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Encyclopaedia of Mass
Media and Communication**

Principles and Practices

Volume 2



Edited by

Oshiotse A. Okwilagwe

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Legal Issues in Writing and Publishing Mass Communication and Communication Textbooks in Nigeria

Introduction

The need for communication for the sustenance of interpersonal relationship and human existence was felt right from the beginning of life. According to Yakubu (1999) '... the limit of human power and understanding led to the idea of communication as a method of expressing one's feelings and grappling with the needs of interpersonal relationships'. The idea of communication has since grown by leaps and bounds both in speech and writing. Indeed, the art of writing has greatly influenced the tremendous development witnessed in the early period in the history of communication and given impetus to what was later regarded as mass communication.

Beyond the rudimentary communication process, the publishing industry today ensures that ideas expressed in books and other permanent formats are put across to readers around the world. The publishing environment becomes complex as a result of several factors which include social, economical and technological development. Of particular interest is the legal environment in which publishing is

undertaken. Every human endeavour is governed by law and publishing is not an exception to this. Writing and publishing textbooks whether in mass communication and communication studies or in any other field are activities that come under the overbearing influence of the law.

Constitutional Freedom of Expression

Every civilised country gives itself a constitution which grants the citizenry certain fundamental rights, including the right to freedom of expression. Section 39(1) of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter called the Constitution) states that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. Similarly, Article 19 of the Universal Declaration of Human Rights states that everyone has the right of freedom of opinion and expression. The right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

It is, therefore, the constitutional right of every person in Nigeria to freely express himself, hold opinions and receive and impart knowledge and information. This constitutional right can be exercised through several media, including writing. Therefore, writing and publishing textbooks are activities that are in consonance with the constitutionally guaranteed right of the author; book being, according to Okwilagwe (2001), a medium of mass communication.

In *OKOGIE VS ATTORNEY-GENERAL, LAGOS STATE*, a similar provision in the Constitution of the Federal Republic of Nigeria 1979 was pronounced upon, when the court held that the abolition of private primary schools amounted to a violation of the right of the proprietors of the schools to freedom of expression.

However, the right to freedom of expression and press under the Constitution is not absolute, as derogation is permitted in appropriate cases. For instance, Section 39(3) of the Constitution states that

'nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society for the purpose of preventing the disclosure of information received in confidence ...' In other words, legislations that are reasonably justifiable in a democratic society can validly be enacted to provide for derogation from this fundamental right. Besides, Section 45 of the Constitution provides generally for restriction on and derogation from fundamental rights. Specifically, Section 45 (1) of the Constitution states as follows:

Nothing in Sections 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society :

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

There can, therefore, be derogation from the right of freedom of expression on account of defence, public safety, public order, public morality or public health. The need to protect the rights and freedom of other persons is also the basis for validating an enactment that permits derogation from fundamental rights enshrined in the Constitution.

Invasion of the privacy of an individual through public disclosure of private and embarrassing fact or by portraying an individual in false light constitutes an infringement of the other person's right (Bittner, 1989).

Defamation

While the right to write and publish is assured under the laws, the right must not be exercised in such a way as to injure other people's feelings and lower their reputation. Defamatory statement contained in publications may, therefore, be the basis of a lawsuit against the author and the publisher.

Rogers (1984) defines defamation as 'the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right-thinking members of society generally

or tends to make them shun or avoid him'. In Nigeria, defamation has been given judicial exposition. Towing the line of previous cases decided on the same subject matter, the Court of Appeal in the case of AYENI VS ADESINA defined defamation as:

... a statement which is published and concerning a person and calculated to lower him in the estimation of right-thinking person or cause him to be shunned or avoided, 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 is of two categories namely; slander and libel. Slander consists of defamatory statements conveyed in spoken words or gestures, while libel is one that is in permanent form, such as writing. Defamatory statement in a published book is, therefore, a libel, which is a significant issue in mass media law (Pember & Calvert, 2005/2006). The distinction between libel and slander also stems from the fact that, while libel is actionable *per se* i.e. without proof of special damage, slander is not, as it requires proof of special damage generally to succeed. However, there are exceptional cases in which slander is actionable *per se*. These include imputation of a criminal offence, imputation of disease, imputation of unchastity and imputation of unfitness or incompetence.

