

## **Emerging Issues in Online Media and Media Laws in Nigeria**

*D. E. Eshett*

### **ABSTRACT**

*Since 1903 there have been press laws aimed at controlling the press in Nigeria. These press laws have been in existence for over 100 years, but with the emergence of online media, the equilibrium of the media laws have been upset given the peculiarities of the new media. This work therefore seeks to identify the emerging issues in online media and media laws in Nigeria. The issues identified cover registration, regulation, implementation of existing laws with regards to online media, jurisdiction, identification of offenders and responsibility for contents in online media. The study concludes that online media pose new challenges to existing media laws in Nigeria and that the existing media laws in Nigeria were meant to regulate analog media and also incapable of regulating online media. Hence, it recommends the establishment of new legal and regulatory framework for online media to avoid the resort to extra-legal measures by government in dealing with issues related to online media practice.*

**Keywords:** *Online media, media laws, newspaper, social media*

### **INTRODUCTION**

The arrival of mass media in Nigeria in the form of Newspaper in 1859 when Reverend Henry Townsend established *Iwe Irohin* marked the beginning of mass media history in the country (Ekeli 2007). According to Udeze (2011), for about 44 years since the first newspaper was established, there was no press law in place. Situations, however, arose that caused the colonial powers as of then to take actions to check the growing influence of the press (Udeze, 2011). For instance, in October 1867, *Iwe Irohin* was forced to close down following a popular uprising against the Europeans that led to the sacking and burning down of the premises of the newspaper. As a result of the crisis, Reverend Townsend

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*D. E. Eshett is a Lecturer and Head, Department of Mass Communication, Akwa Ibom State Polytechnic, Ikot Osurua, Akwa Ibom State, Nigeria. E-mail: danielevanseshett@gmail.com.*

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was sent back to Britain (Ekeli, 2007). Between 1859 and 1914 when Nigeria was named, there were many newspapers. However, it was the criticisms of the weekly Record and others that is said to have led to the introduction of the first law to check the press (Okpoko, 2010). The law was called and is still known as the Newspaper Ordinance No. 10 of 1903. The law was meant to regulate the publication of newspapers in the then southern protectorate understandably because there was no newspaper in the Northern protectorate as of then (Udeze, 2012). Since 1903, there have been other press laws all aimed at controlling the press in Nigeria. These press laws have been in existence for over 100 years, but with the emergence of the new media, the equilibrium of the media laws seems to have been upset given the peculiarities and nature of the new media. Some issues have arisen regarding online media and media laws in Nigeria. This work therefore seeks to critically examine the emerging issues in online media and media laws in Nigeria.

## **CONCEPTUAL ANALYSIS**

“Emerging issues” analysis is a phrase used for future studies that have not yet been influential or was it important in the past, but that might be influential in the future. Since the issues identified in Environmental Impact Assessment (EIA) are new, one cannot rely on their historicity to predict how they will influence the future. This distinguishes EIA from trend analysis. Trend analysis is used for issues where with historical data that can be used to identify a trend that can then be extrapolated to the future (Wikipedia, 2015). According to the BBC English Dictionary (1992), when something emerges, it comes into existence. Emerging issues in online media and media laws in Nigeria, therefore, are the issues that have arisen in media laws which were not there before the coming of the new media. In other words, issues have come up as a result of online media usage especially in Nigeria. In context therefore, emerging issues comprise the problems and challenges of online media and media law.

### **Online media**

The semantics of online media is very vital at this point since there seems to be very high level of interchangeability in the use with other words such as new media, social media, social network and internet and online media. Online media refers to media published online. In other word, online media refers to content that is presented electronically on websites or servers whereby details are available

to be retrieved through web browsers. Online media is thus a form of electronic communication. From the foregoing, whether the term online is used or new media, the same communication format is implied. Therefore, online media are new media which according to online encyclopedia cited in Asak and Ohiagu (2013) cited in Eshett (2014) are the forms of communicating in the digital world, which includes publishing on CDs, DVDs and most significantly, over the internet. It implies that all users obtains the material via desktop and laptop computers, smart phones, tablets and much more. New methods of communication in the digital world allow smaller groups of people to congregate online and share sell and swap goods and information. It also allows more people to have a voice in their community and in the world in general (Eshett, 2014).

