

Legal and Ethical Issues Associated with Publishing

By

Gideon Adesina BABALOLA PhD

Abdulganiy Okanla AHMED PhD

1. Introduction

Publishing put succinctly is the process of production and dissemination of print and non-print versions of books and periodicals, music or information – the activity of making information available to the general public. Publishing includes the stages of the development, acquisition, editing, graphic design; production – printing (and its electronic equivalents); and marketing and distribution of serials, books, literacy works, musical works, software and other works dealing with information; including the electronic media. The information that would be made available to the public should be such that are provided within the confines of the law and which are at the same time not offensive to the norms of the profession and society. Publishing covers a variety of subject ranging from education, health, politics, sports, commerce and others (Meyile, 2009).

Although the constitution makes provision for the right to freedom of expression and press, the law places restriction on what can be made available to the public at what time. Life, civilisation, democracy, law and order are all about rights and duties, and the press is not an exception. The press, therefore, must discharge its responsibilities to the nation and society with a great sense of purpose and responsibility (Melami, 2009). Therefore, freedom of information or press freedom must be carried out

with all underpinning professional ethics that are not abhorring to the societal norms and cultural values. In other words, publishers must strive to abide by all known professional ethics while discharging their responsibilities. Publishing agreements must be religiously followed.

Any publication that contains offensive matters which include: defamation, contempt, disclosure of official secrets, violation of copyright, indecency and obscenity, plagiarism, piracy and any other matters that could be regarded as illegal and which could give rise to civil and criminal action must be censored, jettisoned and avoided as much as possible. This chapter will be discussed under the following sub-topics: publishing agreement/contract; legal concepts relating to publishing - libel/slander (defamation), contempt, threat to security (sedition), disclosure of official secrets etc; International Standard Number requirements (ISBN and ISSN); and legal deposits requirements.

2. Publishing Agreement/Contract

Agreement/Contract law exists to make sure that people keep their promises and that if they do not, the law will enforce it upon them. Agreement/contract is made up of a promise of one person to do a certain thing in exchange for a promise from another person to do another thing. A publisher will definitely make contracts/agreements with printers, authors and distributors. For example, an author's agreement needs to state what rights are being acquired from the author, the territories, languages, electronic rights, rights to merchandising etcetera. It might be necessary for the author to provide the publisher with the appropriate third party permission for all quotes and other such materials. The distributor agreement needs to state what rights the publisher is granting to the distributor. The length of the agreement should be stated without ambiguity. It is advisable for publishers to seek the assistance of legal representatives for all contracts.

3. Legal Concepts Relating to Publishing

Libel/Slander/Defamation

Libel is the legal term for a written defamatory statement. Libel is the publication of a false statement which injures a person's business or

personal reputation. To publish in print (including pictures), writing or broadcast through radio, television or film, a false story about another person which will do harm to that person or his/her reputation, by tending to bring the target into ridicule, hatred, scorn or contempt of others. While it is sometimes said that the person making the libellous statement must have been intentional and malicious, actually it needed only be obvious that the statement would do harm and is untrue. Libel per se involves statements so vicious that malice is assumed and does not require a proof of intent to get an award of general damages. In order to be libellous, a statement must meet the following conditions:

- There must be some negligence on the part of the writer
- It must be defamatory (false and injurious to the plaintiff's reputation)
- It must be published (distributed to someone other than the plaintiff and defendant)
- It is not privilege communication
- The plaintiff must be identifiable to the reader (Coad, 2003, Okwilagwe, 2001).

Slander is an oral defamation in which someone tells one or more persons a false story about another person with the intention to harm or destroy the reputation of the person defamed. Some statements such as an untrue accusation of having committed a crime, having a loathsome disease, or being unable to perform one's occupation are treated as slander per se since the harm and malice are obvious, and therefore usually result in general and even punitive damage recovery by the person harmed. Collectively known as defamation, libel and slander are civil wrongs that harm a reputation; decrease respect, regard or confidence; or induce disparaging, hostile, or disagreeable opinions or feelings against an individual or entity. The injury to one's good name or reputation is affected through written or spoken words or visual images. The laws governing those torts are identical. The most crucial difference between the two offences is that whereas libel exists in a permanent form (such as written words, photographs), slander exists in a transient form – the most obvious example being the spoken word.

