

STARTING & RUNNING

AN ONLINE
BUSINESS IN
NIGERIA

A LEGAL GUIDE

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About this Guide

This legal guide was created to give online sellers or people interested in getting involved in online selling, a better understanding of the legal intricacies involved in the sector. Please note that this is neither a comprehensive compilation of all relevant information on this topic nor professional advice; it is merely a high-level overview of the matters discussed.

About LawPàdí

LawPàdí is a mobile and online platform that provides legal information to Nigerians with regards to their everyday legal issues. Our mission is to educate the average Nigerian about their rights and duties by giving clear and easy to understand answers to questions about the law and how it affects their daily lives.

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Copyright

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Publisher

Lawpadi Consultants Ltd

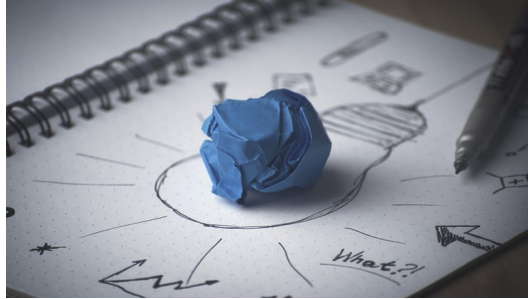
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First Published November 2015

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The Business Idea



The first step to starting your own online business is of course getting the idea. Now, on a number of occasions, as a lawyer I get asked the question around how to prevent ideas from being 'stolen', and so I thought it would be a good place to begin this guide. In summary, this is what you should know:

- An idea can't be copyrighted/patented
- In the context of our discussion on selling online, an idea to sell a particular product online definitely can't be copyrighted/patented
- The product to be sold can be patented, if it meets the required criteria

If you have a unique product which isn't eligible for intellectual property protection but is sufficiently unique enough to be worthy of protecting, then there are other ways to prevent its exploitation by someone else – documenting communication between potential partners and investors, using contracts like Non Disclosure Agreements, and Non-Compete Agreements.

Attempting to protect your idea for an online business you want to go into is quite a difficult (potentially impossible) task, and getting appropriate legal advice might be the way to go.

Helpful Links

[How to protect your Business Idea](#)

[Nigerian Copyright Commission](#)

[Trademarks, Patents And Designs Registry](#)

The Product

The next and most important thing to consider is the item(s), which you will be selling online. There's an unfortunate misconception that the World Wide Web is a free for all, and you can sell whatever you want. Nothing could be further from the truth.



Selling online just like selling in person is governed by the laws of the country (ies) which the sale takes place in or where the customers are domiciled. You need to ensure that there are no restrictions on the sale of the product that you want to sell.

The following are the restrictions that you need to bear in mind when deciding on your product:

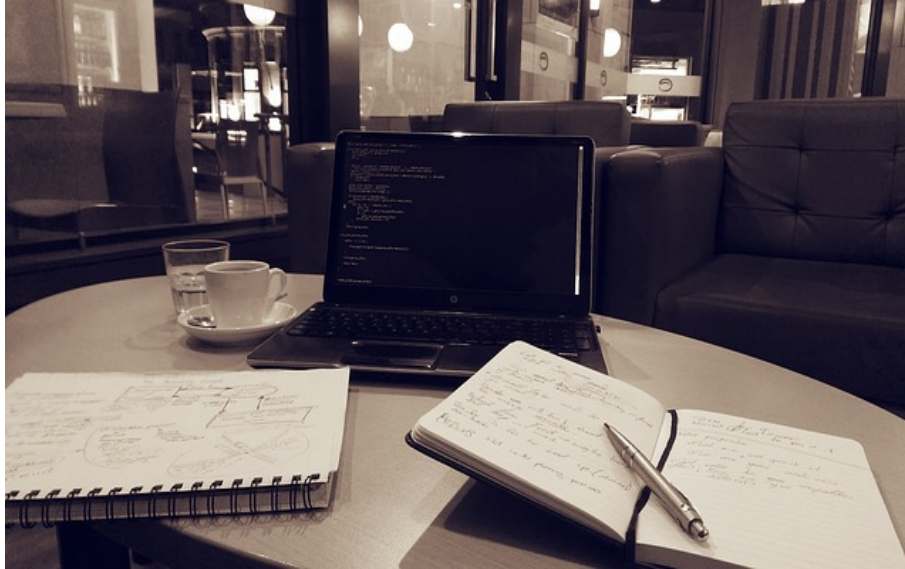
- Restrictions that are contained in the Negative List under Nigerian Law, including sale of arms and ammunitions, narcotics and psychotropic drugs etc.
- Restrictions based on regulatory procedure and licensing i.e. you need a licence to sell the product for example manufacturing and sale of cosmetic products in Nigeria requires a licence.
- Restrictions that are placed on the platform which you intend to sell on, for example, you are not allowed by the Content Policy to sell regulated goods and services, such as alcohol, gambling, pharmaceuticals etc on a .blogspot website

