

Digital Evidence & eDiscovery Law Practice in Nigeria

By Emeka Arinze Esq.

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(Digital Technologist & Certified Digital
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Message from the Author

On behalf of all employees of WhiteHall Solicitors, Digital Evidence & Cyber Forensic Institute and Lawdata Communication Solutions Ltd I extend our warmest regard to you all as we bring on board the book titled **Digital Evidence & eDiscovery Law Practice in Nigeria**, through this brochure.

It is undeniable that technology in the last decade has disrupted the practice of law. Data involving smart phones, apps, iPads, cloud capabilities, e-discovery, litigation preparedness, advocacy, and even artificial intelligence are now regular features in our courts. No wonder in the review of the book, International Commentary on Evidence, Deirdre M. Dwyer, opined:

“It is self-evident that as our society makes increasing use of electronic devices, such as computers and mobile phones, so the evidence that we rely on in litigation, both civil and criminal, will be increasingly electronic in nature. But central to this increasing use of electronic evidence are fundamental technical and legal questions about the quality of that evidence and the circumstances under which it can be obtained and then admitted into court.”

This statement, anchored on the digital dynamics of the 21st Century, no doubt underpins the essence of this book. Its primary objective is geared towards developing analytical skills for the Bar and the Bench to meet the challenges of legal practice inherent in the new world legal order. Given the avalanche of electronic data that pervade the digital ecosystem, and their concomitant interest in litigation, no 21st century trial lawyer is likely to succeed without the knowledge of electronic evidence and eDiscovery methodology. The Bench also is not an exception.

This brochure introduces the salient points in the book with a view to helping lawyers and judges understand that they have to deal with DATA, (not just DOCUMENTS) in their native locations and forms in order to be effective in client representation and dispensation of justice.

The brochure brings into focus, in a summary form, the content and expectation of the book. That is, its general content; the foreword (written by the former Chief Justice of Nigeria, Justice Walter Onnoghen); and its most critical element - the use of the book as an electronic tool.

It is, therefore, with great pleasure that I welcome you all on board as we begin our journey into the world of digits and its versed terrain of essential evidentiary tools of the digital age.



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About The Author

Emeka Arinze Esq. LL..B (Hons), B.L, LL.M, M.I.T (Info-Tech), CBSP, DEA, CCI, CFP

Emeka Arinze Esq., is the first Nigerian lawyer to be dual qualified in Law and Forensic Technology. Called to Nigerian bar in 1983, he holds a Masters' degree (LL.M) in law of the University of Lagos, Nigeria and a Masters' degree in Information Technology (with emphasis on forensic technology) of the University of Lagos, Nigeria.

In 2006 Emeka Arinze attended a certificate course on Cyber Crime & National Security organised by NACETEM, Obafemi Awolowo University, Ile-Ife., and was awarded a certificate on Cyber Crime & National Security upon completion of the course.



In 2006, Emeka Arinze was trained by a Canadian based company; [Data & Scientific Systems Inc on Data Intrusion Detection & Prevention technique](#), featuring two-factor authentication process that incorporates [eToken Authenticators](#), [SafeWord Authenticators](#), [SafeNet iKey USB Token & Smart Card](#). These processes enable secure PKI implementation, secure access to the web, e-mail, digital credentials, encryption and decryption capabilities, as well as software authentication and single sign-on solutions.

In 2008, Emeka Arinze attended an international training conference in Digital Evidence in London. The training was accredited by the Law Society of England and the Bar standards. It was organised by MIS Training Institute, London in partnership with and under the guidance of Stephen Mason, a Visiting Research Fellow, Digital Evidence Research, British Institute of International & Comparative law. The area of coverage in the training include, [eDiscovery](#), [electronic evidence integrity](#), [trustworthiness](#), [reliability and admissibility procedure](#), [electronic signature](#), [search & seizure of digital evidence in civil and criminal procedure](#), [tendering & production of digital evidence](#), [Biometric issues and evidence handling](#), [video footage analyses](#), [digital evidence practice in other jurisdictions etc](#). He was awarded a Certificate in Digital Evidence upon successful completion of the program.

In furtherance of the understanding of the dynamics of the Internet Technology and its convergence with the law, in 2010, Emeka was admitted for a course on Internet & the Law at the University of Cape Town, South Africa. Upon a successful completion of the course, he was awarded a certificate by the University of Cape Town, South Africa on Internet and the Law.

