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## The Intersection of E-Hospitality and the Law

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### Abstract

*Care for travellers and tourist is a phenomenon that has evolved over the ages. The evolution of that aspect of life has developed into a means of livelihood that has seen some form of boom and competition in the course of time. The 20<sup>th</sup> century heralded the computer age where most activities were becoming automated and by the 21<sup>st</sup> century electronic means of doing things is common place. The hospitality industry is not left out in the operation of electronic businesses. Electronic means has taken over in the area of services such that transactions in the hospitality industry are no longer deterred by physical limits or boundaries of any sort. Transactions can be concluded with just a click of the button across country borders, amongst different races or languages and without time borders. Even though this is made possible by reason of advancement in technology, what the position of the law is in regulating the operation of electronic hospitality is the crux of this study. A doctrinal approach is utilized in this qualitative study to analyse the position of the law in the operation of technology in the hospitality industry and tourism sector. Both primary sources of the data being statutes and secondary sources like articles and online materials are engaged to execute this study. The study finds that though technology is necessary to mankind in this generation, the law has to*

*maintain its place in regulating the operation of technology so as to sustain order in the society and to ensure the operation of the rule of law for the benefit of all.*

**Keywords: E-hospitality, hospitality industry, law, tourism, theory.**

## 1.0 Introduction

Travelling is as old as mankind. The Holy books which may represent ancient times contain records of traveling that took place in ancient times.<sup>1</sup> People of old travelled in search for food and shelter (Abraham, Jacob).<sup>2</sup> Overtime, the purpose of traveling changed and so travelling created a huge industry that now benefits mankind in general one way or the other. Needless to say that traveling cuts across different sectors of human life – transport, entertainment, food, shelter and so forth. As means of transportation (technology) improved, the hospitality industry also improved. The hospitality industry borders on taking care of travellers or those involved in tourism. The word ‘hospitality’ is gotten from the French word ‘*hospice*’ which means ‘taking care of the travelers.’<sup>3</sup> Hospitality thus involves accommodation, restaurant services and tourism planning and management.

The word ‘hospitality’ is defined in Merriam-Webster Dictionary as ‘the activity or business of providing services to guests in hotels, restaurants, bars, etc...’<sup>4</sup> Thus, it is an industry that services the tourism sector of an economy. According to the United Nations World Tourism Organisation (UNWTO),

Tourism is a social, cultural and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes. These people are called visitors (which may be either tourists or excursionists; residents or non-residents) and tourism has to do with their activities, some of which involve tourism expenditure. <sup>5</sup>

For the sake of clarity, tourism is ‘the practice of traveling for recreation; the guidance or management of tourists; the promotion or encouragement of touring; the accommodation of tourists.’<sup>6</sup> Tourism may also take different forms and is internationally recognized. For instance, the UNWTO glossary also shows that there

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<sup>1</sup> See Jacques Levy-Bonvin, ‘Hotel: A Brief History’ (*Hospitality Net*, 15 December 2003) <<http://www.hospitalitynet.org/news/4017990.html>> accessed 5 March 2024.

<sup>2</sup> See Gen 12 for instance..

<sup>3</sup> Russel and Dawson, ‘Evolution of the Hospitality Industry’ <<https://www.rdeap.com/blogs/evolution-hospitality-industry>> accessed 7 March 2024.

<sup>4</sup> Merriam-Webster Dictionary, ‘Hospitality’ <<https://www.merriam-webster.com/dictionary/hospitality>> accessed 3 March 2024.

<sup>5</sup> United Nations World Tourism Organisation ‘Glossary of tourism terms’ <<https://www.unwto.org/glossary-tourism-terms>> accessed 5 March 2024.

<sup>6</sup> Merriam-Webster Dictionary ‘Tourism’ <<https://www.merriam-webster.com/dictionary/tourism>> accessed 3 March 2024.

are different kinds of tourism - cultural tourism, rural tourism, leisure tourism, food tourism, eco-tourism, wellness tourism, medical tourism and so on. Hence, tourism and hospitality are inseparable twins.

