

PERSONAL DATA PRIVACY IN THE ERA OF UNSOLICITED ADVERTISEMENTS: THE LEGAL AND ETHICAL IMPLICATIONS IN NIGERIA

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Abstract

Rise in unsolicited advertising and associated effects on personal data currently calls for proactive measures in the legal and regulatory approach in Nigeria. Increase in digital advertising and the borderless nature of the cyberspace makes for ease of dissemination of advertising information many of which are sent without the consent and authorization of the recipient. This paper examines the applicable legal and regulatory framework for advertising in Nigeria, highlighting their strengths and shortcomings as well as the implications of the shortcomings on personal data privacy and protection. It finds that lack of a comprehensive legal framework in regulating online advertisements in Nigeria coupled with the lack of regulatory will by the enforcement agents has a far reaching implication on personal data protection. The paper concluded that there is an urgent need for a comprehensive law on online advertisement and recommended regulatory agencies to take proactive measures for personal data protection in Nigeria.

Keywords; Data, Privacy, Legal, Advertisements, Framework and Ethical

1. Introduction

The 21st century information age is generally characterized with rapid introduction, development, use and integration of different forms of digital technologies in everyday life.¹ Digital technology currently constitutes a remarkable source of development in Nigeria, transforming various sectors of the economy including education, healthcare, finance and governance while introducing new opportunities for employment and commerce to the teeming unemployed youth.² The visible impact of digital technology tools such as phones and access to the internet has also been felt particularly in economic activities, communication and social interactions. Also, the commercial and banking sector have witnessed significant growth and development with the influx of e-commerce, digital entrepreneurship, electronic banking and fintech banks.³

As the mobile technology advances and its functions evolve to accommodate the demands of its numerous consumers especially in e-commerce and trading, mobile advertising became prominent, competing and seemingly taking over the traditional mode of advertising. Advertisement has been defined as any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence the choice, opinion or behavior of the recipients.⁴ Advertisements are

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¹ M M Mahmud and S F Wong, 'Digital Age: Importance of 21st Century Skills Among the Undergraduates' (2022) 7 <<https://doi.org/10.3389/feduc.2022950553>> accessed 4 July 2025.

² D O Okocha, S Wang and M Onobe 'The Impact of Digitalisation of Citizenship in Nigeria' (2020) 10 *Arts and Social Science Research* 57-58.

³ M Kolawole, 'Internet in Nigeria: Mobile Phones, Issues and Millenials' (2017) 10(10) *Journal of Pan African Studies* 153.

⁴ Nigerian Communication Commission (NCC) Guidelines on Advertisements and Promotions 2005 Article 2.

broadly divided into traditional and digital advertising. While traditional advertising utilizes the long known forms of advertisements such as advertisements through television, radio, bill boards, etc; digital or mobile advertising, a more recent and modern form of advertising involves advertising in the digital space using mobile technologically empowered devices to reach the targeted audience.⁵ The product sought to be advertised through this medium ranges from brand imaging, coupon promotion, information transfer, direct purchase or voucher which can be text, voice or visual based among others.⁶

Mobile advertising is further divided into two broad headings based on the manner it is presented to the targeted audience. These are the pull and push modes of advertising. The pull form of mobile advertising usually argued to be similar to the traditional way of advertising involves disseminating information to subscribers and recipients on their permission and request. Here, consumers and recipients are pulled in and certain information disseminated to them on their demand and with their consent. The push type of mobile advertising on the other hand involves direct information dissemination and marketing advertisement messages to users targeted audience without their express or implied consent.⁷ Usually, information of this nature is disseminated to mobile phones and other online and internet enabled devices of the recipients without their consent or request. This form of advertising has been described as unsolicited advertisements and has been described as capable of constituting nuisance and privacy invasion to the unsolicited recipients.⁸ Similar to unsolicited advertisement is unauthorized contents which simply mean digital broadcasts and materials published or shared without permission or legal rights.

2. Conceptual Clarifications

2.1.1 Advertisement: advertising has been defined as any gesture or device capable of attracting and or arresting the attention of the person or persons it was targeted at, inducing them to accept an offer of exchange. According to Williams,⁹ it is a form of paid communication used to inform a targeted audience about the existence and or availability of a product or service, induce and persuade them into taking a positive action towards purchasing the product; a paid form of non-personal presentations and promotion of ideas, goods and services.¹⁰ Basically, advertising takes two broad forms: pull and push advertising. The Pull form of advertising is a strategy of advertising used to bring customers to the advertiser.¹¹ It refers to the strategy in which an advertiser aims to increase demand for its product by drawing or pulling consumers to the product and influencing them into wanting the product. The product owners, marketers and all that are involved in the chain of advertising usually incorporate strategies that will help in creating relations with the target consumers and get them engaged with their offer.¹² Push style of

⁵ I K Enwereuzor, 'Capturing Consumers' Experience of Unsolicited Mobile Advertising' (2017) 34(7) *Telematics and Informatics* 948.

⁶ Ibid.

⁷ Ibid.

⁸ A I Sutha, S Chitra and J S Thangadurai, 'An Analytical Paper on Privacy Issues of Consumers in Unsolicited Marketing Campaign' (2026) 1(1) *Journal of Marketing* 1.

⁹ R Williams, 'Advertising: The Magic System' (1960) 1(4) *New Left Review*.

¹⁰ American Marketing Association (AMA) <<https://www.ama.org>> accessed 17 July 2025.

¹¹ K Williams and A. Jones 'Pull Marketing Strategy: Overview, Tactics and Examples' <<https://www.study.com>> accessed 1 July 2027.

