



Introspections:

Legal Realities of Blogging in Nigeria

Thought Leadership | by Titilade Adekun Ilesanmi (Originally published in *BDLegal Business* on 11.1.2018, pp. 21 - 22)



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Introduction

Resulting from pervasive internet expansion in the 21st century is the democratisation of media access and publishing, a blog being one popular example. A blog is essentially a website (mostly) maintained by one person, containing the writer's thoughts, news, information, opinions, experiences etc., and is frequently updated.

Bloggng has fast become the mainstay of creative content information dissemination; this is evident from the proliferation of blogs over the years. Many of the first generation blogs in Nigeria (*Linda Ikeji, Bella Naija, Nairaland, etc.*) are now in for stiff competition with new and fast growing blogs positioned to get more market share with increased ad impressions through huge investment in Search Engine Optimization (SEO) and other digital content aggregators.

This sudden boom and increased competition for visibility and market share could be attributed to low start-up and maintenance costs in addition to little or no regulation by government agencies. More so, content for blogs has been taken a notch higher with the introduction of video blogging (popularly known as Vlog). Vlog could be compared with conventional television station (though with only an online presence) arguably without NBC licencing requirements.

Irrespective of its potential to become a major money spinner for founders and investors, on the downside, blogging could potentially increase operators' legal exposure if certain legal and operational ethical precautions are not adhered to. This article examines these precautions with a view to suggestions on optimizing legal and operational risks of blogging in Nigeria.

Legal Precautions in Blogging

Libel

Libel is any written published false statement about any individual that results in damage to the individual's

reputation. The entirety of blogging mostly involves publications of news, celebrity gossip, a writer's opinion and thoughts about places, products, services etc. to active followers/readers. Hence, false publications about any individual, read and relied upon by the readers, potentially causing a negative reaction to such individual amounts to libel and it is punishable by law.

The emergence of blogging in Nigeria has witnessed a rise in related litigation, and it bears emphasis that blogging could ground both civil and criminal liability. Recently, a blogger allegedly made defamatory statements about a popular Port Harcourt based pastor, and, an actress, leading to her arrest and arraignment for criminal defamation of character. According to reports, after several weeks in detention (owing to bail issues; including a re-arrest because of glitches in bail perfection), trial is ongoing. A person convicted of the criminal charge, could face up to two (2) years imprisonment - **section 373 Criminal Code Act Cap. C38, LFN 2004 (CCA)**. In addition aggrieved persons could also sue for damages and the blogger may also be liable in a civil suit. Hence





Copyright Protection

Copyright is an exclusive right conferred on the creator of an original work for its use and distribution. Copyright in an image rests with the person who takes the picture and in the writer for a written work without the requirement of registration (registration however secures owner's interest in the work). Governed by the **Nigerian Copyright Act Cap. C28, LFN 2004 (NCA)**, it seeks to protect images, words, etc. of a Content Owner (CO). It is transmitted by assignment, testamentary disposition or operation of law, as a movable property - **section 10 NCA**. Applicability of Copyright law is unique to every country. However, the **Berne Convention for the Protection of Literary and Artistic Works 1886** recognises the Copyright works of member states (Nigeria is a member). This means a country signatory to the Convention must extend the same Copyright it gives to its citizen to another member state.

bloggers must ensure that they verify information received before publication, and where in doubt, to refrain from publication.

This may be a tough call, given the pressure by bloggers to “be the first with the news” or to gain mileage with exclusive stories. The quest to build such reputation could result in relaxed risk management, but exposure could be almost be existential for the blogger. Nonetheless, in the event of a libel suit, a blogger must be ready to provide proof of truth in its publication. Even so, an aggrieved party must be able to prove three things: that a false statement was published; that the false statement referred to the aggrieved party; and the publication has been read by a third party – *Giwa v. Ajayi [1993] 5 NWLR (Pt.294), 425* – in order to attain a successful action.