The importance of the hospitality industry to any economy in the world cannot be over-emphasised.<sup>7</sup> It is one of the building blocks of any good economy because it cuts across the different facets of life – culture, revenue, human resources, job creation and so on.<sup>8</sup> For instance, it contributes to job creation, serves as support for other businesses through tourism, improves revenue generation, impact local arts and preserves culture, impacts on foreign exchange and direct investments, it impacts infrastructural development.<sup>9</sup> Empirically, the World Travel & Tourism Council's Economic Impact Report for the year 2022 states that the Travel & Tourism sector contributed 7.6% to global Gross Domestic Product.<sup>10</sup> This study explores the operation of electronic hospitality and how the law interfaces with the technological applications so introduced.

## **2.0 Historical Perspective<sup>11</sup>**

Historically, the floor of kitchens or other available spaces were utilised by travellers as resting places in the course of their journey. As at then, buildings were not yet dedicatedly erected as resting facilities specifically for tourists and travellers until monasteries decided to change the narrative by building one<sup>12</sup> which marked the beginning of lodging services. The late 1700s saw the beginning of Inns which were mere road side shelters where travelers could stop, rest and eat. Even traveler's horses were taken care of while the owners were resting. This heralded the beginning of modern hospitality facility. In other word, the hospitality industry of today is the evidence of the growth exhibited from the past two millennia.

By the 19<sup>th</sup> Century, lots of Inns had been built and their lodging services had gone beyond bedding and resting to include food and drinks. Also, elements of luxury began

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<sup>7</sup> Garbin Praničević, Daniela, and Ante Mandić, 'ICTs in the hospitality industry: An importance-performance analysis among small family-owned hotels' (2020) 68(2)Tourism: An international interdisciplinary journal, 221-234;

<sup>8</sup> Harman, 'Importance of the Hospitality Industry in the Economy' <<https://botshot.ai/resources/blog/importance-of-the-hospitality-industry-in-the-economy> > accessed 3 March 2024.

<sup>9</sup> See Cordelia Onyinyechi Omodero, 'Nigeria's Economic Diversification with an Emphasis on Hospitality and Tourism Sector as a Necessity' (2019) 7(2) Management Dynamics in the Knowledge Economy, 147–164. Retrieved from <<https://www.managementdynamics.ro/index.php/journal/article/view/307> > accessed 5 March 2024.

<sup>10</sup> World Travel and Tour Council, 'Economic Impact Research' <<https://wttc.org/research/economic-impact> > accessed 3 March 2024.

<sup>11</sup> Russel and Dawson, 'Evolution of the Hospitality Industry' <<https://www.rdeap.com/blogs/evolution-hospitality-industry>> accessed 7 March 2024.

<sup>12</sup> According to the Guinness World Records, 'The oldest hotel is the Nisiyama Onsen Keiunkan in Yamanashi, Japan, a hot-spring hotel, which has been operating since 705 AD. The second oldest hotel is also in Japan' available at < <http://www.guinnessworldrecords.com/world-records/oldest-hotel>> accessed 5 March 2024

to show up in their services to travellers. Hotels began to emerge as more sophisticated with better rooms and dining areas. Thus, hotels and Inns started attaching more importance to services to edge out their competitors. This led to improved services across board. Bars were soon introduced which became an important selling point for hotels. Architecture, aesthetic structures and interiors features were part of the developments in the 19<sup>th</sup> Century.

The development in transportation systems gave opportunity for more people to travel which impacts on hotel businesses. More people had to lodge and so more people plunged into the hotel business. Thus in the 20<sup>th</sup> Century, more hotels were developed and competition became stiffer. Holiday Inns were soon developed to set a better standard for the hospitality business to accommodate families. Also, with the popularity of cars, people engage in more intercity travels which led to the establishment of Motels which word was coined from Motor and Hotel to serve as resting place for those who would wish to rest while on a journey or who would want to sleep overnight. In addition to this, in the 1960s, computer-based reservations replaced manual (traditional) means. Television was introduced to Hotel rooms in 1970s and by the 21<sup>st</sup> century, traditional hospitality industry has evolved to become more and more advanced.

### **2.0.1 New Phase of Technological Intervention**

There is no gain saying the fact that technological developments have greatly improved the hospitality industry. From the nature of the structures of hotels to the manner of attending to customers, hospitality industry is now a different ball game. The heights of hotels attest to the fact that other sectors of the economy are also positively affected by the growth in hospitality industry – for instance, the engineering design services are evidently impacted.<sup>13</sup>

Beyond physical structures being more sophisticated, the information age has also witnesses a new vista of approach in the hospitality business. The hospitality industry has become digitalized and not just that, it has also become globalised. The advent of the internet has greatly impacted the industry – online resources are available to enhance travel as well as businesses from across borders. All operations relating to the rendering of services in the industry is now possible via electronic means, hence the term ‘e-hospitality’. People are now able to view and make their choices electronically as against the traditional physical presence that used to operate. Reviews of other users can also be seen before making choices and reservations. People can now browse through options from anywhere in the world and even make online payments. One of the advantages of this is that it has been able to marry the old with the new because it has led to the construction of more hotels.

