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TOWARDS DEVEOPING A LEGAL FRAMEWORK FOR INTERNET DEFAMATION

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ABSTRACT

The primary purpose of this paper is an attempt to proffer solution to defamation which occurs on the internet. The rationale for this is that, the common law doctrine of defamation though amended here and there by statutes in Nigeria has still not captured internet defamation. Again, the law ought to, as much as possible be at par with technological advancement such as the internet. The paper was researched by examining existing texts on the subject area, some local statutes and internet sources. Upon a critical perusal of existing texts; both local and foreign and some local statutes, it was found that defamation continues to exist as an independent tort, short of encapsulating internet defamation. It is this lacuna that this work seeks to cover by recommending a code of conduct for internet users, abolishing anonymous posts on the internet and a statutory declaration making website administrators and owners responsible for defamatory content on their sites.

KEYWORDS: Towards Deveoping a Legal Framework for Internet Defamation

INTRODUCTION

This study will consider basically the tort of defamation which has always existed as a common law doctrine. The rationale for the research is premised on the fact that as much as there are, in courtrooms cause list, matters on defamation, common law did not envisage defamatory statements made on the internet. Perhaps such defamatory statements could pass with reputational damage on the claimant and without liability on the *tort feasor*. This research is considered imperative knowing that admissibility of electronically generated evidence was an issue in Nigerian courts. Considering however the recent amendment of the Evidence Act allowing admissibility of electronically generated evidence, it became imperative to develop a legal frame work for defamation made on the internet to be captured in defamation suits. The said section of the Evidence Act, Section 84 is set out hereunder;

> In any proceedings, a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible…

The justification for this research can be hinged arguably on the fact that the law is dynamic and legal rules which have always existed, must at some point need an upgrade or amendment to accommodate the ever changing tide of science and technology. So it is with the law of defamation which has, and needs some form of expansion to accommodate defamatory statements made on the internet.

DEFINITION OF DEFAMATION

As is usually said of most dynamic social concepts, there is no universally acceptable definition of defamation, but what exist is a myriad of definitions which is the same in content.

Originally, defamation was simply defined as the publication of a statement which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule.[1] This definition does not seem adequate, especially in that it does not embrace injury to trading reputation.[2]

The Supreme Court of Nigeria in *Sketch Publishing Co. Ltd. & Anor. v. Alh. Azeez Ajabemokeferi* considered defamation to be; "The publication of a statement concerning a person which is calculated to lower him in the estimation of right-thinking persons or cause him to be shunned or avoided or expose him to hatred or ridicule or convey injurious to him in his office, profession, calling, trade or business."[3]

Defamation is concerned with injury to reputation resulting from words written or spoken by others.[4] In other words defamation is the publication of "a false statement about a man to his discredit."[5] Essentially, defamation is the publication of a statement which lowers a person in the estimation of right thinking members of society, or which tends to make them shun or avoid the person.[6]

Winfield considers defamation thus; "Defamation is the publication of a statement which reflects on a person's reputation and tends to lower him in the estimation of right – thinking members of society generally or tends to make them shun or avoid him."[7]

A defamatory statement could be defined as one which tends;

- To lower the claimant in the estimation of right-thinking members of society generally; or
- To expose him to hatred, contempt or ridicule; or
- To cause other persons to shun or avoid him; or
- To discredit him in his office, trade or profession; or
- To injure his financial credit.[8]

Considering the foregoing, it is trite that the words complained of must tend to injure the claimant's reputation in the minds of right-thinking people generally, not merely in the minds of a particular section of the public.[9]

TYPES AND DIFFERENCES OF DEFAMATION

There are two types of defamation viz; libel and slander. Each of these would be examined seriatim;

Libel

A libel is a defamatory statement made in visible or permanent form, such as written or printed statements, for

[1] Street, *On Tort* (12th ed. London: Oxford University Press 2007) p. 351.
[2] *Ibid.*
[3] (1989) 1 NWLR (pt. 100), p. 678.
[4] Kodilinye & Aluko, *The Nigerian Law of Torts* (Ibadan: Spectrum Book Ltd. 2003) p. 136.
[5] *Scott v. Sampson* (1882) 8 QBD 491 at 503 per Cave J.; See also *Sketch Publishing Co. Ltd. & Anor. v. Alh. Azeez Ajabemokeferi (Supra)* and *Atoyebi v. Odudu* (1990) 6 NWLR (pt. 157), p. 384 SC.
[6] See *Sim v. Stretch* (1936) 2 All ER 1127 per Lord Atkin. See also *Complete Comm. Ltd. v. Onoh* (1998) 5 NWLR (pt. 549), p. 197 CA.
[7] Winfield & Jolowicz, *On Tort*, (17th ed., London: Sweet & Maxwell 2006) p. 50.
[8] See Gatley, *On Libel and Slander* (12th ed., London: Sweet & Maxwell 2013).
[9] See *Byrne v. Dean* (1973) 1 KB 818.

instance, in books, newspapers, notes, circular, letter or by way of effigy, caricature, painting, photograph, film, radio and television broadcasts and any recorded audio-visual materials and so forth.[10]

Spoken words taped in cassettes, tape recordings, gramophone records or included in a cinematograph film, are considered to be libel as the Court of Appeal held that defamation matter embodied in a talking cinematograph film was libel.[11]

It follows from the foregoing that a defamatory story heard and accompanied by visible presentation in pictures in a film, would amount to libel. There is however, an open question as to whether or not an audio recording unaccompanied by pictorial representation is libel although it is in permanent form.