This last definition makes reference to social media while the first definition relates especially to a digital convergence. To Asak and Ohiagu (2013) New media technology is digital technology applied to communication or mass communication. This implies that Internet blogs, news portals and online news; social media like facebook, Youtube, Podcast and Webcast, and even the Short Messaging System (SMS) are all new media. To Amodu (2007) cited in Adedina, Adenyi and Bolaji (2008), the new communication and information communication technologies can be grouped as new media. As noted earlier, the new media which mainly refer to computers, smart phones, simple phones and so on make use of channels or applications combined to really make the new media new.

Most technologies described as “new media” are digital, often having characteristics of being manipulated, networkable, dense, compressible and interactive. Some examples are the internet, websites, computer multimedia, video games, CD-Roms, DVDs and Blue rays. New media does not include television programmes (analog broadcast) feature films, magazine, books, or paper based publications, unless they contain technology that enable digital interactivity. Wikipedia, an online encyclopedia, is an example of combining internet accessible digital text, images and video with web link, creative participation of contributors, and interactive feedback of user and formation of participant community of editors and donors for the benefit of non-community reader. Facebook is an example of social media model, in which most users are also participants.

Oliseh (2011) defines new media as “advancements of old/traditional media such as radio, television, newspaper, and others transformed through technological innovations, digitalization and convergence”. They are also described as technological device or computer enabled communications

technologies used for the acquisition, process and dissemination of information to a heterogeneous audience regardless of time, space and distance. These include the internet, mobile phones, digital satellite technologies and computers among others.

Yarhere (2008) notes that information and communication environment has elements of both the old and the new; the conventional and the sophisticated; the analogue and the digital. The conventional or old media include analogue Amplitude modulation (AM) and Frequency modulation (FM) radio, Very high frequency (VHF) and Ultra high frequency (UHF) television, the print media, video, cinema, and indigenous communication media. The digital or new media cover mobile phones, personal computer, the internet, email and imaging technology, digital audio video, and digital broadcast, even cable television. Nwabueze, C. D. and Nwabueze C. (2008) see the new communication technologies or new media as all forms of modern technologies which facilitate the gathering, processing, storage and retrieval of communication content or messages in new ways. Okpoko (2010) points out that the internet has become a vast growing global network that people use to converse, debate, meet, teach, learn, buy and sell, and share virtually horizontal communication opening up new, nontraditional communication channels.

## **MEDIA LAWS**

Udeze (2012) and Ufuophu-Biri (2007) have catalogue media laws in Nigeria from colonial era to the present democratic regime. The compendium of media laws as put together by Ufuophu-Biri (2007) are as follows:

### ***Press control under the colonial administration (1903 – September 30, 1960).***

1903 Newspaper Ordinance

The Basic Provision and Interpretation of Seduction Offence Ordinance of 1909, 1940 and 1942

The Newspaper Ordinance of 1917

The Printing Regulation of 1933

Newspaper Act No 129 No129 of 1958 and two others

### ***Press control in the first Republic (October to January 14, 1966)***

Sedition Meeting Acts No.48 of 1962

Defamation Act No. 66 of 1961

Defamation (Amendment) Act No. 1 of 1963

Official Secrets Act No 29 of 1962

Official Secrets (Amendment) Act No 39 of 1962  
Cinematography Act No 7 of 1963  
The Constitution of the Federation: Adaptation of laws (Miscellaneous Power)  
Order No. 112 of 1964  
News (Amendment Act) No. v

