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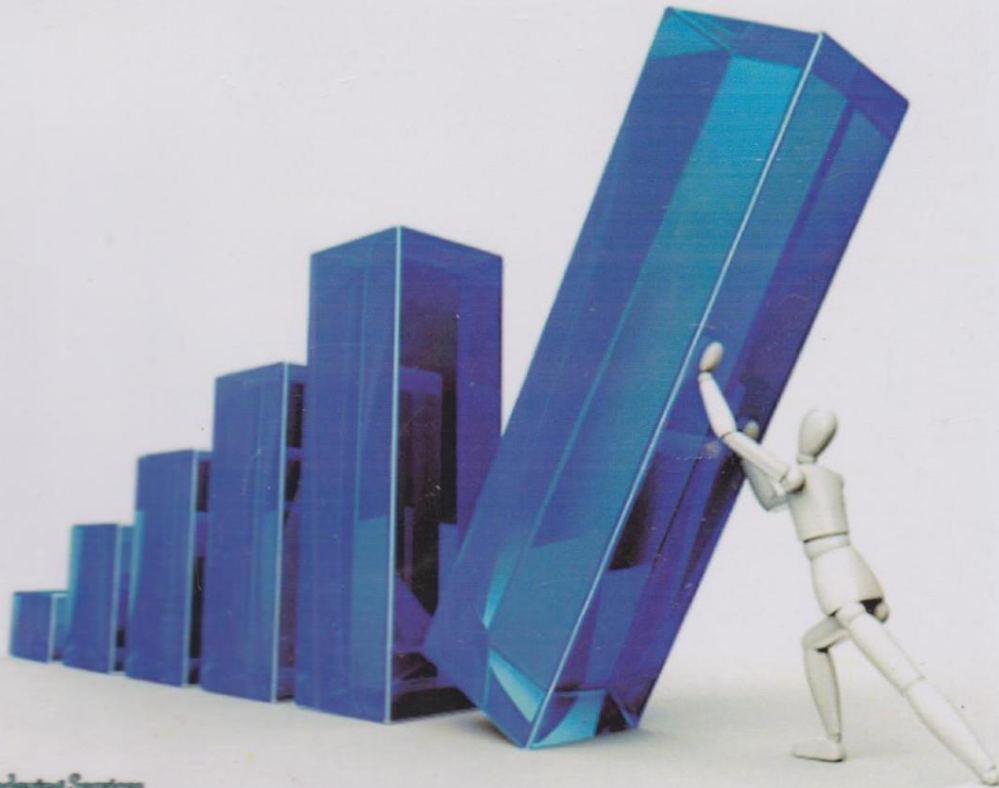
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## Legal Issues in Information: Implications on Library Service Delivery In Nigeria

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### Abstract

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*This article reviews laws that regulate information handling with a view to assessing implications of these laws in library service delivery with particular reference to Freedom of Information (FOI) Act and Copyright Law. FOI Act as the federal statute that establishes guidelines for public disclosure of documents and materials created and held by the federal agencies and the exclusive right of printing or otherwise reproducing copies of an intellectual production and of publishing and offering them for sale. Information is very vital in service delivery as far any country is concerned Nigeria inclusive. The implication of these laws to service delivery is that the act makes public records and information more freely available, provide for public access to public records and information; protects public records and information to the extent consistent with the public interest and the protection of personal privacy among others. While Copyright seeks to promote the free flow and exchange of information by providing ways that these materials may be reproduced or communicated and is of central importance to libraries. Conclusively, information is very important in service delivery and it is used in everyday activities. Information adds awareness and understanding of problems and also helps in problem solving and no library can exist without information.*

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**Keyword:** Legal Issues, Freedom of Information, Library Service Delivery, Copyright, Nigeria

### Introduction

Information is vital in everyday activities as well as one of the determinants of a corporate existence of a peaceful society. Information is defined as a statement of facts, figures, ideas and creative works of the human intellect, which are logically or by way of reasoning interrelated and have been communicated, recorded, published and/or distributed formally or informally in any format. In today's world information explosion is at its peak and this is because information is seen to be the driving force behind nation's development

and emancipation from ignorance. It is information that empowers the people to vote out a non-performing government or vote back into office those who in their estimation are performers.

