

Rules Governing the Publication of Electoral Material -Avoiding Pit-Falls



During election cycles, there are laws that regulate what kind of content media distribution companies can publish, including new media like social networks and other digital media platforms. These laws are both in existence and proposed; an existing law is the Electoral Act 2010 (as amended in 2011), while proposed legislation which will regulate election-related content is the Electoral Act Amendment Bill 2018 (the “Bill”), which has been passed by the Nigerian Legislature. The President has however declined his assent, so we are unable to ascertain the timeline for this proposed legislation.

The Electoral Act 2010 (as amended in 2011) prohibits the following:

1. Campaigning in public earlier than 90 days before polling day or ending it less than 24 hours to the election: Section 99 (1) of the Electoral Act 2010 (as amended in 2011);
2. A political party, advertising in a newspaper, radio or TV during the 24 hours before polling day: Section 99 (2) of the Electoral Act 2010 (as amended in 2011); and
3. Publishing any false statement of the withdrawal of a candidate or about his or her personal character or conduct: Section 126 (b) and (c) of the Electoral Act 2010 (as amended in 2011).

In addition to the election laws cited above, the following general laws should be noted in relation to permissible electoral material:

1. Criminal Code Chapter C38 Laws of the Federation of Nigeria 2004 which among other things, prohibits and criminalises the publication of defamatory matter in respect of any person;
2. Cyber-crimes (Prohibition, Prevention, etc.) Act, 2015 which provides a legal regime for national cybersecurity and for the prevention, detection, response and prosecution of cyber-crimes; and
3. National Information Technology Development Agency Data Protection Guidelines 2017 (the “NITDA Guidelines”) which provides for the standards to be adhered to by data controllers in the collection, processing and storage of data. (Please note that it is not clear whether the NITDA Guidelines have come into effect as they do not stipulate an effective date, although some NITDA officials have informed us that the

Guidelines became effective when they were made public in 2017.)

From a Legal, PR, Business or Public Policy standpoint, the laws regulating electoral materials are very sensitive, posing a high risk of serious criminal penalties if not complied with. In the event of a breach, although the financial penalties are fairly modest, media publishing and distribution platforms stand the risk of criminal liability which may ultimately result in bad PR.

For instance, Section 101 (1)(2)(3) of the Electoral Act 2010 provides for the offence of broadcasting or publishing any material for the purpose of promoting or opposing a particular political party or a candidate during 24 hours immediately preceding or on polling day which is punishable with a maximum fine of N500,000 or imprisonment for a term of 12 months and in case of a body corporate, a maximum fine of N1,000,000. Section 126(b) of the Electoral Act 2010 provides that any person who before or during an election publishes any statement of the withdrawal of a candidate, knowing it to be false or reckless as to its truth or falsity commits an offence and shall be liable upon conviction to a maximum fine of N100,000.00 or imprisonment for a term of 6 months or both.

Further, Section 126 (c) of the Electoral Act 2010 (as amended) provides that any person who before or during an election publishes any statement as to the personal character or conduct of a candidate or to promote or procure the election of another candidate and such statement is false and was published without reasonable grounds for belief by the person publishing it that the statement is true commits an offence and shall be liable upon conviction to a maximum fine of N100,000.00 or imprisonment for a term of 6 months or both.

In the event of a breach of the Electoral Act 2010, the Nigerian Communications Commission may order the removal of content. The Nigerian Communications Commission (the “NCC”) is empowered by the Nigerian Communications Commission Act, Chapter N9, Laws of the Federation of Nigeria 2004 (the “Act”) to protect and promote the interests of consumers against unfair practices as well as implement the Government’s general policies on the communications industry and execute all such other functions and responsibilities as are given to the Commission under the Act or incidental or related thereto.

Section 146 of the Act provides that a licensee shall use his best endeavour to prevent the network facilities that he owns or provides or the network service, applications service or content application service that he provides from being used in, or in relation to, the commission of any offence under any law in operation in Nigeria.

In recent times, the NCC has exercised its powers under the Act by ordering the shutdown of websites that were in breach of the above provision of the Act.