

**THE CHALLENGES IN EXERCISING LEGAL RIGHTS ON  
SOCIAL MEDIA IN NIGERIA**

**BY**

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**BEING A THESIS SUBMITTED TO THE FACULTY OF LAW  
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MASTERS OF LAW DEGREE (LL.M).**

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## DECLARATION

I Ike Eunice Chinedu hereby declare that this work was undertaken by me under the supervision of Dr. E. Okebukola. The information or sources used in this work has been duly acknowledged. No part of this thesis has been presented elsewhere for the award of a Degree of Certificate.



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## **CERTIFICATION**

This thesis is not produced elsewhere and has not been copied from other sources (s). It is the original work of the researching candidate and has satisfied the requirements for the award of Masters of Law of the Faculty of Law, Nasarawa State University, Keffi

**APPROVED PAGE**

This thesis entitled " **THE CHALLENGES TO EXERCISE LEGAL RIGHTS ON SOCIAL MEDIA IN NIGERIA**" meets the regulations governing the award of Masters of Law of Nasarawa State University, Keffi, and is approved for its contribution to knowledge and literary presentation

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## **DEDICATION**

This work is dedicated to my lovely family; My husband (Dr. Fabian O. Ike) and my beloved children (Uju, Ugo, Ifeanyi, Ikenna, Chiedoziem and Nelly) who stood by me through thick and thin to see that this programme is a success.

## ACKNOWLEDGEMENT

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Copyright Act 2004 Cap C28 Laws of Federation of Nigeria 2004

Defamation Act 2013

Freedom of Information Act 2011

Defamation Act 1961

Digital Rights and Freedom Bill 2016

Cybercrime (Prohibition, Prevention, etc) Act 2015

Hate Speech Bill 2018

The Police Act Cap C19 Laws of the Federation of Nigeria 2004

N.C .C vs Godwin Kadiri Charge No: FHC/B/43C/2010

F G N vs Tunde Thompson and Nduka Irabor Unrep.Suit No. PCPT/1/84 of 4/7/84

AG vs Clough (1963) All ER 420

## LIST OF ABBREVIATIONS

FHC	Federal High Court
Cap	Chapter
CFRN	Constitution of the Federal Republic of Nigeria
AC	Appeal Court
CA	Copyright Act
ISBN	International Standard Book Number
ISSN	International Standard Serial Number
N.C.C	Nigerian Communication Commission
N.C.C	Nigerian Copyright Commission
P. A	Police Act
www	World Wide Web
LFN	Laws of the Federation of Nigeria
end.	Edition
F.O.I	Freedom of Information Act
NJIP	Nigerian Institute of Advanced Legal Studies Journal of Intellectual Property
AG	Attorney General

## ABSTRACT

Social media is a very crucial tool in the nation's development. Technology has come to stay and has contributed and still contributing immensely in every facet of life. As important as social media is, its use cannot be felt as it should as a result of the negative use by the infringers which has ripped off the benefactors who are the bloggers, marketers, journalists, manufacturers, students and other stakeholders of their benefits of connecting to people who are far and wide, which ordinarily may have been very difficult to come in contact with. This also affects the nation negatively as it prevents it from financial growth and development.

Social media users have the liberty to use the social media in carrying out different activities but it is observed that while carrying out this legitimate work, some over step their bounds without knowing that they are infringing on others right and this eventually leads to court action, intimidation, harassment, detention, imprisonment, withdrawal of license etc.

Some social media users on the other hand through internet defraud their victims of their possessions which could be inform of money, property or positions. It is a thing of worry that most of the fraudsters are not caught and when caught, prosecution of them to deter other offenders or intending ones from such nefarious acts become a problem as a result of delay in our judicial proceedings.

This Thesis examines the challenges faced by the social media user in exercising the legal rights on social media in Nigeria. In carrying out this research, doctrinal approach was used and the researcher found out that there were some challenges faced by the social media users while using the social media in Nigeria. These challenges amongst others include intimidation and violence, detention, prosecution and imprisonment, enacted laws, internet access, delay in court proceeding, education and language literacy etc. Having identified the above mentioned problems, the researcher recommended that they can be resolved when

there is a synergy between the Nigerian Telecommunication Commission, Service providers and the Electricity Distribution companies, there should be the creation of awareness in form of sensitization or campaigns so as to enlighten the public on the 'dos and don'ts' of social media use. The researcher also recommends that the law enforcement agencies should guide themselves from being used as a tool of intimidation, harassment etc against the social media users. Furthermore that Courts should be more active in handling social media infringement cases so as to punish offenders and deter intending offenders.

# CHAPTER ONE

## INTRODUCTION

### 1.1 BACKGROUND TO THE STUDY

<sup>1</sup>Social media are computer-mediated technologies such as websites for social networking and micro blogging, that facilitate the creation and sharing of information, ideas, career interests and other forms of expression via virtual communities and networks. Advances in global telecommunication infrastructure include computers, mobile phones and the internet have brought major transformation in the world communication. The proliferation of digital technology and the convergence of computing and communication devices have transformed the way in which we socialize and do business. Users typically access social media services via web-based technologies on desktops and laptops, or download services that offer social media functionality to their mobile devices (e.g., smartphones and tablets). When engaging with these services, users can create highly interactive platforms through which individuals, communities, and organizations can share, co-create, discuss, and modify user-generated content or pre-made content posted online. They "introduce substantial and pervasive changes to communication between organizations, communities, and individuals."

Social media differ from paper-based media (e.g., magazines and newspapers) to traditional electronic media such as TV broadcasting in many ways, including quality, reach, frequency, interactivity, usability, immediacy, and performance. Social media outlets operate in a dialogic transmission system (many sources to many receivers). This is in contrast to traditional media which operates under a monologic transmission model (one source to many

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<sup>1</sup> <<http://www.merriam-webster.com/dictionary/social%20media>> Accessed June 4, 2019



receivers), such as a newspaper which is delivered to many subscribers, or a radio station which broadcasts the same programs to an entire city. Some of the most popular social media websites are Baidu Tieba, Facebook (and its associated Facebook Messenger), Google+, Myspace, Instagram, LinkedIn, Pinterest, Snapchat, Tumblr, Twitter, Viber, VK, WeChat, Weibo, WhatsApp, and Wikia. These social media websites have many subscribers or registered users.

As the popularity of social media grows, the amount of content that is posted and shared among social media users skyrockets, it is easy to post an opinion or joke online, but that one tweet or face book status can reach an audience far beyond what you expected or intended. Where a social media user says the wrong thing, it could lead to severe legal consequences. Users can post or repost their own or anyone else's content on social media sites, including copyrighted content. A poorly judged post or message can have significant personal ramifications, However, posting other people's content is not without implication, particularly when it comes to copyright infringement but fewer young people are aware of the laws that govern social media use. Ignorance is not a defence in court, however, most social media users were unaware that they could be sued for tweeting an unsubstantiated rumour about another person and if a false statement causes "serious harm" to a person's reputation, it may be libellous under the Act<sup>2</sup>. Copyright law supports the fundamental idea that if a person created something, they can decide who else has access to it. This applies to the online world just as it does in the real world. The use of a photo or video posted online without the permission of the creator could be a breach of copyright<sup>3</sup>. At the same time, concerns have been raised about possible links between heavy social media use and depression, and even the

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<sup>2</sup> Defamation Act 2013

<sup>3</sup> Copyright Act 2004 Cap C28 LFN 2004

issues of cyberbullying, online harassment and "trolling". Currently, many of young adults have been cyberbullied.

## **1.2 STATEMENT OF THE PROBLEM**

The vast majority of people both young and old living all over the world go online daily and use social networking sites like Twitter, Facebook and YouTube. With all this information-sharing, many questions about ownership of personal information and possible discipline for postings arise. This guide will answer some of those questions so that you can better understand the rights you have when using social networking both in and out of school. Numerous bloggers, online journalists, and private citizens were arrested for their online activities in the past year, most of whom were charged for "cyberstalking"

Under Section 24 of the Cybercrime law, people post, paste and copy different articles, pictures etc without knowing or considering their limits and rights in doing so. Horaby<sup>4</sup> states that if a person or an organisation holds the copyright on a piece of writing, music etc, it means that they are the only people who have the legal right to publish, broadcast, perform it. Other people must ask their permission to use it or any part of it and it expires seventy (70) years after the death of the author.

## **1.3 RESEARCH QUESTIONS**

The following research questions were formulated to guide the study.