¹² Ibid

advertising on the other hand entails pushing products and services to targeted audience and consumers by the advertisers and marketers. Here, the advertiser takes the initial step, establishes contact with the audience before pushing or presenting the information about the existence of the product.

Personal Data can be described as a collection of information about a person such as name, address, occupation, gender, race, and may include payment details, biometric information, personal identification numbers and other important personal information usually collected / gathered and kept by government and other concerned bodies responsible for data gathering and processing.¹³ In online transactions, personal information usually form the enabling link and or password for transactions such as the practice in electronic banking system where a peculiar recognised code is created by the bank for a concerned customer. This code serves as a pathway through which the customer reaches and interacts with the bank.

2.1.2 Data Privacy: this refers to the means of protecting personal data from the public space and third party intrusion. Considering that a lot of personal data is exchanged in the course of online transactions, data privacy and protection is not only necessary but paramount.¹⁴ Information contained in personal data hold important facts about data subject and can be used by third parties for criminal purposes against the concerned data subject. Thus, data protection has been use to equate consumer protection especially as it applies to e-commerce and online transactions and interactions including advertisements.¹⁵

2.1.3 Data Collection and sharing Ethics: these are laws, policies and ethical requirement usually placed on data collectors and processors to ensure that data subjects are not exposed to third party intrusion and unlawful exposure. In Nigeria for instance, there are several laws regulating data collection and sharing ranging from the 1999 Constitution, the Cybercrime Act, the Federal Competition and Consumer Protection Act among others.

3. Theoretical Framework of Advertising

The study considers one of the most popular models of advertising- the AIDA theory of advertising: AIDA is an acronym for Attention, Interest, Desire, and Action. AIDA is a theory of advertising which postulates that advertising a piece of information and or bringing the information about a certain product influences purchasing decision making of the recipients.¹⁶ The acronym-AIDA stands for

- i. Attention: Attention stage is the first stage in advertising where impression of a product is created in the mind of recipients or subscribers.it is the awareness stage where the existence of the advertised product or services is brought to the knowledge of viewers. The duty of attracting the attention of viewers is solely that of advertisers and brand promoters who strives to create and air or display catchy and captivating visual contents capable of appealing to the sense of the targeted audience, thereby inducing in them some

¹³ I Illobinso, 'Consumer Privacy and Data Protection in Nigeria' <<https://placng.org>> accessed 6 July, 2025.

¹⁴ O P OLebara, E Okpara and K G Onyegbule, Data Protection and Consumer Rights in Electronic Commerce In Nigeria: A Legal Appraisal' (2025) 9(1) *African Journal of Law and Human Rights* 120-127.

¹⁵ Ibid.

¹⁶ L Meitili, 'Aida Communication Model on Social Media Platforms: Assessing the Hierarchical Order and its Applicability on Purchasing Behaviour of Students in Higher Learning Institutions'(2023) 6(3) *International Journal of Business Management and Economic Review* 193.

sense of wanting to purchase the product. According to Kotler, Armstrong and Oprensik¹⁷, the information presented catches the attention of the targeted audience by creating meaningfulness in the advertised product, benefits of the product, and the belief in the consumer that the product is useful and will be of benefit.

- ii. Interest: this is the stage where the information disseminated about a certain product elicits some level of interest in the product in the mind of the target audience or consumers. Thus, advertisers usually adopt and include features that will induce interest in consumers in advertising their products.
- iii. Desire: at the desire stage, the viewer of the advertisement became convinced that the product as advertised will satisfy their need and forms the desires to own the product. The advertisers at this stage, also facilitates efforts towards convincing the consumers on the usefulness and positive effect of the product to increase consumers' positive disposition towards the product. Desire can be increased / influenced through personal interaction with the consumers. In online advertisements, advertisers usually provide links and directories for the consumers to click in order to gain more knowledge on the usefulness of the product. Consumers' desire can also be heightened by presenting appealing offers such as buy one and get one free or lowering the purchase price.¹⁸
- iv. Action: at this stage, the consumer is finally prompted to take a specific action based on the experiences garnered in the first three stages. This action ranges from making purchase, signing up for a free trial and visiting the website link provided.¹⁹

Consumers' interest in a product can be increased through interacting with the consumer by creating contents on the effectiveness of a product, testimonials from persons who claim to have used the product, increased traffic on site and links to important pages to further convince the consumers. According to E. St. Elmo Lewis who developed the AIDA model of advertising, consumers' behavior when faced with advertisement or sales promotions such as online advertisements is linked to the nature of the advertisement.²⁰ It opines that advertising and information dissemination passes through three major stages including the cognitive stage, the affective stage and the behavioural stage. The cognitive stage is based on knowledge of information on the availability of a product. The second stage that is the affective stage considers the effect of the information received at the cognitive stage on the recipient. The behavioural stage accesses the reaction of the recipient to the received information. This theory has passed / undergone several modifications by different scholars since its inception and postulation. Notable among these modifications is that done by Lavidge and Steiner in 1961. According to the duo, consumers or information recipients do not readily come with purchase decision after the first two stages- cognitive and effective stage. The scholars maintained that consumers go through seven stages before making or reaching a purchasing decision. These include Unawareness, Awareness, Knowledge, Liking, Preference, Conviction and Purchase.²¹

¹⁷ P Kotler, G Armstrong and M O Oprensik, *Principles of Advertising* (17th Edn, UK 2018).

¹⁸ R Awati 'AIDA Marketing Model' <<https://www.techtarget.com>> accessed 3 July, 2025.

¹⁹ Ibid.

²⁰ A Iwamoto 'The Origin of AIDA: Who Invented and Formulated the AIDA Model' Research Paper Presented to the Faculty of Business and Commerce, Kansari University, Japan.

