



Interrogating The Quandary In The Admissibility Of Computer And Other Electronically Generated Evidence Under The Nigerian Law

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Abstract

The Evidence Act, 2011 which replaced the previous law was mute on the admissibility of computer and other electronically generated evidences, was passed in response to the pressing need for reform and the ensuing heated discussion. The 2011 Act was a significant step in revolutionizing Nigerian law and displacing the ingrained position that such documented evidence is not admissible. Computer-based technology has tremendously increased trade and information, thus it was only prudent to align our law with this new standard in accordance with international best practices. The purpose of this paper is to examine the limits of electronically generated evidence in Nigeria, the problems with admissibility and conditions, the difficulties encountered and possible.

Keywords: Interrogating, quandary, admissibility, computer and electronically generated evidence, Evidence Act, Nigeria.

1. Introduction

It is a fact that the use of computers has increased exponentially in Nigeria over the past thirteen years due to the dependence of modern transportation, communication, and appliances on computers, as well as the startling rise in criminal use of networked computers and the internet. Examples include online banking, internet-connected wireless teller machines, and new types of crime, such as cybercrime.

The courts currently have a difficult time keeping up with technological advancement, particularly as it relates to electronically created evidence. Any trial, whether civil or criminal, must address the problem of admissibility of evidence, and the way a specific court handles this issue is of utmost importance. Thus, the National Assembly's passage of a new Evidence Act, allowing the acceptance of electronic evidence, was welcomed news¹. The British High Court granted a witness permission who was a fugitive who refused to go to England to testify via video link. Additionally, Nigeria's section 84(5) of the Evidence Act specifies the order of production and witness examination, with the order of production pertaining to sequence of production rather than arrangement². In the case of *Nwizuk & Others v. Chief Emeka Enego*,³ admissions made at a *locus in quo* were deemed valid and treated as though they had been made in court.

¹ The New Evidence Act, 2011, was passed Into Law on 3-6-2011.

² See Aguda, A The Law of Evidence in Nigeria, (2nd edition, Sweet and Maxwell, London, 1974) 247.

³ (1953) 14 WACA, 345.

The use of technology in the gathering of evidence is accepted by the Act. In an effort to address the fundamental concerns surrounding the admissibility of computer and electronically generated evidence, this paper takes into account the issues raised and the challenges of the evidence's authenticity, integrity, and confidentiality, among others, and makes an attempt to provide solutions. Pertinently, section 84 only addresses the admissibility of complex and technical computer-generated evidence and not computer printouts of letters and other common documents that were typed and printed using a computer.

A statement in a document generated by a computer is admissible as evidence of any fact expressed in it in any hearing under section 84 (1)⁴ of the Evidence Act, provided that certain requirements specified in subsection 2 are met. Regarding the circumstances mentioned in section 84, subsection 1, the case of *FRN v. Fani Kayode*⁵ determined that there was substantial compliance with the requirements of section 90(e) of the Evidence Act of 2011 due to PW2's sworn testimony that the computer generated statement of account was a document in the Bank's custody and that it was certified as a true representation of the statement of account maintained by the Bank. As a result, every objection raised to the validity of this kind of evidence as well as any efforts to lessen its impact are discussed in this paper.

2. Operative Words and Definitions

The under-mentioned operative words will be defined.

(1) Evidence (2) Documents (3) Admissibility (4) Computer (5) Electronic Document.

The Black's Law Dictionary defines evidence as anything, including testimony, documents, and physical objects, that tends to support or disprove the existence of an alleged fact.⁶

The Act⁷ defines a document as any device that can record, store, or retrieve any information, including computer output. It also includes any disc that contains music or other data bases that can be replicated (with or without the use of additional equipment).

A computer is any device that can store information, process that information, and mention information that was derived from it through calculation, comparison, or another procedure⁸.

Evidence that is admissible is that which the standards of evidence deem credible enough for a judge or jury to consider during a trial.⁹

An electronic document is a piece of writing that is stored on a computer as a Microsoft Word or Excel file, for example.¹⁰

3. Courts where Evidence Act Is Applicable

The precise and comprehensive requirements of section 256 of the Act specify the type of Court.

1. The Act is applicable to all judicial proceedings before any court established in Nigeria, but it does not apply to arbitration, general court marshal, or judicial proceedings in any civil cause or matter before any Sharia Court of Appeal, Customary Court of Appeal, Area Court, or Customary Court, unless any authority authorized to do so under the Constitution by order published in the Gazette confers upon any of the Sharia Court of Appeal, Area Court, or Customary Court¹¹.
2. All judicial procedures in any criminal cause or matter in or before an Area Court shall be conducted in accordance with the provisions of this Act and the requirements of the Criminal Procedure Code Law¹².

