

## INTRODUCTION

*“At present - when most information is spread and carried on in a digital form, when communication technologies such as smart phones and free internet access ubiquity have become part of daily life, when commerce, health and financial services, education and entertainment, social platforms and infrastructures are provided online and in real-time - contemporary life is increasingly moving in the direction of becoming a “transparent society”. -*

Juliane Damen and Lena Köhler”<sup>1</sup>

### What is social media?

Social Media is described as “a group of Internet-based applications that builds on the ideological and technological foundations of Web 2.0, and that allows the creation and exchange of User Generated Content.”<sup>2</sup> Social Media comprises of primarily internet and mobile phone-based tools for sharing and discussing information. It blends technology, telecommunications, and social interaction and provides a platform to communicate through words, pictures, films, and music.<sup>3</sup> Social Media includes social networking sites like Facebook and Messaging applications like WhatsApp. It also includes Blogs, and Micro Blogging sites such as Twitter as well as Media sharing sites like YouTube.

In 2010, Kaplan and Haenlein<sup>4</sup> classified social media into six different types:

- a) collaborative projects (e.g., Wikipedia),
- b) blogs and micro blogs (e.g., Twitter),
- c) content communities (e.g., YouTube),
- d) social networking sites (e.g., Facebook),
- e) virtual game worlds (e.g., World of War craft), and
- f) virtual social worlds (e.g. Second Life).

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<sup>1</sup> Juliane Damen and Lena Köhler et.al., The Human Right of Privacy in the Digital Age 1 available at: <https://publishup.uni-potsdam.de/opus4-ubp/frontdoor/deliver/index/docId/39926/file/srp03.pdf>

<sup>2</sup> Andreas M. Kaplan and Michael Haenlein, Users of the World, Unite! The Challenges and Opportunities of Social Media, 53 Bus. Horizons 59, 61 (2010).

<sup>3</sup> Shishir Tiwari and Gitanjali Ghosh, Social Media and Freedom of Speech and Expression: Challenges before the Indian law, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2892537](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2892537)

<sup>4</sup> Andreas M. Kaplan & Michael Haenlein (2010), “Users of the World, Unite! The Challenges and Opportunities of Social Media”, Business Horizons, vol. 53, 2010

With this brief exposition, you would agree with me that almost everyone here has used one form of social media or the other in the past 24 hrs. Twitter, Facebook, Instagram, WhatsApp... take your pick.

Overtime, the internet has evolved from a community of computer geeks sharing coding ideas into a world of its own with its own unique rules, its own structure, its corporate world with a massive platform for businesses, entrepreneurs, professionals and organizations and even its very own citizens called “Netizens”<sup>5</sup>. Social Media usage is one of the most popular internet activities.<sup>6</sup> During the early days of the COVID-19 pandemic, there was a Global lockdown and the need for human interaction caused many more to turn to social media, causing the reach to grow even larger. It became our sole means for reaching the world, causing social media time to skyrocket in the past year. At the start of 2021, there are 4.20 billion social media users equating to more than 53 percent of the total global population with the numbers said to have surged by 490 million new users in 2021 so far.<sup>7</sup> <sup>8</sup>Kenya, Nigeria, South Africa, and the United Arab Emirates have the biggest increase among 18 markets. These numbers equate to growths of more than 13 percent, or an average of 15½ percent new users every second with a typical user having an account on more than 8 different social media platforms and spending an average of close to 2½ hours using social media each day. To put things in perspective, added together, the world spends roughly 10 billion hours using social platforms each day, which is the equivalent of more than 1 million years of human existence.

Based on publicly available data up to 25 January 2021, the five largest social media platforms have the following number of users:<sup>9</sup>

- Facebook has 2.740 billion monthly active users.
- YouTube’s potential advertising reach is 2.291 billion.
- WhatsApp has around 2 billion monthly active users.
- Facebook Messenger has around 1.3 billion monthly active users.
- Instagram’s potential advertising reach is 1.221 billion.

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<sup>5</sup> The word “netizen” is a fusion of 2 words, “Citizens and Internet” which means a user of the internet, especially a habitual or keen one.