Having acquired the basic academic and theoretical background in forensic Technology, the need for certifications in the various areas of Digital Forensic Technology becomes imperative. Consequently, he was trained for certification in [Biometrics & Surveillance](#), [Digital Evidence analyses](#), [cybercrime investigation and digital forensics at various institutions in India from 2010 through 2013](#).

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Emeka Arinze, after a successful completion of training on specific areas of Digital Forensics conducted by Asian School of Cyber Law, Mumbai, India and after successfully completing the examination administered by Asian School of Cyber Law and Data Techno Solutions Pvt, India and having obtained an aggregate score of 73% was duly certified in April 2013 as follows;

CFP (Certified Cyber Forensic Professional)

CCI (Certified Cyber Crime Investigator)

DEA (Certified Digital Evidence Analyst)

In addition to the above certifications, Emeka Arinze is also a [Certified Biometrics & Surveillance Professional, CBSP](#). He was trained and certified in Biometrics & Surveillance by an Indian Academy as a Biometric and Surveillance Professional. The training and certification have the support and approval of Indian Institute of Technology, Bombay, KIIT University, Bhubaneshwar, India (formerly Kalinga Institute of Industrial Technology), The National Skill Development Corporation (NSDC) a Public Private Partnership (PPP) set up to facilitate the skill development in India and Larsen & Toubro Limited (L&T) Indian multinational conglomerate.

Consequent upon these certifications, Emeka Arinze was inducted as a member into the prestigious [Asian Network of Professionals and Association of Digital Forensic Investigators, India](#).

Over a decade, Emeka Arinze has been responsible for training of lawyers and judges at the Institute of Advanced Level Studies (NIALS), Lagos on Digital Forensic Advocacy and related fields.

Emeka Arinze has had the opportunity of providing forensic leads in cases bordering on election petition at various Election Petition Tribunal in Nigeria (from 2011 to 2015), such cases as led by Chief Wole Olanipeku SAN, Prof A A Utuama, Dr Alex Izinyon SAN, Chief Adebayo Adenipekun SAN, Chief E.L Akpofure SAN, Mr Ken Mozie SAN, Mr E. Ohwovoriole SAN, Mr Tayo Oyetibo SAN, Chief Kalu Umeh SAN (the Attorney General of Abia State, Nigeria), Dr. Livy Uzoukwu SAN, Chief Chris Uche SAN, Dr. Mike Ozekhome SAN, Chukwuma-Machukwu Umeh SAN, Dr. Mrs. V. J. O. Azinge SAN, Olalekon Ojo SAN, Emeka Okpoko SAN, Kabiru T. Turaki SAN, etc.

And most recently in 2018, [Emeka Arinze provided forensic expert opinion/report, demonstrating the possibility of Voice \(biometric\) Impersonation at the National Judicial Council Investigative Panel Against Justice Akon Ikpeeme of the Cross River State Judiciary, sequel to the petition of the Civil Society Network Against Corruption and Senator Smart Adeyemi respectively](#). Emeka Arinze was led in evidence by Mr Mba Ukwani SAN, Mr Emeka Ofordile SAN, Mr Abdul Ibrahim SAN and Mr Tawo E Tawo SAN.

Satisfied with the said forensic demonstration of voice impersonation by Emeka Arinze, the National Judicial Council Investigative Panel acquitted the said Justice Akon Ikpeeme of all allegations as made out by the Civil Society Network Against Corruption and Senator Smart Adeyemi respectively.

The Book Foreword

Written By
Hon. Mr. Justice Walter S. N. Onnoghen, GCON
The Honourable Chief Justice of Nigeria
November, 2018

There is no-gainsaying that technology has ushered in a paradigm shift in the way we think and about how legal meanings are disseminated and construed. Even our most cherished existence and contacts with reality are now technologically mediated and constructed. Within a span of two decades, the practice of discovery of writings, recordings, photographs, and other non-testimonial evidence in both criminal and civil cases in our courts has transformed from one that was based almost entirely on the manual retrieval, review, and production of tangible documents by counsel to one that is almost entirely dependent on accessing, searching, reviewing, and producing digital or computer-generated information.