With respect to defamation through broadcasting in radio and television, cable transmissions etc, they are all treated as publication in permanent form thereby amounting to libel.[12] Thus, strictly audio recording of defamatory matter is an actionable libel. Theoretical performances are also treated as libel.[13]

Libel is always actionable *per se* i.e. without proof of damage.[14] This means that whenever a libel is published, the law will presume that damage has been caused to the claimant's reputation and will award him general damages by way of compensation.[15] If a claimant in a libel action does prove he has suffered actual damage, he will be entitled to recover a further sum in addition to the general damages.[16]

Slander

This is defamation in transient form and is often through the medium of spoken words or gestures.[17] Thus, manual language of the deaf and dumb, mimicry and gesticulation generally constitute slander.[18] Any defamatory statement that is temporary and audible only is slander.[19]

It is sometimes said that libel is addressed to the eye, while slander is addressed to the ear.[20] Both libel and slander however protect the interest of the claimant in his reputation. In an action for libel or slander, the precise words used must be set out in the Statement of Claim. Also, the names of the persons to whom they are uttered must be set out in the Statement of Claim.[21]

It is settled law that in slander, the alleged defamatory words relied upon must be pleaded and proved in evidence.[22] Thus, a claimant cannot rely on the different versions of the defamatory words as given by several witnesses

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[10] Malemi, *op. cit*. 413.
[11] *Youssoupoff v. Metro-Goldwyn-Mayer Pic. Ltd.* (1934) 50 TLR 581.
[12] See Anambra State Torts Law (ASTL) 1986, Section 145; Defamation Law, 1961 Cap.34 Laws of Lagos State 1973, Section 3. See also Defamation Law, 1959 Cap. 32 Laws of Western Nigeria, Section 3.
[13] Enemo, *op. cit*. at p.239.
[14] See *Chike Obi v. DPP* (1961) ANLR 186.
[15] *Kodilinye & Aluko, op. cit*. at p. 140; Nthenda v. Alade (1974) 4 ECSLR 470.
[16] Gatley *op. cit*. pp.415-6.
[17] *Kodilinye & Aluko, op. cit*. p.139, *Offochebe v. Ogoja L.G* (2001) 16 NWLR (pt. 739) at p.467.
[18] Enemo, *op. cit*. at p. 239.
[19] *Ibid.*
[20] *Ibid.* See also *Kodilinye & Aluko, op. cit*. at p.139.
[21] See *Ugbomor & Ors. v. Dr. Hadomeh* (1997) 9 NWLR (pt. 520) p.307; *Yusuf v. Gbadamosi* (1993) 6 NWLR (pt. 299) p. 363.
[22] Malemi, *op. cit*. at p. 415.

called.[23] In slander, special or actual damage must be proved, thus it is not actionable *per se.*[24] The claimant must prove that he has suffered actual loss. There are however a few cases where slander is actionable *per se* and in such cases, it would have the same effect as libel. These cases are examined below;

- Imputation of crime
- Imputation of certain diseases
- Imputation of unchastity or adultery of a woman or girl
- Imputation affecting professional business

Definition of Internet

The internet is considered "a means of connecting a computer anywhere in the world via dedicated routes and servers."[25] When two computers are connected over the internet, they can send and receive all kinds of information such as text, graphics, voice, video and computer programs.

The internet has become a cultural, economical and life changing technological phenomenon.[26] However, the internet is not one single invention; it is a simple idea that has evolved throughout the decades into something bigger than us all.[27]

The internet is at once a world-wide broadcasting capability, a mechanism for information dissemination, and a medium for collaboration and interaction between individuals and their computers without regard for geographic location.[28] Prior to the internet, anonymous conversations were nearly impossible; there was no technological infrastructure to enable such contact between two people, let alone networks of people carrying on interlocking conversations. Now there are populous communities in which people can, unidentified, solicit advice, make friends and also "form identities".