***The First Military era (January 15, 1966 – September 30, 1979)***

The following press laws were made during the period: the Circulation of Newspaper Decree No. 2 of 1966  
Defamation and Offensive Publication Decree No 44 of 1966  
The Sunday Star and Imole Owuro (Prohibition) Decree No 17 of 1968  
The Printer and Publishers of Sunday Star and Imole Owuru (Declaration as unlawful society) Decree No 19 of 1968  
Public officers (Protection against false accusation) Decree No 11 of 1979  
Trade Dispute Decree No7 of 1978  
Newspaper Prohibition from Circulation (validation) Decree No 11 of 1978  
Armed forces and police (Special Powers) Decree No 24 of 1996  
The Press Council Decree No 1 of 1978  
The Daily Times Decree of 1978

***General Buhari's Regime (January1, 1983 – August 27, 1985)***

This period witnessed the promulgation of the two most vicious draconian and unpopular press laws so far in the country. There were:  
Decree No 2 of 1984  
Public Officers (protection against false Accusation) Decree No. 4 of 1984

***The Babangida Era (August 27, 1985 – August 1999)***

The Regime promulgated the following laws, which affected the mass media:  
Newswatch (Proscription and prohibition from circulation) Decree No 6 of 1987  
The Nigerian Press Council Decree No 6 of 1988  
Concord Group of Newspapers Publication (Proscription and prohibition from circulation) Decree no 14 of 1992  
The Treason and Treasonable Offences Decree No 29 of 1993  
The Offensive Publication (Proscription Decree No 35 of 1993)  
The Newspaper Registration Decree No43 of 1993  
The Newspaper proscription from Publication Decree No 48 of 1993  
National Broadcasting Commission Decree No. 38 of 1992  
National Communication Commission Decree No. 75, Vol.2 of 1992

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***The Abacha Regime (November 17, 1993-1998)***

This regime, though very repressive against the press did not promulgate any press law, it carried out its oppressive acts against the Press arbitrarily and lawlessly. The succeeding military regime of General Abdulsalami Abubakar did not so make any press law.

The succeeding regime of Chief Olusegun Obasanjo did not make press law up to 2007. But there have already been cases of infringement such as the temporary closure of AIT and Ray Power over their coverage of the Beliview plane crash at Lisa village in Ogun State on 22nd October, 2005 (Ufuophu-Biri, 2007).

**THEORETICAL FRAMEWORK**

Three theories were considered relevant to this work. These theories:

***Technological Determinism:*** This theory was formulated by Marshal McLuhan in 1964. The basic premise of this theory is that media bring new perceptual habits while their technologies create new environment. The theory states that technology, especially, the media, decisively shape how individuals think, feel and act and how societies organize themselves and operate. Very importantly, the theory also states that the medium determines the content of communication. The theory postulates that the medium has the power to manipulate our perception of the world, as mass communication has become the dominate form of interaction (Asemah, 2011). Teremayne (1997) cited in Anaeto, Onabajo Osifeso (2008) submits that McLuthan’s central notion that the message can be applied to the internet or to particular forms of the World Wide Web, such as online news sites”. Also applicable to today’s mass media environment and reality is his idea of the global village in which electronic communication would break down barriers such as time and distance encountered with traditional mass media.

***Mediamorphosis:*** This theory was propounded by Roger Filder, in 1997. Mediamorphosis of communication media is usually brought about by the complex interplay of perceived needs, competitive and political pressures, and social technological innovations. The major assumptions of this theory development today is the convergence of different media industries and digital technology to produce multimedia. Additionally, new media technology has changed the flow of communication from a linear to a three dimensional form of

information. Thus, mass media grows from one communication to incorporate interactive communication, and interactively, according to Hoggat (1999) allows feedback to enter the system at every stage of the communication process, from acquiring and processing to storing and distributing (Essiet 2014).