<sup>6</sup> <https://www.statista.com/statistics/278414/number-of-worldwide-social-network-users/>

<sup>7</sup> Social Media Overview January 2021, <https://datareportal.com/social-media-users#:~:text=Global%20social%20media%20Stats&text=Our%20latest%20data%20show%20that,of%20the%20total%20global%20population.>

<sup>8</sup> COVID-19’s Impact on Social Media Usage, September 22, 2020, <https://www.thebrandonagency.com/blog/covid-19s-impact-on-social-media-usage/>

<sup>9</sup> Ibid

With the above numbers, it is obvious that the world online has become just as important as the world offline. The surge in the prominence of social media usage has drawn the attention of governments, regulators, legislators, and professionals alike because social media posts and activities raise real issues involving real people who perform real actions with real consequences attached to their real actions. In addition, traditional approaches to human rights are no longer adequate to cater for the complexities and peculiarities of the digital world hence the evolution of digital rights and social media rights.

Digital rights are generally considered to be the same fundamental human rights that exist in the offline world<sup>10</sup>. In its 2016 Resolution<sup>11</sup>, the UN Human Rights Council agreed that the "same rights that people have offline must also be protected online." This means that rather than the United Nations seeking to define new rights for the online space, they have recommended extending existing human rights to cyberspace. Therefore, the same fundamental rights a person enjoys offline apply online and in our use of social media.

Although this UN resolution is not legally binding and individual countries deal with digital rights in diverse ways, we can see Digital rights gradually being integrated into our laws. Since the turn of the century, we have had various laws that touch on these rights enacted by legislators and regulators all over the world even in Nigeria. From the Freedom of Information Act to the Cybercrimes Act, the Nigerian Data Protection Regulation, the Data Protection Bill, the Child's rights Act to name a few, these digital rights can be gleaned from the pages of these laws.

## **SOCIAL MEDIA RIGHTS**

### **1. Freedom of expression**

The right to freedom of expression has existed for so long, dating as far back as the Greek Athenian era more than 2400 years ago.<sup>12</sup> This right means that everyone has a right to freedom of expression which includes the freedom to seek, receive and impart information and ideas of all kinds through the Internet and digital technologies, regardless of frontiers. This right is without restrictions, except those which are either provided by law or prescribed by custom.<sup>13</sup> This right is guaranteed under **Section 39 of the 1999 Constitution**. This section also states that every person shall be entitled to own, establish and operate any medium for the dissemination of information. This can be said to include the various categories of social media earlier enunciated. This right guarantees a freedom for social media users to post a variety of things on their social media platforms as long

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<sup>10</sup> <https://www.dw.com/en/what-are-digital-rights/a-36703292>

<sup>11</sup> [https://www.article19.org/data/files/Internet\\_Statement\\_Adopted.pdf](https://www.article19.org/data/files/Internet_Statement_Adopted.pdf)

<sup>12</sup> UNESCO, Freedom Of Expression Toolkit: A Guide Students, 2013, 1-86, at 16, available on the Web, URL: <http://unesdoc.unesco.org/images/0021/002186/218618e.pdf> ., accessed on

<sup>13</sup> Principle 3 of the African Declaration on Internet Rights and Freedoms, <https://africaninternetrights.org/en/principles/3>

as they don't fall within the legal restrictions on freedom of expression, because fundamental rights are not absolute.

## 2. Right to privacy and Data Protection

In contemporary society, information technology occupies the zenith position in everyone's daily life. Every single day every person wittingly or unwittingly generates large amounts of sensitive personal data while navigating through the World Wide Web. Accordingly, the protection of privacy of people's lives has never been more imperative.<sup>14</sup> The right to privacy is guaranteed in the Nigerian constitution and several human rights instruments.