While the internet was started fairly recently, today we are still at the tip of the iceberg of what this technology has in all its many forms and with what it can help us achieve. So in essence, the internet has already and will continue to revolutionize the world.[29]

The internet is a global network connecting millions of computers. More than 100 countries are linked into exchanges of data, news and opinions. According to Internet World Statistics, as of December 31, 2011, there was an estimated 2,267,233,742 Internet Users Worldwide.[30] The number of internet users represents 32.7 per cent of the world's population.[31]

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[23] *Bakare v. Ishola* (1959) WRNLR 106; *Archibong v. Akpan* (1992) 4 NWLR (pt. 238) p. 750 CA.
[24] Enemo, *op. cit.* at p. 240.
[25] *Internet,* (n.d) available at: http://www.businessdictionary.com/definition/internet.html (accessed on 26 June, 2014).
[26] *History of the Internet,* (n.d) available at: http://www.historyofthings.com/history-of-the-internet (accessed on 26 June, 2014).
[27] *Ibid.*
[28] B. Leiner, V. Cerf, D. Clark, R. Kahn, L. Kleinrock, D. Lynch, J. Postel, L. Roberts and S. Wolff, *Brief History of the Internet,* (n.d) available at: http://www.internetsociety.org/internet/what-internet/history-internet/brief-history-internet (accessed on 26 June, 2014).
[29] See footnote 25.
[30] *Definition of Internet,* (n.d) available at: http://www.webopedia.com/TERM/1/Internet.html (accessed on 26 June, 2014).
[31] *Ibid.*

The internet is becoming the town square for the global village of tomorrow.[32] It has created a new means of communication, and a new manner in which people are defamed.[33] The internet is operatively the most important public forum ever created,[34] its vast inter-connectivity far more nearly approximates the proto-typical "market place" of ideas.[35] The internet has had massive impact on many areas of personal and professional life. Internet sites such as Yelp, Twitter and Facebook are amazing web pages that have connected the world and spread information faster than any point in history.[36]

The internet represents a communication revolution. It makes instantaneous global communication available cheaply to anyone with a computer and an internet connection. It enables individuals, institutions and companies to communicate with a potentially vast global audience. It is a medium which does not respect geographical boundaries.[37]

The utility and essence of this technology notwithstanding, one common truth about it is that; "no one actually owns it."[38] The internet is more of a concept than an actual tangible entity, and it relies on a physical infrastructure that connects networks to other networks.[39] In as much as the internet has no owner, several organizations world over collaborate in its functioning and development. The high bulk of the internet data travels are owned by telephone companies in their respective countries.

Brief History of the Internet

The internet today is a widespread information infrastructure, the initial prototype of what is often called the National (or Global or Galactic) information infrastructure.[40] Its history is complex and involves many aspects – technological, organizational and community, and its influence reaches not only the technical fields of computer communications but throughout society, as we move towards increasing information acquisition and community operations.[41]

The first recorded description of the social interaction that could be enabled through networking was a series of memos written by J.C.R Licklider of MIT in August 1962 discussing his "Galactic Network" Concept.[42] He envisioned a globally interconnected set of computers through which everyone could quickly access data and programs from any site. In spirit, the concept was much like the internet of today. J.C.R Licklider joined the Defence Advanced Research Projects Agency (DARPA) as the first head of computer research program in October 1962.

While most people may think the history of the internet started in the early 90's or even 80's, the idea of the internet started much earlier back in the 1950's. Besides the idea of the Galactic Network, there were other ideas and

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[32] B. Gates, (1999) quoting from *Brilliance and Banter from the Internet Age 6*, Davis L. Green ed. 2008, available at: www.fasken.com/en/internet-defamation-slander/ (accessed on 5 July, 2014).
[33] Wotherspoon & Taylor, *Internet Defamation & the Defence of Responsible Journalism: Protecting Professionals and Amatures alike?* available at: www.fasken.com/en/internet-defamation-slander/ (accessed on 5 July, 2014) at p. 1.
[34] See *Denver Area Educ. Telecomm Consortium Inc. v. FCC, (Supra)* (Kennedy J. dissenting).
[35] See *Abrams v. United States, (Supra)* (Holmes J. dissenting).
[36] *San Francisco Internet Defamation and Libel Attorney*, (n.d) available at: http.//jonesdevoy.com/practice-areas/personal-injury/internet-defamation-and-libel/ (last accessed 5 January, 2014).
[37] Matthew Collins, *The Law of Defamation and the Internet* (Oxford University Press, 2001) Para. 24.02.
[38] *Ibid*. See footnote 25.
[39] *Ibid*.
[40] See footnote 28.
[41] *Ibid*.
[42] *Ibid.*

events that played a part in ultimately creating the early internet. Another event that figured prominently into the history of the internet is a commissioned study by the United States Armed Forces on how the military would be able to keep and maintain control and command of airplanes, bombers and nuclear missiles during and after a nuclear attack.[43] Pretty much, the United States Armed Forces wanted to understand the best ways to create a decentralized network of communications in order to run their branch of the military during and after a nuclear strike. The important point was that this command would have to be decentralized, so no matter the extent of damage, the military would still be able to control its nuclear weapons, airplane and bombers in order to counter strike or protect itself.[44] This study was commissioned and overseen by Paul Beran of RAND Corporation.