Learning resources has been referred to as information represented and stored in a variety of media and format, that assists students learning as defined by provincial or local curricula. This includes but not limited to materials in print, video and software format. These learning resources are usually made available for access to learners in the library hence; the library is usually referred to as a store house of information.

To lend credence to the foregoing premise, Etim (2007) perceives information to be that which adds to our awareness or understanding of some topics, problems or events. It is variously perceived as facts, intelligence, data, news or knowledge necessary for decision making. Information is also seen to a collection of data in a comprehensible form, usually recorded in print or non-print form and capable of conveying some messages. As earlier noted, information is disseminated from enquiry desks at bus stations, airports, information centres, libraries and similar public service institutions however the focus of this chapter will be on libraries.

Apotiade (2004) defines the library as a repository of knowledge or an intellectual storehouse serving as a giant memory to mankind. It is also perceived to be a social institution concerned with the collection, processing, storage and dissemination of recorded information for the purpose of reading, study and consultation: in order to satisfy the varying needs of clientele. Libraries are derivative agencies in that they arise from particular needs within a society hence it can be concluded that libraries are institutions that assist its users in deriving and accessing various information.

Communication of information provides the raw materials for social development and this fits perfectly into the traditional roles of libraries (Saxby, 1990). The traditional roles of libraries include the collection, organization, preservation and dissemination of intellectual resources. However with the explosion of information and the emergence of the digital information age, the roles of libraries have expanded from collection of printed materials to that of electronic information (Klugkist, 2001). The library is also a place where information and knowledge freely dwells to define, empower, preserve, challenge, connect, entertain and

transform. The dwelling place whether physical or virtual is the product of collective reflection, aspiration, commitment, expertise and organization (IFLA, 2005).

In addition, Fabunmi (2009) sees the library as an organized collection of items which may be in form of books, journals, videos, CD-ROMS, etc. along with the services required to make them available to a given user group or groups. This collection is very vital to the library and staff. Without the collection the library and the staff will not exist, this is why the protection of the collection both internally and externally is of utmost importance. Every resource produced is governed by some legal laws in which even the library must observe. This chapter reviews laws that regulate information handling with a view to assessing implications of these laws in library service delivery with particular reference to Freedom of Information (FOI) Act and Copyright Law.

### **Relevant Provision of 1999 Nigerian Constitution on Information**

This section of the constitution actually provides freedom of expression but they have a direct relevance on information. Section 22 of the 199 constitution provides that the press, radio, television and other agencies of mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people. Furthermore, section 39(1) of the constitution stipulates that every person shall be entitled to freedom of expression including freedom to hold opinion without interference. This section includes among others the fundamental rights of the citizens the right to know and be heard by all. It also stipulates the duties of both the press and citizens. Section 39(2) provides also without prejudice to the generality of sub-section 1, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions though the provision to sub-section(3) places a limitation/restraint on the freedom of expression/press which prescribes for permission by the president under the guidelines of the National Assembly for the establishment and operation of a television or wireless broadcasting station for any other purpose. This section stipulates that this freedom granted for the press and citizens is not absolute as it does not guarantee the going beyond the constitution to seek information and disseminate same.

### **Official Secrets Act Cap 03 LFN 2010**

The intent of this law is predicated upon the need to the need to restrict certain information from the general public to enable government carry out its business of governance in a calm atmosphere. The Official Secret Act is mostly connected to government parastatals. Here, journalists/press is prevented from seeking and discovering information in areas that are regarded as of 'security importance' to the nation. Such classified or confidential information are in areas such as military armory, external trade, defence, oil wells, etc. In addition, Section 97 of the Criminal Code Act Cap C38 LFN 2010 prohibits the disclosure of official secrets and the abstraction of confidential information by a public servant.