1. What legal rights accrue to the social media user?

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<sup>4</sup> AS Hornby, Oxford Advanced Learners Dictionary of Current English (7<sup>th</sup> edn. Oxford University Press 2007)325

2. What activities constitute breach of the use of social media?
3. What are the challenges of the social media user on the exercise of rights on the social media?
4. What are the legal instruments that can help a social media user to identify his/her rights as regards to the use of social media?
5. What are the consequences of the negative use of social media?

#### **1.4 AIMS AND OBJECTIVES OF THE STUDY**

The research is aimed at examining the challenges faced by Social Media Users in exercising legal Rights on social media.

The objectives of the research include:

- i. To identify the activities that constitutes breach of the legal use of social media.
- ii. To examine the consequences of the wrong use of social media.
- iii. To identify the legal instruments that can help a social media user in exercising the legal rights on social media.
- iv. To examine the challenges in exercising legal rights of the social media user in Nigeria.

#### **1.5 SIGNIFICANCE OF THE STUDY**

The significance of the study is to the effect that the use of social media as a way of communication, doing business, work, education, etc are on the increase especially amongst

the youths. The researcher hope that this research would create awareness on how social media could be used without hurting or stepping out of ones bounds, for effective and efficient use. This research provides an ample resource material for students, teachers, judges, counsels and the general public to appreciate the efforts made by the researcher in creating awareness on the use of social media.

## **1.6 SCOPE OF THE STUDY**

The territorial and geographical scope of this research is basically Nigeria and as such, emphasis would be made on the Constitution of the Federal Republic of Nigeria<sup>5</sup>, Cybercrime Act 2015, Copyright Act<sup>6</sup>, Freedom of Information Act<sup>7</sup> and case laws as applicable where necessary. Furthermore, references would be made to other jurisdiction where applicable.

## **1.7 METHODOLOGY**

The dissertation will focus on the challenges to exercise legal rights on the use of social media by its users, Consequently, in examining the mechanisms, the researcher would adopt doctrinal approach that is library oriented. The researcher would also adopt the secondary method of data collection and information harvested through relevant sites in the internet. The works of other researchers which are considered relevant to it would be consulted, such as standard law texts, journals, articles and seminar papers, also case laws such as decisions of superior court of records.

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<sup>5</sup> CFRN 1999 (as amended)

<sup>6</sup> Copyright Act CapC28LFN 2004

<sup>7</sup> Freedom of Information Act 2011

## 1.8 SYNOPSIS OF THE CHAPTERS

In this work, the researcher presented the work in chapters, running from chapter one to chapter five. The chapter one gives the background of the work, it explained what social media is all about and the means through one can access social media. It also informed that though social media is used by majority of the populace, yet many do not know their limits while browsing on social media.

In the course of the research, some research questions, aims and objectives were formulated so as to help and guide the researcher in the work.

The significance of this research is to the fact that Social Media has come to stay in Nigeria as a way of communication, doing business, work, education etc, there is the need to create awareness on how social media could be used to avoid infringement on others Rights which may lead to litigation.

The scope of the work is limited to Nigeria and also adopted doctrinal approach that is library oriented, data from relevant sites in the internet and the work of other researchers.

Chapter two of this research looked into works of other researchers as they relate to the research.

Chapter three and Chapter four was able to show case the main body of the work, where the researcher looked at the rights of the social media user as provided by the laws used in Nigeria, also these laws and their provisions as it relates to social media rights and breaches were looked at. The activities which when carried out constitute breaches on the use of social media were examined, so as to enlighten the public on some actions which when done can be construed to be an infringement and also the consequences of the breaches were well spelt out. The researcher also examined the challenges that are faced by the social media users in Nigeria which needed to be resolved so as to guard the internet users from cybercriminals, government and individual intimidations, harassment etc.

Chapter five gives the summary of the work, the researcher also provided for some recommendations so as to avoid breaches on social media and how social media could be a safe place to carryout businesses.

In the course of the research, the researcher discovered that there were cases of intimidation, harassment and even detention on the online user because of what they posted. That, though our laws made provisions for safeguarding the online users, but it is pertinent to know that there were sections that rub off or reduces these rights.

There were other areas suggested by the researcher for further studies as time and resources did not allow for going into such areas.

## CHAPTER TWO

### 2.1 LITERATURE REVIEW:

It is worthy to note that several researches have been conducted on the use of Social Media which would be very useful in the conduct of this dissertation. Furthermore, it was observed that most of these researches did not deeply and articulately deal with the legal use of social media by presenting detailed information on the challenges to identify and exercise legal rights on the use of social media. However, the aim of the present study is to fill the gaps in the existing study or literature as the case may be.

Mansi<sup>8</sup> Stated that in today's interrelated world, information and communication technology (ICT) is extensively used by our country and it affects our lives every day and that in the current digital age, everyday new technology comes as ICT riot. These new technologies have been accessible by people in their everyday life and increase their living standards. Nowadays, many ICT gadgets are used in our life. These gadgets operate for Information, Speed, and Communication and reduce the physical and mental human work load. The book stressed on the innovation and the help of ICT without depicting the co relation of ICT and social media use.

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<sup>8</sup> MP Bosamia 'Possitive and Negative Impacts of ICT in our everyday life'  
(Dept of Computer Maharaja Krishnak umarsinhji Bhavnagar University Conference Paper December. 20013 )

Drew<sup>9</sup> depicts that interacting with friends and family across long distances has been a concern of humans for centuries. As social animals, people have always relied on communication to strengthen their relationships. When face-to-face discussions are impossible or inconvenient, humans have dreamed up plenty of creative solutions. The roots of social media stretch far deeper than you might imagine. Although it seems like a new trend, sites like Facebook are the natural outcome of many centuries of social media development. The earliest methods of communicating across great distances used written correspondence delivered by hand from one person to another in other words, letters. The earliest form of postal services dates back to 550 BC. In 1972, the telegraph was invented. This allowed messages to be delivered over a long distance far faster than a horse and rider could carry them. Although telegraph messages were short, they were a revolutionary way to convey news and information. Two important discoveries happened in the last decade of the 1800s: The telephone in 1890 and the radio in 1891. Both technologies are still in use today, although the modern versions are much more sophisticated than their predecessors. Telephone lines and radio signals enabled people to communicate across great distances instantaneously, something that mankind had never experienced before. Technology began to change very rapidly in the 20th Century. Today, there is a tremendous variety of social networking sites, and many of them can be linked to allow cross-posting. This creates an environment where users can reach the maximum number of people without sacrificing the intimacy of person-to-person communication. This study gave a historical background on how messages or information came into being, without explaining to what extent these information or messages could be done.

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<sup>9</sup> D Hendricks 'Complete history of social media:Then and Now' May 8, 2013  
<<https://smallbiztrends.com/2013/05/the-complete-history-of-social-media-infographic.html>> Accessed September 28, 2019



Edogor et al<sup>10</sup> stated that the medium is the yardstick to measure the communication coming from it. Little wonder, Chiakwelu (2015) notes that when it comes to western media, the prevailing norm in Nigeria and Africa is that “whatever emanates from the BBC is nothing but the truth.” It implies that when the medium is trustworthy then the message from it would be trusted and vice-versa. The twenty-first century is characterized by multi-sources (media) of sending and receiving messages and information. This very era has been variously described as an information age, maybe largely because of the divergent communication medium prevalent now.

The situation is changing what is hitherto known as the mass media news. It has equally altered the gathering, processing, packaging and delivery of the media news as obtained before now. With the prevailing practices which the social media ushered into modern journalism, many ethical canons of the profession are often partly or entirely not observed by the users of the new media who are reporters sans journalistic trainings. Similarly, in most countries of the globe, the legal frameworks guiding journalism as a profession might have no bearing on the social media-made reporters who reports events just like the journalists attached to mass media institutions known and legally recognized in a nation. The virtual base of the social media sites also makes it extremely difficult for the operations of their users to be ethically monitored or legally regulated in the developing countries.

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<sup>10</sup> O Edogor 'Nigerian users evaluation of credibility of social media sites' (New media and mass communication) ISSN 2224-3267 (paper) ISSN 2224-3275 (online) vol. 40, 2015

<sup>11</sup>**Onah etal** attempts to analyze the moral implication of the phenomenon of social media in Nigeria. The paper posits that amidst all the benefits of Social media, the phenomenon has inadvertently given rise to moral issues in Nigeria, while they have fuelled or deepened the level of immorality among the youths in the country; new acts of immorality have cropped up as a result of the negative influences available on these social sites. For clarity, some of the moral issues that have arisen from the abuse and obsession with social media include sexual promiscuity, internet crime, indecent dressing and sexual harassment, loss of sense of sacredness of human life and neighbourliness, impatience and quick syndrome.