Defamation is the act of harming the reputation of another by making a false statement to another person. Defamation may be a criminal or civil charge. It encompasses both written statements known as libel and spoken statements called slander. Generally speaking, there are four elements that the plaintiff is required to prove in a defamation lawsuit, whether for libel (a defamatory written statement, for example in a newspaper or other publication) or slander (a defamatory spoken statement). These are as follows:

- The statement which must be about another person must be false.
- The statement must be published to a third party, who cannot be the person who is being defamed. Publishing in this context does not mean that it must be printed, but purely that the statement has to be made available to someone other than the person about whom the statement was made.
- If the nature of the statement is of public concern the person who has published it must be at least liable in negligence.
- The person about whom the defamatory statement is made must be damaged by the statement. It is possible to establish that the plaintiff suffered "mental anguish" as opposed to 'damage'.

Examples of defamatory statements are virtually limitless and may include any of the following:

- A communication that suggests that the plaintiff was involved in a serious crime involving moral turpitude or a felony.
- A communication that exposes a plaintiff to ridicule
- A communication that reflects negatively on the plaintiff's character, morality or integrity.
- A communication that impairs the plaintiff's financial wellbeing.
- A communication that suggests that the plaintiff suffers from a physical or mental defect that would cause others to refrain from associating with the plaintiff.

Contempt

The law of contempt by publication is based on the need to protect the jury from finding out information that they should take cognisance of when deciding on their verdict. However, the law should only do this as much as it needs to protect a fair trial and it should not go beyond what is needed to protect that trial. There are two ways of committing contempt by publication. One is known as "Strict liability" contempt, and is covered by the contempt of court Act 1981 of Scotland. This contempt is committed when a publication occurs when a case is "active" and that publication creates a substantial risk of serious prejudice or impediment to that case. The contempt occurs even if the publisher did not know that his risk would be created (that is the publisher was not intending to prejudice the case). The other form of contempt by publication is covered by the common law (that is, judge-made law). Under this law, it is contempt to publish information with deliberate aim of impeding or prejudicing a case even if the case is not active. Contempt by publication under the contempt of court Act 1981 of Scotland can be committed only if the case which appears in or is related to the publication is active at the time of publication. There is a defence to contempt known as "innocent publication". This means that if the publisher does not know or suspect that the case is active, he/she does not commit contempt. It is important to know whether a case is active or not. For strict liability contempt under the contempt of court Act 1981, publication is forbidden where a case is active and the publication creates a substantial risk that the course of justice will be seriously impeded or prejudiced in a particular case. The key point is that the risk must be substantial and the prejudice or impediment must be serious.

Threat to Security (Sedition)

Sedition is a written document, a statement or an action that encourages somebody else to go against the laws of his/her government. To pre-empt sedition, the main or fundamental measure to be observed by any government is censorship. Censorship is the official government suppression of any public expression that a governing authority believes to threaten its power or the accepted social and moral order. Similarly, sedition is an offence of uttering any statement or publishing anything that brings government into hatred or contempt, raises discontent or

disaffection amongst the citizens; or that excites or incites the citizens to rise against the government. To establish what constitutes sedition the following questions must be asked and answered:

- Does the publication bring the government or her officials into hatred or contempt?
- Does the publication bring the government and constitution into hatred or contempt?
- Does the publication bring either House of Representatives or the administration of justice into hatred or contempt?
- Does the publication excite citizens to attempt otherwise by lawful means, the alteration of any matter in the state established by law?
- Does the publication raise, disconnect or disaffection in the citizens? And
- Does the publication promote feeling of ill-will and hostility between different classes?

The offence of sedition tends to limit the rights of individual to freedom of expressions and the press as provided by the constitution. A publisher therefore, must exercise his freedom of expression within the limits of the law to avoid the grave danger of sedition.

