

## BOOK CHAPTER | Cybersmearing

## Countering Fake News, Hate Speech and Cybersmearing

Odumesi, John O. &amp; Faya, Moses

<sup>1</sup>Department of Computer Science, University of Abuja, FCT Abuja, Nigeria.  
Centre for Cyberspace, Nasarawa State University, Keffi, Nigeria

E-mails:

Phones:

**Abstract**

The internet revolution points to the unfolding and leverage of social media have always been viewed as a turning point in free speech and communication and represent the freedom of all people to speech and information. The free flow of information and the rise of hate speech, fake news, and cybersmearing on the Internet have no doubt increased social divergence. In tackling the menace of fake news, hate speech and cybersmearing in Nigeria, the government is addressing these challenges largely through existing penal legislations such as Nigeria Criminal Code Act 1990, Penal Code Act 1990, Electoral Act 2010, Evidence Act 2011 and Cybercrime Act 2015. Globally, these problems are viewed seriously and are one that must be tackled by all stakeholders.

**Keywords** – fake News, Hate Speech, Security, Cyber Space, Cybersmearing, Cybercrimes

**Introduction**

With the advent and rapid evolution of the internet and social media, users have been provided with an elective, often anonymous, electronic platform to globally communicate their ideas, beliefs, and commentary, whether factual or not (Sobel, 2000). Fake news is a global concern right now; there is an ongoing discussion about fake news and its impact on global affairs (Ogbette, et, al, 2019). The increase of fake news, hate speech and cybersmearing occurrences on the internet are caused by the internet ever-connected nature and preference. “Fake news,” or fabricated information that is patently false, has become a major occurrence in the context of Internet-based media (Molina, et, al, 2019). According to the United Nations Committee on the Elimination of Racial Discrimination (2013), hate speech includes (a) all dissemination of ideas based on racial discrimination or hatred, by whatever means, (b) incitement to hatred, contempt or discrimination against members of a group on the grounds of their race, colour, descent or national or ethnic origin, (c) threats or incitement to violence against persons or groups on the grounds in (b) above, (d) expression of insults, ridicule or slander against persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above when it amounts to incitement to hatred or discrimination and (e) participation in organisations and activities that promote and incite racial discrimination

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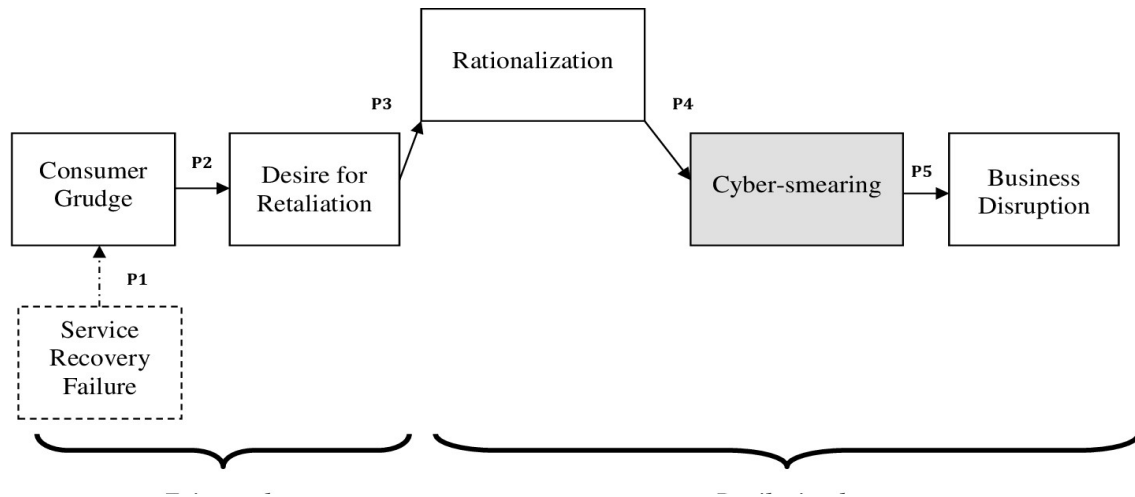
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Naples and Maher (2002) argued that Cybersmearing is the act of anonymous communication of false information about a corporation over the Internet, which causes economic damages. Cybersmear proliferates today because of three defining qualities of the internet itself, which are ubiquity, the illusion of anonymity and eternity. Another aspect of cyber smearing is consumer cyber smearing fuelled by a drive for retaliation for poor quality of service or lack of satisfaction with services or product sold to consumers.