**Uloma Etal**<sup>12</sup> Informed that the term plagiarism has received much attention in recent times as incidents of plagiarism seem to be on the increase. With the advent of the Internet, information is more easily accessible without geographical constraints; hence researchers can now lay their hands on documents in any part of the world. Although, this is a laudable development considering that scholars develop new ideas while learning from the writings of others (Coulthard 2004), some researchers, however, prefer to steal the idea of others rather than learn from their work. Okeke (2001) points out that the plague of plagiarism can be attributed to an educational system that seems to produce fake intellectuals, who merely endure education while stealing the work of others as cover up. Although plagiarism is a universal problem, incidents of plagiarism are becoming increasingly popular in most Nigerian institutions of higher learning as students employ what is commonly known as “cut

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<sup>11</sup> N. Onah etal 'The moral implication of social media phenomenon in Nigeria (Mediterranean Journal of Social Sciences Vol. 5) 2014

<sup>12</sup> Uloma Doris Onuoha and Chinyere Nkechi Ikonne 'Dealing with the plague of Plagiarism in Nigeria' (Journal of Education and practice) [www.iiste.org](http://www.iiste.org) issn 2222-1735 (paper) ISSN 2222 – 288X (Online) Vol.4 No 11, 2013

and paste” when doing assignments or carrying out research projects. Udotong as cited by Obinna (2012) sadly notes that plagiarism and poor writing skills are the bane of Nigeria’s educational system. This is understandably so as plagiarism affects not only the integrity of the individual concerned but also the integrity of the institution associated with the individual.

**Ocheme**<sup>13</sup> discussed the antecedent developments of legal Protection offered to creative works in Nigeria, he stated that in Nigeria the right to use and enjoy private property has been extended even to abstract properties, that as a result of global advancement in science and technology people can get access to properties without having legal right over them so long as the user works within the ambient of law. The researcher agrees with the issues discussed in the book as it is relevant to the current research.

**Adedeji**<sup>14</sup> discussed the contemporary challenges facing copyright law to include emergency of digital technology in the late 20<sup>th</sup> century. He informed that though digital technology brought about innovation and distributive measures, the negative side of it is devastating. He praised the Optical Disc Plant Regulation in the fight against piracy through optical media, he regretted the absence of regulatory frame work like the optical disc plant regulation before 2006 to provide the platform for the effective campaign against piracy. This is also relevant to the research.

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<sup>13</sup> P. A. Ocheme, ‘The law and practice of Copyright in Nigeria (1<sup>st</sup> edn, ABU Press 2000)

<sup>14</sup> A. A. Adedeji ‘Combating Piracy through Optical Disc Plants Regulation in Nigeria: Prospects and Challenges’ (Nigeria Institute of Advanced Legal Studies Journal of Intellectual Property NJIP Maiden Edition. 2011 )

**Keir Baker**<sup>15</sup> Stated that it is easy to post an opinion or joke online, but that one tweet or facebook status can reach an audience far beyond what was expected or intended and if you say the wrong thing, you could face severe legal consequences.

**K Ruby**<sup>16</sup> discussed that the legal mistakes made on social media by companies, celebrities, social media users that could result in legal trouble include, not understanding the copyright law, programming without attribution, failure to properly discuss influencer marketing campaigns, improper formatting of sponsored posts, assuming your social media agency understands legal, fake testimonials, not reading the terms of service, not having an internal social media policy , pulling content from Google image etc.

**NAN**<sup>17</sup> stated that the Vice President of Nigeria informed that a lot of disinformation in the public space at present came from the social media pointing out that the traditional press was obviously more responsible because there is consequence. It is easier to sue the traditional media, they are bound by local laws and much easier to hold them to account, while it is difficult to deal with the consequence of infractions associated with the social media without infringing on freedom of information and press freedom.

**T Oluleye**<sup>18</sup> discussed that social media has come to be recognised as a very important tool for the circulation of information due to its global reach, yet if not used properly it could pose

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<sup>15</sup> Keir Baker 'Social media law: an essential guide' @keirbaker96  
<<http://www.theguardian.com/law/2016/aug/12/socialmedia-law-anessentialguide>> Accessed November 9, 2019

<sup>16</sup> Kris Ruby 'Social media mistakes your business is making that could result in legal trouble'  
< <https://observer.com/2017/08/social-media-legal-trouble-copyright-law>> Accessed November 9, 2019

<sup>17</sup> News Agency of Nigeria 'Osinbajo calls for regulation of social media'  
< <https://www.pulse.ng/news/local/osinbajo-call-for-regulation-of-social-media/pextgfl>> Accessed November 9, 2019

<sup>18</sup> Tobiloba Oluleye ' Nigerian: The Review of the frame work and guidelines for the use of social media plate forms by Public Institutions'  
<<http://www.Mondaq.com/Nigeria/x/834670/Social+media/The+Review+Of+The+Framework+---->>  
Accessed November 9, 2019

a lot of disadvantages, that the National Information Technology Development Agency (NITDA) developed the framework and guidelines for the use of social media platforms by Public Institutions so as to control the use of social media by Public Institutions.

**Itanyi<sup>19</sup>** Stated that social media is an avenue which propagates intellectual creativity and mind field of ideas which can be developed into important works. It is about freely sharing knowledge and information and that it is a powerful tool in today's world, perhaps, a statement which highlights this is accredited to Malcolm X, who opined that the media is the most powerful entity on earth; they have the power to make an innocent guilty and to make the guilty innocent, because they control the minds of masses. It is also a cheap avenue for copyright infringement, it is cheap in the sense that infringement is very easy, less tasking, and instantaneous and it defies easy control and regulation.

**A Adepetun<sup>20</sup>** informed that at the end of the week long social media week (SMW), the Panellists urged social media users to use the platform to build, contribute positively and improve on the narrative and happenings in the society., also that social media users should lend their voices by using social media in speaking up against social injustice, holding leaders accountable, as well as inspiring people to positive actions. The research agrees with the guardian newspaper publication as it is relevant in this research.

**S Ezea<sup>21</sup> (The Guardian)** stated that no doubt that social media networks were invented with the positive intention of easing communication but it has been greatly abused by the

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<sup>19</sup> Itanyi 'Expanding the frontiers of Nigerian Copyright laws in the age of Social media'  
< <http://www.ajol.info/index.php/naujiji/article/download/156721/146328>> Accessed November 9, 2019

<sup>20</sup> Adeyemi Adepetun (The Guardian (Lagos) 'Nigeria use social media positively, judiciously'  
<<https://allafrica.com/stories/201902090138.html>> Accessed November 9, 2019

<sup>21</sup> Samson Ezea ' The good, the bad and ugly side of social media network'

users, students nowadays can neither write nor speak good English because of the form of writing and spoken English used in social media, many are now addicted to it , hearts broken. because of fake love exhibited in social media which led to depression and untimely death.

**D Reed**<sup>22</sup> added that social media has changed the way people interact, that in many ways social media has led to positive changes in the way people communicate and share information, however, it has a dark side that can result to negative outcomes with long term consequences. Furthermore that social media can affect people's finances, give out personal information, lead to depression, feeling of isolation, misinformation, exposure to online predators etc.

**K Opsahl**<sup>23</sup> discussed that social network service providers today are in a unique position. They have access to extremely sensitive information including data gathered over time and from many different individuals. However, network service must ensure that users have on-going privacy and control over personal information stored with the service. Users are not just a commodity, and their rights must be respected, that according to Electronic Frontier Foundation, the three basic privacy protective principles the social network user should demand are the right to informed decision-making, where users have the right to make choices about who sees their data and how it is used, Right to control, where they have right over the use of their data and Right to leave, where they have right to leave a social network service that does not sufficiently protect them.

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< <https://guardian.ng/saturday-magazine/the-good-the-bad-and-ugly-side-of-social-media-network>>

Accessed November 10, 2019

<sup>22</sup> Daniel Reed 'Love to Know'

[https://Socialnetworking.lovetoknow.com/Negative\\_Impactof\\_social\\_networking\\_sites](https://Socialnetworking.lovetoknow.com/Negative_Impactof_social_networking_sites)> Accessed November 10, 2019

<sup>23</sup> Kurt Opsahl 'A bill of Privacy Right for Social Network Users'

<https://www.eff.org/deeplinks/2010/05/bill-privacy-rights-social-network-users>> Accessed November 10, 2019

## CHAPTER THREE

### 3.1 INTRODUCTION

In Nigeria, as a result of technological age, many people carry out different activities on social media without knowing their limits or rights, such activities could be copying and pasting pictures, designs or writings seen on the internet, many also comment on such posts without knowing the effect of what they do. Also some carry out businesses, interact with people whom they have not seen physically without finding out the type and calibre of people they are. They feel that they can carry out their business activities any way they like, chat with friends, visit any website, download any material, copy or paste any article without minding the consequences of their acts.