²¹ Ibid.

This theory however, has been criticised by some scholars on different grounds. For instance, Maccinis and Jaworski²² highlighted the ability of consumers to process information before purchasing; maintaining that it is most unlikely for consumers and recipients of advertisement piece to spontaneously exercise purchasing options based on the information received without more. In other words, these authors are of the opinion that several factors influences consumers' decision to purchase and these factors are not solely based on information received through advertisements. Similar to this, Rossiter and Percy²³ opined that despite the persuasiveness embedded in the advertisement, consumers need for the particular good comes paramount as consumers will not be willing to buy unless they have a need for the product advertised.

While some scholars have maintained that AIDA model of advertising does not pose significant effectiveness on online sales as product usefulness significantly affect purchaser's attention, interest, desire and final decision to purchase,²⁴ others have maintained that AIDA model is the most effective model in online advertising as it is utilized by advertisers and online marketers to design catchy and captivating visual images, bold graphics and emotional headlines capable of attracting viewer's attention.²⁵ It also gives room and opportunity to advertisers to interact with intending buyers, inducing interest by showcasing videos and pictures of products in interesting form with the intention of appealing to the mind of viewers.

In line with AIDA model of advertising, attention is an integral part of advertising. In order to get consumers' attention, Kotler and Armstrong²⁶ maintain that the information presented must be presented to attract the attention of the targeted consumers. A major goal of advertising is increasing awareness by exposing the advertised message to a wider group of people. To achieve this goal, advertisers usually strive to disseminate information the general public. In online space, information is disseminated to the general public and subscribers of the online space including the uninterested persons without their consent.

4. Categories of Advertising

Advertising is a means of bringing to public notice the existence of certain products, brands and services. An advertising strategy is a carefully structured plan that outlines necessary fundamental steps, procedures and stages required to reach target audiences, build brand awareness and establish positive reaction from targeted audience. It is a medium through which the availability of certain products and services as well as the mode of purchasing the goods and accessing the services is established by advertisers in various types of advertisement. Generally, there is no generally accepted form or types of advertisement. While some scholars believe that advertisement is a concept that cannot be subsumed into parts and types, others maintained that advertisement cannot be fully discussed and appreciated without considering the various types. This study however considers advertising from two broad headings with each broad heading accommodating sub-headings.

²² D J Macinnis and B J Jaworski, 'Information Processing From Advertisements: Towards an Integrative Framework' [1989] *SAGE Journal of Marketing*.

²³ J Rossiter and L. Percy, *Advertising Communication and Promotion Management* (2nd Edn. Irwin McGraw-Hill Singapore 1998).

²⁴ E Naryono, 'AIDA Analysis: Towards Advertising Effectiveness as a Basic Online Shop Marketing Strategy in Sukabumi City' <<https://ideas.repec.org>> DOI:10.31219/osf.io/6v72b> accessed 4 June 2025.

²⁵ NV Son, 'AIDA Model: Meaning, Explanation and Examples' <<https://www.tatsmanic.eu>> accessed 3 July 2025.

²⁶ P Kotler and J Armstrong, *Principles of Marketing* (4th ed. Pearson Education Press, 2005).

The two broad headings under which types of advertising are discussed include traditional and digital advertising.

- a) Traditional Advertising: this refers to the process where marketers purchase advertising space or time on traditional media channels such as television, radio, newspapers, magazines and billboards. This style of advertising has been in vogue for decades with modifications to suit the peculiarities associated with circumstances and community of application. This type of advertising plays key role in shaping consumers behavior towards a brand as well as brand recognition and patronage.²⁷ Traditional advertising can take the form of television, radio, print, Direct Mail, outdoor advertising among others.
 - i. Television Advertising: the word ‘television’ simply means ‘seeing from a distance’. Television advertising therefore means projecting an image, an object or event from a distance using electrical transmission waves.²⁸ This form of advertising is mostly preferable in Nigeria because marketers can easily reach mass audience at a relatively low cost. Also owing to the ability to use sound, light, colour, motion, action and or a combination of some or all in television advertising. In spite of the advantages, television advertising is limited by high cost of televisions, channel and network problems in most parts of Nigeria.
 - ii. Radio Advertising: Radio advertising is the use of audio messages in disseminating and promoting information about the existence, nature and usefulness of a certain product or services through airwaves. It is an audio advertising service through the air as radio waves from a transmitter through a radio antenna to a receiver.²⁹ Radio advertising is cost effective and serves the purpose of local accessibility with or without electricity supply depending on the nature of a receiver radio. However, it does not permit video transmission and does not have the capacity of storing information for future uses.³⁰
 - iii. Print Advertising: this is a form of advertising captured and contained in different forms of print media such as newspapers, magazines, brochures and flyers. Print advertising was the most viable means of disseminating information about product availability before the advent of mobile advertising.³¹ This is because; print media possesses the capacity to reach out to subscribers and readers of different levels and categories.³² The declining readership attitude among youths however is a limiting factor to print media in modern day society characterized with access to telephones and the internet.³³

²⁷ J O Okpara, ‘Traditional and Digital Advertising: Relevance and Effectiveness in Emerging Markets’ (2021) 8(2) *Nigerian Journal of Marketing Studies* 55.

²⁸ S Nwanze and Others, ‘Influence of Television Advertising in Promoting Mobile Telephone Network Products in Enugu State, Nigeria’ (2021) 7(1) *International Journal of Network and Communication Research* 14.

²⁹ I W Udomisor, ‘Management of Radio and Television Stations in Nigeria’ (2013) 10 *New Media and Mass Communication Journal* 1.