### **Law of Sedition Criminal Code Act Cap 38 LFN 2010**

Section 50-60 of the Criminal Code Act, Cap 38 C 38 Laws of the federation of Nigeria 2010 provides for the law of Sedition which essentially prohibits the publication of seditious matters and other undesirable or alarming publications and the carrying out of seditious acts. According to Garner (2009), Sedition is an agreement, communication or other preliminary activity aimed at inciting treason or some lesser commotion against public authority and it is also defined as the speaking or writing of words calculated to excite disaffection against the constitution as by law established, to procure the alteration of it by other than lawful means, or to incite any person to commit a crime to the disturbance of the peace, or to raise discontent or disaffection, or to promote ill feeling between different classes of the community. In simple terms, it is the wage of words that tend to encourage people to rise and oppose a constituted authority or government.

### **Obscene and Harmful Publications Law**

The obscene and harmful publications law prohibit the publication of obscene and harmful literatures, articles and acts that are likely to destroy the morality of the Public Criminal Code Act and Laws under sections 214-233(a) prohibits various offences against morality while section 233(b-f) specifically prohibits obscene publications and articles. Apart from the above named statute, the Penal code, the children and young person's law and the constitution also prohibits obscene and harmful publications.

### **Law of Contempt**

Section 155 and 6 of the Criminal Code Cap 89 Northern Nigeria 1963 and Section 155 of the Penal Code Law which respectively provides for the law of contempt, prohibits acts of disrespect and disobedience to court. This includes publications which are disrespectful or are aimed at damaging or destroying the maintenance of the authority or the independence of the courts. The 1999 constitution also makes provision for the punishment of contempt of court in Section 6(6) (a) and 39 (a) and (b) respectively. On the other hand, the legislative houses (Powers and Privileges Act 2004) provides for contempt of parliament, such contemnor is usually prosecuted in court, and if found guilty is sanctioned accordingly. Contempt is defined as conduct that defies the authority or dignity of a court or legislature, because such conduct interferes with the administration of justice; it is punishable usually by fine or imprisonment (Garner, 2009). In agreement, the above definition contempt is viewed as a disregard of or disobedience to the rules or orders of a legislative or judicial body, or an interruption of its proceedings by disorderly behavior or so near thereto as to disturb the proceedings or to impair the respect due to such a body.

### **Copyright Law Cap C28 LFN 2010**

Copyright may be defined as the exclusive right of printing or otherwise reproducing copies of an intellectual production and of publishing and offering them for sale. It is the right of preventing others from doing so, and it is sometimes used to refer to the property in intellectual production. While Garner (2009) describes copyright to be the right to copy; specifically a property right in an original work of authorship (including literary, musical, dramatic, choreographic, pictorial, graphic, sculptural and architectural works; motion pictures and other audio-visual works; and sound recordings) fixed in any tangible medium of expression, giving the holder the exclusive right to reproduce, adapt, distribute, perform and display the work. As defined by Oyinloye (2008), copyright is the legal protection extended to the owner, creator, person or legal entity who owns the copyright in original work that he or she has created. Where a person creates a literary, musical or artistic work, he is the owner of that work and is free to decide on its use. That person (called the creator or author or owner of the right) can control the destiny of the work.

Copyright simply means the right not to be copied or the right to exclude others from the use of an intellectual creativity or the right to enable the copyright owner to prevent

others from copying to any substantial extent, an original work. Copyright can also be described as a property which may be sold, assigned or licensed for use by any other persons who have interest in such works. In addition, copyright is the right of an author, originator or owner of an intellectual property, to the protection of the sole and exclusive right to make copies of it in any material form, publish, and sell and to control such intellectual property for a period of time specified by law.