Further development was recorded by Leornard Klienrock of MIT in 1961 known as the "Packet Switching Theory". The idea of Packet switching is that a packet of data could be sent from one location to the other. Kleinrock was convinced of the theoretical feasibility of communications using packets rather than circuits. One of the differences in packet switching technology than was being used was, if a packet of data was lost at any given point in its journey, the packet could be easily resent by the originator, which was not the case with data being sent at the time.[45]

There were a few other improvements and development of the Packet Switching Theory of which birthed the modern day internet. The original internet was known as the ARPANET, which was the pioneering packet switching network. In the early 1990's, the internet had about 300,000 host computers.[46] With so much innovation over the last few decades, the internet grew from a couple of dozen computers to billions in a blink of an eye.

The vast majority of internet users do not start up their computers and log onto the ARPANET, we usually open our browsers and start typing "www". Which stands for the World Wide Web and this is one of the most important innovations that the internet has seen in its relatively short life.[47] The World Wide Web is a platform that makes it easy to access data on the internet.

The World Wide Web was created in 1989 by Sir Tim Bernes-Lee, Sir Sam Walker and Robert Caillau which became introduced publicly on August 6th, 1991. This is when the internet finally took off.[48] Today, there are many search engines like google, yahoo, ask.com etc and many social network and chat sites like facebook, yelp, instagram etc.

It is however important to note that the internet is not synonymous with the World Wide Web.[49] The internet is a massive network of networks, a networking infrastructure. It connects millions of computers together globally, forming a network in which any computer can communicate with any other computer as long as they are both connected to the internet. The World Wide Web, or simply web, is way of accessing information over the medium of the internet. It is an information-sharing model that is build on top of the internet.[50]

Internet Defamation

Internet defamation amounts simply to any defamatory statement published on the internet. Meaning that;

[43] See footnote 26.
[44] *Ibid.*
[45] *Ibid*.
[46] *Ibid*.
[47] *Ibid.*
[48] *Ibid*.
[49] See footnote 25.
[50] *Ibid*.

- The Statement; spoken or written, must be defamatory;
- That the defamatory statement referred to the claimant and;
- That they were published on the internet.

Internet defamation is a negative false statement of material fact published on the internet.[51] With the internet, defamatory statements can be published online to a worldwide audience, making internet defamation potentially disastrous to one's reputation and business. Frankly speaking, the possible reason for the rise in internet defamation is perhaps owing to the near-infinite information capacity of the internet,[52] and low transaction and market entry costs making it possible for anyone who wishes to publish anything to publish.

While statistics on the phenomenon are unavailable, it is apparent that defamation in particular has begun to occur online with alarming frequency. Defamation, in the shape of slanderous and libelous comments, has been around for many decades, the problem has been exacerbated by the advance of the internet as a reporting and social tool. While comments made in newspapers and even on the TV have a limited shelf life, those made on the internet can remain on the websites and even in the cache of search engines for many more years.

Online defamation or internet defamation is the publication of defamatory statements made on any internet based media including blogs, forums, websites and even social networking websites.[53]

In light of the increase in libelous comments, governments, judges and courts around the world have extended their own laws and regulations to include comments made online as well as in other more traditional forms of media. It is no doubt admitted that even around the world, there are very few or no specific Online Defamation Acts, whenever actions are brought, the Communications Decency Act[54] are cited and many countries around the world, especially the UK, are set to release specific online defamation laws that deal specifically with these internet defamation.

The Communication Decency Act of 1996 above referred was actually established to try and deal with the publication of pornography and other adult content freely and widely available on the internet. However, it was created to combat any indecent and defamatory content found on websites and other online publications.

The Communication Decency Act (CDA), Section 230 is the section that perhaps is most relevant to online defamation. It attempts to deal with the question of Internet Service Providers (ISP's) liability to content stored on their servers. Although it does not specifically outline all instances, it does contend that an ISP is not responsible for the information published by their users unless and until they are informed of any infringement; at this point the ISP is to act by removing the content or face legal action themselves.

Whatever the case is, or in whatsoever jurisdiction it arises, it is no doubt that internet defamation is relatively new and different jurisdictions taking different stand as to its application. We shall consider just a few cases in other

[51] *Internet Defamation*, (n.d) available at http://www.informationlaw.com/Internet Defamation. html (accessed on 2 June, 2014).
[52] The internet can currently accommodate 4.3 billion unique universally scoped web addresses. See S. Garnfinkel, "Internet" *Tech. Rev.* 7 Jan. 2004 (n.d), available at http://www.technologyreview.com/printer_friendly_article.aspx?id=13426, (accessed on 1 July, 2014).
[53] *Online Defamation and Your Rights; Defamation and its rise on the Internet*, (n.d), available at http://www.reputationhawk.com/online defamation. html (accessed on 2 July 2014).
[54] An American legislation. It can be viewed in full at http://www.fcc.gov/Reports/tcm 1996.txt.

jurisdictions where internet defamation has been so held by the courts in their jurisdictions.