Apart from libel which is a tortious act, a blogger can also be held liable for criminal offences like Sedition and Incitement. Sedition is an act, speech or publication made inciting insurrection against the established order and Incitement is the encouragement of another (public) to do an act or make an omission to commit a crime. See **sections 50 and 513 CCA**. Hence, if an influential blogger makes inciting publications to the public, which leads to commission of a crime, the blogger will be held liable for the offence as if it were carried out by the blogger. A few months ago, a popular figure in the entertainment industry, was arrested over a series of tweets alleging

that students of the Kaduna State College of Education were killed by Fulani herdsmen. The tweets were considered as ‘inciting comments’. Whilst he won his fundamental human rights claim in respect of his detention, it appears criminal proceedings are ongoing.

“
You understand that Bella Naija cannot and does not guarantee or warrant that files available for downloading from the Internet will be free of viruses, worms, Trojan horses, or other code that may manifest contaminating or destructive properties...
 ”

Blogging is made possible with visual and written contents (Content), which allows bloggers to express themselves effectively. However the reality about blogging is that Contents gets stolen to be used on other blogs or internet platforms, which is illegal and amounts to Copyright infringement. Hence, in order to use someone else's Content, a License or attribution to the CO (depending on the Content) is a right step to take.

In *Peter Obe v. Grapevine Communications Ltd 40 NIPJD [FHC 1997] 1244/1997*, the Court held that the Defendants' act of publishing the Plaintiff's photograph in a book without authorisation or License was an infringement of the Plaintiff's Copyright. Also, altering or retouching an image without an attribution to the CO, would amount to Copyright infringement.

However, there are a few exceptions to Copyright infringement which include fair use and public domain creative commons licenses, etc. Fair use provides that non-commercial or non-profit use of Contents is always acceptable - such as for student research or teaching (though

with limitation). Public Domain provides that, all Contents that have been forfeited, waived or expired are free and can be used, modified, distributed, etc. as desired. Examples of such materials include the works of William Shakespeare.

Disclaimers

Depending on the Content of a blog, a disclaimer may be required to limit the scope and responsibility of a writer in a legally recognised relationship. Disclaimers are very essential to blogging because information in publications could be relied upon by third parties thus producing an adverse effect. For instance, someone follows a Fitness Trainer (FT)'s advice on a certain meal plan and it causes a reaction, illness, fainting etc. But then the person claims only to be following the advice of the FT, and also at no point did the FT advice readers to consult a dietician or doctor before use. In this illustration the blogger can be sued by the reader and may be liable in damages because the reader relied on the published information (especially if the FT earns fees or derives pecuniary benefit for providing the information).

Disclaimers are to be taken seriously in order to reduce the legal exposure of bloggers. For example, the Disclaimer of Bella Naija, a popular Nigerian blog provides in part as follows “*You understand that Bella Naija cannot and does not guarantee or warrant that files available for downloading from the Internet will be free of viruses, worms, Trojan horses, or other code that may manifest contaminating or destructive properties...*” Hence, liability to ensure safety of use of the information on the blog becomes incumbent on users and not only the blogger.

Illustrative of the fact that the need for disclaimers cannot be over emphasised is *Juan Jacques Jacobs v. Imperial Group (Pty) Ltd, (693/2008)* [2009] Zasca 167. In that case, the Court held that the disclaimer notice “cars are packed at owner risk” was conspicuously displayed, in clear and unambiguous terms, on notice boards at the Respondent's office, at the entrance to the reception and at the cashier's

window. It was displayed in such a manner and at such locations on the Respondent's premises to inform any customer leaving a motor vehicle there, of its applicability. Therefore, the Respondent was held not liable for the Plaintiff's stolen vehicle.

Conclusion

Whilst it can be argued that blogging has become a viable business and a means of passionate self-expression for non-conventional media practitioners in Nigeria, it is incumbent on bloggers to be mindful of and take steps to minimize their legal exposure. Otherwise they could be subject to heavy financial and reputational loss that could bankrupt an erstwhile promising venture. To this end, bloggers need to take steps to ensure that warranted and to some extent ‘unwarranted’ claims are avoided. To achieve this, every post must be verified to ensure that its Content are true and are not in breach of Copyright or attribution is given to the CO. Where such Content is capable of being relied upon by third parties, there should be ample disclaimers.

LeLaw Disclaimer:

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