Many people and even some right owners and enforcement officers are not aware of the existence of rights that accrue to a social media user and even if they are aware of its existence, they are not aware of the damaging implications of their infringements. Effective usage of social media platforms by Nigerians and their government could enhance the Country's political, economic and social development considering the huge number of Nigerians using the internet. This work will highlight these rights and their limits and also the consequences of breaching the rights.

### 3.2 IDENTIFIED RIGHTS OF SOCIAL MEDIA USER

There are various rights which are due to social media users as they carry out their activities on the net. These rights include:

**3.2.1 Freedom of Expression:** The social media user is guaranteed to express his opinion and communicate in social media without fear of intimidation or molestation. He is

expected to air his view so long as it is not embedded on hatred or rancour. The freedom of expression is provided by Section 39 (1) of the Nigerian Constitution<sup>24</sup>. This expression includes freedom to hold opinion and to receive and impart ideas and information without interference. However Section 45<sup>25</sup> of the Nigerian Constitution made provision on the restrictions; the expression could be restricted if it borders on national security, public health or where it affects other person's right.

International Covenant on Civil and Political Rights, 1966 (ICCPR) is one of the international conventions that supports freedom of expression. In Article 19 (2), it provides as follows: Everyone shall have the right to hold opinions without interference.

'Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice'.

In Article 19(3) it imposes restrictions on the enjoyment of this provision or right

'The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:(a) For respect of the rights or reputations of others;(b) For the protection of national security or of public order (order public), or of public health or morals'

Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), provides that:

(i)Everyone shall have the right to hold opinions without interference,

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<sup>24</sup> 1999 CFRN (As Amended )

<sup>25</sup> Ibid



(ii) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, orally, either in writing or in print, in the form of art, or through any other media of his choice.

**3.2.2 Right to Sue or to be Sued:** The social media user has the right to sue for any infringement on his right regarding the activities of the infringer on the social media. He also could be sued when he over stepped his bounds as provided in Section 11,12 and 13 of Defamation Act<sup>26</sup>.

**3.2.3 Preservation of Data:** Social Media users have the right for their personal data to be kept private for them. The Constitution of Nigeria<sup>27</sup> made provision of this in Chapter 4 (37)

Section 37 provided for the Right of family and private life;

“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”.

More also, In other to avail the social media users the right of their privacy, Rule C1384 (6) of Digital rights and freedom bill<sup>28</sup>.provides that the internet provider has a duty to preserve and keep secret all information about the subscriber and all his activities in the social media However, the privacy right could be denied whereby it is for public interest.

**3.2.4 Business/Communication Connectivity:** There is no law in Nigeria restricting social media user from transacting business or communicating with a group of people. The social media user has the right to carry out business or communicate with people all over the world so long as the business or communication is not illegal. Activities in social

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<sup>26</sup> Defamation Act 1961

<sup>27</sup> 1999 CFRN (as amended)

<sup>28</sup> Digital Rights and Freedom Bill 2016

media are not territorial, however user has the right to communicate and transact business with people from different locations, be it local or international.

**3.2.5 No time Bounds:** In Nigeria, it could be observed that social media activities could be carried out at any time of the day, though this has been affected by the poor power supply in the country, also there are issues of poor network service and high cost of internet service. Nevertheless activities on social media could be carried out at any time without restrictions.

**3.2.6 Association:** The Social media user has the right to associate with anybody or belong to a group in social media, without interference from anybody, once the person or group accepts. This is enshrined in the Nigerian Constitution<sup>29</sup> Chapter 4 (40)

“ Every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to any political party, trade union or any other association for protection of his interest”

However, it is pertinent to know that the freedom is not absolute and could be restricted or denied completely when it is used in a fraudulent or wrong way which could affect other persons, group or country negatively. Section 38 (4)<sup>30</sup> provides that: “Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society”.

**3.2.7 Information:** Social Media users have the right to get or disseminate information which will be beneficial to them or the public. Information in this case can be inform of an idea, place, thing, product, person, group of persons, an entity or government. Normally the mere idea to get or disseminate information on social media does not attract any negative thought or lead to legal action on the face of it, but when one is under an obligation not to

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<sup>29</sup> ibid

<sup>30</sup> ibid

disclose an information and he did so, may expose one to legal action. Section 39 (1) (2) (3) (a)-(b)<sup>31</sup> of the Nigerian Constitution. See the case of FGN vs Tunde Thompson and Nduka Irabor<sup>32</sup> where the defendant was sued following some publications which was considered as a breach of secrecy by the government.

Also false information which led to harm to another can result to a legal action. At times due to ignorance and in some cases mischief, social media users post or disseminate information on social media which other users adopt as being a true information without knowing the mind of the disseminator, this if applied can create harm to the users without the disseminator knowing. Majority of social media users sees posts on social media as true and does not care to verify its authenticity. The right of information to the social media is also restricted by law when it is against public interest, health and safety. See the case of AG vs Clough<sup>33</sup>

### **3.3 ACTIVITIES THAT CONSTITUTES BREACH ON THE USE OF SOCIAL MEDIA.**

**3.3.1 Posting of negative opinions or jokes online:** It is easy to post an opinion or joke online, ordinarily, such post shouldn't have been injurious to anyone who comes across it but for the fact that the post or tweet could reach an audience far beyond what was expected, and the reader of the post or tweet does not read nor consider what the poster or tweeter has in mind. However the wrong post or tweet could lead to a serious legal consequence. Where the statement causes serious harm to a person's reputation, it could be taken to be a libellous act under Defamation Act 2013.

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<sup>31</sup> ibid

<sup>32</sup> Unrep. Suit No. PCPT/L/1/84 of 4/7/84

<sup>33</sup> (1963) 1 All ER 420

Furthermore, where one tweets or post some comments but the person was not directly mentioned, so long as they can be identified from what was posted is actionable. In addition, deleting the post does not prevent a claim as it may have been carried elsewhere on the Social Media Stream; the length of time the post was visible for , will only affect the amount of damage payable.

**3.3.2 Trolling:** It is a kind of online abuse. It involves making grossly offensive or threatening remarks or a “Campaign of harassment” specifically targeting an individual. When the threat is credible the offender can be prosecuted.

<sup>34</sup>Jola took “a radical feminist stance” on facebook group some time in 2014 when she was a student of University of Lagos in response, she was highly insulted and also received sarcastic comments. This amongst other things included attacking her personality her appearance to threatening violence. She recalled that one commenter said “I will come to that your University of Lagos and beat sense into your head”.

Though some commenters were in her support, but negative voices were louder and stronger to her. This situation worried her enough to delete her facebook account, knowing that facebook has the details of her personal life and could be an avenue for one who wants to do her physical harm. This led her to be in secluded places and keeps to herself.

Jolla, was a victim of internet trolling. However, certain trolling episodes easily translates to Cyber-bullying and have legal consequences in Nigeria, some of which may be criminal or civil.

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<sup>34</sup> ‘Internet trolling and the extent of the law in Nigeria’  
<<https://techcabal.com/2019/08/29/internet-trolling-andthe-extent-of-the-law-in-nigeria>> Accessed January 24, 2020

Trolling on the face of it, is not illegal no matter how inciting or rude it may appear until the perpetrator makes a comment that is defamatory or in some way harmful to the target.

The victim has to establish that the statement made was untrue or harmful to him/her before looking to the law for recourse.

The Cybercrime Act of 2015 provides for Cyberstalking which includes some acts that may be considered as internet trolling. The Sec 24 of Cybercrime Act criminalises some acts like Cyberstalking, Cyber bullying, harassment, threat and criminal intimidation.

**3.3.3 Unauthorized down loading:** Most social media users while browsing download pictures, articles, publications etc made by other users without obtaining due permission for use from the owners of such items. This has led to plagiarism and other internet fraud that are actionable. Copy Right law supports the fundamental idea that if a person created something, he or she can decide who else that can have access to it. This also applies to online activities. The use of photo or video posted online without the permission of the creator could be a breach of copyright.