³⁰ W Arens, M Weigold and C Arens, *Contemporary Advertising* (McGraw-Hill, 2017) 276.

³¹ S Nweze and Others, ‘Newspaper Advertisements on Readership of the Voice Newspaper in Abakaliki, Nigeria’ (2019) 7(6) *British Journal of Marketing Studies* 58-75.

³² J B Ige ‘Imperative of Total Newspapering for Survival in Nigeria Newspaper Industry’ (2019) 2(8) *Arabian Journal of Business and Management Review* 84.

³³ C.L Bovee and J.V. Thill, *Advertising Excellence* (8th edn McGraw-Hill, 2019) 344.

- iv. Outdoor Advertising: is a form of advertising wherein marketers use billboards, vehicles, signs and other means to interact with target audience and viewers in the public space on the availability of their product thereby creating the desire in them to purchase and patronize their brand. Usually, outdoor advertising accounts for 28 percent of the total media spend in Nigeria, behind television advertising.³⁴ Outdoor advertising enjoys high visibility due to continuous exposure. However, where the advertising material is of a less resistant nature, durability and visibility are prone to destruction as a result of adverse weather conditions.³⁵
- b) Digital Advertising: Digital advertising is a modern form of advertising that uses the internet paired with the relevant electronic devices to deliver messages about the existence and usefulness of a product / service to targeted audience and consumers.³⁶ According to Kotler and Keller,³⁷ digital advertising offers sufficient and effective mode of connecting with consumers. It is any promotional activity a business does through online platforms or digital channels. The major types of advertising include Paid Search, Audio, Display, Native, Social Media advertisement and Influencer marketing.
 - i. Paid Search Advertisement or Search Engine Marketing (SEM): This is a type of digital advertising where advertisements appear on search engine result pages when a user searches for relevant terms or items. According to Sen,³⁸ search engine marketing is the quickest developing promoting medium currently and there is an expectation that getting more viable than the traditional media outlet. Search engine marketing allows a subscriber get most appropriate result of his online searches by helping marketers display their available offers and programs.³⁹ A prominent form of SEM is the usual Pay-Per-Click where advertisers pay a fee any time they click on an advertisement.⁴⁰
 - ii. Social Media Marketing: this type of advertisement utilizes social media websites and platforms in marketing products and services. This type of digital advertising is prominent among small and medium scale business owners owing to the associated cost effect it affords the marketers and the subscribers.⁴¹ The advertisers and marketers usually place sponsored advertisements on social media platforms such as facebook, Instagram, LinkedIn, Tik Tok among others targeting specific peculiar interests based on studied patterns and behaviours.⁴²

³⁴ LO Olujide, 'Outdoor Advertising in Rural Markets, Challenges and Prospects' (2016) 8(2) *Journal of Business and Organisational Development* 94.

³⁵ S Moriarty, N Mitchell and W Wells, *Advertising: Principles and Procedure* (Pearson, 2019) 390.

³⁶ T Ihinmoyan, 'Effects of Digital Advertising on Consumer Buying Behaviour in Nestle Plc. Nigeria, Lagos' (2021) 4(4) *International Journal of Multidisciplinary and Current Education Research* 80.

³⁷ P Kotler and K Keller, *Marketing Management* (15th edn Pearson Education Harlow, 2016) 546.

³⁸ R Sen, 'Optimal Search Engine Marketing' (2005) 10(1) *International Journal of Electronic Commerce* 9.

³⁹ O.I. Mkpurukwe, R. Rimamnde and B.A. Renner, 'Search Engine Marketing and Customer Satisfaction of Domestic Airline in Rivers State' (2024) 25(1b) *Nigerian Journal of Management Sciences* 446.

⁴⁰ C O Eze, 'The Role of Pay Per Click in Digital Marketing' [2021] 5(1) *Nigerian Journal of Marketing Studies* 34.

⁴¹ E G Nwoko and C V Obi, 'Effect of Online Marketing on the Performances of Small and Medium Scale Enterprises (SMEs) in Anambra State, Nigeria' (2024) 12(3) *International Journal of Innovative Social Sciences and Human Research* 219.

⁴² A Adeyemi and F Bello, *Social Media and Business Promotions*, (Spectrum Books) 2020.

- iii. Native Advertising: this type of digital advertising is targeted at contents on platforms owing to their ability to adapt to the content.⁴³
- iv. Re-targeting / Remarketing: This form of digital advertising targets previous users or subscribers of a website or application, showcasing new or existing products to them intending to influence these previous subscribers towards developing interest or mindset towards the advertised product or services.⁴⁴ Usually, retargeting and remarketing can be seen as a feedback market strategy used by marketers in reaching out to consumers who had subscribed to their services in the time past; intending to check up on the consumers to see if they are interested in purchasing similar or a different available goods of the marketer. However, this form of advertising and digital marketing could be said to be the basis of unsolicited advertising.

