

# CRITICAL FEEDBACK:

## *CODE OF PRACTICE FOR INTERACTIVE COMPUTER SERVICE PLATFORMS/INTERNET INTERMEDIARIES.*

### Introduction

On 13th June 2022, the Federal Government of Nigeria announced the development of a draft Code of Practice for Interactive Computer Service Platforms/Internet Intermediaries and conditions for Operating in Nigeria through the National Information Technology Development Agency (NITDA).

The announcement was followed with a stir of reactions among Nigerians especially active social media users, civil society organisations and media organisations. Some Nigerians have described the code of practise as a desperate attempt to breach the fundamental right of citizens to express themselves and shrink dissent voices - similar to the Twitter Ban that was enforced by the government as an aftermath of the #EndSars protest. The code has also been described as a backdoor way of regulating the media since it makes subtle attempts to criminalise certain “unclearly defined” internet activities that are not in compliance with the code. Some are however of the view that the code is fit for fighting disinformation and misinformation.

The eleven (11) paged document consists of a preamble segment, set out objectives and six (6) parts to include its code of conduct and practice.

Part 1 of the code speaks to the responsibilities of interactive computer service platforms as well as internet intermediaries, Part 2 speaks to its additional responsibilities expected of internet platforms to include child protection policies, Part 3 speaks to the compliance of large service platforms, Part 4 speaks into the removal of prohibited materials, Part 5 speaks into measures on disinformation and misinformation and Part 6 contains the miscellaneous segment on the violation of the code.

In a bid to appraise and clarify the intentions of the code, the Centre for Journalism Innovation and Development (CJID) organised a Twitter Spaces conversation that convened government officials, newsrooms editors, lawyers, media development professionals, journalists, civil society organisations, internet users and a representative from the National Information Technology Development Agency (NITDA) to discuss and clarify issues with regards to the new draft.

The conversation availed the public an opportunity to give constructive input and voice their concerns on perceived grey areas of the code. The hope is that the government, through NITDA, will seize the opportunity of the feedback to go back to the

drawing board and address the concerns raised by citizens.

It is in this vein that the CJID have produced this document which contains evaluations, input and recommendations.

### **INTERVENTIONIST AND POSES A THREAT TO FREEDOM OF EXPRESSION**

The intent of the code as stated in its cognisance segment is to safeguard and regulate information technology systems which has become a critical infrastructure in our society while providing protection against online harm. But in its current nature, it potentially poses the threat of constraining the right to freedom of expression, of citizens, and other institutions of the public.

While it is conceivable that the right to freedom of expression is not absolute as it borders on instances of defamation and libel, the rights of citizens to express themselves is guaranteed under section 39 of the 1999 Constitution of Nigeria which provides that **“every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart information *without interference*.”** The code of practice, in its current nature, appears to be interventionist. It adopts terms like intervening and enforcing mirroring the manner in which the Nigeria Broadcasting Code permits it through its code and law to be a complainant, the accuser, the prosecutor, the judge and the enforcer in its own case without any recourse to law.

### **UNCLEAR DEFINITION OF UNLAWFUL CONTENT**

**Part I[Section 3]** of the Code states that if a demand is made by a **user, or an authorised government agency** for a platform to remove an “unlawful content”, there must be compliance within 24 hours. There is a need for the code to expiate on what qualifies as unlawful and under what conditions the 24 hours ultimately applies. Does this for example include situations where entities

who have objections to dissent opinions shared on social media, including content published on media platforms seek removal of such content? The code should not be left open-ended such that it allows for subjective interpretations. It is important to note that **platforms**, as defined by the code, include, social media operators, websites, blogs, media sharing websites, online discussion forums, streaming platform, and other similar oriented intermediaries where services are either enabled or provided and transactions are conducted and where users can create, read, engage, upload, share, disseminate, modify, or access information.

This section of the code is also impracticable to the extent that giving that it bestows powers on a single user or a single agency powers to request removal without recourse to elaborate and defined judicial authorisation. Reputable platforms invest significant time in gate-keeping and fact-checking of contents and as such, contents ought not be allowed to be removed within 24 hours with such ease by invoking the session.

### **NEED FOR WIDE-SECTOR CONSULTATION**

There was no known consultation prior to the draft of the code and neither was there a public announcement for such a gathering. A wide-sector consultation with civil society organisations, media organisations, lawyers, and professional personnel could have enriched the document with citizens’ perspectives. Such engagement would go a long way in clearing citizens’ distrust and absolve the government of accusations bordering on the encroachment on the freedom of expression. The sensitive nature of the code demands that its provision be agreed upon before the commencement of its application.