Helpful Links

[Blogger Content Policy](#)

[NAFDAC website](#)

Choosing a Company structure



The next step in setting up your online business is that you have to decide what company structure you want to adopt. The various business structures allowed in Nigeria are – registered business name, company limited by shares, company limited by guarantee, unlimited company (all companies may be private or public), and incorporated trustees.

For the purposes of this guide, we will limit the discussion to a registered business name or a private company limited by shares, as these are the two most likely business structures you would adopt. A business name is simply a name or title under which a person or entity conducts a business. This name has no legal personality and the person and the business are one and the same. A private company limited by shares on the other hand is a business structure where the owners have limited liability and the incorporated company has corporate personality and is a separate entity.

Deciding on what business structure to adopt is a matter for the founders to decide, but my personal opinion in most cases is that if you

are looking to start a business then you should incorporate a company. It's the best structure to have, some of the benefits include:

- Limited liability of shareholders
- Corporate personality of company
- Tax benefits
- Business Continuity etc.

Helpful links

[Benefits of Incorporating a Company](#)

[How to register a Business name](#)

Website Domain Name



Choosing a name is an important aspect of setting up your online business. Ideally, you want your domain name to mirror the name of your business. Some may wonder, what kind of legal issues could you potentially have to deal with when choosing a domain name?! The reality is there are not that many, but they do exist. Specifically they exist around Intellectual Property rights.

If you choose a domain name which conflicts with a commercial name that already exists, you run the risk of losing it. If a company already has a trademark over a word or phrase, and you attempt to use it as your domain name the law is that the owner of the trademark can stop you from using it.

Disputes with respect to domain name conflicts are dealt with under the Uniform Domain-Name Dispute-Resolution Policy (UDRP). Disputes alleged to arise from abusive registrations of domain names (for example, cybersquatting) are addressed by administrative proceedings that the holder of trademark rights initiates by filing a complaint with an approved dispute-resolution service provider.

To invoke the policy, a trademark owner should either (a) file a complaint in a court of proper jurisdiction against the domain-name holder (or

where appropriate an in-rem action concerning the domain name) or (b) in cases of abusive registration submit a complaint to an approved dispute-resolution service provider. Even if the company does not have an existing trademark, there is a potential remedy in the law of torts for the tort of passing off. Which in very simple terms is when someone trades with a name, which is intended to deceive members of the public into thinking the business, is the same as (or affiliated to) another well-known brand.

Finally, it is worth noting here that Section 25 of the Cybercrime Act 2015 provides that any person who uses a name, business name, trademark, domain name or other word or phrase registered, owned or in use by any individual, body corporate or belonging to either the Federal, State or Local Governments in Nigeria on the internet or any other computer network, without authority or right, and for the purpose of interfering with their use by the owner, registrant or legitimate prior user commits a crime and is liable upon conviction to a term of imprisonment of not more than 2 years or a fine of not more than N5m or to both.

