

AN APPRAISAL OF SOME LEGAL ASPECTS OF MASS COMMUNICATION UNDER THE NIGERIAN LAW

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ABSTRACT

Mass communication in its simplest, literal form involves imparting or exchanging of information on a large scale to a wide range of people. This therefore takes the venture beyond inter-personal relations to public relations that attract copious policy considerations. Under the Nigerian law, adequate attention had been given to freedom of expression, stemming from the existence of the right to the exercise thereof. This right may be exercised privately or in community with others. This is where the concept of mass communication comes into play. A number of legislations and rules of professional conducts were put in place to ensure a society-centered mass communication community. It is observe that adequate awareness of these laws by media and public relations practitioners as an important segment in Nigeria's democratic society. This paper, by way of doctrinal research, examined some of the principal legal provisions regulating mass communication in Nigeria. It was found that knowledge of these laws will be of great help to media practitioners. It is recommended that members of the profession abide by the law, to obviate obvious legal consequences.

INTRODUCTION

This paper analyses the major legal provisions regulating mass communication in Nigeria. The sojourn begins with the grundnorm, i.e the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Some legislation purposely introduced to regulate mass communication, together with the NBC Code were looked into. The common law tort of defamation got a special place in the discussion of the legal provisions regulating mass communication. Some aspects of intellectual property, sedition and contempt of court that have direct bearing on mass communication have been highlighted.

LITERATURE REVIEW

The Nigerian law has made adequate provisions for the rights and obligations of citizens, and other professionals engaged in mass media and public relations. Some of the means or areas are as follows:

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides in Chapter 2, section 22 as follows:

“the press, radio, television and other agencies of mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people”.

This section clearly indicates that the media has the responsibility to the people, to make sure that it operates in such a way that it enlightens the public and make sure that the government is accountable to the people.

Similarly, Section 39 of the Constitution (under Chapter 4 thereof) provides that

“Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart idea and information without interference.”

The section went forward, to state that every person shall be entitled to own, establish and operate an medium for the dissemination of information, ideas and opinion, so long as he/she has complied with the laid down conditions. Pursuant to this, the National Assembly passed the National Broadcasting Commission Act (amendment) 1999. Section of 1 of the Act established the National Broadcasting Commission. The Commission shall have responsibility of:

- a. advising the Federal Government generally on the implementation of the National Mass Communication Policy with particular reference to broadcasting;
- b. receiving, processing and considering applications for the ownership of radio and television stations including cable television services direct sate life broad cast and any other medium of broadcasting;
- c. recommending applications through the Minister to the President, Commander in Chief of the Armed forces for the grant of radio and television licenses;

- d. regulating and controlling the broadcast industry;
- e. undertaking research and development in the broadcast industry;
- f. receiving, considering and investigating complaints from individuals and bodies corporate or incorporate regarding the contents of a broadcast and the conduct of a broadcasting station;
- g. upholding the principles of equity and fairness in broadcasting;
- h. establishing and disseminating a national broadcasting code and setting standards with regard to the contents and quality of materials for broadcast;
- i. promoting Nigerian indigenous cultures, moral and community life through broadcasting;
- j. promoting authenticated radio and television audience measurements and penetration;
- k. initiating and harmonizing Government policies on trans-border direct transmission and reception in Nigeria;
- l. regulating ethical standards and technical excellence in public, private and commercial broadcast stations in Nigeria;
- m. monitoring broadcasting for harmful emission, interference and illegal broadcasting;
- n. determining and applying sanctions including revocation of licenses of defaulting stations which do not operate in accordance with the broadcast code and in the public interest;
- o. approving the transmitter power, the location of stations, areas of coverage as well as regulate types of broadcast equipment to be used; and
- p. carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under of pursuant to this Decree.

By Section 2 of the Act, no person shall operate or use any apparatus or premises for the transmission of sound or vision by cable, television, radio, satellite or any other medium of broadcast from anywhere in Nigeria except under and in accordance with the provisions of the Act. The National Broadcasting Commission and other regulatory bodies have laid down some regulations on how journalist and other media practitioners should operate. Failure to comply with these regulations could lead to penalties.