5. Nature and Effect of Unsolicited Advertising

Unsolicited Advertising basically refers to the act of posting, sending or otherwise distributing advertisement pieces to targeted audience without their consent and or authorization. The underlining feature of this form of advertising is that persons who receive the advertised information neither subscribe to it nor consent expressly or by implication to such advertisement or information being sent to them. The recipients of this type of advertisement information are usually at loss as to how and where the advertisers come about their information considering that their information were never shared to the advertisers at any point. It has therefore been concluded that unsolicited advertising and its perpetrators thrive on stolen personal data usually gotten without the knowledge of the data subject.⁴⁵ Unsolicited advertising takes the form of Spam Emails, bulk SMS, Telemarketing Calls, Pop-up Ads, flyers and leaflets. Among the different types of unauthorized advertising, the most prevalent in Nigeria is the Pop-up Ads. Pop-up ads are forms of unsolicited advertising that pops up at the beginning or completion of a certain internet enabled tasks on phones and other electronic and internet enabled devices without the user's prior consent or authorization, prompting the user to subscribe to and purchase certain products and services. For instance, it has become a regular but annoying occurrence at the end of every telephone call sessions to receive an advertisement piece, prompting the user to download and subscribe to certain goods and services ranging from fintech bank applications, beauty or body building sessions, cookware and clothing / apparel purchases among others. Advertisement of this nature ordinary serves as a means of creating awareness about the availability of a product or service and would have served the recipient by reducing the stress of surfing the cyberspace in search of such. However, it becomes unhealthy, annoying, probing and an invasion of privacy when it is sent to uninterested audience and incessantly too.⁴⁶

⁴³ U Nwankwo, 'Understanding Native Advertising' in T. Okonkwo (ed) *Digital Marketing Strategies in Africa*; (Cyberbooks Ltd, 2021) 73.

⁴⁴ N Uche, 'Behavioural Targeting and Remarketing' in L. Ojo (ed) *Digital Marketing and Consumer Protection* (Integrity House, 2022) 144-147.

⁴⁵ National Data Protection Regulation (NDPR) issued by the National Information Technology Development Agency, (NITDA).

⁴⁶ T Fadoju, 'Assessment of Acceptability of Unsolicited Mobile Advertisements Among Nigerian Students' [2017] 3(4) *International Journal of Humanities and Social Science Studies* 186.

Closely related to unsolicited advertisement is unauthorized contents which refers to any material including texts, images, videos, audios or data published or circulated without the permission and or authorization of the original owner, proper custodian or the subject.⁴⁷ Unauthorized contents applies to the use of copyright material without the permission or authorization of the copyright owner, use of personal data without prior permission of the data subject among others.⁴⁸

5.1 Common Forms of Unsolicited Advertising in Nigeria

The common forms of unsolicited advertising in Nigeria today include:

- i. Unsolicited Short Message Service (SMS) Advertising: this is one of the commonest forms of unsolicited advertising in Nigeria presently. Usually, online market stores, telecommunication companies, banks, betting sites send promotional text messages to users and subscribers of the telecommunication services without the subscriber's prior request or consent. For instance, a user may receive series of messages from telecommunication service providers prompting the user to key into an ongoing promotional offer on data and airtime. Banks also send unsolicited messages advertising available loan offers and new offers and available packages among their services to customers. This may seem a way of promptly bringing the knowledge of an existing offer to customers. However, customers have negative and unpleasant perception of these messages because the information in the advertisements are usually not essential, useful of needed.⁴⁹ An effective mobile advertisement must recognize the interest of the target consumers.⁵⁰
- ii. Spam E-Mail: unsolicited advertising via spam email is a prevalent issue in Nigeria today. This form of unsolicited advertising involves commercial messages sent in bulk without recipient's prior request and consent. Most people find spam annoying and consider it an inevitable part of using email. One major problem with spam is that it can choke email inboxes if not properly filtered and regularly deleted.⁵¹
- iii. Robocalls /Telemarketing Calls: robocalls are automated voice calls placed on users prompting them to accept certain offers for purchasing and or subscribing to certain products and services. These calls are unsolicited, unsubscribed and made without the consent and permission of the user. According to Enwereuzor,⁵² the implications of unsolicited messages in robocalls tend to generally disgust consumers and the future holds negative strides as these consumers may become grossly dissatisfied with any network through which calls of this nature was made.
- iv. USSD Flash Messages and Post-Transactional: these form of unsolicited messages come as follow-ups of certain digital transactions such as checking account balances. These advertisements are designed in such a way that the user cannot complete the primary USSD transaction without viewing the advertisement. An Example of this is the type of

⁴⁷ U J Orji, 'Consumer Protection, Cybercrime, Electronic Banking and Payment System in Nigeria' (2019) 24(1) *TLR*.

⁴⁸ P T Ortese, 'An Appraisal of the Nigerian Cyber Crimes Law from Comparative Perspective' (2023) 12(1) *Benue State University Law Journal* 71.

⁴⁹ Fadoju (n 46).

⁵⁰ Ibid.

⁵¹ P Kirvan, R Awati and T Taina, 'What is Email Spam and How to Fight it' <<https://www.techtarget.com>> accessed 11 July 2024.

⁵² Enwereuzor (n5).

advertises that usually pop up on clicking the PDF application on telephone. The annoying aspect of these type of advertising is that they are numerous and not until they are completely showcased, the phone user or application subscriber cannot perform the needed function.⁵³

6. Unsolicited Advertising and Data Privacy Interventions in Nigeria

In recent times, marketers and manufacturers of products have utilized unsolicited advertising to attract more customers and subscribers. Some persons in need of certain goods and services may not have the contact and channel of producers and or suppliers of such goods and as such may garner information about the goods and services from this type of advertising. However, recent developments and policies in data protection and policy owing to proliferation of different crimes resulting from data breach and third party intrusion on data; coupled with enactment of data protection and privacy laws in Nigeria have ushered in a new trend of data protection, bringing to limelight the unlawful nature of unsolicited advertisements.⁵⁴ These laws apply to check instances where the data subject (subscriber) who earlier subscribed to the service and information has exercised the intention to opt out of the service in respect of which unsolicited advertisement message is sent.⁵⁵ Some of the legal interventions to check unsolicited advertising in Nigeria are discussed below.