The essential ingredients of defamation are that: the words complained of must be defamatory and must refer to the aggrieved person and must be published. Whether or not a statement is defamatory is a question of fact and the test to apply is that of an ordinary reasonable man and not that of a naive or over-sensitive person. Vulgar abuse may not amount to defamation, if the words spoken are generally understood as mere vituperation by those who heard them. This position is however, peculiar to slander. In the case of written abuse, the law assumes that the author must have had time for reflection before writing. Besides, the readers may not have the benefit of the dispute that informed the writing.

A defamatory statement must refer to the plaintiff. If plaintiff is not mentioned by name, it must be understood to be referring to no other person than the plaintiff. Generally, defamatory statement published of a class of persons or group is not actionable by an individual member of the class except reference is to a limited class, and the statement can be said to refer to individual members.

As for publication, this element must be strictly proved. In the case of books and other similar publications, the Court of Appeal (per Mshelia, J.C. A) held in *AYENI VS ADESINA* that:

A libel in any such documents like a book, a magazine or a postcard (posted) is therefore prima facie, evidence of publication by the proprietor, editor, printer, and publisher and any person who sells or distributes it.

Similarly, the court has held in *ADENUGA VS ILESANMI PRESS* that 'a work is deemed under Section 19(2) (a) of the [Copyright] Act to have been published if copies of it have been made available in a manner sufficient to render the work accessible to the public'.

In fact, a cause of action in libel arises when the libel is published (per Muhammed, J.S.C in *DAIRO VS UBN PLC*). The Criminal Code in Sections 375 and 376 makes the publication of a defamatory matter an offence, for which the publisher may be liable to terms of imprisonment, if found guilty. However, as is the case in court, the Criminal Code stipulates defences for criminal defamation and these include absolute and conditional privilege.

It is, therefore, important that authors and publishers of textbooks should be wary of defamatory statements in their publications to avoid the risk of lawsuits.

Defences

It should be noted, however, that there are defences available to a defendant in a case of defamation. These include justification, fair comment and privilege.

a. Justification: since defamation is an injury to a man's reputation, the law presumes that the defamatory statement complained of is false. If, however, the defendant can prove that the statement is true and the plaintiff does not possess the reputation he has laid claim to, then, his case is bound to fail.

b. Fair Comment: it is also a good defence that the statement complained of is a fair comment on a matter that is of public interest. As observed by Rogers (1984), 'honest criticism ought to be, and is, recognised in any civilised system of law as indispensable to the efficient working of any public institution or office, and as salutary for private persons who make themselves or their work the object of public interest.'

A defence of fair comment is, however, subject to the following qualifications:

- i. that the matter commented on must be of public interest;
- ii. that the comment is an expression of opinion and not an assertion of fact;
- iii. that the comment is fair; and
- iv. that the comment is not malicious.

c. Privilege: the defence of privilege is founded on the philosophy that the 'law recognises that there are other occasions on which freedom of communication without fear of an action for defamation is more important than the protection of a person's reputation' (Rogers, 1984).

Privilege can be absolute or qualified. Absolute privilege covers communication made in judicial or parliamentary proceedings. It is a complete defence which avails the defendant, no matter how outrageous the statement or how malicious the motive of the defendant might be. Qualified privilege relates to fair and accurate report of parliamentary and judicial proceedings, which members of the public are entitled to attend. The defendant must have acted honestly and without malice. Malice punctures the defence of fair comment.

Sedition

In writing and publishing textbooks on mass communication or any subject matter, authors and publishers must be careful to avoid seditious publication. Sections 50 to 52 of the Criminal Code deals with sedition. Section 51(1) in particular defines acts that constitute an offence of sedition and stipulates penalty therefore. Section 50 (1) defines seditious publication to mean a publication having seditious intention.

Although, the provisions of the Criminal Code relating to sedition are sparingly invoked, particularly in a democratic setting, it is nevertheless better for authors and publishers to be on the side of caution and avoid any acts that may run foul of the law.