Disclosure of Official Secrets

Official secrets can be referred to as any information deemed sensitive to national security interests. Official secrets can also be referred to as official information or any information that is considered confidential to any organization's interest. All routine public sector business operations and services should be treated as official; some of which could have damaging consequences if lost, stolen or published in the media. They include:

- The day to day business of government, service delivery and public finances
- Routine international relations and diplomatic activities
- Public safety, criminal justice and enforcement activities.
- Many aspects of defence, security and resilience.

- Commercial interest including information provided in confidence and intellectual property.

Most sensitive information requiring the highest levels of protection from the most serious threats are referred to as top secret. Everyone who works with government (including staff, contractors and service providers) has a duty of confidentiality and a responsibility to safeguard any information or data that they access, irrespective of whether it is marked or not, and must be provided with appropriate training. Accidental or deliberate compromise, loss or misuse of official or confidential information may lead to damage and can constitute a criminal offence. Individuals are personally responsible for protecting these information or other assets in their care, and must be provided with guidance about security requirements and how legislation relates to their role, including the potential sanctions (criminal or disciplinary) that may result from inappropriate behaviour. It is an offence to disclose official information without lawful authority. Finally, it is an offence to make a damaging disclosure of information relating to security or intelligence defence or international relations which has been communicated in confidence to another state or an international organization and the information has come into a person's possession without the authority of that state or organization.

Disclosure of official secrets is a punishable offense. Any person who, being employed in the public service, publishes or communicates any fact which comes to his knowledge by virtue of his office, or any document which comes to his possession by virtue of his office and which it is his duty to keep secret except to some persons to whom he is bound to publish and communicate it, is guilty of a misdemeanour and is liable to imprisonment. Therefore, a publisher must be wary of committing the offence of disclosure of official secrets in the course of his duties (Meyile, 2009).

Indecency and Obscenity

Obscenity could be seen as any statement or act that strongly offends the prevalent morality of the present time. Obscenity covers anything which is depraved and is not limited to sexual depravity. To deprave means to make morally bad, to pervert, to debase or corrupt

morally. To corrupt means to render morally unsound or rotten, to destroy the moral purity or chastity, to pervert or ruin a good quality, to debase, to defile. Indecent or obscene matters are those articles capable of corrupting public morality. They are articles which are likely to corrupt persons who come in contact with them for instance children. Such obscene materials include publications containing pornographic pictures and so on. In certain circumstances, obscenities can be displayed in visual or audio form.

In regulating the publication/transmission of materials in the mass media, the government has to strike a balance between protecting public morals on the one hand and safeguarding the freedom of expression on the other. Publication/transmission of obscene or indecent materials in the mass media is controlled through the regulatory and enforcement regimes applied to television/radio broadcasting and the printed/electronic media respectively. Obscenity and indecency are very daunting aspects of publishing which are often overlooked and underestimated in this information driven age. These often overlooked obnoxious materials have gradually encroached into our cultures and infiltrated them for the worst. It is the duty of the government, publishing parastatals and other stakeholders to give greater heed to this menace before it succeeds in its already started hazardous influence in the world at large and especially in our country Nigeria.

Intellectual Property Laws

Intellectual property law are the laws that deal with protecting the rights of those who create original works. It covers everything from original plays and novels to inventions and company identification marks. The purpose of intellectual property laws is to encourage new technologies, artistic expressions and inventions while promoting economic growth. When individuals know that their creative work will be protected and that they can benefit from their labour, they are more likely to continue to produce things that create jobs, develop new technology, make processes more efficient, and create beauty in the world around us. Intellectual property laws deal with the rules for securing and enforcing legal rights to inventions, designs and artistic works. Just as the law protects ownership of personal property and real estate, so too does it

protect the exclusive control of intangible assets. The purpose of those laws is to give an incentive for people to develop creative works that benefit society, by ensuring they can profit from their works without fear of misappropriation by others.