⁴ The 2011 Evidence Act of Nigeria is a verbatim reproduction of section 65 (b) of the Indian Evidence Act, 1872, (as amended).

⁵ (2019) LPELR-46796(CA).

⁶ Garner B.A. *et al*, (8th ed., (St. Paul Minn West Publishing Company, 1999) 867.

⁷ See Section 258 (1) of the Evidence Act, 2011.

⁸ *Ibid.* 84 (5).

⁹ The Law.com Dictionary, p. 300. It also means the quality or state of being allowed to be entered into evidence in a hearing, trial, or other proceedings.

¹⁰ *Ibid.*

¹¹ Evidence Act, 2011.

¹² Section 256 (2) of the Evidence Act, 2011.

3. Despite anything in this section, any legal proceedings involving a criminal cause or matter must be conducted by an Area Court in accordance with the provisions of sections 134 to 140¹³.

The Courts are listed in section 6(5) of the 1999 Constitution as the Supreme Court, the Court of Appeal, the Federal High Court, High Court of the Federal Territory Abuja, High Court of a State, the Sharia Court of Appeal of the Federal Capital Territory Abuja, Sharia Court of Appeal of a State, the Customary Court of the Federal Territory Abuja, a Customary Court of Appeal of a State, such other Courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws and such other courts to which a House of Assembly may make laws. Thus, in *Adeyemi Ogunnaike v. Taiwo Ojayemi*¹⁴, on the vexed issue of admissibility of evidence, the Court decided as follows:

It is erroneous to argue that the provisions of the Evidence Act apply to Customary Law, when the evidence has expressly exempted the application of the Act from judicial proceedings before a Native Court.

Belgore JSC held in *Osu v. Ibor Igiri & 3 others*¹⁵ that Customary Courts are by section 256 (1) (c) of the Act bound by the Evidence Act. The Court held in *Ahmadu Alao v. Alhaji Oba Alabi*¹⁶, concluded that this clause now extends the application of the Evidence Act to all judicial proceedings in or before the court.

4. Documentary Evidence

According to the definition in section 258 (1) of the Act, this includes items like books, recording devices, filming devices, and any other type of equipment that can record, preserve, or retrieve information, including anything that may have been printed from the device¹⁷. It is important to remember that evidence must be pleaded and that an appellant cannot raise an objection to the admission of a statement at the appellate¹⁸, court if they did not raise one at the trial court¹⁹.

5. Relevancy and Admissibility

The rules controlling the admissibility of evidence under the Act, which are very significant, form the foundation of the entire body of the law of evidence. Because a court cannot make a decision based on rejected evidence, admissibility is crucial²⁰. Any item of evidence's admissibility is determined by its relevance, which is based on the Act's provisions. It is important to note that section 255 of the Evidence Act of 2011 gives the Minister of Justice the authority to issue regulations that broadly specify additional requirements for the acceptance of any relevant type of evidence. However, the courts have made decisions about relevance and admissibility in a plethora of cases. In *Elias v. Disu*,²¹ the Court concluded that when assessing whether a certain piece of evidence is admissible, the relevance of the evidence is what matters, not how the evidence was gathered.

¹³ *Ibid.* Section 256 (3).

¹⁴ (1982) NWLR (Pt. 53), 760.

¹⁵ (1981) 1 NWLR (Pt. 69) 221.

¹⁶ (1997) 6 NWLR (Pt. 508) 35 at 36.

¹⁷ See the case of *U B A Plc v. AFPU* (2004) 3 NWLR (Pt. 861), 516, CA, *Udoro v. Governor of Akwa Ibom State* (2010) 11 NWLR (Pt. 1187) 254, CA. On categorizing a document, see *Darby v. D P P* (1995) 159, JP, 533, (1994) 4 TLR, 555.

¹⁸ *Uduaghan v. Omegara* (2010) 11 NWLR (Pt. 1204) 168, CA, *H D P v. I N E C* (2009) 8 NWLR (Pt. 1143) 297, SC.

¹⁹ *Olalomi Industry Ltd. v. NIBD Ltd.* (2009) 19 NWLR (Pt. 116) 266, SC, *Guinness Nigeria Ltd. v. Nwoke* (2001) FWLR (Pt. 36) 981, CA.

²⁰ *Bakare v. The State* (1987) 3 SC, 1, *Omoregie v. The State* (2009) ALL FWLR (Pt. 458), 230, at 249, paras. D – E.

²¹ (1962) ALL NLR, 214, at 216.

6. Mode of Proof of Contents of Documents

It is well acknowledged that it is the responsibility of the party seeking to depend on the contents of a document to provide it before the court in order to substantiate any truth that is in dispute. The document cannot be considered by the Court as evidence or be considered by it in its determination unless it is offered and admitted. In *Okonji v. Njokama*,²² the Supreme Court ruled that any party intending to rely on a document must first establish sufficient evidence to support its acceptance. In the case of *Orly v. Ogogo Abite*, the judiciary supported this viewpoint²³.