**Fig 1: Consumer Cybersmearing Framework**

**Source:** <https://www.semanticscholar.org/paper/Understanding-consumer-cyber-smearing%3A-a-conceptual-Hermann/d4459d43eea00a0fa82fb535bd43f6758ae5b2ec>

The public acceptance of social media has caused the spread of fake news, hate speech and cybersmearing where conspiracy theories, disinformation and misinformation thrive. Detection and mitigation of fake news is one of the fundamental problems of our times and has attracted widespread attention (Lakshmanan, et. al, 2019). There are fact-checking websites such as Africa Check, Snopes, Politifact and open-source tools that fight disinformation online such as AdBlock Plus, Bot Sentinel, Dirt Protocol, Exifdata and major corporations such Facebook, Twitter, Google have also acquired Artificial Intelligence and Machine Learning (AI/ML) tools that are waging war against fake news such as Cape, Fabula, CrowdTangle. Nevertheless, much more remains to be done at all levels. In Nigeria, the government is addressing the menace of fake news, hate speech and cybersmearing largely through existing penal legislations such as Nigeria Criminal Code Act 1990, Penal Code Act 1990, Electoral Act 2010, Evidence Act 2011 and Cybercrime Act 2015.

### **Nigeria Approach In Addressing Fake News, Hate Speech And Cybersmearing**

The right to Freedom of expression in Nigeria provided in Section 39(1) of the 1999 Constitution of the Federal Republic of Nigeria is very clear. The section provides that “every person shall be entitled to freedom of expression, including the freedom to hold and to receive and impart ideas and information without interference.” Subsection 2 assert “without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinion.” The Nigerian courts have similarly highlighted the importance of the right in some cases. The Court of Appeal, in the case of IGP v ANPP described the right to freedom of expression as “the backbone of any democratic form of government” (Inspector General of Police V. All Nigeria Peoples Party & Ors (2007) LPELR-8932(CA).

However, despite the Nigeria Constitution guarantees the right, it also provides a limitation on the exercise of the right under section 45 of the 1999 Constitution “Nothing in section 39 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society” This section places a boundary on the freedom of expression provided in Section 39. This means that the rights guaranteed in section 39 (Freedom of expression and the press) are not unconditional. It validates censorship of freedom of expression if it is determined to be in the interest of national security or if it is necessary to protect the rights or freedoms of other persons.

The restriction of freedom of expression on these grounds is applicable to print, electronic, and digital media. Additionally, though the Constitution provides the right of freedom of expression, including the freedom to hold opinions, receive and impart ideas and information without interference, this right does not exist in a vacuum. The tort of defamation can be instituted against expression or speech made that is false. The existing legislation in Nigeria that regulate fake news, hate speech and cybersmearing are:

#### **A. Nigeria Criminal Code Act 1990**

The Criminal Code prescribes punishment for crimes committed in the Southern states of Nigeria. Chapter 373 of the Act deals with defamatory matters wherein a person who publishes any defamatory matter knowing it to be false is liable to imprisonment for two years.

#### **B. The Penal Code**

The Penal code prescribes punishment for crimes committed in the Northern states of Nigeria and the federal capital territory, Abuja. Section 114 deals with inciting disturbance or anyone who causes the disturbance of public peace.

Section 392 addresses issues of criminal defamation and prohibits the intentional use of words or signs that will or have reason to believe that such words or signs will cause harm to the reputation of an individual. Section 399 addresses issues of criminal intimidation. This section prevents the use of insulting or abusive language towards a person or group of persons. Lastly, the Penal code in sections 417 and 418 addresses exciting hatred between classes of people and publication of false news with the intent to disrupt public peace.

#### **C. Electoral Act 2010**

Section 95 (1) Political campaigns or slogans must not contain abusive language or use language in a manner disrespectful to religious, ethnic, or tribal beliefs. Further in Section 95(2) abusive, slanderous, extreme, vile insinuations or inferences likely to provoke violence must not be used in political campaigns.