**Section 37 of the 1999 Constitution** provides that:

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

**Article 12 of Universal Declaration of Human Rights (UDHR)** reads thus:

*"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."*

Principle 8 of the African Declaration on Internet Rights and Freedoms explains the right to privacy as everyone having the right to privacy online, including the right to the protection of personal data concerning him or her, the right to communicate anonymously on the Internet, and to use appropriate technology to ensure secure, private and anonymous communication.<sup>15</sup>

The Nigerian Data Protection Regulation 2019 like other Data Protection instruments provides that Personal data or information shall only be collected and/or processed by states and non-state actors such as access providers, mail providers, hosts and other intermediaries, in compliance with well-established data protection principles, including the following:

- personal data or information must be processed fairly and lawfully;
- personal data or information must be obtained only for one or more specified and lawful purposes;
- personal data or information must not be excessive in relation to the purpose or purposes for which they are processed;

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<sup>14</sup> Rishika Taneja and Sidhant Kumar, Privacy Laws 231(Eastern Book Company, Lucknow, 1st edn., 2014)

<sup>15</sup> Principle 8 of the African Declaration on Internet Rights and Freedoms,  
<https://africaninternetrights.org/en/principles/8>

- personal data or information must be deleted when no longer necessary for the purposes for which it is collected.
- The collection, retention, use and disclosure of personal data or information must comply with a transparent privacy policy which allows people to find out what data or information is collected about them, to correct inaccurate information, and to protect such data or information from disclosure that they have not authorised.

This right should not be subject to any restrictions, except those that are provided by law and are necessary and proportionate in pursuance of a legitimate aim.<sup>16</sup>

### 3. Right to peaceful Assembly and Association

Developments in technology have changed the ways society can assemble beyond physical space. This event typifies the right of Assembly and association as we all gathered to interact under the banner of this great club. The issues that can be discussed, and things that we can do at such gatherings virtually are images of online engagements.<sup>17</sup> Over the past year, meetings went virtual, seminars became webinars and virtual meet platforms like Zoom, Google meets, and Microsoft teams became town halls and event centers for various events. There is therefore the need to clearly describe what promoting, protecting, respecting and fulfilling rights to Freedom of Association and Assembly entails in the digital era.

**Section 40 of the Constitution of the Federal Republic of Nigeria 1999** provides as follows:

*“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 association for the protection of his interests.”*

From the digital rights perspective, everyone has the right to use the Internet and digital technologies in relation to freedom of assembly and association, including through social media networks and platforms subject to lawful restrictions.<sup>18</sup>

### 4. Intellectual property rights

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<sup>16</sup> Section 45 of the 1999 Constitution

<sup>17</sup> “Digital Space and the Protection of Freedoms of Association and Peaceful Assembly in Africa”, SUBMITTED TO THE UNITED NATIONS SPECIAL RAPPORTEUR ON THE RIGHT TO PEACEFUL ASSEMBLY AND OF ASSOCIATION - CLÉMENT VOULÉ, February 2019.  
[https://www.google.com/search?q=Digital+Space+and+the+Protection+of+Freedoms+of+Association+and+Peaceful+Assembly+in+Africa&rlz=1C1JZAP\\_enNG849NG849&oq=Digital+Space+and+the+Protection+of+Freedoms+of+Association+and+Peaceful+Assembly+in+Africa&aqs=chrome..69i57.536j0j9&sourceid=chrome&ie=UTF-8#](https://www.google.com/search?q=Digital+Space+and+the+Protection+of+Freedoms+of+Association+and+Peaceful+Assembly+in+Africa&rlz=1C1JZAP_enNG849NG849&oq=Digital+Space+and+the+Protection+of+Freedoms+of+Association+and+Peaceful+Assembly+in+Africa&aqs=chrome..69i57.536j0j9&sourceid=chrome&ie=UTF-8#)

<sup>18</sup> Principle 5 of the African Declaration on Internet Rights and Freedoms,  
<https://africaninternetrights.org/principles/5>

According to the World Intellectual Property Organization (WIPO), “intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce”.<sup>19</sup> One of the Intellectual property rights that oftentimes interacts with social media is Copyright.

Any approach to intellectual property and its usage on social media has to ask two questions: who owns the intellectual property and what rights do social media users have with reference to the fair usage of said property?<sup>20</sup>

Social media, like Facebook, Twitter, and Pinterest, allow online posting of material that may be copyrighted. The social media site however does not own the work that has been posted on their site; the copyright is still kept by the owner. But by agreeing to post works on the site, users sign agreements that gives the site a license to use the work for a variety of purposes, like displaying it, adapting it, or copying it. In these cases, the license is given without payment.<sup>21</sup>

The best way to protect intellectual property from being appropriated on social media is to not put it up there in the first place as copyright laws in social media are not so well defined - yet. Sometimes, it is difficult to determine the extent to which the Copyright Act can be adapted to the digital space.