Perhaps the most popular case concerning internet defamation is *Dow Jones & Co. Inc. v. Gutnick,*[55] although the merits of the case has not been heard, but issues arising out of some preliminary objections which have gone on appeal has made it so popular and is frequently cited and has in fact filled academic discussions. The issue here is that Mr. Joseph Gutnick, a businessman who is involved in a number of philanthropic, political and sporting activities who lives in Victoria with friends, associates and business interests in that state, although his business extends outside Australia. Dow Jones the defendant publishes Wall Street Journal and Barron's Magazine which is a weekly magazine covering financial matters published an article dated 30th Oct. 2000 titled "Unholy Gains". It was sub-headed; "when stock promoters cross paths with religious charities, investors had best be on guard" and was accompanied by a large photograph of Mr. Gutnick and other persons.

The article went on to state that some of Mr. Gutnick's business dealings with charities raised "uncomfortable questions" and that an investigation by Barrons Magazine had found that several charities traded heavily on stocks promoted by Mr. Gutnick. It also linked Mr. Gutnick with many persons who may have been involved in criminal activities in the USA. The magazine was widely circulated in the USA and a small number entered Victoria.

Most interestingly, the article was posted on Barron's online website which could be accessed by any of the 550,000 or so subscribers in Victoria. Dow Jones web server and web site is located in New Jersey (USA).

Mr. Gutnick sued Dow Jones in Victoria (Australia). Dow Jones applied for a stay of action or to have the service or the proceedings set outside on three grounds; first, that publication was effected in the USA and not Victoria. Secondly, that no act was committed in Victoria to enable service outside Victoria and; thirdly, that Victoria was not a convenient forum. The primary Judge Hedigan J. dismissed Dow Jones arguments and refused to stay the action. Dow Jones then sought leave to appeal to the Court of Appeal of Victoria, of which the Court of Appeal refused leave to appeal. Dow Jones then appealed to the High Court which granted leave and also granted leave to a group of 18 business and organizations including Amazon.com Inc, News Ltd and Yahoo! to intervene in support of the appellant.

The decision reached by the High Court is thus; seven members of the High Court delivered four separate judgements. However, all held that the publication of the communication, an essential element of a defamatory action, occurred in Victoria where the matter was downloaded from the internet. The court allowed the matter to be held in Victoria and the Victorian laws to apply. This case has a lot of *ratios decidendi* which would be considered in chapter four, when considering issues in internet defamation.

Again in *Kitakufe v. Oloya,*[56] a case in Toronto, Canada in which a Ugandan born Toronto doctor claimed damages against a Ugandan journalist over a report in a Ugandan newspaper accusing him of professional misconduct and fraud. The online edition was available in Canada but not the hardcopy version. The court allowed the matter to proceed on the basis that the claimant should be able to sue in his place of residence and should not have to go all the way to Uganda to enforce his rights.

[55] (2002) HCA 56, 10 December 2002.
[56] Ontario Court of Justice, Himel J., 2 June 1998; *Godfrey v. Demon Internet Service* (2001) QB 201.

Issues in Internet Defamation

Anonymous and Pseudonymous Posts and the Position of Internet Service Providers (ISP's)

The primary question to be determined from the outset of internet defamation is to consider who the defendant is. A huge challenge holding people responsible for internet defamation is that they will often post messages using anonymous e-mail addresses or screen names.[57] Many people who post damaging content online believe that web anonymity is a free speech right or that it makes them immune from prosecution.[58]

The digital age and its open invitation to publish, presents not only an entirely novel oppourtunity for the creation and dissemination of content by vast multitudes who were never before able to do so, but also a difficulty in arriving at who actually posted a particular piece. Tracing an individual that has posted a defamatory comment can prove very difficult.[59] It is only when one is able to identify the defendant that action "may" commence.

At common law, persons who intentionally or negligently participate in or otherwise authorize the publication of defamatory material are as potentially liable as if they were the original authour. This means that in a newspaper publication for example, the authour, the publisher, the editor and printer of a defamatory statement may all be liable. These individuals are generally easily identifiable, however, with regards to an internet publication, the publishers are not so easily identifiable and their geographical location may even prove to be most difficult to locate. It may be assumed that Internet Service Providers (ISP's) and certain intermediaries may be held liable, but this situation is not conclusive.[60]

The nature of the web makes it impossible to ensure with complete effectiveness the isolation of any geographic area on the earth's surface from access to a particular website.[61] Thus unlike traditional publishers who can restrict their sales of their publication by geography, internet publishers- simply by choosing to publish on the internet- are held to be subject to the various laws of every nation reached on the internet.[62]

ISP's may share some characteristics with more traditional publishers, depending on the services provided, for example, ability to edit content. It is important to note, however, that not all ISP's provide all of the same services. Indeed, some ISP's may act solely as access providers, connecting subscribing users with the internet, others may offer a variety of additional services including the provision of e-mail addresses, or may even host content or websites. Regardless of the services offered, however, ISP's are not likely to use their ability to edit content in the same way as the editor of a newspaper. The law of innocent dissemination therefore becomes relevant.