Helpful Links

[ICANN website](#)

[Domain Name Dispute Resolution Policies](#)

Tax Issues

“In this world nothing can be said to be certain, except death and taxes” – Benjamin Franklin



Every business is obligated to pay tax. If you are an incorporated company then you will need to register for company income tax and Value Added Tax. Once a company registers for Company Income Tax it is given a unique Taxpayer's Identification Number (TIN). The TIN is a unique number that identifies a specific company for the purposes of paying taxes.

Apart from registration for TIN being mandatory, there is a long list of other things, which you need a TIN for:

- Opening a corporate bank account
- Government loans
- Foreign exchange,
- Application for trade licenses, Import and export licenses
- Registration of motor vehicles,
- Application for certificate of occupancy, etc.

Further, as you will be selling goods online, the sale of goods in Nigeria is subject to Value Added Tax (VAT). VAT is a tax imposed on the supply of goods and services. The tax is charged in Nigeria at 5% of the value of the taxable goods and services. An illustration of this is if you sell a shirt on your website for N10, 000, the VAT chargeable on that is 5% of the value – N500, the business is therefore supposed to sell the shoes to members of the public for N10, 500. The company retains N10, 000 and then remits the N500 to the Inland Revenue Service.

Under Nigerian Law, there is also a tax levied on ICT companies called the Information Technology Tax. This tax is payable by specified companies (GSM service providers and all telecommunications companies, cyber companies and internet providers, pension managers and pension related companies, banks and other financial institutions, and insurance companies) who have an annual turnover of One Hundred Million Naira (N100, 000,000). The companies are to pay a levy of one per cent (1%) of their annual profit before tax to the National Information Technology Development Fund (“NITD Fund”).

This tax when paid is tax deductible for company income tax purposes. The unfortunate thing here is that the term ‘cyber companies’ is not defined by the Act, so there is some ambiguity as to whether e-Commerce companies would fall under that term and therefore liable to pay the tax. It is however something that e-Commerce companies should bear in mind.

Helpful links

[How to register for VAT in Nigeria](#)

[How to get a TaxPayers Identification Number – TIN](#)

Legal Documentation



In creating an online business, there are 2 key documents which every business must have- a Terms and Conditions (T&C) Agreement, and a Privacy Policy Agreement.

A Terms and Conditions Agreement is the contract you have with your customers. It states what the terms of the sale are and what rights the customers have when they purchase your product, and more importantly how to go about exercising those rights. To protect your company and customers, you need to state your terms of use in clear, simple, and easily understood language. This Agreement is extremely important because:

- It sets out the payment terms for your product/service
- It sets out any restrictions on use, for e.g. if the product can only be bought by customers in a certain jurisdiction
- It deals with issues of intellectual property in the product and on the website
- It normally sets out limitation of liability and includes disclaimers and warranties
- It deals with the shipping terms and other delivery issues

- It deals with how disputes/complaints will be resolved etc.

A Privacy Policy Agreement on the other hand is an Agreement between you and your customer which sets out how you will handle their information, what use you will put it to, and other sundry issues. It is important because it lets the customer know what level of security and protection their data will get, and what measure of information they are legally and willingly parting with when they access your website. A standard privacy policy will cover things like:

- What information is collected
- How the information which is collected is used
- How the information is stored
- Circumstances where the information can be transferred to 3rd parties (e.g. if there is a court order)
- Whether cookies are used on the site and to what extent

When starting your online business you should seriously consider getting a lawyer to draft these documents to adequately protect your business.

Helpful links

[Why Your Web Site's Privacy Policy Matters More Than You Think](#)

[Setting out good terms and conditions for your small business](#)

approval is as below:

- Application is made seeking approval to advertise attaching all the necessary requirements as applicable to the particular product/service and medium to be advertised on
- The application is forwarded to the Chairman of the Advertising Standards Panel together with all the necessary documents
- Payment of the applicable fee
- A formal letter notifying the applicant of the status of the application will be sent to him/her as soon as the application has been entertained
- Prior to the receipt of a certificate of approval, the advert is prohibited from being exposed

Apart from the above guidelines, if you intend to carry out Outdoor Direct Marketing/Activation, Flyer-ing, and Posting Bills, there are further rules around this. This depends largely on the location where it is based. For example, in Lagos, the Lagos State Signage & Advertisement Agency (LASAA) deals with this.