## **5. Right to Freedom from discrimination:**

**Article 1 of the African Charter on Human and People’s Rights** states:

*“every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”*

Similarly, **Section 42 of the 1999 constitution** as amended provides that:

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religion or political opinions are not made subject; or

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<sup>19</sup> WIPO, “What is Intellectual Property?”, <https://www.wipo.int/about-ip/en/>

<sup>20</sup> Jaq Greenspon, “Social Media and The Art of Intellectual Property Theft”, [https://www.researchgate.net/publication/317901420\\_Social\\_media\\_and\\_the\\_art\\_of\\_intellectual\\_property\\_theft](https://www.researchgate.net/publication/317901420_Social_media_and_the_art_of_intellectual_property_theft)

<sup>21</sup> INTELLECTUAL PROPERTY AND SOCIAL MEDIA, <https://www.iprhelpdesk.eu/blog/intellectual-property-and-social-media>

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

Every day, minorities are targeted on social media based on race, gender, religion, ethnicity, and skin color. Discrimination online is even more widespread because of the cloak of anonymity the internet provides. In May 2020, the Secretary General of the UN denounced “a tsunami of hate and xenophobia, scapegoating and scare-mongering,” unleashed amid the COVID-19 pandemic<sup>22</sup>. The right against discrimination is one that each and every user of social media should enjoy in equal proportion without restrictions.

### **OBLIGATION OF SOCIAL MEDIA USAGE**

There is a very thin line between the enjoyment of one’s right and the violation of the rights of another in the process of exercising certain freedoms. On social media, the exercise of freedom of speech and expression by one may result in the invasion of privacy and defamation of another person. Again, the idea of *objectionable content* varies from one person to another. A cartoon which someone might consider as a harmless way of having fun may be seen as offensive by someone else. Similarly, defamation, hate speech, racist remarks, religious remarks are some negative offshoots of freedom of expression.

Social media also poses a number of threats to the unbridled enjoyment of right to privacy like<sup>23</sup>: *Communication surveillance, Data theft, Trans-border flow of data, Breach of confidentiality, Electronic voyeurism, Unlawful access, Data retention, Big data issues etc.*

The advancement of technology with the omnipresence of the internet has both pros and cons. On one hand it poses potent threats to the realization of human rights like the right to privacy in the form of surveillance of communication, interception and data retention containing personal information which renders a person to vulnerable. On the other hand, social media can potentially be used as a platform to foster the realization and protection of human rights by creating awareness of the existence of rights and obligations that accompany social media usage. In a bid to create a balance between rights, rights can be restricted when certain conditions are considered.

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<sup>22</sup> Secretary-General Denounces ‘Tsunami’ of Xenophobia Unleashed amid COVID-19; [www.un.org/press/en/2020/sgsm20076.doc.htm](http://www.un.org/press/en/2020/sgsm20076.doc.htm)

<sup>23</sup> Dr. Lisa P Lukose & Ms. Alankrita Mathur, “Human Right and Social Media”, Human Rights and Digital Age (pp.31-39), Publisher: ELCOP Bangladesh, March 2019. [https://www.researchgate.net/profile/LisaLukose/publication/331715928\\_Human\\_Right\\_and\\_Social\\_Media/links/5c892215a6fdcc38175254a1/Human-Right-and-Social-Media.pdf](https://www.researchgate.net/profile/LisaLukose/publication/331715928_Human_Right_and_Social_Media/links/5c892215a6fdcc38175254a1/Human-Right-and-Social-Media.pdf)

In *FRN v. Daniel*,<sup>24</sup> the Court of Appeal stated that derogation from an individual's right to privacy can be permitted where it impinges on the rights of others or puts the welfare, safety or public health in jeopardy.<sup>25</sup> This being the limit of both offline and online rights as enunciated above.

**Section 45 of the 1999 Constitution** provides exceptions where fundamental rights may be reasonably restricted which are interest of defense, public safety, public order, public morality, public health and for the purposes of protecting the rights and freedom of other persons. Hence, in any of the above instances, the rights can be restricted.