7. Are Computer Printouts Original?

Since the Evidence Act makes no mention of such, the question of whether computer printouts can be considered original for main or secondary evidence of the contents of the documents arises. When a printout is considered secondary evidence, it is initially inadmissible until adequate foundation evidence is presented.

According to Nigeria's best evidence rule, a person who presents a document as evidence must present the best evidence available, which in this case implies the original document or something that is reasonably similar to it, which is equivalent to credible proof. This served as the foundation for the judgment in *Agbiri v. Ogbeh*²⁴. The Evidence Act also permits primary or secondary evidence to be used to substantiate a document's contents.²⁵

8. Admissibility of Electronically Generated Evidence

Esso West Africa Inc. v. T. Oyegbola,²⁶ a case in which the Nigerian Supreme Court opined on the merits of giving recognition to computer-generated evidence, was the catalyst for the country's first foray into the admissibility of electronically generated evidence.

The law cannot be unaware of contemporary business practices and cannot close his eyes to the computer's problems. Modern times frequently include mechanically reproducing and inscribing information on ledgers or other documents, so section 37 cannot apply simply to books of account.

A few years later, the Supreme Court issued another *obiter* in *Festus Yusufu v. A C B*,²⁷ which has been used to bolster the argument that the Evidence Act, which was later repealed, does not permit the admission of computer-generated evidence. Lower Courts can barely ignore the Supreme Court's remarks, even when they were made *obiter*. This is especially true when they encounter notoriously convoluted questions. As a result, the lower courts have relied on the aforementioned *dicta* with varying degrees of success, and up until the Evidence Act of 2011 was passed, the status of computer-generated evidence was, at best, debatable. This point was decided in the cases of *Trade Bank v. Chami*,²⁸ in which the Court of Appeal determined that computer printouts could be admitted into evidence under section 38 of the old evidence Act, and *Ogumma Associated Company Ltd. v. IBWA*²⁹.

Such evidence was admissible in Nigeria prior to the addition of section 24 of the 2011 Evidence Act, with the exception of a small number of cases where computer printouts of bank statements were admissible under section 97 of the previous Act, according to a close examination of some decided cases by superior courts of record in Nigeria. Yemi³⁰ for instance, disagrees with the originality of computer printouts. Additionally, he criticizes³¹, some English rulings that computer-generated evidence qualifies as "actual evidence," even when supported by statutory restrictions.

²² (1999) 1 NWLR, (Pt. 638), 250.

²³ (2010) 18 LRCN, 149.

²⁴ (2005) 8 NWLR, 69.

²⁵ See section 85 of the Evidence Act, 2011

²⁶ (1969) NMLR, 194 AT 198

²⁷ (1976) ALL NLR, (Pt. 1) 325

²⁸ (2003) 13 NWLR (Pt. 836) 158.

²⁹ (1988) NSCC, (Pt. 359) 43.

³⁰ Osibanjo Y Electronically Generated (Evidence: Law and Practice of Evidence in Nigeria, 2001) 243.

³¹ *Ibid* at 249

Electronically generated or computer-generated evidence is not always admissible; it must first be pertinent to the facts at issue in a particular case before it may be used as evidence. A computer printout is defined as a hard copy output from a computer, such as information that has been selected from or analyzed from computer files, or just a printout of the information that is now displayed on the computer screen. Specific programmes are needed to instruct the computer how to make some prints, such as statistical analysis. The standard operating system programmes produce some others, like a printout of the screen.³² In accordance with the best evidence rule, the original text must be shown in court unless it can be proven to be unavailable. If the original document cannot be provided, a copy of the original may still be used as evidence if the party that wants to tender it can provide a strong enough justification.

Prior to the Evidence Act of 2011, the Supreme Court recognized the acceptance of computer printouts as supporting evidence in the case of *Elizabeth Anyaebosi & Others v. RT Briscoe Nig. Ltd.*³³ The Evidence Act does not totally exclude the class of evidence that includes electronic statements of account, according to the court. The Supreme Court emphasized in *Festus Yesufu v. A.C.B.*³⁴, that the Evidence Act needed to be changed in order to permit the admissibility of computer statements of account. These issues of admissibility were also raised in the cases of *INEC v. AC.*³⁵ *Dr. Imoro Kubor & Another v. Hon. Seriake.*³⁶ and *Dickson, FRN v. Francis Atuche & Others*³⁷. In the *Dickson's* case, it was decided that the two printouts from an online newspaper's website were inadmissible because they did not meet the certification criteria under section 84 (2) of the Evidence Act, 2011.³⁸

The similarity between section 84 (1) of the 2011 Evidence Act and section 88 (1) is notable. In every instance, a document's declaration qualifies as admissible evidence only if the facts it contains may be directly corroborated orally. The requirements for documents under section 83 (1) and those under section 84 are different in terms of admission. The maker is the issue in the former, but the computer itself is the issue in the latter³⁹. The following criteria were provided by Prof. Amuda⁴⁰ to decide whether it was appropriate to allow electronic device evidence:

The strength of the improper behavior or violation, the probative value of the evidence, the significance of the evidence in the proceeding, the nature of the relevant offence, the cause of action or defence, and the nature of the proceedings' subject matter, among other factors.