i. The Constitution of the Federal Republic of Nigeria (CFRN) 1999

The CFRN provides that the privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication is hereby guaranteed.⁵⁶ It has been opined that right to data privacy is not explicitly captured in this section and the Constitution is explicit on the right it is sought to protect which does not in any way include right to privacy of data.⁵⁷ This position notwithstanding, while it is not in doubt that the Constitution does not explicitly mention data as one of the concepts it is sought to safeguard, the general right to privacy however, is hinged on the premise that people should be free from unnecessary intrusion especially when the intrusion is unsigned for or has been opted out of if earlier signed or subscribed to. Apart from the feeling of annoyance usually associated with receiving these advertisement messages, the question of how the subscriber's information and data was gotten by the advertiser becomes another issue of discourse. This issue has received a judicial interpretation in recent times in the case of *Omotola Fathiat Quadri v, Zenith Bank Plc.*⁵⁸ In this case, the applicant instituted an action against the respondent seeking for a declaration that the respondent's unsolicited emails numbering over 300 from February 2021 to May, 2021 to the applicant's email address violated the applicant's fundamental right to privacy under section 37 of the 1999 Constitution; an injunction restraining the respondent from further sending such unsolicited emails to the applicant's email; and general damages of Five Million Naira. In defending the action, the respondent contended that a customer of theirs provided a wrong email which coincidentally is that of the applicant hence, her receiving the unsolicited emails. The court gave judgment in favour of the applicant, holding that sending unsolicited email message to the applicant by the

⁵³ NCC 'Guidelines on USS Short Codes' (Abuja, 2022) Section 3.7.

⁵⁴ S Tunji. 'Nigeria's Data Privacy Breaches Surge Amid Regulatory Pressure' <<https://pnchnng.com>> accessed 16 July, 2025.

⁵⁵ Ibid

⁵⁶ Constitution of the Federal Republic of Nigeria (CFRN) 1999 s. 37.

⁵⁷ B U Ihugba, 'Constitutionality, Privacy and National Security: Developing a Legitimate Legal Framework for Nigeria' (2016) 7(2) *Nigerian Journal of Legislative Affairs* 83.

⁵⁸ *Unreported Suit No. HCT /606/ 2021.*

respondent violates the applicant's right to privacy. In arriving at its decision, the court considered the import of section 37 of the 1999 Constitution and also relied on an earlier case of *EMTS V. Eneye*⁵⁹ where the Court of Appeal held that sending unsolicited text messages to the respondent amounts to violation of the respondent's right to privacy guaranteed by Section 37 of the 1999 Constitution and includes right to privacy of telephone lines.

These decisions notwithstanding, the efficacy of this section to personal data has been faulted on several grounds. One of such grounds is the fact that section 37 of the 1999 Constitution fall within the limited rights that can be justifiably limited in the interest of defence, public safety, order, morality, health or for the protection of rights and freedoms of others.⁶⁰ Considering that the section explicitly mentions homes, correspondence, telephone conversations and telegraphic communications, it may be difficult to accommodate other forms of personal data such as that contained in social media and biometrics. Again, in spite of lofty provisions in legislations, enforcement and procedure usually pose certain challenges especially in this area of law, relatively new to some persons including law enforcement agents and judges.

ii. Nigeria Data Protection Act, 2023

The Nigeria Data Protection Act (NDPA), 2023 regulates the general mode of collecting, processing, storing and using personal data.⁶¹ The NDPA was enacted as a response to the numerous rising concerns and cases of persona data breach and general misuse by data controllers and marketers. The Act aims at protecting data subjects' rights to data privacy by promoting responsible data procession policies and practices through the Nigeria Data Protection Commission, an agency created under the Act. Personal Data is defined in the NDPA as

any information relating to an individual who can be identified or is identifiable, directly or indirectly by reference to an identifier. Identifiers under the Act includes name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of that individual.⁶²

The NDPA provides that companies, network service providers and data controllers generally have the duty to implement appropriate technical and organizational measures to ensure that the security, integrity and confidentiality of personal data in its possession or under its control, including protection against accidental or unlawful destruction, loss, misuse, alteration and unauthorized disclosure⁶³ Considering this explicit provision of the Act on data protection and personal data security, any action or conduct of a data controller at variance with this provision becomes illegal, capable of sustaining a legal action against the erring data controller. In the telecommunication sec, considering that the relationship between subscribers and telecommunication operators which is purely contractual can also give rise to legal rights. The Act mandates controllers including marketers to strive towards securing data subject's consent

⁵⁹ [2018] LPELR 46193 (CA).

⁶⁰ CFRN s. 45.

⁶¹ National Data Protection Act (NDPA) 2023 s1.

⁶² Ibid s 65.

⁶³ Ibid s 39.

before processing of using their data for any formal purpose including marketing.⁶⁴ When determining if the consent was truly and freely given to a controller to process personal data, controllers must assess if the provisions of service was made a condition; in instances where consent is conditional, freedom of consent is vitiated. The Act enjoined data controllers to implement appropriate technical and organizational measures such as pseudonymization, encryption and secure processing systems.

The Act also provides for the right of a data subject to opt out of a previously given consent. Under Section 35, a data subject has the right to revoke, withdraw and opt out of an already given consent. The process of revoking consent should be made seamless as giving same by the data controllers. Thus, a consumer who initially gave consent can decide to withdraw or revoke consent over processing his data and in any case where such decision is made, the Act mandates the data controller concerned to respect the decision and act accordingly.

Specifically, the Act regulates direct marketing and sending unsolicited promotional messages.⁶⁵ Based on this, an advertiser or marketer must not process personal data for direct marketing without the consent and approval of the data subject. The Act provides for the right of data subjects to object at any time to the use of their personal data by data controllers and where a data subject objects to his data being used or opts out of the initial arrangement / withdraw consent after giving it initially, the data controller must discontinue the use of such data subject's data forthwith.