The regulatory bodies in Nigeria have not yet caught up with the recent growth of the online advert industry in Nigeria, and that is why there are no specific guidelines directed at this space. Although the APCON vetting guidelines specifically includes Internet advertising as one of the mediums which vetting of adverts is required, the process for vetting as laid out by them is not really compatible with online adverts.

If we are to follow the letter of the law, then if a blog wants to display adverts, then it should require any advertisers to provide a certificate of approval for the advert granted by APCON. The reality is that such an application of the law based on the prevailing regulations is doomed to fail, as the structure for the enforcement of such an application does not currently exist.

Online Networks



These next few paragraphs will highlight some pertinent things that you should note if you intend to use any of the popular online and social media networks to advertise. Google prohibits certain adverts that are to be placed on the Google Adwords platform, this also the case with Facebook, Twitter, and LinkedIn advertising platforms. They all have similar restrictions and you may get more information on each specific one by reviewing their advertising policies. Generally, the networks:

- Do not allow the promotion of counterfeit goods
- Do not allow the promotion of dangerous products like recreational drugs (chemical or herbal); psychoactive substances; equipment to facilitate drug use; weapons, ammunition, explosive materials and fireworks; tobacco products etc.
- Prohibit adverts that promote inappropriate or offensive content
- Prohibit promotions that prompt users to initiate a purchase, download, or other commitment without first providing all relevant information and obtaining the user's explicit consent.

Helpful links

[Blogger Content Policy](#)

[Facebook Advertising Policy](#)

[Twitter Advertising Policy](#)

[LinkedIn Advertising Policy](#)

Receiving Orders



When you are selling online, an important step in the transaction is collecting information from the customer before the order is made. This information would include personal details of the customer – name and address (at the very least).

The legal issues here are around the protection of the data of the customer, and the protection of his/her privacy rights. The relevant laws seek to ensure that when the customer provides such information, it is only used for the purposes of that transaction, and that is not used for any other purpose not contemplated by the customer (except with his/her express consent).

As of present, Nigeria is yet to enact any specific National legislation with respect to Data Protection and privacy; however, there are some bills presently before the Nigerian National Assembly, which seek to address the issue of data protection and privacy in an e-commerce framework.

However, the fact that the Nigerian legal system does not have any specific laws on Data Protection does not mean that people who sell online can act without regard and do as they please. Section 37 of the 1999 Constitution of the Federal Republic of Nigeria provides for the

Right to Privacy and family life, it provides; 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.'

It may be argued that the right to have your personal data protected can be subsumed under this section of the constitution. This is in light of the definition of privacy as 'a private person's right to choose to determine whether, how and to what extent information about oneself is communicated to others, especially sensitive and confidential information' (Black's Law Dictionary 9th Edition).

Further, businesses engaging in online selling need to be aware of the provisions of the National Information Technology Development Agency (NITDA) Guidelines on Data Protection. The guidelines amongst other things lays out the process to be followed in collecting personal data, how it should be stored, and who can access this data. It also lays out Data Protection Guidelines Principles. They are:

- Personal data must be processed fairly and lawfully
- Personal data shall only be used in accordance with the purposes for which it was collected
- Personal data must be adequate, relevant and not excessive
- Personal data must be accurate and where necessary kept up to date
- Personal data must be kept for no longer than is necessary
- Personal data must be processed in accordance with the rights of data subjects
- Appropriate technical and organizational measures must be established to protect the data
- Personal data must not be transferred outside Nigeria unless adequate provisions are in place for its protection

Helpfullinks

[NITDA Data Protection Guidelines](#)

Processing Delivery

Once an item is sold online, the next stage is to ensure the goods are delivered to the customer. The issues involved here are – timelines for delivery, liability for goods when in transit, and customer’s right of withdrawal. With respect to timelines for delivery, ideally every online seller at the time of sale should inform the customer what the expected delivery times are.



