



Digital Lending and the Challenges of Data Protection in Nigeria's Financial Sector

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Abstract

A healthy financial services sector remains critical for the sustenance of social and economic development of any nation, as it guarantees easy access to finance for developmental purposes. One of such ways of accessing finance is through lending from financial institutions, which are mainly the conventional banks, but the tide is now changing owing to the disruptive effect of Covid-19 pandemic. There became the need to leverage on innovative technology in the Nigerian financial sector to rapidly move from the analog-based financial services to a technologically driven financial sector where services are rendered faster, easier and more accessible to the overall benefit of customers, investors, businesspersons and other stakeholders. The advent of Covid-19 pandemic and the subsequent lock downs during the period further exposed the vulnerability of the Nigerian financial sector, as access to funding became a challenge to most investors and businesses. To address this unforeseen challenge, the ingenuity of technological innovations was further deployed giving rise to digital lending services (popularly known as loan apps), which hitherto were nonexistent in Nigeria prior to the emergence of Covid-19. Digital lending entails the method of applying, processing, and granting loans with the aid of digital channels where lenders place reliance on personal data of customers accessed online or provided by such customers, to make credit decisions, for the benefit of a customer. As digital lending service is no doubt laudable, it came with associated fresh challenges, which included violation of customer's privacy rights and data protection. The focus of this paper, therefore, is to examine the concept and practice of digital lending in Nigeria, its legal framework and the challenges of customers data protection and privacy rights in Nigeria. The researchers will adopt the doctrinal legal research method wherein reliance will be placed on primary and secondary sources, and based on the findings, certain recommendations would be made.

Keywords: Financial Sector; Covid-19; Digital Lending; Data Protection; Privacy Rights

1. Introduction

Nigeria's financial sector consist of commercial banks, mortgage banks, development banks, microfinance banks, and other specialized banks, bureau de change operators, while the Central Bank of Nigeria, being the apex bank plays the role of a regulator and banker of last resort to the government. There is also another segment which forms part of Nigeria's financial sector, popularly refers to as individual money lenders, whom are not under the supervisory

purview of the Central Bank of Nigeria, but are licensed by the subnational governments, their sphere of operation is restricted to their immediate environment and low income earners, their operations are largely informal, analog and devoid of the strict documentation process of the financial sector within the supervision of the Central Bank of Nigeria [1]. The financial sector in Nigeria has grown from a relatively conservative analog sector to a sector now dependent and driven solely by technology. The basic role of the financial sector is to provide loans to customers, for developmental purposes, as these loans could be either short term, medium term or long term. The process through which these loans are obtained from the financial sector is referred to as lending. Lending in Nigeria's financial sector has evolved and keeps evolving due to the increasing reliance of technology in the financial sector. Thus, it has been reported that the financial sector in Nigeria, sits at an information control crossroads, which is being driving by advances in information technology, and this have altered the way and manner banking services are rendered to customers within Nigeria's financial sector. This advances in technology have led to the introduction and deployment of various electronic channels by financial services providers within Nigeria's financial sector, these channels include but are not limited to the use of automated teller machines, mobile banking applications, online banking and more recently, the advent of digital lending which seems to be changing the way and manner loans are being applied for and processed, for the benefit customers [2].

2. Digital Lending in Nigeria's Financial Sector

The concept of lending is not strange or new to the financial sector of any nation, including Nigeria. Lending entails the act of giving money to someone with the understanding that they will repay or return same, at a future date agreed by them. The lenders are permitted by law or regulations to charge a fee otherwise known as interest. The growth and development of commercial activities in Nigeria's financial sector has equally encourage lending, as no financial sector is complete without lending activities, as people, families, and businessmen resort to lending to meet short falls in cash supply needed to finance immediate or emergency needs. A lender could also be licensed financial institutions, registered, and licensed in accordance with law and subject to regulatory supervisions, and they could be referred to as traditional lenders. A lender could also be individuals, family members otherwise known as alternate lenders. However, where individuals engage in lending activities, they are not required to charge interest, unless such individual(s) have obtained a Money Lenders License, in accordance with the Money Lenders Law, applicable in their area of jurisdiction, as Individual Money Lending outside the purview of Nigeria's financial institution, is within the regulatory framework of the subnational governments (State Government) [3].