Thus, in the case of Domino's Pizza,⁶⁶ the Federal High Court sitting in Abuja recently ruled in favour of an Applicant whose action was based on unsolicited messages that was consistently sent to the applicant by the respondent. The court held that the respondent had sent unsolicited advertising messages to the applicant's phone without his consent or authorization thereby breaching section 25 of the Nigeria Data Protection Act, 2023. The issue leading up to the case started in December 2023 when the Applicant came to the knowledge that the respondent had been sending advertising / promotional messages to his phone despite not giving his information or consenting to it being used by the respondent.⁶⁷ The messages continued till May 2024 with messages of similar nature numbering up to 16 from the respondent.

Investigations revealed that the applicant earlier shared his information with Jumia Food, a different online commerce platform when he ordered food the shop. Jumia subsequently shared applicant's data with the respondent-Domino's Pizza who used it for advertising without securing the applicant's consent. Jumia Food, a data controller ordinary has the duty of ensuring lawful processing of the applicant's data including the duty to obtain permission from him before sharing the data with a third party / data controller. On this note, Jumia Food ought to have been held liable alongside the respondent; however, it was established during trial that Jumia Food

⁶⁴ Ibid s 24.

⁶⁵ Ibid s 25.

⁶⁶ B Abiodun, 'Court Orders Domino's Pizza to Pay Customer Three Million Naira for Privacy Infringement' <<https://techpoint.africa>> accessed 16 July, 2025.

⁶⁷ Ibid.

having earlier notified the respondent to discontinue the messages to the applicant has discharged the duty reposed on it in the NDPA and as such cannot be held liable.⁶⁸

In an earlier case of *Njikeonye v. MTN Telecommunications Ltd*⁶⁹, the court stated of telecommunication service providers to disclose the identity of third parties to whom customers'/ subscribers information in the custody of these operators will be shared. According to the court, this disclosure is a fundamental part of the contract existing service providers and subscribers the violation of which entitles the affected subscriber or customer to damages in an action challenging unsolicited adverts emanating from activities of third parties and marketers who send unsolicited updates on business innovations, ideas and availability of certain goods and services.

In furtherance of its purpose, the National Data Protection Commission (NDPC) has made some policy directives and guidelines towards personal data protection in Nigeria. One of such Guideline is the NDPA General Application and Implementation Directive, 2025 which provides that where personal data is processed for direct marketing, consent of the data subject is required.⁷⁰ Considering this provision, marketers and advertisers have the duty of seeking and securing the consent of data subjects before an advertisement and related information can be sent or marketed to them as anything short of explicit consent of the data subject had and obtained is antithesis of the provision of this Directive. However, a major problem facing the Commission is underreporting from the affected data subjects who fail to notify the Commission about the breaches of unlawful data processing activities on their data/

iii. The Federal Competition and Consumer Protection (FCCP) Act 2018.

The FCCP Act serves as the principal legislation governing and regulating competition and consumer protection in Nigeria. It seeks to promote maintain and regulate competition in Nigerian market economy, protect and promote the interest of consumers of products and services by regulating prices as well as restricting unfair and exorbitant prices and market practices that may constitute and occasion hardship to consumers.⁷¹ The Act provides that consumers have the right not to be contacted with direct market messages and failure to adhere to this by marketers and advertisers attracts liability under the Act.⁷² In other words, the FCCP Act protects personal data of persons in Nigerian from an unhealthy and unauthorised access and processing including unconsented sharing with other data controllers. It provides that the Federal Competition and Consumer Protection Commission (FCCPC), the agency saddled with the responsibility of enforcing the provisions of the Act must ensure that consumers are given the necessary information to assist them in making informed choices.⁷³ An application of this provision to subscribers of telecommunication services simply means that consumers and subscribers of services where data collection and processing applies have the right to be informed of how their data is to be processed to enable them make informed choices.⁷⁴ The Act also mandates the FCCP to protect consumers from unreasonable, unjust and improper trade practices.

⁶⁸ Ibid.

⁶⁹ [2008] 9 NWLR (Pt. 1092), 339.

⁷⁰ NDPA (General Application and Implementation) Directive 2025, Article 18.

⁷¹ Federal Competition and Consumer Protection Act, 2018 s 24; I. Chime and C. Okoroafo, 'Gaps and Bridges Data Protection and Competition Law in Nigeria' (2025)12(1) *NAUJCL* 11-21.

⁷² (n71) s 127.

⁷³ Ibid s17(s).

⁷⁴ Ibid s17(y).

This can be interpreted to include any misuse or improper sharing of personal data for unsolicited advertising.

Some perceived shortcomings of the FCCPC in consumers' personal protection ranges from the FCCPC Act's omission to define personal data. It also omits an explanation on the basic requirement for processing personal data and the extent or level of the required consent. This gap in the Act constitutes a clog on the Commission's wheel of enforcing consumer right based on personal data as the commission is usually faced with ambiguous, vague and conflicting interpretations on the subject of personal data. Also, lack of the requisite expertise in data protection, digital privacy and data security affects the commissions' ability to investigate cases and matters bordering on personal data privacy and breach. Underreporting is yet another problem faced by the Commission as reported cases of unsolicited advertising are few. Again, the FCCPC is bedeviled with lack of jurisdictional boundaries between the agency and other agencies for data protection such as the Nigeria Data Protection Commission and the Nigerian Communications Commission.