Intellectual property created by others could only be used in three scenarios;

- a. Where copyright is owned because you created the content;
- b. Where a licence has been obtained or that you have bought the copyright; and
- c. Where the use of the intellectual property is considered a fair dealing example, where it is used for research, private use, criticism and review. It is worthy of note that acknowledgement of the owner is paramount.

**3.3.4 Plagiarism<sup>35</sup>:** This is the wrongful appropriation, stealing and publication of another author's language, thoughts, ideas or expressions and the representation of them as one's own original work. It is considered as academic dishonesty and a breach of journalistic ethics. It is subject to sanctions like penalties, suspension and even expulsion.

Plagiarism is not in itself a crime, but can constitute a copyright infringement. In academia and industry, it is a serious ethical offence. Plagiarism is not defined or punished by law, but rather by institutions (including professional associations, educational institutions and commercial entities such as publishing companies).

#### **Common forms of plagiarism<sup>36</sup>**

1. Submitting someone's work as another's own.
2. Taking passages from some one's previous work without adding citations.
3. Re-writing someone's work without properly citing sources.
4. Using quotations, but not citing the source.
5. Interweaving various sources together in the work without citing.
6. Citing some, but not all passages that should be cited.
7. Melding together cited and uncited sections of the piece.
8. Providing proper citations, but fails to change the structure and wording of the borrowed ideas enough.
9. Inaccurately citing the source.
10. Relying too heavily on other people's work. Fails to bring original thought into the text.

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<sup>35</sup> 'Social Media Law: as essential guide'

<https://www.theguardian.com/law/2016/aug/12/Social-media-law-an-essential-guide>> Accessed November 17, 2019

<sup>36</sup> <<https://en.wikipedia.org/wiki/plagiarism>> Accessed November 7, 2019

**3.3.5 Piracy<sup>37</sup>:** Piracy refers to the unauthorized duplication of copyrighted content that is then sold at substantially lower prices in the 'grey' market. The ease of access to technology has meant that over the years, piracy has become more rampant. For example, CD writers are available off the shelf at very low prices. Piracy is done in many ways like video piracy, cable piracy, book piracy software piracy and DVD/CD piracy. Piracy has robbed the creator of properties of the enjoyment of their work, and it has been a common occurrence by the social media users, this is a fraudulent act and can be actionable. In Nigerian law, there is no express law on piracy, but piracy is regarded as the infringement of copyright which is treated as a crime and is punishable.

See the piracy case of *NCC vs Godwin Kadiri*<sup>38</sup>

The accused Mr. Kadiri was charged for selling and distributing to about 100 subscribers the whole or substantial parts of HiTV broadcast/ Channels to Copyright subscribers, without the consent or authorisation of the copyright owner in breach of Sec 20 (2) (a) and (b) of the Nigerian Copyright Act<sup>39</sup>, The accused was also charged for having in his possession equipment and contrivances including decoders, smart cards and splitters for the purpose of illegal rebroadcasting of HiTV channels, contrary to Sec 20 (1) (c) of the

copyright Act. Hon. Justice A.A Okeke of the Federal High court Benin delivery Judgement on December, 17<sup>th</sup> 2012 convicted Kadiri and sentenced him to two years imprisonment each on the 1,2<sup>nd</sup> and 3<sup>rd</sup> counts and to six months on the 4<sup>th</sup> count of the criminal charge without option of fine.

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<sup>37</sup> < <https://economictimes.indiatimes.com/definition/piracy>> Accessed November 7, 2019

<sup>38</sup> Charge No. FHC/B/43C/2010

<sup>39</sup> Cap C28 Laws of the Federation 2004

Some forms of online plagiarism include softlifting, hard disk loading, renting, unbounding, counterfeiting, freebooting etc.

**3.3.6 Counterfeiting:**<sup>40</sup> Counterfeiting is a federal and state crime, involving the manufacturing or distribution of goods under someone else's name, and without their permission. Counterfeit goods are generally made from lower quality components, in an attempt to sell a cheap imitation of similar goods produced by brands consumers who know and trust the brand. It could be the production and distribution of fake copies of software, making it look authentic. This involves providing the box, CDs, and manuals, all designed to look as much like the original product as possible. It also spread across other items like apparel, accessories, music, software, medications and cigarettes, to automobile and airplane parts, consumer goods, toys and electronics. These fake products when produced could attract consumers by mere displaying and sending to the consumers through social networking. This act can attract a legal action against the offender because is an infringement on the right of the rightful owner as provided by the intellectual property law.

**3.3.7 Cut, Copy and Past**<sup>41</sup>: Cut, Copy and Paste are related commands that offer an interposes communication technique for transferring data through a computer's user interface. The cut command removes the selected data from its original position, copy command creates a duplicate. In these the selected data is kept in temporary storage (the clipboard). The data from the clipboard is later inserted wherever a paste command is issued. From the activities above, whenever a social media user cut, copy and paste any article,

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<sup>40</sup> <https://cs.stanford.edu/people/eroberts/csi81/projects/1999-00/software-piracy/types.html>> Accessed August 20, 2019

<sup>41</sup> Cut, Copy and Paste  
< [https://en.wikipedia.org/wiki/cut\\_copy\\_and\\_paste](https://en.wikipedia.org/wiki/cut_copy_and_paste)> Accessed November 23, 2019



publication Pictures or diagrams from some ones page without well acknowledgement of the owner could also lead to serious sanctions.

### **3.4 CHALLENGES OF THE SOCIAL MEDIA USER ON THE EXERCISE OF THE LEGAL RIGHTS**

Internet freedom in Nigeria declined in the past years, the social media user do not operate their activities freely as required due to censorship or restricted measures embarked upon by either the government, companies or individuals themselves who feels that things sent on social media did not favour or promote them. Hence the right of the social media user to use the social media freely is affected. These breaches could come inform of:

**3.4.1 Intimidation and Violence:** In recent times, journalists and activists and other social media users have been facing the act of intimidation and harassment due to their activities in social media.

The intimidation or harassment tactics could be in form of police raiding homes of targeted bloggers, seizing equipment<sup>42</sup> etc.

In June 2017, Charles Otu, a local journalist, was assaulted by a mob in Abakaliki over a controversial facebook post. Otu a publisher of conscience, a local newspaper used his newspaper and facebook to “expose the failure of the state government in many sectors and critically analyse its programmes and projects”<sup>43</sup>.

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<sup>42</sup> Samuel Ogundipe, 'Another Nigerian blogger arrested by 'State Agent' Premiun Times September 7, 2016 <<https://www.premiumtimesng.com/news/top-news/209985-another-nigeria-blogger-arrested-state-agents.html>> Accessed November 22, 2019

<sup>43</sup> Nnamdi Akpa, 'Journalist beaten to stupor over facebook post', The Guardian, June 5, 2017. <http://bitIY12wOgVJ>> Accessed November, 22, 2019

**3.4.2 Prosecutions and detentions:** In the past years, many internet users have been arrested, detained and some cases prosecuted for their online activities. Some were charged for “Cyberstalking” under section 24 of the Cybercrime law though no cases have led to convictions:

In August 2017, a citizen was arrested for posting an image of Kogi State Governor Yahaya Bello’s Abuja residence on WhatsApp; authorities claimed that the image threatened Bello’s security<sup>44</sup>.

In July 2017, a primary school teacher was fired and then arraigned before a Magistrate Court in Ilorin for allegedly insulting the then Senate President Bukola Saraki on facebook; The charges were later withdrawn<sup>45</sup>.

**3.4.3 Enactment of laws:** As a result of high usage of internet by both the youths and aged on daily bases in carrying out numerous activities, many laws have been enacted which have their bearings on the checking of the usage of the internet. The hate speech bill proposed in march 2018 which is seriously gaining grounds in the National Assembly has faced serious critical oppositions as it was alleged to be enacted so as to silence online dissent so also the Digital Rights and Freedom bill passed at the National assembly in 2017 and 2018<sup>46</sup>

**3.4.4 Internet Access:** Nigeria has one of the largest internet user populations in sub-saharan Africa with over 89 million citizens online, according to the latest data from the International Telecommunication Union (ITU). Power cut, frequently disrupts services and access. There has been a very poor supply of electricity to the citizens so as to access the

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<sup>44</sup> Johnson Aluko ‘Youth docked for exposing Bello’s Abuja residence’. The Guardian, August 5, 2017  
<http://bit.ly/2xFKFgw>> Accessed November 22, 2019

<sup>45</sup> Nnenna Ibeh, ‘UPDATED:Charges against Kwara civil servant who criticised Saraki withdrawn’, Naij.com  
<<http://bit.ly/2XWVT9E>> Accessed November 22, 2019

<sup>46</sup> <<http://freedom.house.org/report/freedom.net/2017nigeria>> Accessed November 22, 2019

internet, individuals, are able to rely on private generators and standby battery –powered inverter systems to stay online during outages. The short fall in power supply also undermines the quality of internet service offered by providers. The need to pay for expensive backup power generators has increased the closure of cybercafés.