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<sup>13</sup> Hotel Fairmont Makkah and Burj al Arab are good examples.

It is worth emphasising here that hospitality industry contributes largely to the economy world-wide.<sup>14</sup> Revenues are gotten from tourist activities ranging from lodging and food to accommodation. A new era was opened in 2008 when the impact of technology manifested in electronic form with the launching of Airbnb which opened up a new segment in the hospitality industry.<sup>15</sup> It is a form of marketplace that is utilized to connect people who wanted to rent their property with those who want to rent it. In other words, hospitality has become digitalized to the benefit of even other sectors across the world.

The technological improvement in the delivery of services in the hospitality industry is a result of innovations in tourism as there are innovations in tourism sector which according to the United Nations World Tourism Organisation (UNWTO) refer to ‘the introduction of a new or improved component which intends to bring tangible and intangible benefits to tourism stakeholders and the local community, improve the value of the tourism experience and the core competencies of the tourism sector and hence enhance tourism competitiveness and /or sustainability’. Innovation in tourism may cover potential areas, such as tourism destinations, tourism products, technology, processes, organizations and business models, skills, architecture, services, tools and/or practices for management, marketing, communication, operation, quality assurance and pricing.

### **3.0 Impact of Pandemic on Hospitality Industry**

The developments in hospitality industry which resulted in the boom of hospitality business across the world was soon attacked by the pandemic that started in late 2019 when the news of the deadly COVID-19 broke. COVID-19 is an airborne virus that affected the world and consequently businesses. Though there was steady improvement of technology on hospitality industry before the pandemic, the global pandemic that saw to the lock down of many cities and closure of many businesses greatly affected the hospitality businesses. The resultant effect of the lockdown was loss of job, lack of and low patronage, remote jobs, violence, drug abuse and so on.<sup>16</sup> This left room for a rethink of the industry’s need to revamp because there was practically led to a nosedive in the rise in the tourism/hospitality businesses thereby affecting many lives and other aspects of life.<sup>17</sup> The hospitality industry had to

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<sup>14</sup> Okonkwo Adonai Okechukwu Prince and Aniekwe Emmanuel, ‘A Review on the Impacts of Tourism and Hospitality on Economic growth of a Nation’ (2020) 6(1) IAA Journal Of Social Sciences 128-136; Onuegbunam Michael Rotimi Sanni, ‘The Influence of the Economy on Hospitality Industry in Nigeria’ (2009) 2(1) Ethiopian Journal of Environmental Studies and Management <DOI:10.4314/ejesm.v2i1.43499> 4 March 2024.

<sup>15</sup> Airbnb is an acronym for AirBedandBreakfast.com and was founded by Brian Chesky, Joe Gebbia and Nathan Blecharczyk – visit< <https://airbnb.com/about-us/>> accessed 1 May 2024.

<sup>16</sup> Henry Aigbedo, ‘Impact of COVID-19 on the hospitality industry: A supply chain resilience perspective’ (2021). Int J Hosp Manag.98:103012 < doi: 10.1016/j.ijhm.2021.103012.> 4<sup>th</sup> March 2024

<sup>17</sup> UNWTO ‘Tourism and COVID-19 – unprecedented economic impacts’ < <https://www.unwto.org/tourism-and-covid-19-unprecedented-economic-impacts>> accessed 3 March 2024

embrace the new-normal by innovative means of rendering its services such as enhanced cleaning protocols, contactless check-in and check-out processes, AI-powered chatbots *et cetera*.<sup>18</sup>