The "digital explosion" has required a more fundamental change on how counsel and judges must think about digital evidence and eDiscovery in legal proceedings. While the digital natives of the legal profession typically have greater knowledge and less phobia regarding what is needed to engage in what has come to be known as "e-discovery," there are many counsel and judges of our time who look at the digital process with concern, if not fear and loathing.

Part of the problem lies with not knowing where to begin to develop the knowledge and experience needed to survive in the daunting new world of digital evidence and e-discovery. Though their technical proficiency has not matched the pace of the increased role that technology plays in an interdisciplinary global environment, the bar and the bench cannot abdicate their responsibilities due to ignorance of the current technology as they impact on the modern law practice. The bar and the bench must remain accountable for rendering competent legal services to the client and the effective dispensation of justice respectively.

The book, Digital Evidence & eDiscovery Law Practice in Nigeria is a timely intervention to address

“*One of the compelling points of this book is that the author writes from the vantage point of law and forensics, having been dual qualified*”

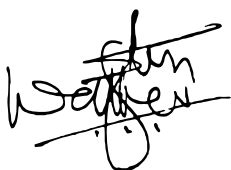
this challenge. The author has opined, "as lawyers and judges, we cannot walk away from the overwhelming majority of the evidence that may be lurking in the computer hard drives, networks and other devices. Not having digital discovery skills is a ticking time bomb in the 21st century law practice. A pervasive lack of knowledge about electronic data, coupled with experience grounded exclusively on paper discovery, makes it hard for lawyers and judges to meet the challenges of digital data discovery. We must, therefore, learn to master electronic discovery and at its extreme, exploit its powerful sub-discipline, digital forensics". I agree no less with this postulation. Counsel and the court must therefore stay abreast of changes in the law and its practice and understand the benefits and risks associated with relevant technology; and in addition to their legal expertise, must also have enough knowledge in different areas of technology and forensics to enable them identify issues, understand concepts,

“ *Emboldened by the quality of scholarship demonstrated, and the convergence of law and forensic technology brought into focus by the author, I commend this book as a critical resource to the bar and the bench respectively, as they confront eDiscovery and evidentiary issues posed by electronically stored data in the course of proceedings in our courts.* ”

contribute to teams and connect ideas across disciplines. Above all, every lawyer and the court need basic knowledge of how the Internet works; how computer systems, tools and storage functionality are preserved; how digital forensic investigations are conducted; understand forensic expert evidence and a host of other electronic dynamics relevant to the 21st century litigation.

One of the compelling points of this book is that the author writes from the vantage point of law and forensics, having been dual qualified. The book, written in a conversational style, while keeping the commentary broad and all inclusive, is divided into five parts, to wit: digital evidence; eDiscovery law practice; digital forensic investigation, prosecution and defence; expert witness and forensic evidence and finally, precedents and landmark cases from foreign jurisdictions. Sprinkled throughout the book are very helpful references to cases, secondary sources, and other materials fully automated, thereby giving the book depth beyond its relative brevity. A quick look at the table of contents reveals an impressive inventory of the most important digital evidence and e-discovery topics of the day. Like a well-designed website, it is informative, interesting and easy to navigate, providing up-to-date practical information that would impact on the lawyers' efficiency to effectively represent clients in a world meshed in digital technology, eDiscovery processes and the basic understanding of forensic expert evidence.

Emboldened by the quality of scholarship demonstrated, and the convergence of law and forensic technology brought into focus by the author, I commend this book as a critical resource to the bar and the bench respectively, as they confront eDiscovery and evidentiary issues posed by electronically stored data in the course of proceedings in our courts.



Hon. Mr. Justice Walter S. N. Onnoghen, GCON
The Honourable Chief Justice of Nigeria
November, 2018

The Book - Digital Evidence & eDiscovery Law Practice in Nigeria

Evidentiary issues raise certain fundamental questions on the evolution of digital evidence. It is obvious that no matter how knowledgeable a digital forensic expert (not also trained as a lawyer) engaged as an expert in providing expertise on technical issues in court, he cannot conduct an examination-in-chief, cross-examine a witness or re-examine a document custodian or computer forensic expert on the other side. This is the province of the lawyer. For lawyers to engage in effective examination or cross examination of such expert witness in court, they must as a matter of necessity make effective effort towards understanding client's use of technology, electronic data dynamics, methods, policies and procedures inherent in managing electronically-stored information (ESI). The lawyer, at all-time material, should be prepared to defend his introduction of computer evidence against all objections and attack such digital evidence produced by opposing counsel where expedient. A working knowledge of the computer, the evidence it can generate, and the evidentiary questions