It was pursuant to the aforementioned powers that the Commission issued the National Broadcasting Commission Code, the first of which was issued in 1993. The current code is the NBC Code of 2016. The Code made copious provisions concerning the objectives of broadcasting including social objectives, economic objectives, political objectives, technological objectives and professional objectives. The Broadcasting Standard laid down by the Code concerns coverage of crisis, disaster and emergency, program schedules, log books, among others. Chapter 2 makes provision for licensing, types of broadcast services and coverage, renewal and conditions of renewal. Chapter 3 makes provisions for general programming standard, covering the minimum requirements of what is expected of journalist by the audience. These include straight dealing, accuracy, objectivity and fairness, objectivity and integrity. Use of language to incite violence and gender insensitivity especially in relation

to women are regulated. In short, there is hardly any activity falling in the daily activities of the mass media that is not regulated by the code.

Freedom of Information Act 2011. By the Short note to the Act, it was An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and; for related matters. This is an important legislation/ law that gives journalists and other media practitioners the right to seek and obtain information without restriction for the purpose of discharging their professional obligations. By Section 1 (3) of the Act, any person entitled to the right to information under the Act, shall have the right to institute proceedings in the Court to compel any public institution to comply with the provisions of this Act (Omotayo, 2015)

Defamation. The purpose of the law of defamation is to protect the reputation of people from injurious statements, or acts of others. According to the writers of Winfield and Jolowicz on Tort, (1998):

“Defamation is the publication of a statement which reflects on a person’s reputation and tends to lower him in the estimation of right-thinking members of the society generally or tends to make them shun or avoid him”.

A defamatory statement is a statement which tends to lower the plaintiff in the estimation of right-thinking members of the society generally, or to expose him to hatred, contempt or ridicule; or to cause other persons to shun or avoid him; or to discredit him in his office, trade or profession; or to injure his financial credit. In **Egbuna v Amalgamated Press of Nigeria Ltd** (1967) ALL NLR 27, the Supreme Court said, in finding out the standard of the right-thinking members of the society, the court usually does not include:

“On the one hand, persons who are so lax or cynical that they would think none the worse of a man whatever was imputed to him, and on the other hand, those who are censorious as to regard even trivial accusations (if they were true) as lowering another’s reputation, or who are so hasty as to infer the worst meaning from any ambiguous statement..... the ordinary citizen... is neither usually suspicious or usually naïve, and he does not always, for he is not inhibited by a knowledge of the rules of accusation”.

By excluding the two extreme of the naïve and those who may be too sensitive, the Supreme Court seems to have arrived at the general public as constituting right-thinking members of the society. Defamation is mainly divided into two main areas, namely libel and slander.

- a. Libel consists of a defamatory statement in a permanent form like picture, statue, or any writing, print, mark or sign exposed to view. Moreover, broadcasting, both radio and television and theatrical performances are by law treated as publication in permanent form. I.e. libel. Libel is actionable *per se*. This means that the law will

presume that damage has been caused to the plaintiff's reputation. The plaintiff doesn't have to prove malice or that he suffered any special damage as a result of the publication.

- b. Slander is defamation in transient/temporary form, mostly made by spoken words or gesture. Defamation in manual language of the deaf and dumb, and mimicry and gesticulation are slander because they are temporary.

Slander is not actionable *per se*. This means that for the plaintiff to succeed, he has to prove that he has suffered some actual loss, for example, that he has been dismissed from his employment as a result of the slander. Loss of employment, loss of clients, loss of hospitality of friends, loss of prospective marriage or loss of consortium are examples of special or actual damage.

Exceptional cases in which slander is actionable without proof of actual/special damage are:

- I.* Imputation of a criminal offence that is punishable by imprisonment.
- II.* Imputation of disease likely to prevent other persons from associating with the plaintiff. Examples of these diseases are Smallpox, leprosy, TB, Ebola and so on.
- III.* Imputation of unchastity or adultery in any woman or girl. Unchastity has been held to include lesbianism.
- IV.* Imposition of unfitness, dishonesty or incompetence in any office, profession, calling, trade or business held or carried on by the plaintiff at the time when the slander was made. Accusation of fraud, incompetence and quackery fall within this class.