Section 5, 6, and 7 give the owner of a copyright or intellectual property, exclusive right to do the following:

- i. Control of copyright in Nigeria
- ii. Reproduction
- iii. Broadcasting
- iv. Publication
- v. Performance
- vi. Adaptation

It must be observed that copyright is an incentive for authors and creators in order to make sure that adequate returns are made from their works so as to encourage the creation of intellectual works. The social-economic development of a country depends on the creativity of her works to a large extent and creative works cannot be encouraged without effective administration and sensitization on the copyright laws (Anyanyemi, 2007).

However, the law equally provides an exception to the exclusive right of the copyright owner to make reproductions of his works and it is called fair use. Fair use of a copyrighted work includes such use by reproduction in copies for purposes such as book reviews, criticisms, comments, news reporting, teaching(including multiple copies for classroom use) research is not an infringement of copyright (Ojedokun, 2007). On the other hand, libraries lend out materials/information resources based on first sale doctrine. First sale doctrine simply refers to the purchaser to transfer that is selling, lend or give away a particular lawfully made copy of the copyrighted work without permission once it has been legally obtained from the right owner (Awak, 2012). Thus, it can be gleaned from the above premise that libraries are often the only entities that provide access to the vast majority of copyrighted works and are also the only entities that preserve public domain materials.

### **Freedom of Information (FOI) Law 2011**

This law is modeled after the English Freedom of Information Act. Blacklaw dictionary defines FOI Act as the federal statute that establishes guidelines for public disclosure of documents and materials created and held by the federal agencies. The basic purpose of the statute or of a state statute modeled after it is to give public access to official information so that the public will be better informed and the government will be more accountable for its actions. The preamble to this Nigerian adaptation declares that it is an Act to make public records and information more freely available, provide for public access to public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.

### **Implications of Legal Issues for Library Service Delivery FOI**

FOI is not only meant for the media, but also for custodians of knowledge - the Library and Information Professionals. FOI: makes public information more accessible to all citizens; gives right to information; promotes accountability in governance access. However, Information will be accessible on written application after which access to the information can be given. The request must be well described in a manner that the officer in charge will understand the request. A form of cost may be involved in the processing of the request. The officer must not decline the request, because the law allows the citizen to ask any question without stating the reason for it. However, in case of denial, the court is the final determinant of the case (Nwogu, 2012). As stated in the FOI Act that all records, documents and information stored in whatever form, including written, electronic, visual images, sound, audio, recording etc. should be made accessible to the public, it eases the work of the librarian in that availability and accessibility of the information could be provided by the libraries.

This Act makes public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, and protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedures for the achievement of those





purposes. Libraries face the challenge of information sorting because of classified and non-classified information. Granting the public access to certain information earlier termed classified information is crucial to the education of the citizenry and enlightenment of the public. Prior to the act, certain forms of information could be kept as "classified" such that certain records were kept in a manner to prevent the public from having access to it such as the official secrets Act under section 1 subsection 2. By the provision of the FOI Act public institutions like the library are compelled to make available every information in public interest. Libraries should provide unfettered access to all forms of information resources: electronic, web based, locally digitized and open access as posited by Ossai-Ugbah (2012). As stated in the FOI Act in Section 1 (4): "A public institution shall ensure that information referred to in this section is widely disseminated and made readily available to members of the public through various means, including print, electronic and online sources, and at the offices of such public institutions." Librarians have the duty of making sure that these information are available and accessible so as to enhance service delivery. The provision of library services through enabling laws like the FOI Act enhances access to national information for quality education and research towards national development.

### **Copyright Law**

Increase in plagiarism, photocopying and piracy, an act that does not recognize or acknowledge the actual owner (author) of intellectual work call for serious concern the world over. Libraries enable users to access copyrighted and public domain works and to exercise their right under the exceptions and limitations creators' right in the law. Libraries are places where public and the proprietary meet. The multiple roles of libraries as social organizations address the balance in the law and are shaped by it. The institutional role of libraries, librarians and their association necessitate paying close attention to that balance and promotes users' rights as well as creators' rights.