It is absolutely remarkable that though the pandemic affected the hospitality industry like it does every other business and sectors, the industry is still building on the advantages that technology can offer to occupy a high stature in both global and local economies. As businesses are recouping, information and communication technology are utilized to fast-track deals, conclude businesses, sustain business relations and minimize cost of operation in hospitality industry.<sup>19</sup> Marketing and service rendering has greatly improved and in fact became more efficient. Besides, services rendered have greatly been transformed through innovative ways from the traditional hospitality business to ensure customer satisfaction and business growth to would give competitive edge. All these are made possible with the engagement of information and communication technology in the form of:

a. Automation/robotics

Certain tasks and even interactions are now being automated in the industry. For instance, robots are now being used in doing repetitive or potentially unsafe activities like cleaning tasks that may involve exposure to harmful substances.<sup>20</sup> Also, there is now self-ordering kiosks in restaurants in some jurisdictions which facilitate quick processing of orders, thereby aiding removal of queues or delays and creating more attraction to customers.<sup>21</sup>

b. Artificial intelligence and machine learning

Another evolving trend in the hospitality industry is the Artificial Intelligence (AI) and machine learning. AIs like voice assistance are available in rooms to attend to queries and arrange organisers. Apart from the general and visible functions of the AI, hotel patrons use machine learning to gather information on personalized experiences through the clicks on AI devices and other interactions with AIs to enhance their business and maintain relationship with their customers.

c. Internet of Things

Internet of Things is used to create a network that transform things making them seamlessly adapt to guest and staffs. Internet of Things can be used to make lodging memorable through personalized preferences, intelligent sensors to aid cost savings and so forth. It can be engaged to transform a room to 'smart room'. Thus, most tech-savvy hospitality businesses now have smart room management systems where features like temperature, lighting, electronic curtains are controlled through apps

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<sup>18</sup> The Insider, 'Technology in The Hospitality Industry: Looking Towards The Future' <<https://www.glion.edu/magazine/technology-in-hospitality-industry/>> accessed 6 March 2024.

<sup>19</sup> *ibid*.

<sup>20</sup> A good example waiter robots.

<sup>21</sup> Ibrahim Aydin, 'Investigation of the Effect of Robot Waiter Usage Desire on Word of Mouth Communication and Robot Waiter Usage Attitude In Restaurants' (2021) 2(4) Turkish Business Journal 93-105.

or voice control which guests can use through the provided controls or through their smart phones.

Other technological features of the hospitality industry include digital payments, online booking, mobile apps, augmented reality (AR) and virtual reality (VR). Thus, some of the copious benefits of technology in the hospitality include improved efficiency and marketing, cost saving, improved guest experience.<sup>22</sup>

Improved efficiency implies that the efficiency of the industry has greatly improved through automation of redundant tasks and optimization of time-consuming ones. Particularly, there is important progress in the overall efficiency of hotel and restaurant operations. There is digital check-ins and check-outs through tech-devices which have helped to reduce the waiting times at hotel desks. Also, most hospitality business outfits have developed management software for the purposes of assistance in organizing their bookings, managing room availability efficiently as well as handling customers' data and requests swiftly. Besides, technology-based housekeeping teams can accomplish cleaning tasks quickly and promptly without having to compromise the quality of service required.

Hospitality business like every other business requires proper management to grow. One of the management approach is through cost saving. Even though the initial investments in technology may appear high, the long-term financial implications would show delivery of substantial saving of cost of operation. For instance, automation cuts down labor costs of repetitive-but-necessary jobs as human intervention would not be necessary. Also, digital marketing strategies are evidently more cost-effective than traditional marketing way to reach potential customers.

Technology has also improved guests experiences in the hospitality industry across the world. The introduction of technologies, such as AI chatbots and user-friendly mobile apps has enhanced customer satisfaction through personalized experiences. These innovations offer instant responses to guest queries and simplify the process of reserving rooms. With digital interfaces, businesses can also provide on-demand room services and travel experiences based on data analytics. This constant pursuit of perfection in guest-centric services is momentous to improving a company's reputation. Thus, adopting new technologies becomes essential for delivering an elevated customer experience in this tech-based era.

#### **4.0 Challenges to e-hospitality**

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<sup>22</sup> Aarni Tuomi, Iis P. Tussyadiah, and Jason Stienmetz, 'Applications and Implications of Service Robots in Hospitality' <<https://doi.org/10.1177/1938965520923961>> accessed 9 April 2024.