Copyright

One other important area of law, critical to writing and publishing is copyright. Just as authors/publishers would not want their copyright infringed upon, they too must be wary of and respect other people's copyright ownership.

Copyright has been defined simply as 'the right to literary property as recognised and sanctioned by positive law' (Kolawole, 2002). Right to copyright is incorporeal and gives the author the right to exclude all other persons (per Karibi-Whyte, JSC in PLATEAU PUBLISHING VS ADOPHY).

Copyright is a subset of intellectual property law. In Nigeria, copyright is governed by the Copyright Act, Cap C 28 Laws of the Federation of Nigeria 2004 (hereinafter referred to as the Act). The law was first promulgated as Decree No. 61 of 1970 (Okwilagwe, 2001) and later Decree No. 47 of 1988 before it was incorporated in the Laws of the Federation of Nigeria 1990 and later, 2004.

Section 1(1) of the Act enumerates works that are eligible for copyright. These are literary works, musical works and artistic works. Others are cinematographic films, sound recordings and broadcasts. The focus of this paper, however, is literary work. The term 'literary work' has been defined in the Act to include textbooks. According to Section 1 (2) of the Act, a literary work 'shall not be eligible for copyright unless sufficient effort has been expended on making it, as to give it an original character and (it) has been fixed in any definite medium of expression, now known or later to be developed from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.'

Copyright can be conferred on an eligible work:

- i. by virtue of nationality or domicile;
- ii. by reference to country of origin; or
- iii. by reference to international agreements.

In the case of nationality or domicile, the author or any of the authors (in the case of a work of joint authorship) must either be an individual who is a citizen of, or is domiciled in Nigeria or a corporate body incorporated by or under the laws of Nigeria. As for conferment of copyright by reference to country of origin, the literary work must have been published in Nigeria.

A work enjoys copyright by reference to international agreement under Section 5 (1) of the Act, if on the date of its first publication, at least one of the authors is a citizen of or domiciled in or a body corporate established under the laws of a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party. The privilege is also conferred on a work first published in

such a country or by the United Nations or any of its specialised agencies or by the Organisation of African Unity (now African Union) or by the Economic Community of West African States.

Section 6(1) of the Act states the general nature of copyright in literary work as the exclusive right to control in Nigeria, subject to the exceptions in the second schedule of the Act, certain acts including the reproduction or publication of the work in any material form. (See also *ADENUGA VS ILESANMI PRESS* (1991) 5NWLR (Part 189) 82 per Adio, J.C.A at page 97).

Copyright Ownership

According to Section 10 of the Act, copyright shall vest initially in the author of the work eligible for copyright. Where a work is commissioned by a person who is not the author's employer under a contract of service or apprenticeship or the work not being so commissioned, is made in the course of the author's employment, the copyright shall belong in the first instance to the author except there is a written contract stipulating otherwise.

The position is, however, different in the case of a literary work in a newspaper, magazine or similar periodical if the author is under a contract of service or apprenticeship. The proprietor, for the purpose of publication in such newspaper, magazine or similar periodical, shall be the first owner of copyright in the publication of the work unless there is an agreement to the contrary.

Terms of Copyright

The terms of copyright are as contained in the first schedule to the Act. For literary works, copyright exists for 70 years after the end of the year in which the author dies. If a government or a corporate body is the copyright owner, the duration of copyright is 70 years calculated from the end of the year in which the work was first published.

Assignment and Licence

Section 11(1) of the Act states that copyright is transmissible by assignment, by testamentary disposition or by operation of law as a movable property, subject to some other provisions of the section. An assignment can be partial in terms of the copyright acts or limited territorially in scope. The Act requires that an assignment must be in writing. In *ADENUGA VS ILESANMI PRESS*, the Court of Appeal emphasised the need for a written agreement as the basis for authority to publish a book.

Licence can be exclusive or non-exclusive. Like assignment, an exclusive licence must be in writing, while non-exclusive licence, according to Section 11 (4) of the Act, may be written or oral, or may be inferred from conduct. The Nigerian Copyright Commission is empowered in Section 39 of the Act to grant compulsory licences in line with the provisions of the Act. In exercise of this power, the Commission must constitute a Copyright Licensing Panel to consider any application made to the Commission.