Generally speaking, intellectual property laws cover industrial and copyright law. Specifically, it can be broken down into copyright, trademarks, patents, designs and trade secrets/law of confidence. Legal rights of creative effort or commercial reputation and goodwill are associated with intellectual property law. The law deters other from copying or taking unfair advantage of the work or reputation of another and provides remedies where this arises.

Copyright

Copyright is a legal right created by the law of a country that grant the creator of an original work exclusive right to its use and distribution, usually for a limited time, with the intention of enabling the creator to receive compensation for their intellectual effort. Copyright has been described as an integral part of an intellectual property laws that guarantee the moral and economic right of those who possess them. They are the laws that ensure that the inalienable rights or privileges of the right holders are enjoyed by them maximally and that they are in no way denied or deprived from enjoying the fruits of their labour through sabotage or any other fraudulent means. Moreover, personal and organizational benefits are accruable from research productivity and intellectual publications. Right owners would benefits economically, socially and morally. Apart from getting financial rewards (economic benefits) from the sales of their publications, research productivity (publication outputs) is one of the major criteria that are listed for the promotion and status elevation (social benefits) of faculty (in universities and other academic environment) (Babalola and Adeniyi, 2009).

It has been contended that copyright law is not designed to limit public access to information but to ensure that the public has access to it by protecting the economic and moral rights of authors. They contended further that an author is more likely to be motivated to embark on continuous production of intellectual products if there is assurance that another individual can claim neither the credit nor the profit from the

author's effort. (Leach, Melicher, Oswald & Wermers, 2000, Okwilagwe, 2001; Symonds, Gernmell, Braisher, Gorringer & Elgar, 2006; Babalola & Adeniji, 2009; Pan & Hovde, 2010). According to Asein (2012), the word copyright has three connotations. First, it suggests the right that a person has over the physical copy of his work. The second idea conveyed is the right to copy i.e. the right that the owner of a work has to make copies of his work. The third connotation is the requirement that a work must be copied "right". That is the work is copied in a lawful manner.

World intellectual property organization (1980) as cited by Asein (2012) described copyright as the exclusive right granted by law to the author of a work to disclose it as his own creation, to reproduce it and distribute it or disseminate it to the public in any manner by any means, and also to authorize others to use the works in specified ways. Copyright protects the expressive arts. They give owners exclusive rights to reproduce their works, publicly display or perform their work, and create derivative works, additionally, owners are given economic, moral and financial rights to maximally benefit from their work and prohibit others from doing so without their permission (Babalola, 2006, 2008, Babalola & Adeniji, 2009). It must be stated that copyright does not protect ideas for any work to enjoy copyright it must be captured in a fixed medium. (Okwilagwe, 2001; Copyright Act, 2007; Asein, 2012). Copyright applies to writings, music, motion pictures, architecture and other original intellectual and artistic expressions. Most copyrights are valid for the creator's lifetime plus 70 years.

Piracy

Generally speaking, piracy refers to an attack, robbery, murder, forcible dispossession of valuables on the high sea (in the spirit of intense hostility) without lawful authority. From the publishing dimension, however, piracy is unauthorised or illegal copying, distribution and sale of copyrighted materials belonging to someone else without giving the original owners of such works any forms of benefits or compensation. It could also be defined as the illegal manufacturing and distribution on a commercial scale of published work without the permission of the copyright owners. Though sea piracy has existed for thousands of years, it has been in existence for as long as sea travel itself has existed; just as