**3.4.5 Education and language literacy:** This has been observed as a factor that prevents social media in exercising their right to use social media freely. In Nigeria, most internet users are not educated and this constitutes a big obstacle on the use of social media with regards to knowing their rights and limits. Most of them use social media without knowing what constitutes breach of others right or breach of their own rights. Internet is said to be a home to over 500 local languages<sup>47</sup>. The language use in social media is mostly English but in some cases it could be technical thereby making it difficult for some internet lovers to carry out their activities.

**3.4.6 Delay in Court proceedings:** It had been worrisome that when there are infringements on the right of the social media user and the case is taken to the law court for prosecution, the matter takes a long time before it is dispensed with.

However it was also observed that in many of such cases, no offender will be convicted at the end of the day. In most cases, those whose rights were violated become more interested in adopting the regulatory approach, as a result of frustrations with the traditional court system. Such frustrations are borne out of the undue delay and long time to fully determine a case, coupled with ineffective enforcement of the final court orders

**3.4.7 Cost of Data/ Browsing:** One of the challenges faced by the social media user is the cost of data or high price of browsing. Internet will only be available for the user to carry out

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<sup>47</sup> Nigerian Languages

<http://www.onlinenigeria.com/languages/languages.asp>> Accessed November 22, 2019

the intended activities when there is data. This is purchased through online from the service providers like MTN, Glo Mobile, Airtel, 9mobile etc. The prices are usually high which limits the browsers in their operations.

**3.4.8 Fraud:** There are various fraudulent activities that are carried out on or by the aid of social media, these include hacking, advanced free fraud (yahoo yahoo) and other financial fraud, Impersonation, Kidnapping, Robbery terrorism and even murder. With social media many investors carry out their business through social media, while it attracts so many benefits, it could also create a means for cybercriminals to perpetrate their evil deeds. It is easy for cybercriminals to make their messages look real and credible so as to defraud their victims. Nowadays many bank customers have lost their money through internet transactions and businessmen lost their goods, individuals kidnap by means of what they posted on social media, as in the case of

<sup>48</sup>the owner of the fireman generator, a billionaire Mr. Ignatius Odunukwe, was kidnapped in December 2019 and found dead in a forest in Lekki Ajah, Lagos. It was revealed when the killers were apprehended that Mr Odunukwe offered to sell his property in Abuja for Nine hundred Million (900, 000,000.00) The killers got information about the billionaire through his facebook page which helped them to trace him, made contact with him posing as a prospective buyer of the property, lured him to the hotel and eventually killed him and collected the property documents.

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<sup>48</sup> 'How Owner Of Fireman Generator Was Murdered, And His Body ...  
<https://www.independent.ng/how-owner...>>Accessed March 3, 2020

**3.4.8 Weather Conditions:** It has been observed that one of the challenges faced by the social media user is the inability to regulate weather condition at the points of browsing. When the weather is cloudy especially during rainy and harmattan seasons, it affects the availability of network in the affected areas and this greatly affects the number of people online which invariably reduces social media activities, but when the weather is good, more people are online and social media activities increased.

## CHAPTER FOUR

### 4.1 LEGISLATIONS ON THE USE OF SOCIAL MEDIA IN NIGERIA

In Nigeria there are extant laws which regulates the use of social media in Nigeria, However there are some bills within the Federal House of Assembly (Federal House of Representatives and Senate) like the Hate Speech Bill, Consumers Bill of Rights, Communication Service Tax Bills, 2015, Frivolous Petitions (Prohibition, Etc) Bill, 2015 etc which focuses on the use of social media. Some of them were seen as a means to clamp down on social media users and it has affected their passage into law.

Some legislation regulating the use of Social Media in Nigeria include:

#### 4.1.1 The 1999 Constitution of the Federal Republic of Nigeria.

The 1999 Constitution of Nigeria (as amended) made provision for the freedom of expression. This provision gives the citizens of Nigeria the liberty to air their views or express themselves without fear or favour. The freedom of expression is one of the fundamental rights which are universally recognised and protected. Most Countries in the world, including Nigeria have expressly provided for the protection of this right because of its importance and relevance to the enhancement of personal liberty and democracy.

Section 39 (1)<sup>49</sup> guarantees freedom of expression as a fundamental right. It provides as follows:

- 1 Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.
2. Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of

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<sup>49</sup> 1999 CFRN (As amended)

information, ideas and opinions: Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

However, the right to freedom of expression like most other rights, is not absolute, there are recognised restrictions to this right as provided in Section 45<sup>50</sup> which states that the above rights could be restricted:

- a. in the interest of defence, public safety, public order, public morality or public health; or
- b. for the purpose of protecting the rights and freedom of other persons

Nigeria's 1999 constitution guarantees freedom of expression and the press. The implementation of Sharia (or Islamic) law in 12 northern states has not affected internet freedom in those regions to date. Nonetheless, libel is a criminal offense in Nigeria, including online, with the burden of proof resting on the defendant. Print media journalists covering sensitive issues such as official corruption and communal violence are regularly subject to criminal prosecution. From the foregoing it could be deduced that in as much as a citizen of Nigeria has the above rights, he/she should be conscious of infringing on others rights while carrying out any activity on the social media, as any violation of the rights can result to a serious consequences.

Online journalists and internet users in Nigeria have been subject to increasing extra-legal harassment and intimidation for their activities in the past few years, particularly by local officials or powerful businesspeople who have taken issue with critical commentary posted

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<sup>50</sup> Ibid

about them on social media, alongside the threat of arrest as an intimidation tactic, police often raided the homes of targeted bloggers, seizing equipment, and eventually prosecuting them.

#### **4.1.2 Defamation Act 1961**

Defamation is a recognised exception to the exercise of right to freedom of expression under the law. With the advent of the Internet, defamatory statements can be communicated or published with seamless ease and having their consequences in geographically locatable territories. The Internet as a new and more effective medium of communication compared to the traditional communication systems, like newspapers, letters, etc. presents special challenges to the existing legal regime for traditional defamation law, which include the determination of legal responsibilities of parties involved in the defamation matter and the problem of jurisdiction.

Defamation is a civil wrong that can easily be committed in the use of social media. It means the making of a false statement which defames or harms another person's reputation. It has been defined as "a statement which if published of and concerning a person, is calculated to lower him in the estimation of right thinking men or cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business."

Defamation takes two forms; Libel and Slander. Libel is defamation in a permanent form, mostly written or printed words, whereas slander is usually expressed through speech. Libel is written or visual defamation while slander is spoken or oral defamation.

Sec 11, 12 and 13<sup>51</sup> informed that anybody who maliciously publishes any defamatory libel by printing or publishing it shall be liable to a fine or terms of imprisonment or both.

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<sup>51</sup> Defamation Act of 1961



Section 11 provides that:

Every person who maliciously publishes any defamatory libel shall on conviction thereof on indictment, be liable to a fine not exceeding two hundred pounds or to imprisonment for a term not exceeding one year or to both such fine and imprisonment.

Section 12 provides that:

Every person who maliciously publishes any defamatory libel, knowing the same to be false shall, on conviction thereof on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Section 13 (1) provides that

Every person who composes, prints or publishes any blasphemous or obscene libel shall, on conviction therefore on indictment, be liable to a fine not exceeding five hundred pounds or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or to penal servitude for a term not exceeding seven years.

Through social media defamatory words which ought not to reach a third party, reached a large audience that are near, far and wide. When an internet user posts comments, videos audios or tweets on social media, he should be careful because he cannot measure how far such posts or tweet could go.

**4.1.3 Copyright Act Chapter C28 Laws of the Federation of Nigeria 2004  
(Copyright Act),**

The Section (1) (1)<sup>52</sup> of the Act provides that the following enlisted below are capable of being protected. These are:

- a. Literary works
- b. Musical works
- c. Artistic works
- d. Cinematographic films
- e. Sound recordings
- f. Broadcasts

However any authorisation on their usage by law in any manner attracts punishment. Digital technology has created innovative ways of distributing creative works on a global scale such as sound recordings, film products, books which led to the difficulty in controlling information sharing and getting of admissible evidence to convict infringers.