Prior to the advent of the Covid 19 pandemic, lending within Nigeria's financial sector, was normally carried out through the financial institutions, as these institutions' subject to the regulatory and supervisory oversight of the Central Bank of Nigeria, developed financial services products that cater to the needs of virtually every stratum of the society. These financial services products ranges from short term personal loans for individuals and family members, whom most time are salary earners, to medium term and long-term loans, for small scale businesses and big corporations, as these products made them meet their various cash calls and financial obligations as the case may be. Interest rates are determined and fixed in accordance with the Monetary Policy Rates issued by the Central Bank of Nigeria. Any interest rate charged or fixed by any financial institution in Nigeria, must be within the approved regulatory threshold, as charging or fixing interest rates arbitrarily is prohibited. During this time, the concept of digital lending was unknown or practically non-existent in Nigeria [4].

The Covid 19 pandemic came with its adverse effect and consequences on the economy of most countries, particularly, sub-Saharan countries like Nigeria, as there were massive job cuts/losses, restrictions in human and vehicular movements and business closures, because of lockdowns ordered by the Federal Government of Nigeria, all in a bid to curtail and combat the spread of the Covid 19 pandemic [5]. These measures taken by the Federal Government of Nigeria, though laudable but has its negative consequences on households and businesses, as access to funds, where greatly affected, even the financial institutions were reluctant or unwilling to lend to customers and businesses, because there were, lockdowns and economic activities were at its lowest ebb. However, despite these issues, the quest to access funds continued, and the ingenuity of technology was deployed, or it came to the rescue of most Nigerians. The post covid 19 period witnessed a sudden surge in the deepening of technology within the economy, as Nigeria's financial sector, was not left out. This era saw the emergence of loan apps or financial technology (fintech) carrying out digital lending activities, targeted at addressing the financial/funding challenges being experienced by businesses

and households. The post covid 19 era, witness the exponential growth of digital lending in Nigeria, as it became an alternate source of accessing funds for addressing immediate personal and family needs in Nigeria, particularly the low-income earners [6].

Digital lending is quite different from the conventional lending activities carried out in Nigeria's financial sector. The conventional or traditional lending takes place within Nigeria's financial institutions, which is heavily regulated by law as stated earlier. Under the conventional or traditional lending model, the customer approaches a financial institution of his choice, applies for loan, which would be granted if the customer meets the criteria laid down for such loan, consideration for loan approval is made by a review of the customers' financial standing to know if he or she is credit worthy or a credit bureau is called in, to conduct a credit check on the customer, as the credit bureau is mandated to issue a credit report on such customer, stating clearly whether he is qualified or not, and in the event of a default in repayment, such a customer may likely be blacklisted from accessing loans from the financial sector or an action for loan recovery is instituted against such customer, in accordance with the provisions of the law [7]. In the conventional lending, the customer is always known to the financial institution, as physical contact is made and background checks are conducted, third parties are only part of the transactions only if they expressly undertake to act as guarantor (s) or consent to act as guarantor for the borrower or a thing of value otherwise known as collateral will be deposited by the customer, as security for the loan. In digital lending, loans are applied and processed via digital or mobile channels, such as loan apps installed on mobile phones, supported by a telecom network. Loan decisions are made without necessarily having contact with loan applicant (customer), all the customer does is to supply his on her details to the lender through his phone or grants access to the lender's loan app to have access to his personal data in his phone, while these are commendable, as loan processes (ranging from application to disbursement) are faster, and convenient, reduces turnaround time, it also raises the issues of privacy rights violations and personal data misuse, as the extent of details which the lender may collate from a customer, may not be within the control of the loan applicant (customer). Thus instances abound, wherein digital lenders in Nigeria's financial sector, in a bid to recover loan from defaulters, embark in some unethical or unlawful practices, such as sending unsolicited messages to third parties whose personal data were unlawfully collated and most likely were unaware of such transactions in the first place. Since the advent of digital lending in the post covid 19 era, Nigerians and even stakeholders within Nigeria's financial sector, has had cause to complain about these unwholesome practices associated with digital lending, which even made the National Information Technology Development Agency of Nigeria to impose sanction on a particular digital lender for privacy violation, and more recently a deliberate effort is being made to sanitize the digital lending space through the activities of the Federal Competition and Consumer Protection Commission of Nigeria, whose mandate is to protect the interest of consumers in Nigeria [8].