Moses alludes to the fact that there is no singular definition for technology.<sup>23</sup> Schön on his part gave the meaning of technology as ‘any tool or technique, any product or process, any physical equipment or method of doing or making, by which human capability is extended’.<sup>24</sup> As such technology is by nature aimed to be beneficial to mankind. The benefits of e-hospitality are evidently huge but it is not without some challenges. Paper issues, queues, time and geographical constraints might have been dealt with by the introduction of technological means of operation, however, some challenges are also thereby introduced to the hospitality industry.

Some of the challenges to e-hospitality in a developing country like Nigeria include data privacy and security issues;<sup>25</sup> dearth of skilled personnel to manage apps, software, devices and gadgets; the cost of digitalisation as well as dependence on developed countries to upgrade facilities to tech-based and even for broadband services. Lack of and/or inadequate home-grown broadband, software and technological appliances by developing countries render growth in hospitality industry draggy which thereby affects the quality of service rendered in those areas when compared with their Western counterparts. Also, Western influence on the manner of operation of e-hospitality cannot be ruled out as internet protocol/broadband provisions still reflects a colonial form of operation and management of technology in developing countries. Essentially, this affects privacy and data protection which would not be sufficiently dealt with without discrimination from those providers as to the ownership of technology and what is deemed to be appropriate.

It is significant to state that humans are indispensable in the hospitality industry as they actually drive technology, manipulate and instruct the robots and machines accordingly - for instance robots do not dish food and a button has to be pressed by human for it to function.<sup>26</sup> This leads the question of what the position of the law is on the operation of e-hospitality in relation to the position of man and the society.

## 5.0 Theories of Law and Technology applicable to e-hospitality

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<sup>23</sup> Lyria Bennett Moses, ‘Why Have a Theory of Law and Technological Change?’ (2007) 8(2) *The Minnesota Journal of Law, Science & Technology* 589.

<sup>24</sup> Donald A. Schön, ‘Technology and Change’ (Delacorte Press, 1967).

<sup>25</sup> Physical security challenge also exist in hospitality businesses that are not tech savvy as was seen in the Hotel killings in Nigeria . See: Timothy Agbor, ‘Adedoyin, Two Hotel Workers to Die by Hanging for Killing OAU Student’ *The Guardian (Nigeria)*, 31 May 2023) available at <<https://guardian.ng/news/adedoyin-two-hotel-workers-to-die-by-hanging-for-killing-oau-student/>> accessed 7 March 2024; visit also <<https://guardian.ng/news/police-confirms-mans-death-at-port-harcourt-hotel>> accessed 7 March 2024.

<sup>26</sup> Matt Simon, ‘Peanut the Waiter Robot Is Proof That Your Job Is Safe’ *Wired* (Science, June 1, 2021) available at <<https://www.wired.com/story/peanut-the-waiter-robot-is-proof-that-your-job-is-safe/>> accessed 9 March 2024.

The interest of lawyers in technology borders on the intersection of law and technology - that is how the law should relate with activities and relationships initiated by technology.<sup>27</sup> As good as technological improvements in hospitality industry are, there is need for the law to take its place as an instrument of social engineering. Technological improvements impact the place of the law.<sup>28</sup> Human society was governed by law as it dictated what happened in the society until the industrial revolution when technology came and heralded a new mode of doing things. Since the advent of technology, law seems to race to catch-up to regulate human activities. That notwithstanding, the position of the law in every society of the world is undoubtedly unshaken as regards regulation of human conducts even with the engagement of technology.

In Nigeria, some of the legal frameworks underlying and regulating the hospitality industry are: the Nigerian Tourism Development Corporation Act, 1992, the Companies and Allied Matters Act, 2020, the Companies Income Tax (Amendment) Act 2007, the National Office for Technology Acquisition and Promotion Act 1979, the Nigerian Investment Promotion Commission Act 1995 and the Nigeria Data Protection Act 2023. It is worth stating that none of these laws or any other pointedly addressed e-hospitality. So how is the nation expected to maintain order in the face of electronic service rendering in the hospitality industry? The following theories are considerable for the application of the law to the operation of e-hospitality.

### **5.1 Necessity Theory**

This theory is to the effect that man is compelled to resort to technology because of the need for efficiency. It believes also that pressure has been brought to bear on the resources that man has due to factors like population expansion, climate change which is a result of human activities and so forth. Thus, technology became necessary without issue of legality being first considered. Thus, legal minds like Widdison and Teubner analysed the position of the law with necessity theory. According to Widdison, technology dematerializes physical human activities. It is omni- present and malleable.<sup>29</sup> Teubner argues that Widdison's argument is simply digitalization of systems or activities, privatisation of government and globalisation of affairs.<sup>30</sup> For instance, technology crashes boundaries and privatizes governance thereby bringing the different classes in the society within the one group controlled by private force. Essentially, this theory believes that technology is borne out of necessity and so the law should just regulate it.