robbery on land. Intellectual content owners adopted the term piracy to equate copyright infringers with thieves (robbers). The term 'piracy' became operational shortly after the invention of the mechanical printing press in 1439. Since then, the term came to be applied to those who make unauthorized copies of publications. Any copying of copyrighted materials that violates the principle of "fair use" of materials is piracy. Fair use of copyrighted materials allow people to use protected copyrighted work at any time without the creators explicit permission in a limited scenarios such as in reviews, or for use by educational institutions. The practice of piracy is widespread in all regions of the world. Any publishing and related industries of countries that have not acceded to the international intellectual property agreements have traded in pirated products on a particular large scale. Piracy affects both print and non-print formats of information materials. Today, internet piracy has cost the publishing industry heavy loss in sales. Many publishers have responded to the perceived threat to publishing on the internet with strict Digital Rights Management (DRM) software. The effects of piracy can range from the tangible (lost sales, lower author royalties) to the intangible (decline in the perception of the value of a book). Piracy takes place in different media and formats such as: music, internet, film, software and book piracy. The Nigerian Copyright Commission (NCC) established under section 34 of copyright Act of 1970, inaugurated in August 1989, is the only government agency responsible for copyright administration in Nigeria. The mandate of the Commission (NCC) includes administration, enforcement and regulation of copyright activities in Nigeria of which fight against piracy is inclusive. The Nigerian government has adopted zero tolerance for acts of piracy. In line with the zero tolerance for piracy, the copyright Act 33 in its wisdom provides for anti-piracy measures to assist the commission effectively and efficiently carry out its functions.

4. International Standard Number Requirements (ISBN AND ISSN)

Both International Standard Book Number (ISBN) and International Standard Serial Number (ISSN) are system of ensuring proper control of all published materials. They are unique to each publication and facilitate identification and retrieval of specific publication internationally. From the deposit of publication through legal

deposits provision, national library is able to identify the publication which do not carry the number or carry them wrongly. From such lapses, corrections would be made and standard of the published materials could receive a boost.

4.1. International Standard Book Number (ISBN)

International standard book number is unique, sacrosanct and is a strong identifier of books and other published materials. Once assigned to a monographic publication, an ISBN can never be reused to identify another monographic publication, even if the original ISBN is found to have been assigned in error. A registrant who discovers that an ISBN has been erroneously assigned must delete this number. It must be added that the issuance of ISBN commenced in 1966 with 10 digits. The 10 digits number formats were used between 1966 to 2006. In 2007, product code of 3 digits was added making the ISBN to have 13 digits. Each of the parts of the ISBN digits is separated by hyphen (space). An example is given below

ISBN 789-7-7143-1043-7

Interpretation:

Product Code	Group/Country Code	Publisher's Profile	Title Code	Check Digit
789	7	7143	1043	7

An ISBN number is assigned to each edition and variation (except re-printing) of a book. For example, an E-Book, a paperback, and a hard cover edition of the same book would each have a different ISBN. ISBN issuance is country-specific in that ISBNs are issued by ISBN registration agency that is responsible for that country or territory regardless of the publication language. The ranges of ISBNs assigned to any particular country are based on the publishing profile of the country concerned, and so the ranges will vary depending on the number of books and the number, type, and size of publishers that are active. Some ISBN registration agencies are based in national libraries or within ministries of culture and thus may receive direct funding from government to support their services.

4.2. International Standard Serial Number (ISSN)

The International Standard Serial Number (ISSN) was developed in the early 1970's by International Organization for Standardization (ISO) in order to meet the needs for a brief, unique and unambiguous identification code for serial publication. ISSN is a unique eight-digit number used to identify a periodical publication at a specific media type. It is internationally accepted as a fundamental identifier for distinguishing between identical serial titles and facilitating checking and ordering procedures, collection management, legal deposit, interlibrary loans etcetera. The format of the ISSN is an eight digit code divided by a hyphen into two four-digit number. The hyphen functions in this format as an aid to visual recognition thereby facilitating the avoidance of error. An example is **ISSN 0084-9243**.

ISSN codes are assigned by a network of ISSN National Centres, usually located at National Libraries and co-ordinated by ISSN international centre based in Paris. The international centre is an intergovernmental organization created in 1974 through an agreement between UNESCO and the French government. The international centre maintains a database of all ISSNs assigned worldwide, the ISDS (International Serials Data System) register otherwise known as the ISSN register. ISSNs are assigned to ongoing integrating resources which fulfil all the inclusion and exclusion criteria. National centre (for the issuance of ISSN) can decide to exclude ephemeral ongoing integrating resources or ongoing integrating resources of purely local interest from systematic ISSN assignment. Meeting one of the criteria is not sufficient for ISSN assignment. Part of the inclusion criteria include: having editorial content; identified editorial responsibility; consistent title etcetera. Exclusive criteria include the following amongst others personal resources; website consisting of links; and resources focusing on a company, a product, an institution or organization.