**Democratic Participant:** The theory, propounded by Dennis McQuail in 1987 as part of the normative theories, embraces the principles of democratization of the media for the purpose of accessibility by all and sundry (Asemah, 2011). The internet is the major element here in view of its ability to cross national boundaries, to allow two way interactivity, to sort information at incredibly high speeds, and to make massive amounts of information available. This democratization is not just in terms of receiving information. It is now possible for anyone to become a media practitioner and to start by passing some of the standard media outlets. Anyone with fairly basic computer skill can set up their own website (O'shaghnessy and Stadler, 2005).

### **Emerging Issues in Online Media and Media Laws in Nigeria**

The flexible participatory and ubiquitous feature of online media that shrinks the world has made the new media a potent platform for human communication in the twenty first century with myriad benefits (Ojo, 2014). The ubiquitous and global nature of the online media has brought about some perceived challenges to the existing media laws in Nigeria. These laws were meant to control and regulate the media since the colonial era. When Nigeria gained independence in 1960 these laws were retained and even more stringent ones promulgated by the military regimes. Surprisingly, the democratic regimes have not repealed or abolished those laws that were handed down from the colonial and military governments in the country. However, the information and communication technologies (ICTs) have brought the new and online media with far reaching implications for the existing media laws in Nigeria. There are some pertinent issues that have emerged regarding the media in Nigeria due to the existence of online media. The emerging issues in online media and media laws in Nigeria can best be examined under different subsets of the laws as follows:

#### ***Newspaper Registration, Printing and Circulation; Broadcasting Regulation***

Under this subset are the Newspaper Ordinances of 1903 and 1917; The Printing Regulation of 1993; Newspaper Act No 129 of 1958; Circulation of Newspaper

Decree Prohibition from circulation Decree No. 17 of 1967. The constitution of the Federation: Adaptation of laws (Miscellaneous Power) order No. 112 of 1964; News (Amendment Act) No. v; The Press Council Decree No 1 of 1978; National Broadcasting Commission Decree No. 38 of 1992 and National Communication Commission Decree No.7, Vol. 2 of 1992. All these laws as noted by Udeze (2012) with their vigorous demands are meant to make registration and operation of print and broadcast media an uphill task.

#### **Issue 1:**

##### **Are online media registered according to these laws?**

It appears that these laws are obsolete with regards to online media. Today, newspapers, magazines, radio and television exist online without the complimenting physical version. Whereas these laws were meant to regulate the media in their physical forms with known offices address and known proprietors, online media do not have known physical addresses and may not even be operated by known persons

#### **Issue 2**

##### **Are online media regulated by these laws?**

Online newspapers, blogs websites, televisions and radios do not obtain any license or get registered before they go into operation. Today, anybody with mobile devices can publish a newspaper, magazine, or broadcast to the whole world. Who regulates online media in Nigeria? What laws do the regulators rely on?

#### **Media Performance Control**

Under this subset are the laws of sedition, libel, obscenity and indecent publication and official secret Act No. 29 of 1962. Public officers (Perception against false accusation) Decree No. 111 of 1976; No. 4 of 1984.

#### **Issues 3:**

Are these media laws actionable or implementable against online media?

#### **Issues 4:**

Considering that online media are global and ubiquitous in nature and in most cases no physical presence, do Nigerian courts have jurisdiction to try cases involving online media. Does any country have the jurisdiction to hear cases involving online media?



**Issue 5:**

In cases where the online publishers or broadcaster's identity is not known, how and where can the presumed offender be charged to and arraigned in court?

**Issues 6:**

Where does publishing occur considering the global nature of the internet?

**Issues 7**

Who is responsible for the content on a site given the user generated content feature of some sites?