The conditions for admissibility of computer generated evidence is set out under section 84(2) thus:

Three (3) conditions are set forth. They are as follows:

1. That the statement's document was created by the computer during a time when it was frequently used to store or process information for any regular activity carried out during that time, whether for profit or not, or by any specific person. This condition is necessary to guarantee the computer's dependability in accurately storing operations and retrieving data. This is due to the possibility of malfunctioning, making an abandoned computer unreliable⁴¹.
2. During that time, in the regular course of such activities, information of the kind contained in the statement or of the kind from which the information thus contained is derived was routinely supplied to the computer.
3. That the computer was functioning well for the majority of that time, or if it wasn't, that any issues with how it was working during that time didn't have an impact on whether the document was produced or its contents were accurate.

³² 2010 <http://www.answers.com/computer20%printout>. (accessed on 08/09/2021, at 10 am)

³³ (1987) 2 NSCC, 805.

³⁴ (1976) 4SC 1.

³⁵ (2009) ALL FWLR (Pt. 480) 732 at 799.

³⁶ (2013) 4 NWLR (Pt. 1345) 534.

³⁷ 2012 (Unreported), suit No. ID/154/C/11, Judgement delivered in the 6th day of December, 2012.

³⁸ Evidence Act, 2011.

³⁹ See *UPS v. Adegosoye* (2011) 5 NWLR (Pt. 1240) 314, CA.

⁴⁰ Amuda KA, Admissibility of Evidence As it Relates To Electronic Devices, Social Media and Forensic Science, Business Regulations, (Law and Practice 2018) 3.

⁴¹ Dada JA The Law of Evidence In Nigeria, (2nd edition, University of Calabar Press, Calabar, 2015) 200.

To guarantee the statement's veracity, this criterion is important. The focus should be on the circumstances of the record rather than the circumstances of the record's creation as was decided in the case of *American Express Travel Related Service Company Inc. v. Vee Vinhnee*⁴². The Court outlined the necessary nature of the requirements outlined under section 84 (2) of the Act in *Oluwa Rotimi Akeredolu v. Mimico & Others*⁴³.

In the American situation, the law adopted a standard⁴⁴ for deciding whether such evidence is admissible, which includes:

- i. that the company utilized a computer
- ii. that the company has created a procedure for entering data into the computer with built-in accuracy checks.
- iii. that the company maintains the computer in a functional state.
- iv. That the statement was obtained and read out when the computer was still functional.

9. Signature in Electronic Document

Electronic papers often cannot be signed, but they can be proved to have been executed by scanning a specific signature into the document. Address can be used to establish that a document is original when it is printed from an email.⁴⁵ The email was in writing, and the offer had been accepted orally on behalf of the claimant, therefore the court determined that it qualified as a sufficient note or memo for the purposes of section 4⁴⁶. A computer printout, however, does not include a signature, and electronic papers in general do not⁴⁷.

10. Likelihood of Forgery of Computer Generated Evidence

It is important to note that there are no reasonable uses for technology-driven devices. It is accurate to say that computer-generated evidence can be faked, but this is also true of other kinds of documents. The *Thoroughgood case*⁴⁸ established common law recognition of document forgery. Then, Lord Denning, expressed concern about the likelihood of forgery in the situation where only a rubber stamp would be accepted as a signature in *Goodman v. Eban Ltd*⁴⁹. No one was certain, though, that the Solicitor had actually attached it. In the case of *R v. Mawji*,⁵⁰ forgery cases in computer-generated documents were also brought up, affecting the origin or authenticity of an email. The Court had to wonder why someone would go to the trouble of forging the contents of an email when it was so plainly connected to the other evidence presented at the trial.

It's important to note that a party claiming that a computer printout was forged cannot claim that only when the document is sought to be tendered. Instead, he must plead that fact and, as has always been required by law in regards to forgery⁵¹, he must plead the specifics of the forgery and prove the point beyond a reasonable doubt⁵².

11. Documents Produced from Computer Network or a Combination of Computers

The computer industry entered a new dimension in 1993 with the launch of the world wide web. This might be a different communication link in a network. A collection of data may be shared by several computers. It is possible for the information to be entered into one computer in one city

⁴² (1993) 1 ALL ER 225, HL.