### **NO DETAILED PROVISION FOR CHILD PROTECTION**

Although there are international standard practice for child safety protection on the internet, the code made provisions for Child safety in **Part II, Section 2 [a] stating “Inform users through the terms of**

**service not to create, publish, promote, modify, transmit, store or share any content or information that: a) is harmful to a child;...**” with little details on what safe procedures or practices as regards to child safety on the internet. It is therefore advised that the code provide extensive detail on content categorised as harmful to children, and perhaps refer to existing laws where such have been clearly outlined.

### **VIOLATION OF PRIVACY POLICY**

Some parts of the code violates data and privacy policy of users. **Part II {Section 4} of the code for instance states that the platform shall preserve a disabled or removed content and any related record as required by law. Part II [Section 6] also states that the platform can “preserve any information concerning a person that is no longer a user of a platform due to withdrawal or termination of registration, or for any other reason, as required by law”.** This contradicts the right to erasure which is an internet standard practice protected under the Section 3.1(9) of the NDPR Act, which guarantee the rights to have personal data erased, the user's "right to be forgotten:"**Part III [Section 5]** states that on demand users would provide government agencies with information.

This violates **Section 37 of the Nigeria constitution** that guarantees and protects the right of Nigerians to privacy in their homes, correspondence, telecommunication and telegraphic communication. This also violates the **Cyber Crime Act** which criminalises data privacy breaches and prescribes that anyone or service provider in possession of any person’s personal data shall take appropriate measures to safeguard such data. Part II [Section 6] of the code violates the right to erasure which is an internet standard practice protected under the Section 3.1(9) of the NDPR Act, which guarantee the rights to have personal data erased, the user's "right to be forgotten"

**Part III [Section 5]** creates undue fear and tension in an emerging democracy as ours. The power for any

user or government agency to request the reasons and 'figure' [person or persons] behind a trend is dangerous to the safe use of the internet itself. These powers extend to civil matters and as such creates enormous powers with a user

or agency to discover identities or the identity beyond trends online. Such enormous power can be subject to manipulations and victimisation of social media users, journalists and news media organisations. It in fact threatens the anonymity relationship that may exist between journalists and their sources where such relationships become unavoidable in the interest of safety.

### **WHO DEFINES MORALITY AND WHAT QUALIFIES AS STATE PUBLIC INTEREST?**

On pages 3 and 4, the code defines **harmful** as **not unlawful** but **harmful**, whereas, it contains no clear definition of what qualifies as “Harmful”. Furthermore, it explains that objectionable and prohibited materials equals contents that are objectionable on the ground of **state public interest, morality, order, security, peace or are otherwise prohibited by applicable Nigerian Laws’**. First is that this section begs the question on what qualifies as state public interest and from whom prism it is so defined. The code does not also define morality and morality is not a legal issue in Nigeria. So who defines what is morally accepted in the NITDA code?

### **RECOMMENDATIONS**

- Collaboration with Nigeria Orientation Agency (NOA) and media houses by NITDA to invest in digital space education would go a long way in keeping or making the Nigeria Internet space safe.
- Since it was stated that the released code is still in a draft stage, there is a need for NITDA to collaborate with media houses and communicate to the public through a press release/press conference that the released document is a draft and not yet an act.

■ Policy environment is important. In the context of making this code, it is always important to consider the environment. So far, the environment has been more hostile towards the need to control social media and there are trust issues within the polity. In this, there is need for NITDA to consult with CSOs, media houses and personnels to understand, properly draft **and agree on such a bill that should be sent to parliament [for an all inclusive input] to keep the Nigeria internet space safe without infringing on the rights of its users or impeding on the ease of doing business.** The few countries that have laws regarding social media in Europe and Asia all do so through the instrumentality of statutes, not through bye laws or agency backed regulations because of the complexity of issues involved.

■ While we understand the significance of regulations of this nature, we insist that such efforts should be co-created in a robust inclusive manner that should not conflict with fundamental guaranteed rights within national and international laws.

■ NITDA's objectives of putting up the code which includes setting up best practices that will make the digital ecosystem safer for Nigerians and non-Nigerians in Nigeria, setting up measures to combat online harms such as disinformation and misinformation, and ensuring child protection are quite laudable. It is however mandatory that the right approach of achieving them though an act of legislation by the national assembly be adopted.

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**NBC VS THE MEDIA; EXAMINING THE BOUNDARIES OF REGULATION AND SUPPRESSION.**

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### About CJID

The Centre for Journalism Innovation and Development (CJID), formerly the Premium Times Centre for Investigative Journalism (PTCIJ), is a West African media innovation and development think (and do) tank. Founded in 2014 as a non-governmental organisation in Nigeria. The Centre has been a leader in investigative journalism, civic technology, open data, verification, safety of journalists, elections and freedom of information and expression. It has a presence in Nigeria, Ghana, Sierra Leone, Liberia and The Gambia.