Data and the Expanding the frontiers of the Natural Resources Industry: Do we need a legal regime for its exploitation?

By Dr David O Adetoro
School of Law Seminar Series
February 16, 2018
Abstract

- Data and the Expanding Frontiers of the Natural Resources Industry: Do We Need a Legal Regime for its Exploitation? Dr David O. Adetoro (Assistant Professor)

While what constitutes natural resources may be fixed and often concealed or located in a remote part of the earth, it is clear that there are other categories of natural resources not requiring deep exploration in muddy fields but bursting open at every corner. Holmes provided a cue to fully tapping into its resourcefulness, seemingly pointing to economics and statistics as the drivers. The question to ask is ‘will this vehicle in motion remain stable and will it not crash without brakes?’ The new resource is data and the place of the law in stabilizing its use is what is open for discourse in this paper. The sheer size of Nigeria, especially in terms of population attracts ample commercially viable opportunities and data will enhance business; production and market penetration. Data however goes beyond borders and across jurisdictions making its regulation an interesting subject. In considering a legal regime for data, ownership will be a front burner and questions will arise of who the ‘oil majors’ of the data world really are.
According to Oliver Wendell Holmes, ‘for the rational study of the law the black-letter man may be the man of the present, but the man of the future is the man of statistics and the master of economics…. We learn that for everything we have to give up something else, and we are taught to set the advantage we gain against the other advantage we lose, and to. know what we are doing when we elect.’

Oliver Wendell Holmes, “The Path of the Law”, Harvard law Review, 10 (1897:)457, 469, 474.
What is Data

• Data is simple, raw and unorganized facts and consists of basic subscriber information (BSI), transactional data and content data

➢ Transactional data is information related to communication such as IP addresses, device information used by subscribers to communicate and content data is the substance, purport or meaning of a communication

➢ BSI and transaction data are together known as non-content data and were traditionally lower in the value hierarchy as compared to content data, but the same has changed in recent times and non-content data has been seen to provide critical insights

• Information, especially facts or numbers, collected to be examined and considered and used to help decision-making, or information in an electronic form that can be stored and used by a computer

➢ The quality of data is fast evolving

➢ They are no longer mainly stocks of digital information—databases of names and other well-defined personal data, such as age, sex and income

➢ It is more about analyzing rapid real-time flows of often unstructured data: the streams of photos and videos generated by users of social networks, the reams of information produced by commuters on their way to work, the flood of data from hundreds of sensors in a jet engine
And Natural Resources?

• At its simplest, natural resources are materials or substances occurring in nature which can be exploited for economic gain.
• In its narrower sense and for the purposes of this paper we will limit it to mineral deposits which have been the subject of economic gain in the past century.
• These substances have been the subject of study, controversy, legal disputes as well as tool for development.
• Most people encounter the substances at its refined state and use it in their day to day lives, consciously or otherwise.
What Do Oil and Data have in Common

• Both have to be processed – Refinery versus Data Centre
  ➢ Long pipes for transmission or transportation
Similarity of Oil and Data

- Both are in wells
  - oil wells and wells of information
- Both perform similar roles
  - producing crucial feedstock for the world economy
- Components of crude oil are needed in making cars, plastics and many household items
- The distillations of data centers, for their part, power all kinds of online services and, increasingly; more people are fast becoming dependent on different devices that use data
Why data matters

• When data is organized, processed and given a context, it can be termed as information

 It is this information that is leveraged by corporations for economic purposes

 Information is power, a powerful resource and critical in decision making

• Data has value in understanding, predicting and influencing individual behavior and decisions

 This is the power that makes it dangerous – economic and political

• Data can also empower citizens by enabling more informed decision-making; including issues that center around politics

• Data can improve governance and quality of lives
Differences between the two commodities

- The value of oil comes from its scarcity and the difficulty of extracting it from new, untapped locations
- It is increasingly easy to produce massive amounts of data
- Oil is generally a single-use commodity, while data can be reused and shared for new purposes and insights
Fundamental Questions

• Who owns the data and has intellectual property rights on it?
• Does the emerging importance of data pose any threat to Nigeria?
• Does data possess enough economic or social or political value for our bother?
• Is there an emergence of data capitalists who like the oil majors may hold even nations to ransom?
• Who will be the target of the legal and regulatory regime?
• What is at stake? What is the big deal?
Why do we need of a legal regime?

- To ensure repatriation of accruable income
- Data protection issues
- Taxation purposes
- Conflict resolution
- Consumers rights
- Promotion of conducive market behaviours
- The introduction of necessary improvements to the quality of data may be facilitated by developing appropriate legal provisions
- It provides the possibility of imposing penalties on data users, including enterprises, in cases of non-compliance with appropriate laws /regulations or misuse of data
What are the possible problems?

• The present ‘owners’ or rather ‘holders’ of data, have it mostly as a byproduct of their business
• While its trade may be regulated, can they be stopped from using it to enhance their own trade?
• Who has the technical know-how and bears the cost of turning raw data to useful information? Who determines the real cost?
• With what vehicle will they be compelled?
• How do you measure and determine compliance?
Conclusion

This buzz about data appears to be open ended but the most reasonable conclusion would be that data has come of age and is as relevant to every economy as oil has become relevant to man for the past one decade. Thus a legal framework for its utilization is the least we can either start or start to reap from its numerous advantages.
Remarks!

Thank you for your attention and any questions, comments and observation would be welcomed