“*The 21st century bar and bench must possess the “I” shaped and “T” shaped quality skills. The “I”-shaped professional is highly versed in a specific area of expertise, whilst the “T”-shaped professional has broader skills and knowledge and learns by linking up different perspectives from different specialties. Although the bench and the bar have deep legal expertise, they must also have the ability to collaborate across disciplines such as technology and forensics.*”

raised, prove invaluable for the bar and the bench in today's rapidly changing and increasingly automated society.

For the bar and the bench to fit into the emerging concept of digital evidence and eDiscovery and explore the potential knowledge inherent in digital data in streamlining the pre-trial and trial processes, they must in addition to their earlier legal training acquire skills across relevant disciplines. The ability to apply skills across disciplines comes handy anywhere problem solving is required. To be relevant in this dispensation, the bench and the bar must have basic knowledge of adjacent and connecting fields so as to readily adapt and address the novel and complex problems that often arise. Therefore, the 21st century bar and bench must possess the “I” shaped and “T” shaped quality skills. The “I”-shaped professional is highly versed in a specific area of expertise, whilst the “T”-shaped professional has broader skills and knowledge and learns by linking up different perspectives from different specialties. Although the bench and the bar have deep legal expertise, they must also have the ability to collaborate across disciplines such as technology and forensics.

This book (1300 pages) delves into these questions and provides a starting point for further consideration of law of evidence in the current dispensation. To achieve the understanding of the

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technical issues in the convergence of law and technology, the book is divided into five parts, namely: Part A, Digital Evidence; Part B, eDiscovery Law Practice; Part C, Digital Forensic Investigation, Prosecution and Defence; Part D, Forensic Evidence and Expert Witness, and Part E, Precedents and Landmark Cases from Foreign Jurisdictions in Digital Evidence; eDiscovery; Digital Forensic Investigation and Forensic Expert Evidence.

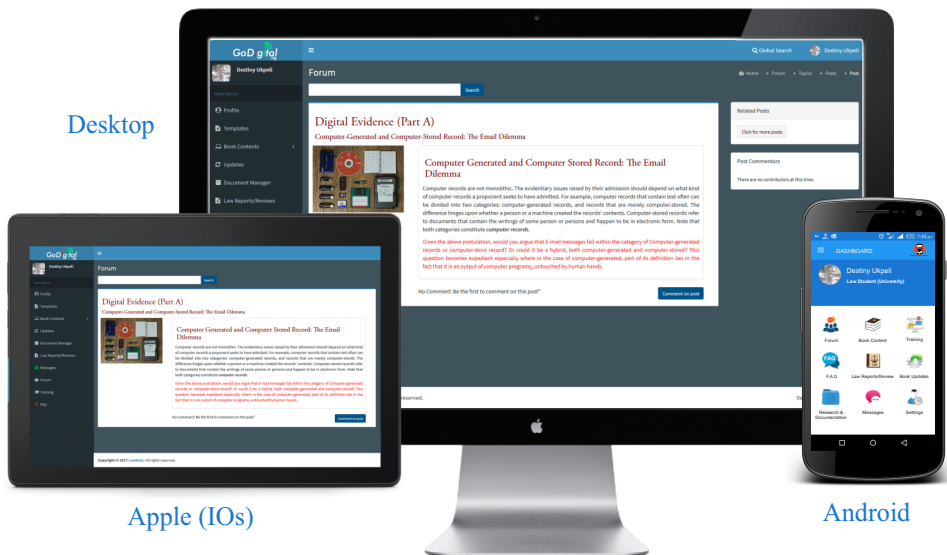
The Book ePlatform

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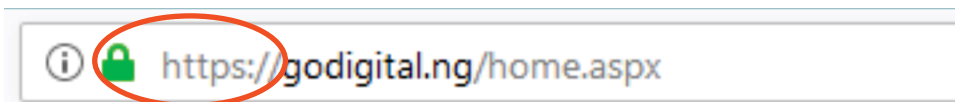
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