3. Legal and Institutional Frameworks Regulating Digital Lending In Nigeria

Digital lending is an emerging area in Nigeria's financial sector and may be seen as one of the positive sides of the Covid 19 pandemic, as it further expanded the scope of access to funding for Nigerians, and also deepening financial inclusion. The legal and institutional framework for regulating digital lending in Nigeria is still very vague and unclear, as there is no specific legislation that have been enacted to address the specific peculiarities associated with digital lending, although there are certain legislations and institutions, which by their interpretation may be used to fill in the vacuum, and these legislations are:

- a. The Constitution of the Federal Republic of Nigeria 1999, as amended:** The Constitution of the Federal Republic of Nigeria is the grund norm and makes provision for the protection and preservation of the rights of citizens of the Federal Republic of Nigeria. Digital lending involves collation and processing of personal data of individuals, thereby raising questions about the sanctity of the privacy of customers, who uses such service. The right to privacy is specifically provided for and guaranteed in the Constitution of the Federal Republic of Nigeria, when it states thus "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected". It is worthy to state now that, the 1979 Constitution of the Federal Republic of Nigeria, which is no longer in force, contains similar provisions, similar provision was equally made in the 1963 Constitution of the Federal Republic of Nigeria. Thus, by virtue of these Constitutional provisions, privacy rights in Nigeria, has always been constitutionally guaranteed and protected. The Court of Appeal has also judicially established this fact, when it held that by

virtue of Section 37 of the 1999 Constitution of the Federal Republic of Nigeria, as amended, the privacy of every Nigeria citizen, his home, correspondences, and telephonic communications are cherishingly guaranteed and protected. Again there is no provision for digital lending in the Constitution, but taking a look at the constitutional provision relating to privacy, it covers the aspect or areas within the contemplation of digital lending activities, such as telephone conversations, telegraphic correspondence and communications which includes exchange of personal data across technological devices, hence, the Constitution in that respect can be seen as relevant. Even the Court supports this view when it gave a wide and extensive interpretation of that Constitutional provision relating to privacy, when it held that, ‘it includes all aspects of human life’.

- b. The National Information Technology Development Agency Act, (NITDA) 2007:** The National Information Technology Development Agency Act, 2007, may be seen as a digital lending regulation because the Act regulates and establish guidelines for private sector investors dominate the deployment of information technology infrastructure in the private sector, as digital lending operations. The Act further regulates and establish guidelines for electronic governance and monitoring the use of electronic data interchange and other forms of electronic communication transactions, as an alternative to paper based methods in government, commerce, education, the private and public sectors, labour, and other field, where electronic communication may improve the exchanges of data and information. Investments in Nigeria’s fast growing digital lending app are private sector driven, and the volume of personal data collected and processed by digital lenders are quite huge, owing to increased patronage by Nigerians. The Act further establishes the Nigeria Information Technology Agency, as the agency serves as a clearinghouse for all Information technology projects in the country. It is the prime Agency for e-government implementation, Internet governance and information communication technology development in Nigeria. Thus, considering the wide application and scope of the Act, it can be regarded as a digital lending regulation in Nigeria, although there is a bill (Nigeria Information Technology Bill 2021) pending before the national Assembly, which seeks to repeal the 2007 Act and further expands its scope.
- c. The Nigeria Data Protection Regulation (NIDPR) 2019:** The Nigeria Data Protection Regulation, 2019 is a subsidiary legislation made by the Nigeria Information Technology Development Agency, in exercise of the powers conferred on her by the principal Act. The regulation is divided into four parts, with each part addressing a specific personal data question or issue. Part one, sets out the objectives and scope of the regulations, which includes to safe guard the rights of natural persons to data privacy, to foster safe conduct for transactions involving the exchange of personal data, and to prevent the manipulation of personal data, as the regulation applies to all transactions intended for the processing of personal data. Part two of the regulation laid down the governing principles of data processing, which must be strictly adhered to, by any person or institution charged with the responsibility or duty to collate, store, process, use or transmit personal data. Some of the governing principles are: personal data shall be collected and processed in accordance with specific, legitimate and lawful purposes, consented to’ by the data subject. Digital lending involves the collation and processing of personal data of consumers, who have applied for loans and are considered as data subjects, within the meaning of the Nigeria Data Protection regulation. Digital lenders equally collate and process personal data and can be regarded as data controllers or data processing entities by virtue of the regulation, thereby making them subject to its provisions [9].
- d. The Federal Competition and Consumer Protection Act, 2018:** The Federal Competition and Consumer Protection Act, 2018, is the apex consumer protection legislation in Nigeria today. The Federal Competition and Consumer Protection Act repealed the Consumer Protection Act, of 2004. Part of the objectives of the Federal Competition and Consumer Protection Act, is to among other things protect and promote the welfare and interest of consumers in Nigeria. The Act applies to corporate bodies and agencies of government, if such corporate body or agency of government engages in commercial activities. Digital lending is a commercial activity aimed at making profits and geared towards the satisfaction of demand from the public, thereby making it subject to the provisions of the Act. In addition, those who patronize the services of digital lenders are can be referred to as consumers, going by the definition of consumer, which ‘includes any person to whom a service is rendered’. The Act further establishes the Federal Competition and Consumer Protection

Commission, and establishes the Competition and Consumer Protection Tribunal, which is a specialized court for consumer matters in Nigeria [10].