In the United States, in order to avoid a plea of innocent dissemination, the claimant must prove that the publisher was not innocent. Conversely, under English law, innocent dissemination is not presumed. The defendant publisher must

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[57] See http:www.informationlaw.com/internet-Defamation.html (accessed on 5 July, 2014).
[58] *Ibid.*
[59] See http://www.reputationhawk.com/onlinedefamation.html (accessed on 5 July, 2014).
[60] L. A. Joseph, *Defamation and the use of the Internet,* (n.d) available at: http://www.barnaclegrenada.com/index.php/local-news/commentary-mainmenu-53/2855-defamation-and-the-use-of-the-internet, pp.1-2 (accessed on 10 July, 2014).
[61] "High Court throws a Spanner in the Global Networks", *The Australian,* 11 December, 2002 as cited in N. Dixon, *Defamation and the Internet: A New Challenge,* Queens Law Parliamentary Library (n.d), available at: www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2003/200311.pdf at p. 26 (accessed on 5 May, 2014).
[62] *Ibid.*

establish their innocence if they wish to stand on this defence.[63] To date, there is nothing in the Canadian Jurisprudence which speaks directly to the liability of ISP's however, on the basis of the existing jurisprudence, ISP's may also become liable for publication where they become aware of defamatory material and decline to interfere with its communication to third parties.

The defence of innocent dissemination has been recognized in Canadian law and applied in circumstances where the defendant was not the originator of the alleged defamatory material but simply facilitated its public dissemination without being aware of the content. In *Minear v. Miguna*,[64] the issue was whether the University of Toronto Press, which contracted to print and bind a book that turned out to contain defamatory statements, was liable for publication. The key factor in this case was that the function of the University Press was not to provide editorial services, but merely to reproduce the documents. They established that they were innocent of any knowledge of the defamatory material, and as such could rely on the defence of innocent defamation.

The claimant in *Hemming v. Newton*[65] attempted to strike out a portion of the statement of defence which pled innocent dissemination. The defendant pled that he did not see or authourize the impugned posting before it occurred, and removed it promptly once it had been brought to his attention. On this basis, Gerow J. accepted that the defence may succeed and denied the motion to strike.[66]

Of great benefit to ISP's escape of liability in the United States is the United States Communications Decency Act, Section 230, the Section attempts to deal with the ISP's liability to content that is stored on their servers. Although it does not specifically outline all instances, it does contend that an ISP is not responsible for the information published by their users unless and until they are informed of any infringement; at this point, the ISP should act to remove the content or face legal action.

It may be of relevance to cite the provision above refereed *id est*; Communications Decency Act, Section 230; "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

A critical perusal of this statute would mean that ISP's would escape liability from the backdrop that they cannot control the activity of internet users. Whether or not this position is proper is doubtful considering the fact that publishers in traditional defamation are usually made parties to the suit.

The Classification of Internet Defamation

It is trite law that the classification of defamation into libel and slander is not merely decorative, but is so vital to ascertain the extent of liability of the *tort feasor*. This has been an issue with respect to internet defamation as to whether internet defamation is libel or sander. The internet is a unique mode of communication that is resistant to our traditional methods of categorizing defamation as libel or sander on the basis of the form of publication.[67] Though statements posted on the internet share some characteristics with more traditional communications, there are other distinguishing characteristics about them. For instance, the Ontario Court of Appeal recently in *Toronto Star Newspapers Ltd. v.*

[63] *Ibid*, *Godfrey v. Demon Internet Ltd. (Supra).*
[64] (1996) Can LII 8214 (ON SC).
[65] (2006) BCSC 1748 (Can LII).
[66] *Ibid*. at Para. 63.
[67] Wotherspoon and Taylor, *op cit.* at p. 10.

Canada[68]noted that the internet undermined the efficacy and ability to enforce publication bans. Another fact is that once information is posted, it has a level of permanence.

Prior to the internet, anonymous conversations were nearly impossible; there was no technological infrastructure to enable contact between people, let alone networks of people carrying on interlocking conversations. This raises very serious issues.

The categorization of defamatory statement into libel and slander is of utmost importance as libel is in a more permanent form whilst sander is transient. The idea of the law is that there is presumed damage when the defamatory statement is libelous. One would wonder should there be this classification of libel and slander with respect to internet defamation?