The international centre is responsible for the allocation of blocks of ISSN to National Centres. Each centre receives limited blocks of numbers. In using blocks of ISSN, National Centres adhere to the following procedures:

- Report all ISSN assigned by their centre to ISSN register;

- Use ISSN within their assigned block consecutively and use up one block completely before starting another block;
- Ensure that ISSN assignments made in advance of publication or production of a continuing resource are recorded in the ISSN register by determining if publication or production of the resources has occurred and creating appropriate ISSN records (or updating existing work records).

5. Legal Deposits Requirements

Legal deposit is a statutory provision which obliges publishers to deposit copies of their publications in libraries in the country in which they are published. Legal deposit of the material is the sole responsibility of the publisher. The purpose of legal deposit is to collect, preserve and make available to the present and future users the documents that contain the intellectual and cultural heritage of the country. It is important to note that legal deposit legislation covers all kinds of published materials, that is material generally produced in multiple copies and offered to the public regardless of the means of transmission. In many countries the measure requiring the legal deposit appears in a legal deposits act (France, Greece, Indonesia, Norway, Peru, South Africa, Sweden), while in other countries it is part of another act, such as the copyright act (Australia, Great Britain, United States), the national library act (Canada, Japan, Nigeria, Venezuela) or a general library act (Tasmania). In some jurisdictions, it takes the form of an administrative decree or ordinance (Chile, Cuba, and Nigeria). In all countries with a legal deposit system, published material, often described as library materials (books, periodicals, newspapers, microforms, sheet music, maps, brochures, pamphlets etc.), constitutes the basis of the national deposit collection.

In many countries, however, audio visual material (sound recordings, films, videos etc.) is also subject to legal deposit (Canada, Finland, France, Germany, and South Africa). A few countries have already included electronic publications in their legislation (Canada, Denmark, Finland, France, Japan, Norway and South Africa, among others). The development of a national deposit collection of published material in its broadest sense has to rely on a legislative foundation in order to ensure that all publishers will comply. Furthermore, to be taken seriously by

depositors, the legislation has to be enforceable. In Nigeria, legal deposit requirement is enshrined in decree no. 29 of 1970 which mandates publishers to deposit certain number of their publication to the National Library of Nigeria through National bibliographic centre. Private publishers are required to deposit three (3) of their publication; state government publishers are to deposit ten (10) copies of their publication while federal government and its agencies are to deposit twenty-five(25) copies. The decree also goes against errant publisher who do not deposit their materials to the National Library.

6. Summary

This chapter explicitly discussed legal and ethical issues associated with publishing. The issues discussed ranges from agreement/contracts that are usually established between authors and publishers to other legal and ethical issues that border on what could be published within the confines of the law and the societal norms and values. Publishing agreement/contract is akin to covenant made between two parties-authors and publishers which if breached by any of the parties involved could lead to litigation. Libellous and defamatory publications are false documents that injure the business or the reputation of the plaintiff. Libellous publication could in turn result in catastrophe for the author and the concerned publisher. Slander is an oral form of defamation which could have similar consequences like libel. A written document is a statement or an action that encourages somebody else to go against the law of his/her government is sedition which is a punishable offence. Similarly when an individual reveals official secrets for whom they are not meant for, such an individual is also liable to punishment. Indecent and obscene publications that injure the norms and values of the society should be discouraged as much as possible. Illegal reproduction of copyrighted materials in form of piracy or infringement is antithetical to the principles of copyright and negates the tenets of intellectual property laws. Finally, across the globe all publications should conform to international standard and best practice by ensuring that international standard numbers like ISBN and ISSN were appropriately given and necessary deposits made to appropriate quarters like National libraries.

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