Writing on media and law in Nigeria, Gadzama (2014) submits:

*We have in over 100 years of the media in Nigeria promulgated and enacted several decrees and Acts with a view to regulating the sector at one point or the other. To that end, several laws have been put by successive governments, to keep the media in check. While this may sound oppressive, one needs to bear in mind the fact that without laws to its operations, the media would be practically impossible to control and we would then have on our hands, a problem bigger than any we have ever faced. Imagine a country where you could broadcast or print anything without checks; ethnic write-ups unfettered extremist's religious teachings, inviting speeches, unsubstantiated rumours, sensitive classified information and a host of others. Such a country would stumble from one crisis to another until it eventually goes off the rail and spin inexorably into orbit. To drive the message closer home, imagine a situation where a privately owned newspaper and perhaps one or two privately owned online media outfit report that there has been a bloody coup in Nigeria. Immediately there would be panic and the news, even if false, would spread really fast due to the infinite reach of the media. In event that the government is unable to respond on time to these allegation, Nigerians would begin to believe it and gradually, other countries. There is no need telling what that could lead to for the country politically and economically.*

In Nigeria, the scenario depicted above by Gadzama is playing out extensively. There is very high level of freedom enjoyed by Nigerians and citizen

journalists in criticizing succeeding administration. Online media with new possibilities appear to have broken the grip of government on the media. As further noted by Okafor, online media reliance on information and communication technologies (ICT) and the emergence of new possibilities and potentials confront government with a new paradigm, as the media and the public sphere move beyond government control. This new reality is echoed in the words of a former director of public prosecution in Britain, Lord MacDonald quoted in Guardian of Tuesday 17th June, 2014 that it is fatuous to pretend that elderly laws can cope with modern communications. In contemporary Nigeria, there seems to be a legal vacuum with regard to online media. Morely (1992) cited in Udoakah, Senam and Udoh (2014) observes long ago that the degree of control of the media by the State or society depends on the feasibility of applying such control. Pavlik and McIntosh (2011) in discussing content rights and responsibilities note that with the User Generated Content (UGC) features of some internet sites, submit that it is virtually impossible for a company to police all the content uploaded to the internet, thereby raising the question of who is responsible for the content on a site when someone is defamed in a user comment as opposed to something the company itself wrote. In their view, the internet has raised a host of legal and regulatory issues regarding media, and the legal system lags generally far behind in dealing with them. The global nature of the internet also raises question on which law should be followed if content that is offensive or illegal in one country can be viewed online. Explicating the situation, Pavlik and McIntosh (2011) state thus:

*With analog media, the answer was obvious – publishing occurred in the country where the printing press was located. A book might be legally printed in one country but banned in another; thus if a copy was smuggled into the country where it was banned, the person caught with the printer. But in the internet the question of where something is published is not all clear. A person may create some banned content in his country for his website, which is hosted by a company in another country, where the content is not banned. Someone else may come across the content in a third country, where the material is considered harmful, sacrilegious or defamatory. Several issues are raised in this scenario, including what country's law will be used if a lawsuit is brought and what constitutes libel, since it differs from country to country.*

With globalization, media organisations need to keep up with the laws of many

countries and fast changing technology (Rodman, 2006). Interestingly, the United States Congress in 1996 passed the communications Decoy Act (CDA), which protects online service providers from liability for publication of defamation material. The law states: “No provider or user of and interactive computer service shall be treated as the publisher or speaker of any information provided by another information provider” (Itule and Anderson 2003). The issues raised in this work are very pertinent as far as media performance and regulation are concerned in Nigeria and globally.

### **CONCLUSION AND RECOMMENDATIONS**

Based on the discussion of this work, it is quite obvious that online media pose new challenges to existing media laws in Nigeria and indeed the entire world. The media laws in Nigeria have become obsolete and incapable of addressing the various issues that have arisen due to the peculiarities of and nature of online media. The existing media laws in Nigeria were meant to regulate analog media and are incapable of regulating the media in the digital form.

1. The existing media laws in Nigeria are analog and require a migration to the digital paradigm, the migration is necessary for effective regulation of the press to avoid anarchy in the society.
2. New legal and regulatory framework should be established for online media.
3. Capacity building should be put in place for Nigerian journalists in the area of online media practice
4. The National Assembly should enact related bills to strengthen media practice in the digital age.
5. To avoid the resort to extra-legal measures, government should as a matter of urgency, set up a committee to review existing media laws in Nigeria and to address issues raised in online media practice.

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