There appears to be a position reached in the United States by the New Jersey Supreme Court in *W.J.A v. D.A*[69] where the court held that the presumed damages doctrine applies and is recognized on internet related defamation. The court however recognized that only nominal damages are to be awarded precluding compensatory damages absent proof of actual harm. The claimant is however allowed to prove actual damage which is difficult though as reputational harm is extremely hard to measure.

It is submitted that this position of maintaining presumed damage serves a utility as the claimant should be able to get some remedy for the reputation assassination, but like the court held, such damage awarded should and ought to be minimal (by way of nominal damages and giving room to establish the extent of damage to his reputation so that he does not take undue advantage of the law to claim a reputation he does not have).

Jurisdiction

It is trite law that jurisdiction is of utmost importance in any given suit. It has been given several "all-important" nomenclatures like the heart, nerve, blood and such similar terms of a given suit.[70]

It gets to play out particularly with respect to internet defamation assuming a defamatory content is uploaded in the United States of America against a claimant who resides in Nigeria. Should the laws of the United States or that of Nigeria regulate the defamatory suit?

The issue of jurisdiction relating to internet defamation cannot be firmly determined without discussions on the issue of publication. It does appear to be that by the decision in *Dow Jones & Co Inc v. Gutnick*,[71] the issue of jurisdiction and choice of law to be applied in internet defamation cases has been laid to rest as the court held that in the context of material on the internet, the place where the material is downloaded is the place of publication i.e. in the scenario above, the place to bring the action would be where the defamatory content is downloaded; Nigeria being the place where the wrong is committed.

The facts of the case is that the claimant, a business man involved in philanthropic, political and sporting activities lives in Victoria State of Australia and was defamed by Barrons Magazine who also posted the article on their website stating that Mr. Joseph Gutnick traded heavily in stocks whilst dealing with charities. The article further linked the

[68] (2009) ONCA 59 (Can LII) p. 29.
[69] A – 77 – 1- (May 16, 2012). See generally gdn@gdnlaw.com, (accessed on 1 July, 2014).
[70] See *Madukolu v. Nkemdelim* (1962) 1 All NLR 581.
[71](2002) HCA 56, 10 December, 2002.

claimant; Joseph Gutnick with a convicted money-launderer. The web server of Dow Jones the defendant is located in New Jersey, United States of America. Upon this suit in Victoria, the defendants contended the proper forum ought to be in the United States where the server is located, but the court held that the proper forum was Victoria being the place where the material is downloaded and the place where the tort is committed. This appears to be the authority now regarding internet defamation.

In another internet defamation case; *Baldwin v. Fischer-Smith*[72] of the United States of America, where the defendants Karen Fisher-Smith of Arizona and Patrick Hall of Pennsylvania created a website; "stop-whisperinglane.com" which accused a Missouri dog breeder of being a "puppy mill" and called Missouri the "puppy mill of the world". In deciding that the defendant's website established the minimum contact required for jurisdiction in Missouri to be appropriate, the court warned, "if you pick a fight Missouri, you can reasonably expect to settle it here".[73] The court arrived at this by concluding that the defendants expressly aimed their tortuous activity towards Missouri and thus jurisdiction was appropriate.[74]

It does appear therefore from the authorities that it is the place of download of the material which is considered by legal fiction to be where the defamatory matter is published that has jurisdiction over the matter and not where the defamatory content was uploaded.

Publication Issues

Publication as is well known is the heart of any defamation action, as it is trite law that for a claimant to succeed in a defamation suit, the defendants must have published the defamatory material. Again, the issue of publication is also relevant to determining whether the limits of the defence of qualified privilege have been exceeded, or whether this element of defamation can be presumed.

One striking issue that naturally arises in internet defamation cases is where actually is the place where the person defamed has a reputation to protect. In the case of the World Wide Web, material is not available in a comprehensive form until downloaded unto the computer of the person who has used the browser to retrieve it from the web server.[75] It is the place where the person downloads the material that the damage to reputation occurs and the tort of defamation is committed.[76]

On the authority of *Dow Jones & Co. Inc v. Gutnick*[77] it follows therefore that the place of downloading the defamatory material is the place of publication and not where the defamatory statement was uploaded.