### **The Cybercrimes Act 2015**

This Act which became law in May 2015, is the first cyber security specific legislation in Nigeria and introduces a plethora of restrictions on the rights of the social media user.

Section 39 of the Act provides that where reasonable grounds exist, electronic communication may be intercepted after law enforcement have obtained an order of court for that purpose, and Section 40 of the Act empowers law enforcement agencies to collect subscriber information from service providers. These provisions have far reaching implications for the concept of social media anonymity, particularly because the duty imposed on law enforcement under Section 39 of the Act includes the power to collect or record such data which will then be analyzed. When this power is coupled with the power of law enforcement agencies to compel service providers to provide information relating to their subscribers, it becomes clear that the traditional layers of anonymity enjoyed by social media users in Nigeria is just a mirage. Other notable provisions of the Act include Section 22 of the Act which prescribe a prison term of not less than 3 years or a fine of not less than N7million naira or both for identity theft. Identity theft is the unlawful use of another person's personal identifying information, this would include impersonating someone else online with the intent to commit a crime. Also, Section 24 of the Act has criminalized cyberstalking. Cyberstalking includes sending online messages or images that are offensive, false, dangerous, insulting, and calculated to cause injury, intimidation, enmity, hatred, and ill will. The penalty for cyberstalking is a prison term of not less than 3 years or a fine of not less than N7million naira or both.

The most potent remedy where there is infraction of a person's right online is the use of the above Section 24 which can lead to criminal prosecution of the Defendant/ aggressor. This is quite distinct from your civil right of instituting a claim in tort including damages for any loss of

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<sup>24</sup> *FRN v Daniel (2011) LPELR-4152(CA) Per Saulawa, J.C.A. Pg. 21-23, paras. E-C*

<sup>25</sup>Titilade Adelekun Ilesanmi, "Circumspections: Legal Issues In Social Media Usage", May 2020.  
<https://www.mondaq.com/nigeria/social-media/938740/circumspections-legal-issues-in-social-media-usage>



reputation and financial loss resulting from injury caused by the infraction. It is instructive to note that in view of recent decisions of courts, an aggrieved person can institute a claim, not only where the libelous publication was made but wherever it is read.

**Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR)** imposes restrictions on the following grounds:

- (a) For respect of the rights and reputations of others
- (b) For protection of national security, or public order, or public health or morals.

These restrictions however cannot be arbitrarily executed. The 2011 Report of the UN Special Rapporteur on Freedom of Opinion and Expression<sup>26</sup> laid emphasis on the need for proper, judicial procedures in relation to anything that affects the right to Internet freedom of expression, contrasted with the arbitrariness it observes in many respects, including surveillance and monitoring of communications. He added the important supplementary principle that:

“Any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences, in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application.”

## CENSORSHIP

This assumes different shapes. Government and other regulators can do this. A good example is the social media bill before the National Assembly. This must also reflect the consensus of the people by way of content. It must be largely consistent with the basic human right provisions. To this end, there is need for the active participation of the people. Proprietors of social media platforms equally have their own internal rules, the violation of which leads to the censorship of violators. In this instance, recall the closure of the twitter account of the former president of the United States of America, Donald Trump. Finally, we are all at liberty to regulate internally our own platforms and disengage or censor whoever violates our rules. This is equally complimentary of the checks above.

## CONCLUSION

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<sup>26</sup> The UNITED NATIONS, Report of The Special Rapporteur on The Promotion and Protection of The Right to Freedom of Opinion and Expression, 10 August 2011. <https://undocs.org/A/66/290>

*“...freedom of expression, the rights to equality and life and the obligation of non-discrimination are mutually reinforcing...”<sup>27</sup>*

No individual fundamental right online or offline exists in isolation, neither can any be said to be absolute. Therefore, it is important to create a balance between these rights and their restrictions. To this end, everyone has a role to play: the government, private entities, stakeholders and individuals. In conclusion, it is important to note that in the expression of our freedoms on social media, users should recognize that everyone has rights, freedoms are not absolute and actions on social media have real consequences suffered by real people.

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<sup>27</sup> Statement by United Nations High Commissioner for Human Rights, Michelle Bachelet at the 13th Session of the Forum on Minority Issues: Hate speech, social media and minorities, Geneva, 19-20 November 2020  
<https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26519&LangID=E>