Copyright Infringement

Section 15 of the Act enumerates those acts that will constitute an infringement of copyright if done without the licence or authorisation of the copyright owner. They include doing or causing to be done, any act controlled by copyright, importing or causing to be imported into Nigeria any copy of a work which, if made in Nigeria, would constitute an infringing copy, exhibiting in public any article in respect of which copyright is infringed and distributing by way of trade any article in respect of which copyright is infringed.

The Act makes provisions for civil and criminal liability for copyright infringement. For instance, certain acts of infringement and omission constitute critical offences under sections 20 and 23 of the Act. The Act permits civil and criminal actions to be taken simultaneously in respect of the same act of infringement.

Acknowledgments

The issue of acknowledgement is equally of a fundamental nature in writing and publishing textbooks. It is traditional that an author obtains permission to use a substantial part of a work that enjoys copyright protection. The same goes for artistic works being used as illustrations. It even amounts to intellectual fraud for an author to fail to acknowledge his source. Okwilagwe (2001) citing Butcher (1983) states the conventions that must be observed in acknowledgment. These include placing the acknowledgement in the place required by the copyright holder, having a complete list in the preliminary pages or at the end of the book usually in alphabetical order and, in the case of illustration, including the acknowledgement at the end of the relevant items in the list of illustrations. The author must note and apply the appropriate convention.

Publishing Agreement

A publishing agreement between the author and the publisher is important in book publishing. It constitutes a contract between the parties, which the law will recognise and enforce. The rights and obligations of the parties are defined in the agreement and any party who alleges an infringement or breach, can approach the court for redress. While a contract can be express or implied, written or oral, a publishing agreement should necessarily be express and in writing. The need for a written agreement in book publishing was emphasised in *ADENUGA VS ILESANMI PRESS*.

There is no hard and fast rule about the contents of a publishing agreement. Details may vary depending on the intention of the parties and the circumstances of the case. However, the main features of a publishing agreement between an author and a publisher include, according to Okwilagwe (2001), terms relating to manuscript, responsibility for seeking permission for illustrations, author's correction, responsibility for publishing, copyright ownership, royalty, tax, statement of sales, free copies of work, revision of work and reversion of rights.

Conclusion

Writing and publishing of textbooks, like any other activity are conditioned by the legal environment in which they are carried out. Just as these activities affect the society, the society and the law wield great influence on the manner in which they are carried out. There are specific legislations, which regulate the activities and whose provisions, authors and publishers must be conversant with. There are also common law principles, which define the relationship between the authors/publishers and the rest of the society. The relevant provisions and principles of the law must be respected in the interest of peace and order in the society.

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References

- Adenuga VS Ilesanmi Press (1991). 5 NWLR (Part 189) 82. Ayeni VS Adesina (2007) All F.W.L.R (Part 370) 1451.
- Bittner, J. R. (1989). *Mass Communication: An Introduction*. (5th Edition) New Jersey: Prentice Hall Englewood Cliffs.
- Constitution of the Federal Republic of Nigeria, 1999. Copyright Act, Cap C. 28, Laws of the Federation of Nigeria 2004.
- Dairo V. UBN PIC (2007). All FWLR (Part 392) 1846.
- Kolawole, S. (2002). *Legal Aspects of Publishing*. The Publisher, Vol. 9, No.1, pp. 27-32.
- Okogie VS Attorney-General, Lagos State (1980). F.N.R. 445.
- Okwilagwe, O. A. (2001). *Book Publishing in Nigeria*. Ibadan: Stirling-Horden Publishers Ltd.
- Pember & Calver (2005/2006). *Mass Media Law*. New York: McGraw Hill Companies Inc.
- Plateau Publishing VS Adophy (1986). 4NWLR (Part 34) 205.
- Rogers, W.V.H. (1984). *Winfeild and Jolawicz on Tort* (Twelfth Edition). London: Sweet & Maxwell.
- Yakubu, J.A.(1999). *Press Law in Nigeria*. Ibadan: Demyaxs Law Books.

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