Section 20 (1)<sup>53</sup> provides that:

Any person who makes or cause to be made for sale, hire, or for trade or business purposes any infringing copy of a work in which copyright subsists, or cause to be imported into Nigeria more than two infringing copies of such work, or makes, cause to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of such work is , unless he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy work was an infringing copy of any work, or that such plates, master tape, machine, equipment or contrivance was not for the purpose of making infringing copies of such work, guilty of an offence under this Act and liable on conviction to a fine of an amount not exceeding ₦1,000 for every copy

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<sup>52</sup> Copyright Act Chapter C28 Laws of the Federation of Nigeria 2004 (Copyright Act)

<sup>53</sup> Ibid

dealt with in contravention of this section or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

Section 20 (3)<sup>54</sup> provides that:

Any person who, without the consent of the owners, distributes, in public for commercial purposes, copies of a work in which copyright subsists by virtue of sections 6 (1) (a)(vi), 6 (1)(c)(iv), 7(1)(b) or 8(1)(c) of this Act, by way of rental, lease, hire, loan or similar arrangement, is guilty of an offence under this Act and liable upon conviction to a fine of ₦100 for every copy dealt with or imprisonment for six months or to both such fine and imprisonment.

however , there are exceptions to the above provisions, section 6 (b) provides that where the work is used by way of parody, pastiche, or caricature , for ephemeral use of Artistic work, used for educational purpose, use for judicial or law reporting.

#### **4.1.4 Digital Rights and Freedom Bill 2016**

The bill was enacted to protect the citizens of Nigeria who make use of social media so as to shield them from the nefarious activities of internet service providers.

Rule C1384 (4)<sup>55</sup> provides as follows:

1. Every person shall have the right to communicate anonymously online without fear of interference with correspondence.
2. Every person shall have the right to express themselves anonymously online and shall not be compelled to adopt real name registration system.

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<sup>54</sup> Ibid

<sup>55</sup> Digital Rights and Freedom Bill 2016

3. Internet service providers shall uphold and respect the human right of customers by supporting the existence of anonymous speech.

Rule C1384 (6)<sup>56</sup> provides that:

1. Every person is guaranteed the confidentiality of his personal data.
2. The integrity and confidentiality of personal data and information of citizens is inviolable and therefore guaranteed.

Rule C. 1384 (10)<sup>57</sup> provides exceptions on these provisions above and that the person data could be interfered with when it borders on public safety and health so far the person whose data is been interfered with was communicated within seven days upon the completion of such lawful interference and that court order was sought, obtained and a period specified.

#### **4.1.5 Cybercrime (Prohibition, Prevention, etc) Act 2015**

The proliferation of digital technology and the convergence of computing and communicating devices have transformed the way in which we socialize and do business. While we record overwhelming positive effects of it, there are also negative side of it which proves the maxim that crime follows opportunity.

According to a 2011 World Bank Survey, out of the top ten countries in the world, with a high level of cybercrime prevalence, Africa is host to four of the countries (Nigeria, Cameroon, Ghana and South Africa)<sup>58</sup> and The Chief Executive Officer of the Nigerian

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<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Adesina O. S, 'Cybercrime and Poverty in Nigeria' Canadian Social Science (26 April, 2017)

Communication Commission (NCC), Prof. Umar Danbatta state during the 2017 Annual Conference of the Nigerian Bar Association (NBA) in Lagos that: “ Nigeria ranks third in global internet crimes behind U.K and U.S”.

Cybercriminals in Nigeria commit numerous internet crimes in various forms such as identity theft, fraudulent electronic mails, ATM spoofing, cyber harassment, internet chat room scams, piracy, hacking etc. They take advantage of the speed of the internet, messaging systems and publications of information in seconds to attack computer systems with their malicious plans. Criminals involve in this nefarious schemes are popularly called “ yahoo boys”<sup>59</sup>

Thus, in general terms cybercrime can be defined as crimes committed on the internet using the computer as either a tool or a targeted victim. It encompasses all illegal activities perpetrated by one or more people referred to as scammers, hackers, internet fraudsters, cyber citizens or 419ners, using the internet through the medium of net worked computers, telephones and other information and communication technology (ICT) equipment. Cybercrimes targeted laptops, tablets, mobile phones and entire networks<sup>60</sup> .One of the objectives of Cyber Crime Act is to provide an effective and unified legal, regulatory and institutional frame work for the prohibition, prevention, detection, prosecution and punishment of cybercrime in Nigeria and to promote cyber security and protection of computer systems and networks, electronics communications, data and computer programmes, intellectual property and privacy rights.

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<sup>59</sup> <<http://www.escanada.net/index.php/css/article/view/9394>> Accessed May 20, 2019  
Ibid

<sup>60</sup> Lexis Nexis (2013)  
The cost of fraud, 2013 Study: Managertail Fraud. Retrieved from  
<<http://www.lexisnexis.com/risk/insight/2013-true-cost-fraud.aspx>>Accessed November 10,2019

The Act criminalises certain Acts, prescribes punishments for offenders and create an institutional and enforcement framework. Defamation on cyberspace is one of those crimes which the law intends to punish. Recently, cases of defamation have been instituted against a number of people and organizations who allegedly published malicious stories online. One particular case of interest is the on-going case of Seun Oloketuyi and Chris Nwandu.

Seun Oloketuyi,<sup>61</sup> a blogger, was accused of publishing a story on his blog ([www.naijahottestgist.com](http://www.naijahottestgist.com)) that the Managing Director/CEO of a bank had an extramarital affair with a married woman working in the Marketing Department of the bank, as well as putting up the sordid details of the purported affair. Oloketuyi was accused of intentionally sending information by means of computer system or network against the banker which he knew to be false, for the purpose of causing him annoyance, insult and ill-will, an offence which is contrary to and punishable under Section 24 (1) (b) of the Cybercrime (Prohibition Prevention Etc) Act, 2015.

Chris Nwandu is a social media commentator who allegedly shared Oloketuyi's story on his Facebook page and made some inciting commentary. He was also arrested and charged for being an accomplice to Seun Oloketuyi.

The bank MD reported the matter to the police who, upon investigation, arrested Oloketuyi and Nwandu and charged them to court. One of the counts against Nwandu that read: "That you, Chris Kehinde Nwandu, acting in concert with one Seun Oloketuyi, on or about June 2015, in Lagos within the jurisdiction of the Federal High Court, did knowingly or intentionally send a message and pictures by means of computer system on your Facebook page purporting to be that of one... the Managing Director/CEO of.....Bank Plc, which you know to be false, for the purpose of causing him annoyance, insult and ill will and thereby

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<sup>61</sup> 'Social Media and the New Crime Act'

<https://www.naijalegaltalking.com/article/other-Important-legal-info/209-social-media-and-The-n----->>

Accessed November 17, 2019

committed an offence contrary to and punishable under section 24(1)(b) of the Cybercrime (Prohibition Prevention etc) Act,2015.”

Section 24 (1)(b) provides that when a person spreads a message he knows to be false for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent; such person commits an offence under this Act and shall be liable on conviction to a fine of not more than N7, 000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment. While we await the judgment of the court in this matter in order to determine the extent of application of the new law, the case illustrates the dangers of posting unverifiable stories on the internet and reposting to one’s social media pages.

## **4.2 CONSEQUENCES ON THE BREACH OF THE USE OF SOCIAL MEDIA IN NIGERIA**

Considering the negative effect breach on the use of social media to persons and the nation in particular, there are laid down punishments set aside for the offenders in Nigeria as contained in the laws.

**4.2.1 Court action:** Internet Crimes and other offences committed can be instituted in the law Court in Nigeria, This could be in tribunals, Federal High Courts, Appeal Courts and Supreme Courts so as to punish the offenders and compensate the person whose right was infringed.

Section 251 (1) (f) 1999 Constitution of the Federal Republic of Nigeria vests exclusive jurisdiction in the Federal High Court over disputes relating to copyright, patent, trademarks and passing-off, industrial designs and merchandise marks. In addition to its original

jurisdiction, the Federal High Court sits in appeal over the proceedings of the Tribunals established by the Trademarks Act and the Patents and Designs Act. The Court of Appeal, and ultimately the Supreme Court, exercise appellate jurisdiction in relation to matters emanating from the Federal High Court.

**4.2.2 Imprisonment and Fines:** When there is a breach on the right of a social media user, this could lead to Court action which its end result could be either in form of imprisonment or payment of some amount as fine. In some cases it attracts both the payment of fine and imprisonment, as provided in Section 11, 12 and 13 of the Defamation Act of 1961.