⁴³ (2012) KPELR, 50 at 51.

⁴⁴ Klein J. Adopted the test – Edward Imwinkeiried, Evidential Foundation (6th edition, 2005), 4.09, 4c, 86 - 88. See also Jerry Amadi: Contemporary Law of Evidence in Nigeria, (vol. 1, Pearl Publishers, Porthacourt, 2012) 876.

⁴⁵ See *Pereira Fernandes SA v. Mehta* (2006) 2 ALL ER, 829.

⁴⁶ *Williams v. Redcard Ltd.* (2011) 4 ALL ER, 444, CA.

⁴⁷ *Arewa Textiles Plc. v. Fenetex Ltd.* (2003) FWLR (Pt. 162) (1985), CA.

⁴⁸ (1584) 2 Co Rep, 9A

⁴⁹ (1954) 1 ALL ER, 763, CA.

⁵⁰ (2003) EWCA Crim.

⁵¹ *Pam v. Mohammed* (2008) 16 NWLR (Pt. 1112) 1 SC, *Orlu v. Gogo-Abite* (2010) 8 NWLR (Pt. 1119) 307, SC.

⁵² *Pam v. Mohammed, Ibid*, (n. 56), *PIP Ltd. v. Trade Bank Nig. Plc, Nwaobodo v. Onoh* (1984) 1 SC, NLR, 1, *Atuchukwu v. Adindu* (2012) 6 NWLR (Pt. 1297) 534, CA, *Etisi v. State* (2018) ALL FWLR (Pt. 947) 1151, CA, *Dairo v. State* (2018) ALL FWLR (Pt. 928) 81, SC.

and printed out in another computer in a different city. Additionally, the information may be altered or changed using various computer components.

When a computer changes hands, there is a chance that someone with a bad intention would tamper with it. Because digital evidence is so easily altered, it is crucial to handle it with special care. Additionally, one must make sure that there is a clear connection between the hardware and any digital evidence transferred from that hardware in order to maintain accurate records. where and how was the evidence gathered? the identity of the individual who obtained the evidence? Where and how was the evidence kept? The safeguards provided for the evidence while it was being stored, as well as the identities of those who took the evidence out of storage⁵³.

12. Certificate for Computer-Generated Documents Issued to Demonstrate Originality or Authenticity

This is made possible by section 84(4) of the Evidence Act, which permits the use of a certificate issued specifically for this reason to prove the contents of a computer-generated document. In *R. v. Shepherd*⁵⁴, the House of Lords acknowledged that one means to prove a computer-generated document may be by the provision of a certificate.

In *R. v. Mawji*,⁵⁵ O'Brien J. states that after the fundamental requirements for authentication have been met, a finding of authentication is simply a determination that there is enough evidence to support the presentation of the offered evidence at the trial of facts; it does not preclude the opponent from contesting the writer's veracity. Only a solid foundation must be established by the prosecution for the fact-finder to determine that the exhibits actually belonged to the defendant⁵⁶.

Although section 84(4) of the Evidence Act does not specify the format of the certificate, it appears that sections 84(4)(a), (b), and (c) of the Evidence Act outlines the essential information that the certificate should contain. From the sentence, a legitimate certificate should:

- a. recognize the files that contain the contents.
- b. describe the process used to create the document.
- c. describe any equipment used to create the document in detail.
- d. describe the connection between the many computers that ultimately resulted in the statement being made and its eventual output.
- e. be endorsed by the individual who issued the certificate.
- f. the position of the person providing the certificate should be stated to the degree necessary to demonstrate that he is in a reasonable position with respect to the management of the relevant activities or the oppression of the relevant device, as the case may be.

The certificate does not need to be sworn under oath; rather, the person issuing it only needs to affirm that its contents are true to the best of his knowledge and belief by what would seem to be an obligatory confirmation⁵⁷.

We contend that section 84(4) of the Evidence Act was written with the intention of establishing a legal exemption to section 83 (exclusionary's) rule for statements made by interested parties while litigation is pending or contemplated. From the entire intention of section 84 of the Evidence Act and subsection 4 in particular, the certificate is prepared to be used in a pending action.

13. Documents Produced Without Human Efforts or Intervention

It is interesting that some technologies don't need to be manned or controlled by a person in order to function. These tools may gather information, process it, and generate assertions in any kind of document as a result. Examples include the satellite, CCTV, drone, and other security equipment used in sophisticated cities around the globe. These devices are placed in specific locations to collect information, and this technique is now popular in banks, hotels, aircraft black boxes, and other public spaces. The information provided by any of these devices and produced in the form of a document can be treated as a computer-generated document and is therefore admissible under section 84 of the Evidence Act through section 84 (5) of the Act. Issues

⁵³ *R. v. Stevenson* (1971) 1 ALL ER, 678, *R. v. Robson* (1972) 2 ALL ER, 699.