The plaintiff in an action for defamation must prove or establish the following:

1. The words must be defamatory. The defamatory words must tend to lower the plaintiff's reputation in the estimation of right-thinking persons, or must tend to cause him to be shunned or avoided. A defamatory statement is a statement which tends to lower the plaintiff in the estimation of right-thinking members of the society generally, or to expose him to hatred, contempt or ridicule; or to cause other persons to shun or avoid him; or to discredit him in his office, trade or profession; or to injure his financial credit.
2. The words must refer to the plaintiff. Where the plaintiff is mentioned by name, there will be no problem in establishing a case. Even if the name of the plaintiff is not specifically mentioned, if the statement contain "key pointers" in such a way that other persons will understand that to mean the plaintiff, the court will hold that defamatory statement to refer to the plaintiff. Where the plaintiff is identified by Nickname, his office or post, photograph, drawing or description, the court will hold that the defamatory statement refer to the plaintiff.
3. The words must be published. Publication is the communication of the words to at least one person other than the person defamed. The statement must be understood by the person to whom it is communicated. There is no publication if it is in a foreign language or if it is not understood by the person to whom it is made. Communication

of a defamatory matter by a husband to his wife or vice versa is not publication, for what happens between them protected by law on the ground that any other rule “might lead to disastrous results to social life”.

The distributors of a newspaper or other printed materials will be liable/responsible for defamatory statements contained in them except if they can prove

- a. That they were innocent of any knowledge of the libel contained in the work.
- b. That there was nothing in the work which appears to them to be defamatory, and
- c. That when the work was disseminated by them, it was not by negligence on their part that they did not know it contained the libel.

Apart from the civil aspect of defamation discussed above, an aggrieved person can lodge a complaint for defamation with the police, in order to procure criminal prosecution. The procedure at the lower courts is that upon arrest and investigation by the police, the police is arraigned before the court on a First Information Report (FIR). If he pleads guilty, the court may convict him and pass a sentence on him accordingly.

If he doesn't plead guilty, the prosecution is called upon to lead evidence to prove the guilt of the accused person. The standard of proof is that the prosecution must prove the guilt of the accused person *beyond reasonable doubt*. The purpose of criminal law according to some scholars is to punish offenders.

Section 391 of the Penal Code states:

Whoever by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning a person, intending to harm, knowing or having reason to believe that such imputation will harm the reputation of such person is said, save in case thereafter excepted, defame that person.

Section 392 provides that whoever defames another person shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Sedition is any writing or speech which incites or is likely to incite people to disobey the government or other constituted authority. Sedition is a crime. It is one of the areas of the law which limits the citizens in expressing themselves freely. In the case of **DPP V OBI** (1961) 1 ALL NLR 186, the then Chief Justice said:

“A person has right to discuss any grievances or criticize, canvass and censure the Acts of the Government and their public policy. He may even do this with a view to effecting a change in the party in power or to call attention to the weakness of a government, so long as he keeps within the limits of fair criticism. What is not permitted is to criticize the government in a malignant manner as described above, for such attacks, by their nature tend to affect the public peace.”

Sedition is covered by Chapter XXVII of the Penal Code, which is applicable to the 19 States of Northern Nigeria and FTC, from Sections 416 to 422. Sections 50-52 of the Criminal Code applicable to States of Southern Nigeria made similar provisions.

It is essential to know that in an offence of sedition, there must be seditious intention. Seditious intention has been defined in Section 50(2) of the Criminal Code as an intention:

- a. To bring into hatred or contempt or to excite disaffection against the person of the President, or the Governor of a state, or the Government of the Federation or of any State thereof, or against the administration of justice in Nigeria. This provision is similar to Section 416 of the penal Code.
- b. To excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration otherwise than by lawful means, any other matter in Nigeria as by law established. This provision is similar to Section 418 of the penal Code.
- c. To raise discontent or disaffection among the citizens or other inhabitants of Nigeria. This is similar to Section 417 of the Penal Code.
- d. To promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Punishment for sedition

Under the penal code,

- a. Causing disobedience or disaffection against the government or administration of justice is punishable with imprisonment which may extend to 7 years or with fine or with both.
- b. Exciting hatred between classes is punishable by three years imprisonment or with fine or with both.
- c. Publication of false news with intent to cause breach of peace is punishable with imprisonment for three years or with fine or with both.
- d. Possession of seditious articles is punishable with imprisonment for a term of 2 years or with fine or with both.