Also Section 24 (1)(b) provides that when a person spreads a message he knows to be false for the purpose of causing annoyance, inconvenience danger, obstruction, insult, injury, criminal intimidation, enmity, hatred, ill will or needless anxiety to another or causes such a message to be sent; such person commits an offence under this Act and shall be liable on conviction to a fine of not more than N7, 000,000.00 or imprisonment for a term of not more than 3 years or to both such fine and imprisonment.

**4.2.3 Seizure of properties:** When an infringement on another person's right is established and it was as a result of usage of some materials, goods or properties the Court can issue an order for its seizure. Also law enforcement agents on whose purview it fell on would also seize the items. Such Law enforcement agents are the Nigerian Police, NAFDAC, Custom Service etc.

**4.2.4 Arrest and Detention:** An infringer of the social media right could be arrested and detained by the Nigerian Police on the complaint of the person whose social media right is allegedly violated by the order of the competent Court or on the issue of the warrant of arrest by the Police.

Section 4 of the Police Act provides for the general duties of the police, as follows:



The police shall be employed for the prevention and detection of crime, the apprehension of offenders, the preservation of law and order, the protection of life and property and the due enforcement of all laws and regulations with which they are directly charged, and shall perform such military duties within or outside Nigeria as may be required of them by, or under the authority of this or any other Act.

**4.2.5 Destruction of goods and properties.** Where the breach on the right of the social media user borders on the usage of some gadgets, goods and other properties, the destruction of such items could be ordered by the law court or the enforcement agency involved.

**4.2.6 Sealing of the Premises:** The premises where the infringement is carried out could be sealed as a deterrent to the illegal operator and others who would like to cause such or similar breach. This is usually carried out by the Police and other law enforcement agencies.

**4.2.7 Withdrawal of license:** License issued to a person or Company for carrying out businesses could be withdrawn by the Government when breach on its usage is dictated. The Nigerian Telecommunication has a right to withdraw license of any internet provider when breach is dictated, also cybercafés are sealed when internet fraud committed in their cafes are established.

## CHAPTER FIVE

### 5.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS

#### 5.1 SUMMARY

In conducting this research, the research has analysed many literatures which comprised of books, periodicals, enabling laws, court cases and institutions which were related to social media, its use and rights. More also domestic laws have been scrutinized to measure their efficacy on the research. Especially, the 1999<sup>62</sup> constitution which guarantees citizen the freedom of expression and to hold opinion without intimidation also goes a long way to make provision on the extent an individual or media house can enjoy the right without infringing on another person's right. When internet users are aware of this provision it helps them to use social media aright.

Social media being a universal plate form where individuals carry out their businesses in areas of commerce, communication, education, entertainment etc. Different laws have been enacted in Nigeria to safe guard the users from abuse and also to encourage the social media users from carrying out their businesses. When a social media user carries the work in social media within its bounds it does not attract sanctions of any kind but where the bounds were over stepped it could lead to a serious consequence. However, proper guidance and monitoring of the users enables them to shun away vices which could be associated with social media.

When part of ones work is cut, copy or pasted, taking the position that did not recognise the creator of the work, the creator has the right to sue for infringement of his right. The copyright<sup>63</sup> law permits the creator of the work the enjoyment of his creation.

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<sup>62</sup> Ibid

In carrying out activities in social media, users have been exposed to people who are far away from them, building trust and mutual love amongst them, the platform could be used at any time of the day and at anywhere. Despite the numerous benefits the users have, their rights over the use of social media has been greatly tampered with, in form of intimidation, harassment, injury, detention etc.

Nigeria like several other developing countries, is facing serious challenges in the exercise of their right in the use of social media, there are no wide coverage of internet access in Nigeria and this affects the rate of use of social media especially for those in rural areas or under-served areas. The service providers believe that when their equipment is sited in rural areas they will not be able to recover the money spent on the project let alone making gains. They also complained about the theft and vandalism of their equipment since there are no adequate security in rural areas. This has gone a long way in depriving the rural dwellers access to the use of social media.

## **5.2 FINDINGS**

The research has critically examined the challenges in exercising legal rights on social media and discovered a number of issues which hinders social media users from exercising their rights in Nigeria.

In Nigeria, there is a growing intimidation and violence against journalists, activists and other social media users for their online activities. Journalists and bloggers have been continually arrested and detained as a result of their online activities.

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<sup>63</sup> CA Cap C28 LFN 2004 S.6 (1) (a) (c)

In March 2018, hate speech bill<sup>64</sup> was proposed by the senate and this bill has been facing a lot of strong criticisms because citizens see it as a way by which government wants to silence online dissent. The bill provided for a death penalty to offenders whose posts caused death to another person which is viewed by the citizens to be very harsh and a way to clamp down on free speech or right of expression at a time when Nigerians are increasingly using online tools on daily basis for various activities.

The continual arrest for online commentary under 2015 cybercrime law has resulted in increasing self-censorship particularly among professional journalists who publish content online.

The 1999 Nigeria constitution guarantees freedom of expression and the press, nevertheless, libel is a criminal offence in Nigeria including online, with the burden of proof resting on the defendant. Print media journalists covering sensitive issues such as official corruption and communal violence are regulatory subject to criminal prosecution.

In the course of the research it has been observed that in as much as there has been serious violations on the express of freedom of expression on social media, no case has been diligently prosecuted and the offender convicted, rather the “person” or “persons” whose right is infringed always resort to arrest and detention of the offender. Most of the time it could be in form of harassment, assault, search and seizure.

The work also found out that online activities requires some level of education before the user can engage in the activities, the major language in internet environment is English and there are technical words which the user has to understand before making any post. Moreover the social media has to know that every post or activity in the social media counts as any

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<sup>64</sup> Hate Speech Bill 2018

violation on the right of others could lead to a serious consequence and should also look out for any infringement on his own right.

The research also found out that despite the right of the social media to use internet at any time, in Nigeria, social media users are easily affected by poor internet access as a result of poor electricity generation and availability. This limits the hours the user works on internet, some users resort to buying of generators and maintaining them but this is usually on the high side there by limiting the usage of internet to only those who could afford the cost.

These with other findings and observations revealed by this research, shows the rights of the social media user and the extent they could be exercised. These rights as highlighted will equip the social media user in carrying out activities on the net without fear of infringements.

### **5.3 RECOMMENDATION**

From the research, it is evident that there are legal rights which are due to a social media user and there are established laws that safe guards these rights. However there are identified challenges which de bars the user from exercising these rights effectively.

In the area of ready access to internet use, the government through the Electricity Distribution Companies which were allotted to the six geopolitical zones in Nigeria should endeavour to provide stable and quality internet services to the citizens both in served and underserved areas so as to ease the challenge of internet fluctuations and unavailability. This has caused untold hardship and frustrations to the internet users.

In resolving the problem above, there should be a synergy between the Nigerian Telecommunication Commission (NCC), Service providers and the Electricity Distribution

Companies. Also a law on the provision of adequate and affordable internet access for Nigerian citizens has to be enacted.

The study recommends that meaningful public education in form of sensitisation, campaign and establishment of affordable cybercafé at the grassroots level must form a critical component of the government agenda so as to enlighten the populace on the “dos and don’ts” of the social media use considering the large number of social media users springing up daily in Nigeria.

The research recommends that the idea of harassing, injuring, intimidating of journalist, bloggers and other social media users by the government officials, wealthy individuals etc, as a result of an allegation of infringement on their rights without due process of law should be stopped. The cybercrime Act, criminal law, 1999 Constitution and other laws have made provision of the penalties. The law enforcement agencies should guide themselves from being used as a tool of intimidation, harassment etc.

The study also recommends that the fight against breaches on the right of the social media user has to involve the public since the public are the internet user and the promoter of the activities in the net, when they know their rights and limitations, internet fraud and other infringements would be reduced to the barest minimum.

The research recommends that our courts should be proactive on social media infringements cases so as to deter infringers from their nefarious act.

The equally research recommends a documentation of both legal and non-legal rights of the social media user so as to make it accessible to the internet users.

#### **5.4 SUGGESTED AREAS FOR FURTHER STUDIES**

In the course of this research, the researcher wish to suggest that other areas a researcher can go into as this research did not cover such areas:

- a. Critical analysis of the domestic and international rights of a social media user.
- b. Enforcement of the breach of social media right in countries other than the infringers country.
- c. Examination of the synergy between the government, Nigerian Telecommunication Commission, Service providers and the social media user in effective service delivery.
- d. The role of enforcement agency on the protection of the social media and the rights of the social media user.

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