iv. The Nigerian Communication Commissions (NCC) Act 2003

The NCC Act is the principal legislation regulating the telecommunication industry in Nigeria and the mode of operation of telecom operators including the way and manner they relate with customers and consumers of telecommunication services. In line with its mandate, the NCC Act establishes the Nigeria Telecommunication Commission, an agency charged with the responsibility of implementing the provisions of the Act part of whose duty is to make and enforce regulations towards coordinating the industry. In line with this power, the NCC has issued regulations and bans on telecommunication industry operators.⁷⁵ One of such regulatory guideline is published in the NCC Guidelines on Advertisements and Promotions. Article 2 of this Guideline defined advertisement to mean any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any medium with the intent to influence their choice opinion or behavior.⁷⁶

The Guideline in Article 3 sets out the minimum standards and requirements for that must be followed by advertisers at all times. The minimum requirement mandates operators and advertisers to include a detailed report of advertisement wherein the goods and services for which the advertisement is made as well as the target consumers will be clearly specified and forward same to the NCC within seven days for approval before communicating or advertising the goods / services to the target consumers.⁷⁷ The approval if granted must be registered with the Consumers Protection Council within three days after the advertisement commences.⁷⁸ The purpose of this Guideline is to ensure that advertisers do not over flood the market with unnecessary and sometimes false information about goods and services some of which may not serve any useful purpose to the consumers. In spite of the lofty provisions of the NCC Act, the Commission has faced several challenges in its operation due to numerous challenges such as growth and rapid development of the telecom sector and network making it difficult for the Commission to keep pace. Conflict of jurisdiction and regulatory overlap is another shortcoming of the Commission.

⁷⁵ NCC Act s 3 (1); Nigeria Communication (Enforcement, Processes, Etc) Regulation, 2005 Article 8(1).

⁷⁶ NCC Guideline on Advertisements and Promotions Article 2.

⁷⁷ Ibid Article 4(1) (iii).

⁷⁸ Ibid Article 4 (1) (v).

The NCC is no doubt empowered to regulate the operations of the telecommunication sector. Nevertheless, the operational mandate of the Nigeria Data Protection Act, an Act principally geared towards protection of personal data of Nigerians from unauthorized access has overtaken the NCC's role of data protection in the telecommunication sector since the NDPA enjoys unlimited jurisdiction in so far as the matter referred to affects data.

v. The Advertising Regulatory Council of Nigeria (ARCON) Code

The (ARCON) Code is the principal legislation governing advertising including the ethics, rules and regulation for advertisers in Nigeria. The Code sets out principal areas and ethical standards for advertising practices including truthfulness and accuracy as well as consumer protection and social responsibility of advertisers.⁷⁹ The Code establishes the Advertising Practitioners Council of Nigeria (APCON) now Advertising Regulatory Council of Nigeria (ARCON).⁸⁰ The mandate of the Council mainly revolves around protecting consumers and ensuring that advertisements are truthful, not misleading, and not exploitative of vulnerable groups; promote fair competition; comply with ethical standards and principles relating to social responsibility; as well as regulate contents and claims in advertisements.

With the advent of digital advertising, the Council's mandate has been amended to strengthen rules of online platforms, influencer marketing and a clear disclosure of sponsored contents; addressing the implication of Artificial Intelligence driven advertising and data protection principles.⁸¹ One of the Regulations made by the Council is the Procedure and Monitoring Regulations. The Regulation provides that all consumer promotions are required to be verified by the Advertising Standards Panel (ASP) and when applications are made for the verification of any consumer promotion, the promotional item offered and prospects are to be made available to the ASP to ascertain that what the advertiser is promising the consumers are actually available before approval is given. Enforcement however, is the major challenge of the Council. This challenge especially as it relates to digital advertising and online promotion presents a unique challenge considering the borderless nature of the internet and the rapid and constant proliferation of online contents and advertising messages thereby posing a herculean task on the Council.

In spite of the above examined laws and the provisions towards protecting subscribers and consumers of online services from the menace of unsolicited advertising in Nigeria, unsolicited advertising with its associated vices still happen to the annoyance and discomfort of the affected subscribers. The case is however different in other jurisdictions such as the United States of America and the United Kingdom. In the United States of America, the Telephone Consumer Protection Act⁸² prohibits digital advertisers and marketers from making and placing unsolicited commercial calls and texts if the recipient declines consent or withdraws consent at some point after giving it. Under the Act, contravention of any provision of the Act constitutes a breach and the data subject is entitled to sue for redress.⁸³ In the United Kingdom, where a customer declines consent or register their number with the Telephone Preference Service (TPS) or Corporate

⁷⁹ O Kayode, 'Advertising and Marketing in Nigeria' <<https://www.chambers.com>> accessed 14 July 2025.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Public Law No.102-243 105 227.

⁸³ Ibid s 227(3) (a) (b) (c). See the case of *Destination Ventures Limited v. FCC* [1995] 46 3d, 54; *Moser v. FCCP* [1995] 46 F3d, 970.

Telephone Preference Service (CTPS), placing a promotional call to such customer entitles the affected customer to sue for redress.⁸⁴

7. Conclusions

The rate of unhealthy exposure occasioned by unsolicited advertising to personal data in Nigeria and the need for a stiffer legal and regulatory framework has been demonstrated in this study. The analysis of the relevant laws, the operational mechanisms of the regulatory agencies as well as the case laws in this area shows a gross lack of enforcement will especially as it applies to consent of data subjects and when it can be validly withdrawn. This has continuously bedeviled consumer protection steps in personal data protection. Considering the rapid growth and development in digital advertising, there is a need for proactive measures for personal data protection to be taken in Nigeria.

⁸⁴ B Oregbemhe, 'Consumer Protection in Advertised Promotion and Unsolicited Commercial Calls and Text Messages in Nigeria' <<https://spaajibade.com>> accessed 15 July, 2025.