The law however is that where no time for delivery is stated by the seller (or agreed by the parties), then delivery must be made within a reasonable time. What constitutes reasonable time will be determined by the nature of the goods sold, and the prevailing average delivery timelines in that sector.

Also important is who bears liability for the goods when in transit. Obviously, the customer will not bear liability, as he hasn’t taken physical possession of the goods. Normally, the seller will bear liability, but if the delivery is not carried out by the seller, but is contracted to a third party logistics/delivery company, then it is important to understand the contractual implications around liability and to what extent the third party company will bear liability.

Finally, it is important to let the customer know what his/her withdrawal rights are. Nigeria is yet to develop direct laws that apply to e-commerce transactions, and as such we have to make recourse to general laws applicable to trade in goods and services. The law is that a customer is not deemed to have accepted goods until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.

However, when the goods have been delivered and the customer retains the goods without intimating to the seller that he has rejected them, or does any act which is inconsistent with the ownership of the seller, for example if the item is a shirt and the customer wears it, then it is deemed in law as acceptance.

Accepting Payment

Online sellers also need to be aware of the legal issues involved when they accept payment from customers. The primary area for concern is fraud and the legal liability that comes with it. When sellers accept payment, they either do it through their own payment processor or the payment is processed by a third party who charges a fee e.g. PayPal, WorldPay, VoguePay etc.



In Nigeria, the Central Bank of Nigeria implemented the Guidelines on Transactions Switching Services.

When these provisions are examined, it shows that the legal position in Nigeria with respect to fraudulent transactions that are carried over e-commerce transactions is that the customer is liable for any fraud committed if he is in possession of the card and has knowledge of the PIN code.

However, once the customer reports any theft or loss of card, he/she is automatically absolved of any liability for any future unauthorised transaction on that card, furthermore, if a fraudulent or unauthorised transaction can be traced to the negligence or breach of contract of the issuer or merchant, then the customer would not be liable.

So, as an online seller in order to protect yourself from liability you need

to ensure that your payment system is secure and protects the data of the customer, or else you could be held liable for negligence. If you are using a payment processor, then ensure you have reviewed the terms and conditions of the service, to understand the extent of your legal liability if there is a breakdown in the payment system which leads to a fraud perpetrated on the customer.

Helpful links

[CBN Guidelines on Transaction Switching Services](#)

Returns and Complaints

In selling online, it is important for the seller to set up a system in place for dealing with returns of goods and complaints. There are no current guidelines or laws specifically dealing with consumer rights in Nigeria.



The Consumer Protection Council (CPC) has been set up to protect the rights of consumers, but it is yet to lay out any guidelines or minimum standards for sellers when dealing with returns and complaints. Best practice is for issues like this to be adequately covered in the Terms and Conditions of the seller. I always say to clients that creating a robust Terms and Conditions agreement is one of the most important (and in most cases largely cost effective) investments an online seller can make.

There are a number of platforms which provide free templates for e-Commerce websites, but with due respect something as important as your contract with every single future customer shouldn't be predicated on a one size fits all template. Get a lawyer who understands the online business to draft one for your business which takes into consideration the nature of the goods you are selling, the inherent risks involved, the prevailing legislation, and also pre-empts pending legislation being deliberated at the National Assembly.

The CPC has considerable oversight and regulatory functions and so if an online seller has unfavourable terms or procedures for its returns and complaints policy, customers could report the seller to the CPC and the seller could be fined or have more severe action taken against him.

Helpful links

[Consumer Protection Council](#)

Conclusion

This guide is not meant to be an intensive guide on all the legal issues involved in setting up and running an online business. Rather, it is meant to give business owners information about things that need to be considered.

We hope you have found this guide helpful, please share it with your social and professional network if you have. We are also working on improving this guide in future versions, if you have any feedback, please contact the author on babatunde@akinibidapo-obe.com.