⁵⁴ (1993) 1 ALL ER, 225, House of Lords.

⁵⁵ (2003) EWCA, Crim. 3067.

⁵⁶ At 22.

⁵⁷ *Awojobi v. INEC* (2012) 8, NWLR, (Pt. 1303) 528, CA.

concerning these devices were adjudicated by the Court in *R. v. Khan*⁵⁸, *R. v. Cochrane*⁵⁹ and *Egbue v. Araka*⁶⁰.

14. Challenges Posed to the Admissibility of Computer Generated Evidence (The Quandary)

There have recently been many difficulties with electronically generated materials. This is as a result of the issue with electronic devices in general. Because computer evidence can be accessed by a third party in both legal and illegal ways, it has not been able to inspire confidence in many people. It is susceptible to hacking, which can compromise its authenticity. The difficulties will be addressed in order in this paper as follows.

- i. The issue of authenticity primarily concerns whether or not the information genuinely came from the source that it claims to come from and whether it is accurate in what it connotes. It is possible to impersonate someone's voice on the phone, their signature, and their password. Any employee in the office is able to input data into a computer memory. Electronically generated materials do not lend themselves to the test of authenticity that is typically possible with the conventional document permitted by the Evidence Act because the Court can easily be misled, signatures can be forged on non-electronic documents, and most of the time, signature experts have a lot of work detecting forgery.⁶¹
- ii. Integrity challenge. This raises the question of whether the information has been altered or falsified even though it came from a reliable source. An audio or visual recording can be modified or tampered with by superimposing images and devices, hacking computers using passwords, or changing emails without the maker, sender, or recipient's knowledge. It is possible for a peculiar operator working for a network company with malicious intentions to mix together telesales and test communications, listen to them, and even change them.
- iii. the difficulty of maintaining privacy. These issues exist with electronically generated content. Since they are legally or illegally accessible to third parties or unauthorized readers, they hardly ever enjoy secrecy.
- iv. the difficulties of taking pictures. The courts' requirement for the submission of photo negatives as evidence is cliché. However, given that we live in a current period with digital cameras and cell phones that don't need negative films, this viewpoint might be problematic. Therefore, it is problematic to deny digital photos the status of secondary evidence that can be used in court.
- v. the difficulties of illiteracy. The majority of people, including judges and attorneys, are not computer proficient, which has an impact on admissibility.
- vi. Poor electricity is a problem. Electricity is used to power many electronic gadgets, including computers, televisions, radios, and phones. The courts, judges, and attorneys would have a tough time retrieving evidence from these devices and getting these devices accepted as evidence when there is intermittent energy, such as in Nigeria.
- vii. Given that no two signatures are the identical, the problems of cyber terrorism, forging, and fingerprinting have gained widespread attention.
- viii. Section 58 of the Nigerian Cybercrime Act contains a legislative interpretation of the term "computer" that, while it may appear to be broad, really falls short of providing the needed certainty for prosecuting cybercriminals who have been brought before the court.
- ix. There is the issue relating to the use of various data bases in Nigeria. Data is gathered and stored everywhere, making it challenging to draw information from the various government parastatals data bases that contain these data. Awodokun⁶² explains why the need for a centralized or uniform data base still exists.
- x. Hacking, or unauthorized access to a computer, causes a lot of trouble and is a setback.

⁵⁸ (1996) 3 ALL ER, 289, H L.

⁵⁹ (1993) Crim, LR, 48, CA.

⁶⁰ (1996) 2 NWLR, (Pt. 433) 688, CA.

⁶¹ *R. v. Silver Louck* (1894) 2 QB, 766.

⁶² Awodokun G "A Simple Solution to Nigeria's Unified Data Based Problem", cited by Dr. K.O. Mrabure, in Handbook on Nigerian Cybercrime Law, edited by Dr. Felix Eboibi, (Justice Jeco Printing and Publishing Global Benin, 2018) 506.