The Competition and Consumer Protection Tribunal is vested with the jurisdiction to hear appeals from or review any decision of the Federal Competition and Consumer Protection Commission, taken in the course of the implementation of any provisions of the Act or hear appeals from or review any decision from the exercise of the powers of any sector specific regulatory authority in a regulated industry in respect of consumer protection matters, and settle all consumer disputes or consumer related disputes, and it is expected that the Tribunal which has been constituted will carry out its duties according to the provisions of the Act, thereby giving consumers of digital lending services the opportunity of seeking redress when there is a breach of their consumer rights [11].

Consumer rights has further being extended to include data protection and privacy rights, which seemed to have gained global attention considering the theme of this year's (2022) World Consumer Day Celebration which is 'Fair Digital Finance'. The theme can be described as timely, as it seeks to encourage people and businesses to create insights and campaigns targeted at consumer data protection, as digital finance cannot be fair where the privacy rights of consumers are violated [12].

Again in a bid to ensure proper regulation and supervision of digital lending in Nigeria's financial sector, the Federal Competition and Consumer Protection Commission, in exercise of its powers issued a Limited Interim Regulatory/Registration Framework and Guidelines 2022, to guide the operations of digital lending in Nigeria, thereby bringing digital lending under the firm supervisory and regulatory purview of the Federal Competition and Consumer Protection Commission [13].

Again, it is necessary to address the raging debate whether digital lending should be regulated by the Central bank of Nigeria, which is the apex regulatory body in Nigeria's financial sector. The proponents of this argument are of the view that digital lending is a financial service and should ordinarily be within the regulatory framework of the Central Bank of Nigeria, but these researchers, respectfully opine that digital lending cannot come under the regulatory purview of the Central Bank of Nigeria, because they are not Commercial Banks licensed by the Central Bank of Nigeria and do not fall within the definition of Banks, as provided in the Banks and Other Financial Institutions Act, unless there is an amendment to the Banks and Other Financial Institutions Act, as well as the Central Bank of Nigeria Act, making digital lending to come within the regulatory purview of the Central Bank of Nigeria.

- e. **The Companies and Allied Matters Act, 2020:** The Companies and Allied Matters Act, 2020, is the principal legislation regulating the formation and administration of Companies and businesses in Nigeria. By the provisions of the Act, any two or more persons can form or register a company in Nigeria, although nothing also prevents an individual from registering a company, which means that a single person can form, register and own a Company in Nigeria, this is one of the innovations of the Act, and also the requirement to disclose the identity of persons with significant control of a company, during its formation and registration. This requirement has gone a long in promoting transparency in the administration of companies as it discourages secretiveness in company formation and registration in Nigeria. A company in Nigeria can either be a private company limited by shares or a public company, and where it is a public company; it must be stated in its memorandum of association, in compliance with the provisions of the Act. Any Company duly registered in accordance with the provisions of the Act, is normally issued a certificate of incorporation, and such a company is clothed with juristic personality, as such, a company can sue and be sued in its registered name [14].

A person or group of persons, who wants to engage in the business of digital lending, must comply with the provisions of the Companies and Allied Matters Act, by registering such entity in accordance with the provisions of the Act. The Act further laid down setting criteria which persons intending to form a company must meet or fulfil, and these includes; that a person interested owning a company must be of sound mind, a of sound mind, and not to have been convicted of any court in Nigeria or elsewhere, must not be less than 18years old, as the anyone under the age of 18years, is considered a minor in Nigeria [15].

Again, the Companies and Allied Act, further establishes the Corporate Affairs Commission of Nigeria, which is Nigeria's Companies Registry, thus every company registered in Nigeria, is mandated to have and keep her records at the Commission, and such company record is can be made available to any members of the public upon the payment of prescribed fees. The Corporate Affairs Commission of Nigeria, exercise oversights in the affairs and administration of every company in Nigeria, as Companies in Nigeria are required to file annual returns yearly, the annual return is a brief statement of affairs of a company, which shows that a company is in existence and active, and where a company is in default in filing of her annual returns, such a company will be liable to sanctions in the form of payment of fines. The Corporate Affairs Commission is vested with the power to delist any company from its database or records, where such a company is in continuous breach of the provisions of the Act. No principal officer (director or shareholder) of a company can be appointed or removed in Nigeria, without the knowledge of the Commission [16].