#### **D. Evidence Act 2011**

Presently, the Nigerian court is not adequately empowered to deal with issues of hate speech since there is no specific hate speech legislation in Nigeria. However, litigants have the option of instituting an action for defamation. In discharging the burden of proof in defamation proceedings, Section 84 of the Evidence Act. Section 84(1) of the Act provides the platform for admissibility of a statement contained in a document, which has been produced by a Computer, (where direct oral evidence of such statement would be admissible) provided the conditions prescribed by Sections 84 (2) and (4) are complied with. The provision undoubtedly provides the necessary platform for admitting electronic evidence. This means that documents derived from electronic devices, statements made online or forwarded from one platform to the other can be admitted by the courts if they comply with Section 84 of the Act.

#### **E. Cybercrime Act 2015**

The Cybercrime Act addresses fake news, hate speech and cybersmearing circulated through social media under cyberstalking and deals with hate crimes, xenophobia, among others. Sections 24 and 26 are noteworthy. In a Court of appeal decision which was filed challenging the constitutionality of section 24(1) of the Act, that the provision of section 24(1) lacks a clear

definition of the offence as it was vague and overbroad and that it threatened his right to freedom of expression (protected by section 39 of the Constitution) and a fair hearing (protected by section 36(12) of the Constitution).

The Court rejected the argument that section 24 of the Act does not satisfy the requirements of section 36(12) of the Constitution holding that in its view the words in section 24(1) of the Act are “*explicit and leave no room for speculation or logical deductions.*” The Court held that the offence in the relevant section of the Act is clearly defined, and the punishment is also clearly stated. It, therefore, concluded that the provisions of section 24(1) of the Cybercrime Act, 2015 are not in conflict with the provisions of sections 36(12) and 39 of the Constitution.

#### **F. Nigerian Broadcasting Commission (Amendment) Act of 1999**

This Code was adopted the Nigerian Broadcasting Code (NBC Code) to regulate the broadcasting entities, including online broadcasts. The Code mandate to ensure political adverts or broadcasts do not contain hate messages or speeches, contents of online platforms are mandatory to conform with the Code's programming standards on fake news and broadcasters have the responsibility to verify news material emanating from an unconventional source.

There have also been other legislative proposals to regulate fake news, such as the National Commission for the Prohibition of Hate Speeches bill, also known as the Hate Speech Bill introduced in November 2019. A similar bill, the Hate Speech (Prohibition) Bill, 2019 (HB246), is currently pending before the House of Representatives and the Digital Rights and Freedom Bill, 2019 (DRFB) prohibits hate speech, child pornography, defamation, direct and public incitement from committing genocide, and advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence

In terms of relevant major international human rights instruments that bear on both basic digital rights, Nigeria has ratified some international and regional human rights instruments, including the African Charter, the ICCPR, and the ICESCR. At the sub-regional level, Nigeria has also adopted the Declaration of Political Principles of the Economic Community of the West African States, which stipulates member states' commitment to the ‘recognition, promotion and protection of human and peoples' rights under the provisions of the African Charter on Human and Peoples' Rights.’

#### **Conclusion**

This study focused on the laws on freedom of expression online in Nigeria and their acceptable limitations. Globally, the problem of fake news, hate speech and cybersmearing are viewed seriously and is one that must be tackled by all stakeholders. Thus, everyone has a responsibility to combat the scourges.

Finally, this study further notes that:

- a. The right to freedom of expression is a constitutional guarantee in Nigeria, however, the constitution and other laws impose a limitation on the exercise of the right to freedom of expression.
- b. The laws regulating fake news, hate speech and cybersmearing are currently inadequate.
- c. Some laws interfere and hurt the proper enjoyment of the right to freedom of expression online in Nigeria due to their ambiguities such as Cybercrime (Prohibition, Prevention, etc.) Act 2015

#### **Recommendations**

The following preventative measures can be implored to tackle the rise of fake news, hate speech and cybersmearing in Nigeria:

- a. Public awareness through different media engagements to build people’s capacity in spotting and calling out fake news, disinformation, and misinformation.

- b. People must realise the need for fact-checking. A post is not dangerous until it has been shared and “re-shared”. New media users must realise the enormous influence it wields and therefore takes caution while making use of social media platforms.
- c. Fight misinformation with information by providing alternative information alongside the content with fake information so that the users are exposed to the truth and correct information.
- d. Encourage victims and witnesses to report fake news, hate speech and cybersmearing related crimes to appropriate authorities.
- e. Establish social media monitoring operations to build a database of incidents and profile perpetrators.

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