Under the Criminal Code

Under the Criminal Code, the punishment for conspiracy to sedition, uttering seditious words, publication, sell, distribution and importation of seditious materials is imprisonment for two years or a fine of N 200 or both, and for a subsequent offence of three years.

Report of judicial proceedings. A journalist should have some basic knowledge of the law, so that he/she can appreciate the Nigerian legal system and have the skills to understand and report what happens in relation to the law and court proceedings. A journalist that is ignorant of the law cannot do that. Matters are considered to be *sub judice* (Latin for 'under judgment') once legal proceedings become active. Publication of material which is *sub judice* comprises contempt of court, a crime which is punishable by a fine and/or imprisonment for up to two years. In **ONAGORUWA V STATE** (1993) 7 NWLR (303) 49, the court said:

'Contempt committed ex facia curia being words spoken or acts done outside court which are intended or likely to interfere with or obstruct the fair administration of justice, a newspaper article apparently prejudging a trial could clearly be prima facie contemptuous, but in deciding whether it actually offends the law, the court should act with caution and restraint and consider whether the hearing will in fact be grossly affected, particularly, where the issue concerned is a civil one to be heard without a jury, but solely by a judge, trained to assess the evidence fairly and to arrive at conclusion based on that alone

Accordingly, any of the following activities could be considered to be contempt in relation to a media practitioner:

- obtaining or publishing details of deliberations of judges among themselves;
- filming or recording within court buildings;
- making payments to witnesses;
- publishing information obtained from confidential court documents;
- reporting on the defendant's previous convictions;
- mounting an organized campaign to influence proceedings;
- reporting on court proceedings in breach of a court order or reporting restriction;
- breaching an injunction obtained against another party;
- anticipating the course of a trial or predicting the outcome; or
- revealing the identity of child defendants, witnesses or victims or victims of sexual offences.

However, it is acceptable to publish material as part of a discussion of public affairs or as a contemporary report of the day's legal proceedings.

Copyright is the right which the law gives an author or other originator of an intellectual production whereby he is invested with the sole and exclusive privilege of reproducing and selling copies of his work. It is usual to see warnings like the example below in books and photographic recordings:

"All rights reserved. No part of this work may be reproduced in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the author/publisher."

The essence of copyright is to protect intellectual property from being reproduced and sold by unauthorized persons so that the owner of the work can enjoy the fruit of his labor.

The following are covered by copyright.

- Literary works.** This includes writings such as novels, stories, poetry, plays, film, broadcast and text plays, textbooks, biographies, essays, articles, etc
- Musical works.** This includes all musical works, whether accompanied by lyrics or instrumental.

- c. **Artistic works.** They include paintings, drawings, sketching, lithographs, and woodcuts, engravings, maps, plans, sculptures, photographs, etc
- d. **Cinematograph films.** This refers to films of all sorts, whether or not they can be shown as moving pictures.
- e. **Sound recording.** This is any recording of sound that can be perceived aurally.
- f. **Broadcasts.** This covers all broadcasts through radio, television, satellites, cable, or rebroadcasts.

Some kinds of works do not enjoy copyright; they include, but are not limited to letters to the editor, advertisements, titles idea, thought, fact, concept, principle, discovery, procedure and system or method of operation. See Malemi, E. (1999).