4. The Challenge of Data Protection In Digital Lending In Nigeria

Despite the numerous advantages of digital lending in Nigeria's financial sector, there seems to be some other challenges, such as inadequate regulatory framework and conflicting regulatory jurisdictions, personal data abuse and misuse, privacy rights violations among others. The focus of this research will be limited to personal data abuse or misuse and privacy rights violations.

- a. Personal Data Abuse or Misuse:** The use of personal data is strictly regulated, and it is usually regulated by any of the following: contractual relationship between the data subject and the organization collating such data, it is regulated in accordance with the privacy policy or legislation in force, at the time such data was collated or being collated. Thus, where the use of the personal data by the digital lender was not in accordance or is at variance with the contract, policy or legislation under which it was collated or processed, such use can be regarded as misuse or abuse, and in some circumstances amount to a violation of the law [17]. Data misuse or abuse is a major challenge to digital lending in Nigeria, as instances abound particularly within the digital lending space in Nigeria, where customers' data are used for purposes other than that which it was collated. This tend to cast aspersions on the integrity of the data collator or processor, as customers confidence and credibility on the transaction is greatly affected, when a customer believed or fears that his or her personal data will be misused or likely to be abused by the organization collating or processing his personal data [18].

The volume of personal data collated or processed by digital lenders in Nigeria, is quite huge and the need to avoid abuse or misuse of these personal data cannot be overemphasized. One of the principles of personal data processing as contained in the Nigeria Data Protection Regulation is that, personal data must be processed in accordance with the specific purpose, for which it was collated, and personal data abuse/misuse occurs when it is use for other purposes other than that which it was collated, thereby making such processing unlawful. This seems to be the trend with digital lenders in Nigeria, as personal data of customers are shared or sent to other third parties, particularly when attempting to recover loans from defaulters. This practice have been greatly condemned by the regulators and customers, which has led to regulatory sanctions on some digital lenders and even clamp down on others [19-22].

- b. Privacy Rights Violations:** Another major challenge to digital lending in Nigeria is privacy rights violation. The privacy rights of every citizens of Nigeria, is guaranteed and protected under our laws, and the Courts in some cases have confirmed this position. Privacy rights violation occurs when personal data of individuals are shared or disclosed to unauthorized person, who ought not to have access to such information. The financial details and transactions of individuals are issues that ought to remain private and confidential, unless there is need to make disclosures, subject to consent of the owners of such information or disclosures in accordance with law [23]. Thus, the practice of most digital lenders in Nigeria, disclosing the personal data of customers to unauthorized persons, in a bid to recover loan from a defaulting customer amounts to violation of the privacy rights of such customer, and same condemnable, and also a violation of the age long principle of the doctrine of privity of contract, which restricts liabilities and obligations in a contract to the parties to such a contract. Applying for loans from a digital lender is a purely contractual matter, and in the event of a breach of such contract by any of the parties, the aggrieved party should seek redress in accordance

with law, rather than making unauthorized disclosures, which is not in accordance with law and amounts to violation of privacy rights [24].

- c. **Conflict Among Supervising Agencies:** There seems to be some level of conflict among supervising agencies as highlighted above, while the Federal Competition and Consumer Protection Commission exercises supervisory activities over the activities of digital lenders in Nigeria, the National Information Technology Development Agency equally exercise same supervisory role, considering the fact that there is no central agency or no specific legislation establishing a particular agency to perform this role, the tendency for conflict to arise among the aforementioned agencies cannot be ruled out, as notice from the various sanctions and clampdowns already carried out by the two agencies, this could be very confusing [25].

5. Conclusion

The researchers will be concluding this paper with the following submissions:

- a. The emergence of digital lending in Nigeria's financial sector is a welcome development, as it will further expand Nigeria's financial sector by giving Nigerians other sources of accessing loans for immediate needs, thereby complimenting the activities of other financial institutions in Nigeria's financial sector.
- b. Despite its challenges, accessing loans from digital lenders is quite fast and convenient, as loan decisions are made faster.
- c. Digital lending is cheaper to establish than setting up a financial institution.

6. Recommendation

The researchers, will further make the following recommendations, because digital lending is an emerging area in Nigeria's financial sector and should not be left for entrepreneurs alone.

- a. The Banks and Other Financial Institutions Act and the Central Bank of Nigeria Act, should be amended to make digital lending subject to the regulatory oversights and supervision of the Central Bank of Nigeria, being the apex regulatory institution in Nigeria's financial sector.
- b. Digital lending should be properly regulated to boost customer's confidence in their operations and activities.
- c. Digital lending and their operators must be sensitized on the provisions of the Nigeria Data Protection Regulation 2019, particularly as it relates to the collating and processing of customer's personal data to avoid personal data breaches.

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