- xi. Due to the issue of receiving emails surrounding password to unravel one's privacy, they cannot be easily accessed at will by the Court or Counsel through section 89(d). However, the original copy can be printed out via section 89(d) and (g) and section 90(1)(a) & (d), and the printed version of the email will not reveal the perpetrator's identity.
- xii. Hacking into electronic evidence compromises the device's integrity and authenticity.
- xiii. The use of electronic evidence in cybercrime prosecution is a challenge that the courts have not fully addressed⁶³.
- xiv. There is an issue with the authority granted to judges under section 15 of the Evidence Act to reject evidence that was gained inadvertently; yet, the judge may utilize the discretion, confining himself to the fact that he works with the evidence in front of him.
- xv. The admissibility of computer generated evidence has been plagued by a lack of trustworthy experts because their opinions are very persuasive⁶⁴, and our courts do not favour them.
- xvi. As restated in the *UBA Plc. v. Sani Abacha Foundation case*,⁶⁵ the law has not yet exempted a document created by a computer from the requirements outlined in section 97 of the Evidence Act.
- xvii. It can be challenging for litigants to satisfy section 91's requirements for the establishment of a proper basis for arguing the admissibility of audio or video tapes, such as by identifying the source of the record and the method by which it was obtained, as in the case of *Ojo Maduekwe v. Okoroafor*⁶⁶.
- xviii. Contrary to South Australia's definition of computer output, which is more expansive and inclusive under section 59 (a) of that state's Evidence Act, the Evidence Act, 2011, only made conclusions about computer outputs⁶⁷.
- xix. For entries in books of account or electronic records that are routinely retained in the course of business, there are specific issues with the admission of electronic evidence under section 51 of the Act. Also problematic is the admissibility of secondary evidence based on an entry in a banker's book under section 89(h) of the Evidence Act, though there are conditions under section 90. Section 37 of the Evidence Act does not require the production of books of account but makes entries in such books relevant for the purpose of admissibility. These conditions are mutually exclusive since all four prerequisites must be met for computer-generated evidence to be accepted under this clause⁶⁸.
- xx. If we accept the notion that printed things from the computer are secondary, then we rely on printed photos, maps, graphs, and other printed materials as primary evidence without considering the possibility that they may actually be secondary.
- xxi. Despite its good intentions, section 84, subsection 4, on certificates could be stored by anyone, including our computer institution or business centres that certify quacks who are not computer literate. Additionally, we believe that the phrase "to the best of the knowledge and belief of the person stating it" in section 84, subsection 4, is relative and subjective.
- xxii. How can it be known, ascertained, or guaranteed, according to the definition in section 84 (1) of the Act, that the computer was regularly used to store or process information, that information was regularly supplied to the computer from which the information contained was derived, or that the computer was functioning properly throughout the entire period? Are these gaps caused by Nigeria's epileptic power supply issues, which undermine the Act's lofty goals?
- xxiii. Electronically generated documentary evidence for our courts appears to be under debate, and academics have split into two major categories to address the issue. Some people believe that digital evidence cannot be compared to documents, however another school of thought considers digital printouts to be considered documents.

⁶³ Eboibi FE (ed) Handbook of Nigeria's Cybercrime Law (Justice Jeco Printing and Publishing Global Benin, 2018) 239.

⁶⁴ *Ibid* 68.

⁶⁵ (2003) 4 FR, 257, at 275.

⁶⁶ (1992) 9 NWLR (Pt. 263) 69, CA, see also *NBA v. Fawehinmi* (1986) 2 QLRN (190) 210

⁶⁷ Olayinka SA, Kamoru TL, Admissibility of Computer Generated Evidence Under Nigeria's New Evidence Act, 2011, 587.

⁶⁸ See *FRN v. Fani Kayode* (2010) 14 NWLR, (Pt. 1214), 481, CA.

- xxiv. A computer printout or other electronic evidence is not verbal and cannot be considered writing in the traditional sense.
- xxv. A signature in a transaction involving electronic payments, computers, and diskettes that is replaced by an electronic key intended to authenticate the message can be changed even without the alteration being detected by media analysis.
- xxvi. Unfortunately, the Evidence Act of 2011 does not distinguish between an electronic and a digital signature.
- xxvii. Affidavit testimony presents a number of complex obstacles that must be overcome.

15. Recommendations

The issues with computer and other electronically created evidence being admissible in Nigerian law will be addressed by the proposals that follow.

First, section 258 of the Act, which deals with the definition of a document, will be more inclusive if it defines the term by stating its nature or character rather than by citing examples. It's possible that the variety of materials currently accepted as documents, including electronic documents, may soon become moribund and obsolete due to advances in science and technology.

Second, as an alternative to everything stated above, it is suggested that section 89 of the Act be revised to add a clause addressing circumstances in which the original is stored in a computer. This section outlines cases in which documents may be proved by secondary evidence. If section 89 of the Act included an additional paragraph addressing electronic and computer concerns, for instance, there would be no debate regarding the admissibility of computer printouts.

Thirdly, in order to stop the plethora of online crimes that occur nearly constantly, the legislature should investigate the incorporation of potential requirements as well as current patterns of online behaviours. Therefore, the Act has to be changed.

Fourth, a significant amount of time should be spent identifying and analyzing the authentication and admissibility issues pertaining to the electronic data involved in the litigation, as prompt resolution of these issues will result in a successful evidentiary presentation on Summary Judgment at a hearing or at the trial. As soon as the data is obtained and examined, the foundational work for proving its legitimacy and admissibility should start since more discovery may be needed to permit the use of electronic evidence in court⁶⁹.