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<sup>27</sup> Lyria Bennett Moses, 'Why Have a Theory of Law and Technological Change?' (2007) 8(2) *The Minnesota Journal of Law, Science & Technology* 589.

<sup>28</sup> *ibid.*

<sup>29</sup> Robin Widdison, 'Electronic Law Practice: An Exercise in Legal Futurology' (1997) 60 *Modern Law Review* 143.

<sup>30</sup> R. Alexander Teubner and Jan Stockhinger, 'Literature Review: Understanding Information Systems Strategy in the Digital Age' (2020) 29(4) < <https://doi.org/10.1016/j.jsis.2020.101642> > accessed 7 March 2024.

Relating this theory to e-hospitality, scarcity of resources and indeed human activities necessitated the introduction of technology and continued improvement on same such as the Covid-19 pandemic, global economic melt-down and so on. Therefore, the law will have to operate to regulate same and not gag it.<sup>31</sup>

## 5.2 Autonomous Theory

This theory believes that technology operates to change the *status quo*. This means that technology changes the traditional ways of doing things such as machines serving food as against the tradition way of human waiters.<sup>32</sup> Autonomous theory is in three parts namely innovative theory, disruptive theory and reverse reactionary theory.

### 5.2.1 Innovative Theory

Innovative theory believes that technology brings innovations that redirect the course and ways of doing things – that is it changes the *status quo*.<sup>33</sup> Thus, e-hospitality is an innovation that challenged the traditional ways of operating the industry. For instance, online check-in has replaced physical check-in. This is considered more convenient and embraced by many. Another practical example is the introduction of Airbnb to hospitality industry which changed the face of accommodation arrangements worldwide.

### 5.2.2 Disruptive Theory

This theory narrates that those in the industry who had operated the traditional systems of engagements would find technological innovations to be disruptive to their businesses.<sup>34</sup> That is, technology challenges their old ways of operation. For instance, hotel agents that operated good businesses before the introduction of Airbnb would find Airbnb to be disruptive to their businesses. In other words, there would be loss of jobs where technology is introduced to perform certain functions that humans used to perform.<sup>35</sup> The position of the law is to ensure that no one is unlawfully disrupted.

### 5.2.3 Reverse Reactionary Theory

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<sup>31</sup> Prof. Olubukola Olugasa, Lecture Note on Law and Technology 2023/24 Session, School of Law and Security Studies, Babcock University, Ilisan.

<sup>32</sup> Aarni Tuomi, Iis P. Tussyadiah, and Jason Stienmetz, 'Applications and Implications of Service Robots in Hospitality' <<https://doi.org/10.1177/1938965520923961>> accessed 9 April 2024.

<sup>33</sup> Connor Amor-Bendall, 'How can we harness disruptive innovation in legal?' *InView* (2023) <<https://inview.lawvu.com/blog/how-can-we-harness-disruptive-innovation-in-legal>> accessed 28 October, 2023.

<sup>34</sup> Clayton Christensen, 'Disruptive Innovation' <<https://claytonchristensen.com/key-concepts/>> accessed 28 October 2023; Philip Woodward, 'Technological Innovation and Natural Law' (2020) <<https://philarchive.org/archive/WOOTIA-5>> accessed 27 October 2023; Roger Brownsword, 'Law, authority, and respect: three waves of technological disruption' (2022) <<https://doi.org/10.1080/17579961.2022.2047517>> accessed 28 October 2023.

<sup>35</sup> Aarni Tuomi, Iis P. Tussyadiah, and Jason Stienmetz, 'Applications and Implications of Service Robots in Hospitality' <<https://doi.org/10.1177/1938965520923961>> accessed 9 April 2024.