Forms of breach of copyright

In Nigeria, the widespread violation of copyright, especially in the music industry led to the enactment of the Copyright Act 1990. Section 14(1) of the Act states as follows:

Copyright is infringed by any person who, without the license or authorization of the owner of the copyright

- a. *Does or causes any person to do an act, the doing of which is controlled by copyright;*
- b. *Imports into Nigeria, otherwise for his private or domestic use, any articles in respect of which copyright is infringed under paragraphs (a) of this section;*
- c. *Exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this section;*
- d. *Distribute by way of trade, offers for sale, hires or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect in respect of which copyright is infringed under paragraph (a) of this section;*
- e. *Makes or has in his possession, plates master tapes, machines or contrivances used for the purpose of making impinged copies of the work;*
- f. *Permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;*
- g. *Performs or causes to be performed for the purposes of trade or business or as business or as supporting facility to a trade or business, any work in which copyright subsists.*

From the above, it is breach of copyright to do any of the following:

- a. Engaging in any activity which is controlled by copyright. Example of this is the writer of a book is the only person that has right to reproduce copies of the book. It is therefore breach of copyright for any unauthorized person to engage in the production of the book, without the permission of the author. This is called piracy.

- b. It is also breach of copyright to import into Nigeria, any pirated document or material, illegally reproduced from overseas.
- c. It is also breach of copyright to exhibit in public any document or material, with was reproduced as a result of breach of existing copyright.
- d. It is breach of copyright to distribute, sale, hire or otherwise trade in any document or material that was produced as a result of breach of somebody's copyright.
- e. It is breach of copyright for a person to allow his building to be used in a performance which constitutes breach of an existing copyright. E.g to allow a DJ to perform in your uncompleted building by singing other peoples' songs which in itself is breach of copyright.
- f. It is also breach of copyright to perform any work in which copyright subsists.

Duration of copyright and fair usage

The Copyright Act stipulates that the duration of copyright depends on the nature of the work in question.

- For literary, musical and artistic works, the copyright lasts for the lifetime of the author, plus 70 years after his death.
- For cinematograph films, photographs, sound recordings and broadcasts, the copyright lasts for 50 years from the end of the calendar year in which the work was first published or broadcast.
- "Fair usage" or "fair dealing" is an exception to copyright control, whereby the work is not reproduced for commercial purposes but a few copies are made for private use, study or research. It is therefore not wrong for students to make photocopies of a book or a part of it for the purpose of personal use in studies and research.

Remedies for breach of copyright

Any person who alleges that his copyright has been breached by any person or organization can file a civil suit at the Federal High Court for the purpose of obtaining redress. According to the Copyright Act, the following are the remedies available to the plaintiff in an action for copyright:

- a. **Damages.** This is monetary compensation which may be recovered in the court by any person whose copyright has been breached, and he has suffered loss as a result.
- b. **Injunction.** This is an order of court mandating/directing the defendant to do or refrain from doing a particular thing. The court may therefore, by way of injunction, direct the pirate to stop further breach of copyright.
- c. **Account.** This is the assessment of the gains which were acquired by the violator of the copyright. If this is assessed, he will be directed to return same to the plaintiff who is the owner of the copyright.
- d. **Delivery up.** This is an order directing violator to surrender all materials or documents produced in breach of existing copyright, still in his possession.

Other laws relating to mass commutation in Nigeria

1. *The Wireless Telegraphy Act*, Cap.W5 LFN 2004 (as amended by section 22, subsection 2 of the Act);
2. the Law of contempt relating to matters pending before law courts;
3. *The Official Secrets Act*, Cap. 03 LFN 2004;
4. The Advertising Practitioners Council of Nigeria Act, Cap. A7 LFN 2004;
5. The National Film & Video Censors Board Act, Cap. N40 LFN 2004;
6. The Electoral guidelines on broadcast matters as contained in the Electoral Act;
7. The National Food and Drug Administration Law Enforcement Agency Act, Cap. NI LFN 2004;
8. National Lottery Act, Cap. N145 LFN 2004;
9. Nigeria Film Corporation Act; and
10. Nigerian Communications Act, Cap. N97 LFN 2004.

RECOMMENDATIONS

Based on the above discussions, it is recommended that media practitioners should be adequately grounded on the law, to make their practices professionally acceptable and within the realm of internationally acceptable standards. This will bring sanity to the profession and ensure that the best is gotten from them.

CONCLUSION

This paper looked at the major legal provisions regulating mass communication in Nigeria. From the constitutional and statutory provisions, common law and judicial precedent, it has become quite obvious that mass communication is an area richly regulated by law, and adequately sanctioned by it.

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