Libraries are small but significant market for published works. The vast majority of copyrighted works in library collections were purchased or acquired through license agreements. Often libraries pay more for copyright works than works of individuals. This is especially through subscriptions to periodicals, to ongoing research work and electronic information. Hence there is need for library staff and users to know about copyright, their limitations and benefits, when making use of any of the materials on the library shelves.

either in open or closed access in order to safeguard anti – piracy legislation. Librarianship has an important role to play in caring for and providing access to other people’s copyright work. Librarians need to recognize that most users of copyrighted materials are not aware of their dependence on the law and policy for access to information and for gaining knowledge. Members of the public take their rights for granted and generally exercise common sense, but do not get involved in policy deliberation. Librarians are to take seriously their role as rights, and privileges of the publishers are safeguarded, that is; they must assure the library users of uninhibited access to available collection in aid of research. Any user that is unsure if the material to be copied is protected by the copyright needs to seek advice from the library staff. Copyright seeks to promote the free flow and exchange of information by providing ways that third material may be reproduced or communicated. Copyright law is of central importance to libraries. Many library services are subject to the limitations and conditions of various copyright exceptions. Users of information resources are benefiting more often from copyright law, which ensures steady development of intellectual work from the authors and creators. Users are also aware of the role information resources play in various fields, this is why works used are acknowledged or cited, to give recognition to the creator or author. This is the prohibitive power of information resources as noted by Cornish (1998, 1999). Copyright law allows works to be used, under conditions defined as "fair use.

Schechter (2005) is of the opinion that a very important exception to the rule of copyright infringement is the concept known as fair use. Under this principle; the law permits the use of portions of copyrighted material. The Copyright Act of 2000 is therefore a *sine qua non* for all librarians to be properly educated in content so as to assume their leadership role in the dissemination of relevant information concerning the law.

Librarians are major purchasers of copyrighted works and make this work available to the public. Although, librarians typically seek to prevent copyright infringement of library materials, the ultimate responsibility of librarians is to provide access to materials and information services; not to enforce copyright law. Basic education and knowledge of the tenet of copyright laws enable librarians at dispensing their services in the direction of protecting copyright law and satisfying the need of its patrons. While librarians render their services, they should ensure the elimination of copyright violation, thus help in keeping publishers in business. This is possible only when the librarians are well informed.

Anyanyemi (2007) observed that libraries and librarians are the custodians of most intellectual property, and this make them indispensable world and relevance in the effective administration of copyright law in Nigeria and in the world at large. Violation of copyright law is frequently practiced by users in the library. This made it necessary for librarians to create more awareness through public enlightenment programmes like seminars, symposium, workshops, campaign, and public rally both within and outside the campus. Librarians could sponsor printing of pamphlets, posters and even banners and placed same at conspicuous strategic location to sensitize members of the public on the copyright law and the effect of it violation. The librarians could liaise with the relevant government agencies in enlisting copyright protection as a curriculum for studies right from Primary to tertiary institutions; they could sponsor the establishment of copyright protection vanguards as well, so as to safeguard the economic and moral rights of the authors. This in turn will enhance service delivery as materials will be freely given out for photocopying a small amount of the entire work for research purpose only. This also helps in creating a balance between library services and copyright law.

## Conclusion

Information is very important in service delivery and it is used in everyday activities. Information adds awareness and understanding of problems and also helps in problem solving. No library can exist without information. Information serves as the lifeblood of the library, in which if information is taken away the library's life is automatically put to a stop. Every resource acquired into the library is governed by legal laws and these laws regulate information handling and enhance service delivery. Librarians are expected to acquaint themselves with these laws that relates to the resources because it will help them in service delivery.

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