This theory is to the effect that those who find technological innovations disruptive of their businesses would respond with further technological reactions or innovations.<sup>36</sup> This can be said to be playing out in the hospitality industry where technological innovations keep rising. For instance, most ‘traditional’ hotels now have online presence as their response to Airbnb. Also, the law would not allow the use of technology to shortchange any lodger or prospective lodger.<sup>37</sup>

### 5.3 Technological Determinism

The term technological determinism was coined by Thorstein Veblen.<sup>38</sup> The theory of technological Determinism believes that technology has taken over every activity in the world.<sup>39</sup> This theory is an assumption of law and technology to the effect that technology has become an instrument of social engineering and must determine everything.<sup>40</sup> Though technology is engaged in everything, the law still needs to operate to check technological operations.

### 5.4 Functional Equivalence Theory

Functional Equivalence theory is a theory that requires technology to spell out its processes with a view to determining its legitimacy within the confine of the rule of law. This is a kind of mischief rule that uses old law to measure new technology to be able to determine if it complies with the rule of law. Thus, humans or operators of AI and Robots in hospitality industry will not be allowed by the law to evade liability in case of wrong because the intent of the law will be evoked. An example of the operation of this theory is the position of the court which refused personhood to AI in the patent case of *Thaler v Comptroller-General of Patents, Designs and Trademarks*,<sup>41</sup> wherein the Supreme Court of England stated clearly that AI is not a person within the contemplation of the law. Thus, going by the principle of vicarious liability, the liability of a robot should be borne by its operators.<sup>42</sup> Also, applying the principle of mistake in contract law, the operators of technology will be liable for all

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<sup>36</sup> Connor Amor-Bendall, ‘How can we harness disruptive innovation in legal?’ *InView* (2023) <<https://inview.lawvu.com/blog/how-can-we-harness-disruptive-innovation-in-legal>> accessed 28 October, 2023.

<sup>37</sup> See *Selden v Airbnb, Inc.*, 4 F.4<sup>th</sup> 148 (D.C. Cir. 2021)

<sup>38</sup> Terrence Finley, ‘A Look Through Technological Determinism, Social Constructivism, Modernity and Social Media’ (2022) available at <<https://scholarworks.arcadia.edu/cgi/viewcontent.cgi?article=1552&context=showcase> > accessed 24 April 2024.

<sup>39</sup> Nadine Drexler and Viyella Beckman Lapré, ‘For better or for worse: Shaping the hospitality industry through robotics and artificial intelligence’ (2019) 9(2) *Research in Hospitality Management* 117–120 available at <<https://doi.org/10.1080/22243534.2019.1689701>> accessed 9 April 2024.

<sup>40</sup> Finley, Terrence, "A Look Through Technological Determinism, Social Constructivism, Modernity and Social Media" (2022) *Capstone Showcase* 8. <[https://scholarworks.arcadia.edu/showcase/2022/media\\_communication/8](https://scholarworks.arcadia.edu/showcase/2022/media_communication/8) accessed 29 October 2023; Prof. Thomas Hauer, ‘Technological determinism and new media’ (2017) 2 *International Journal of English, Literature and Social Science* 1

<sup>41</sup> [2023] UKSC 4

<sup>42</sup> Juan Ramirez, ‘When AI Makes a Mistake, Who’s Responsible’ (Built-In, September 5, 2023) available at <https://builtin.com/artificial-intelligence/responsibility-for-AI-mistakes>

non-disclosure resulting in contract breach to customers. Essentially, the law will come in to address issues of AI and robotics as it would the non-tech industry to maintain its place of social engineering.

### **5.5 Ethical Theory**

Technology is subject to ethical issues.<sup>43</sup> Ethical theory looks at the value system of technology to consider its legality. It basically looks at the value technology places on humans and their dignity of person. It checks whether the introduced technology gives equal opportunity to all humans without discrimination. The claim of Seldon in the case of *Gregory Selden v. Airbnb Inc.*<sup>44</sup> where he alleged racial discrimination by Airbnb is instructive here. It is imperative to state that technology may not be bias in itself, but those operating it may be and so the law would rise to check unethical application of technology.<sup>45</sup> In an empirical study, the operators of AI and Robots in the hospitality Industry attested to the fact that the law stands tall in ensuring ethical standard even as regards data protection,<sup>46</sup> though others have expressed views of doubt as to the position of the law on liabilities in some jurisdictions.<sup>47</sup>

### **5.6 Theory of Privacy**

One of the shortcomings of technology in the hospitality and tourism business is that it may be used to intrude into a visitor's privacy.<sup>48</sup> The security and safety of a person's information may be compromised through the use of e-hospitality. Nigeria is one of the countries that have taken steps to put legal measures to data protection through Nigeria Data Protection Act 2023 which provides for the protection of personal information. Thus, e-hospitality cannot be operated discriminately in Nigeria to intrude into a person's personal data. However, this law would not operate against a foreign site.