Furthermore, given the value of electronically generated evidence in our judicial system and courts, Nigerian courts are urged to interpret the admission of such evidence broadly.

Our judges, magistrates, and other classes of judicial officers, such as legal practitioners, the Economic Financial Crimes Commission (EFCC), Independent Corrupt Practices and Other Related Offences Commission (ICPC), Independent Corrupt Practices and Other Related Offences Commission (NAFDAC), and other significant organizations, who are required to apply the technical rules of evidence, must be empowered through training in order to acquire more knowledge and expertise on forensics in this regard.

Since electronic evidence is becoming more important in litigation, considerable time should be devoted to identifying issues related to electronic data involved in litigation that must be addressed at the earliest stage of information gathering. As a result, additional discovery may be necessary to authenticate the use of electronic evidence.

The issue of electronic recorded video evidence of the defendant's or accused person's confessional statement, which is acknowledged in the majority of States in the Federation's Administration of Criminal Justice Act, should be included in the Evidence Act. To include the new video electronic record of confessional statement, the Evidence Act section addressing confessional statements needs to be changed. Therefore, this has to be added to section 29 of the Act rather than section 31 in order to increase the credibility of confessional remarks.

A mark, signature, or other indicator should be able to be accepted as a signature with the use of electronically created evidence.

The burden of proof regarding admission shouldn't be excessive; instead, the court should focus more on the weight that should be given to the document.

Nigeria should follow the example of India when it comes to cybercrime investigations, where any department or agency of the central or state government can be appointed as the examiner

⁶⁹ Mr. Beluolisa Nwaofor SAN, Reiterates this view in his publication "Lawyers, others Fought Evidence Act" Published at *Vanguard Newspapers*, November 15, 2015.

of electronic evidence under section 79(a) of the IT (Amended Act) 2008. This agency will be essential in providing professional judgment on electronic forms of evidence.

We concur with Osipitan that excluding computer-generated evidence would have a long list of unfavourable effects; admittedly, e-specific law would be ideal. However, Nigeria does not require specific legislation or procedures in order to accept computerized statement of accounts and other electronically generated proof⁷⁰.

In addition, the Evidence Act's section 2(1) meaning of the word "document" could, and in fact, should, be sufficiently interpreted by the courts so as to keep up with contemporary socioeconomic realities in the interim.

The hearsay rule should be extended through law, at the very least to embrace other types of computer- or electronic-generated evidence.

A public authority may very well decline to certify documents obtained through a website, which could result in unfairness. Therefore, we contend that it is best if all internet-generated documents are made admissible in evidence⁷¹.

We agree with the Court's reasoning in *Anyabosi v. RT Briscoe Ltd*⁷² that section 37 cannot only apply to books of account that are so bound and have pages that cannot be easily changed because duplication and inscription on ledgers and other mechanically inserted papers are ubiquitous in modern society.

We agree with Mr. Horacio Neto's recommendation that we all, as Attorneys pay attention to the new electronic tools being developed to perform tasks that Attorneys have traditionally performed for years, i.e., the use of robots. As Attorneys, we should adapt to change and pay attention to the judiciary's⁷³, digitization, for instance by embracing electronic filing of court processes.

16. Conclusion:

In this paper, an effort has been made in examining electronically generated evidence, including computer and other forms, to discuss its nature, acceptability, and issues that may arise. Despite the challenges, we will continue to apply the admission of computer and electronically generated evidence, with amendments where required, because to reject technological innovation would not only be wrong but would also perpetuate injustice. The use of judicial authority to uphold the law is a continuum and a by product of social engineering, which law should at⁷⁴ in tandem with the the application of new technologies when and where necessary.

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⁷⁰ Cited by Hon. Justice Ohimai Ovblagele' Lecture, on (The Challenges of Electronically Generated Evidence), delivered at Edo State Magistrate Conference Benin, 8 -9.

⁷¹ This suggestion is in line with the Supreme Court's Judgement in *Kubor v. Dickson* (2013) 4 NWLR (Pt. 1345) 5778.

⁷² (1987) 3 NWLR (Pt. 59) 108.

⁷³ "Robots Won't Replace Lawyers" A Key Note Address Presented by the International Bar Association President at the Opening Of The Nigeria Bar Association Conference in Lagos, Punch Newspaper, 12 September, 2019, 39.

⁷⁴ See *Owuru v. Adigwu* (2018) ALL FWLR (Pt. 939) 2058, SC, *Rasaki v. Ajijola*, (2018) ALL FWLR (Pt. 931) 556, SC, *Sule v. State* (2018) ALL FWLR (Pt. 953) 164, SC, *Mohammed v. C O P* (2018) ALL FWLR (Pt. 949) 1466, SC, *Adama v. State* (2018) ALL FWLR (Pt. 936), 1477.

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