

THE WHITE COLLAR

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The Internet and The Web 2.0 Defence

Alfred runs an unconventional message delivery service in Lagos. He has an office location where anyone may visit and leave a message for another person who in turn visits the location to retrieve the message. His business is sponsored by other third party businesses that want to advertise at his office location because of the amount of traffic Alfred generates.

The Ecosystem of the Internet
This is the basic story of what is called a "Web 2.0 Eco-system" or the User-Generated Content system of the Internet. Alfred- the "Host Site" in this case operates an Internet website that functions like a "meeting place" for "Users" i.e. people who generate their own messages and content. These Users then visit Alfred's website and "post" their content there, giving some or all other Users access to this information. A degree of complexity is added when we introduce the tremendous amount of "traffic" on the Internet- i.e. millions of Users can visit millions of Host Sites in the space of hours as well as the various types of Content information on the internet ranging from Text based information to Image/ Photographic content, audio and video imagery to encoded information. It is enough at this point to say that a tremendous amount of information is exchanged and accessed with limited restriction, which of course is part of the appeal of the Internet as a market place.

The Catch 22
The problem emerges when Alfred's website is a national or global success and because of his User-generated content system his Host Site receives information that is sensitive or privileged i.e. there are two main types of information falling into these two categories, information that affects the reputation of a natural or corporate person and information that is restricted by its creator or owner. For our purposes **Defamation** and **Proprietary Rights** to information become the issues to focus on in this quandary (however many other issues exist ranging from Privacy Protection to Age Sensitive Content online). So Bola a User on Alfred's Host Site posts personal information about Charles on Alfred's website. We do not know how Bola has obtained this information or if she also has some right to the information, we simply have access to this information through Alfred's website. Is Alfred liable for the access of Charles' personal information by Debiri a third-party? Does the answer to the legal question change when Bola, the User generating the personal information on Charles is Charles' daughter?

Now lets step out of Alfred's website for a moment, and step into Lekki.com (a fictional Host) website specialising in linking buyers and sellers of property in the Lekki area for a commission fee. A former employee of Lekki.com,



Kazim posts information about a lucrative property in Lekki for sale on Alfred's website and Jumai a property buyer contacts Kazim and concludes the sale which earns him the commission. Is Alfred liable for the loss of the sale commission to Lekki.com? Does his liability change if the owner of the property had contacted other websites to advertise the property? Or if Kazim obtained the information about the property from information that was freely open to the public on Lekki.com?

New Blurred Lines in Old Approaches

If we were not talking about the Internet many would assume the immediate response to these questions was trivial assessing Alfred's risks by reference mainly to the laws of Defamation and Intellectual Property Ownership rights. However the peculiarities of the Internet as a marketplace mean that these traditional views will often if not always omit essential considerations of modern day Internet behaviour that carries legal significance and which constitute the legal issues upon which rights and obligations on the Internet are determined.

Traditionally every individual is guaranteed a qualified right to the privacy of their person, home, correspondence and the like by section 37 of the 1999 Constitution, and if this is breached it is a fairly straightforward matter to ascertain who by and the loss flowing from such a breach. However with the Internet where a reasonable expectation of privacy may not exist because the information has been volunteered by its owner or by another person sharing the right to privacy the lines of legal culpability start to become blurred.

The owner of intellectual property in a song or a book is

entitled to a much clearer right to appropriate that property in the manner they deem fit, which ordinarily includes the right to limit or restrict the transfer of that intellectual property. However when you add in the *Neutrality of the Internet* i.e. the worldwide principle that all information on the internet should be treated the same by Governments and Internet Service Providers, International Jurisdictions and Peer-to-Peer file sharing softwares designed to allow for the instantaneous duplication of data exponentially among Users it becomes less clear where culpability for a breach of IP rights lie.

Protecting Growth- Section 47 USC 230

Part of the reason for the Internet's ubiquitous growth and development is the Web 2.0 infrastructure that exists, it is less about a "type" of technology and more about what User-generated interactions and developments are enabling. "So-called 'mashups' of existing technologies, combined with growing numbers of knowledgeable users, and the proliferation of how-to data... Web-based communities and hosted services such as social networking sites, wikis, and blogs, aim to facilitate creativity, collaboration, and sharing among users" (BlueCoat Technology Primer: Web 2.0). Which is why in the US Host Sites are guarded jealously and protected from ordinary liability arising from User-generated content.

7 of the world's top Internet Companies are American and these represent the Who's Who of Internet business, GOOGLE, Facebook, Amazon and the like, all made successful by their User-generated activities. All protected by Title 47 of the U.S Code 230 the crux of which maintains that it is a United States' Policy to promote the con-

tinued development of the Internet and to protect what is termed the "Good Samaritan" i.e. Host Sites, such as Alfred's.

Jones v. Dirty World

Even where the so-called *Good Samaritan* isn't so much a Good Samaritan as much as it is a salacious and reprehensible gossip website such as TheDirty.com (in the litigation between **Jones v. Dirty World Entertainment Recordings, LLC, 2013 WL 4068780**) title 47 USC 230 protections are not automatically denied. In the suit by Sarah Jones a professional sports cheerleader against TheDirty.com, a gossip website where Users were encouraged to post salacious information about other people, the Complainant sued the website for posts put up about her by other Users. Ordinarily the title 47 USC 230 protection would have been activated but for some very inventive interpretation by the Judge who also wrote a "supplementary memorandum of opinion" which strayed vastly from legal precedent with an eccentric interpretation designed to convince the appeal court (because of course it was appealed) that the Judge's interpretation was correct.

It would appear that giving such a website protection under the title 47 USC 230 law would be in the extreme, however when considering the wider policy effect it would have on all Host sites if they were to be held responsible for the personal opinions posted by billions of Users worldwide the matter seems less reprehensible when considering alternative means to holding such extreme abusers accountable. The protection under title 47 USC 230 is of course not absolute, however it does form the general rule with regards to protecting and encouraging User-generated content in the US.

How to Engage- Internet Laws in Nigeria?

The immediate question to ask from all this is- "Why should we pay attention to them? Are these legal issues of rights and obligations on the Internet applicable in Nigeria?" In answering those questions consider this- in the Retail Sector in Nigeria Online Internet Shopping grew from N49.9 billion in 2010 to N78 billion in 2012- a staggering 13.7% of 2014's national GDP, and by any other means a significant growth area. On the continent the Internet by itself is predicted to contribute \$300 billion by 2025 up from \$18 billion in 2013 (McKingsy&Company 2013).

On a single day Friday the 28th of November 2014- on the popular pre-Christmas sale occasion known as 'Black Friday' one Online Retailer generated up to N600 million worth of sales revenue from over 1,600 transactions. This is not taking into account other medium and large Online Retailers in the country whose sales also grew exponentially on the same day. Even if we choose to ignore the revenue being generated in this area the sheer scale and amounts of transactions tell us it is not farfetched to predict that legal impasses over the Internet will arise and businesses in Nigeria ignore the Internet and its *rules of engagement* at their own peril.