## **6.0 Conclusion and Recommendation**

Movement of people from one place to another is inevitable. Man has designed means of making himself feel good even outside his normal place of abode through

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<sup>43</sup> Jinsheng Jason Zhu, Zhiyong Liu, Tairan Huang, Xue Shirley Guo, "Roboethics of Tourism and Hospitality Industry: A Systematic Review" (2023) 18(6) Plos One, e 0287439 available at <doi: 10.1371/journal.pone.0287439> accessed 9 April 2024.

<sup>44</sup> *Selden v Airbnb, Inc.*, 4 F.4<sup>th</sup> 148 (D.C. Cir. 2021) – though he lost the case because of arbitration clause.

<sup>45</sup> Prof. Olubukola Olugasa, Law and Technology Note 2023/24 Session.

<sup>46</sup> See Jacques Bulchand-Gidumal, Eduardo William Secin, Peter O'Connor & Dimitrios Buhalis 'Artificial intelligence's impact on hospitality and tourism marketing: exploring key themes and addressing challenges' (2023) <[https:// doi/full/10.1080/13683500.2023.2229480](https://doi/full/10.1080/13683500.2023.2229480)> accessed 9 April 2024.

<sup>47</sup> Ignacio N. Cofone, 'Servers and Waiters: What Matters in the Law of A.I.' (2018) 21 Stan. Tech. L. Rev. 167.

<sup>48</sup> van den Hoven, Jeroen, Martijn Blaauw, Wolter Pieters and Martijn Warnier, 'Privacy and Information Technology' in Edward N Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2020 Edition) available at <https://plato.stanford.edu/archives/sum2020/entries/it-privacy/> > accessed 7 March 2024.

hospitality businesses. The introduction of technology during the industrial era impacted hospitality but the evolution of cars, computers and other forms of technology has metamorphosed hospitality and tourism to a state in which virtually everything is now tech-based. There are, however, a number of challenges with this technological integration, especially when it comes to data protection. Businesses in the hospitality industry become guardians of sensitive data when they collect vast amount of personal data from visitors, including payment information, booking details, and preferences. This data may be misused and subject to breaches if it is not well protected.

The operation of technology is however still subject to the rule of law which may be operated through the beam of the light of the theories of law herein discussed. The place of law cannot be choked by technology. Hence, the Nigerian state has promulgated laws to guide the hospitality industry and also to regulate electronically generated transaction. The existence of these laws is to checkmate the activities of technology but in some cases, it may be necessary to have a specific law focused on addressing the new trends introduced in a particular industry by technology for law to be seen to be effectively taking its place in the society. This is more particularly necessary because of new rules, uncertainty of applicability of old laws, scope of old laws vis-a-vis new technologies which may not be proportionate and also some justification for the rules may not be effective for new technologies.<sup>49</sup>

Against this background, it is recommended that there is need for the legislative arm of government to harmonise the laws through a tech-focused legislation that will encompass the provisions of the different legislations stated herein as a stand-alone legislation to cater for technological improvement in the hospitality industry. This call is for the Nigerian National Assembly to promulgate specific law on technological advancement which includes AI and robots operation in Nigeria. The promulgation of such law would remove uncertainty as to liabilities and extent of loss in all cases involving technology in the hospitality industry and even other sectors.

In addition to the above, it behoves the Nigeria Data Protection Commission and other relevant agencies to ensure compliance with the law on data protection in the operation of technology within the hospitality industry. Further to this, the Nigerian Government should ensure to put up a visible fight against phishing by foreign entities or websites. Moreover, the judiciary should not shy away from adjudging appropriately in cases of wrong or unethical technological innovations or application in the hospitality industry.

Be that as it may, there is also the need for technology savvy individuals, corporate bodies and indeed the government to come up with ideas on how African countries (Nigeria in particular) can develop home grown technology that will be independent

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<sup>49</sup> Lyria Bennett Moses, 'Legal Responses to Technological Change: The Example of In Vitro Fertilization' (2005)6 *The Minnesota Journal of Law, Science & Technology* 505, 514-15.

of the influence of the Western world. This will help in proper checks against Western domination and by extension reduce data breaches and segregations.