By the above authority, the single publication rule was rejected. Under the single publication rule, a widely disseminated publication is treated as a single publication regardless of the number of places in which it has been

[72] 315 S.W. 3d 389, 391-92 (MO.Ct.App.2010), available at http://www.courthousenews.com/2010/07/19/28948.htm (accessed on 7 August, 2014).
[73] See also *Calder v. Jones* 465 U.S 783 (1984); *Pfeiffer v. International Academy of Biomagnetic Medicine* 521 F. Supp. 1331 (WD MO 1981).
[74] *Ibid.* at 397-98.
[75] N. Dixon, *Defamation and the Internet: A New Challenge*, Queens Law Parliamentary Library (n.d), available at: www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2003/200311.pdf at p.5 (accessed on 5 May, 2014).
[76] *Ibid*.
[77] *Supra.*

published. The rule was rejected, as the court decided to stay glued to the traditional defamation law that every communication of a defamatory matter founds a separate cause of action.[78]

It is however, important to note that publication cannot be presumed where a defendant posted hyperlinks. In *Crookes v. Wikimedia Foundation Inc*,[79] Kelleher J. noted that; "the mere creation of a hyperlink in a website does not lead to a presumption that persons read the contents of the website and used the hyperlink to access the defamatory words."[80] For publication to be found under those circumstances, evidence would be required that individuals other than the claimant, read the defendants website, clicked on hyperlinks and read the defamatory statements. For the same reasons, the presence of hyperlink does not necessarily constitute a republication either. "Although a hyperlink provides immediate access to material published on another website, this does not amount to republication of the content on the originating site. This is especially as a reader may or may not follow the hyperlinks provided."[81]

The English case of *Loutchansky v. Times Newspaper Ltd.*[82] addressed the issue or republication on the internet. Commenting on the balance between the social utility of archiving material, and the protection of reputation under the circumstances, the court held that, "archive material is stale news and its publication cannot rank in importance with the dissemination of contemporary material."[83] Ultimately, to adopt a single publication rule, would necessitate a change in the law of defamation. The court was unwilling to engage in such a change on the circumstances of this case.

On the contrary however, the future treatment of a single publication rule in Canada is uncertain. In the case of *Bahlieda v. Santa*,[84] an Ontario Superior Court of Justice case interpreted the Ontario Libel and Slander Act to impose a single publication rule in the context of archived internet material. However, this decision was a matter of interpretation of the wording of the Ontario legislation.

In British Columbia, the Court of Appeal addressed the issue of reputation in *Carter v. B.C Federation of Foster Parents Association*,[85] the court refused to adopt the single publication rule, indicating that such a step would be the proper and perhaps required role of the legislature especially in the light of the unique issues in widespread internet publication.[86]

In the United States however, many jurisdictions have adopted legislations which impose the single publication rule to discourage repeated litigation arising from the same material.[87]

Resolving Issues in Internet Defamation

Ban on Anonymous and Pseudonymous Posts and ISP's Statutory Liability

The perhaps most serious challenge facing internet defamation suits which is identifying the defendant can be sorted by a technological ban on anonymous and pseudonymous posts. The only possible way of being able to identify a user who has posted would be to find out the details of the computer that was used to publish the statement or post contact.

[78] *Duke of Brunswick v. Harmer* (1849) 14 QB 185.
[79] 2008 BCSC 1424 (Can LII) (Crookes 2).
[80] *Ibid*. at Para. 24.
[81] *Ibid.* at Para. 30.
[82] Nos. 2-5 (2002) QB 783 at 813, per Lord Philips M.R (C.A).
[83] *Ibid.* at Para.74.
[84] (2003) 64 OR (3d) 599 (SCJ).
[85] (2005) BCCA 395 (Can LII).
[86] *Ibid*. at Para. 20.
[87] See *Firth v. State of New York*, 775 NE 2d 463 (Ct. App. 2002).

However, if this is a public computer, then it is almost impossible to narrow down the search in order to find the culprit.[88] This justifies including the Internet Service Provider, administrator or owners as co-defendants.

This bottle neck can be resolved by enacting a Bloggers Code of Conduct as proposed by the blogher.org community guidelines[89] and defined by Tim O' Reilly[90] as the Site Content Rules which specifically licences the deletion of abusive, threatening and invasive content.

It is clear that a defendant in internet defamation cannot be identified without the ISP whose role as the "publisher" cannot be undermined. The rationale behind holding website administrators and owners responsible as publishers for their site content is that doing so would quickly and dramatically decrease the amount of defamatory content online. Whatever the case, claimants in jurisdictions which have internet defamation recognized have attempted to name ISP's as defendants in defamation actions.[91] ISP's may have "deep pockets" in excess of the resources of the average internet user. This makes them an attractive target to would-be plaintiffs [claimants].[92]

The reasoning that ISP's be made parties as well as held liable together with the original *tort feasor* is premised on the fact that in traditional libel, publishers of defamatory content are made parties and held liable as well. It is no doubt that some ISP's act solely as access providers; merely connecting users with the internet and not involved in any form of web hosting. If publishers in traditional libel, who perhaps were not involved at the manuscript stage of defamatory publications, are not excused, one would wonder why the case should be different in the internet cases.

Internet Defamation as Libel

It is no doubt that the internet is a unique mode of communication that is resistant to our traditional methods of categorizing defamation as libel or sander on the basis of the form of publication.[93]

One cannot jettison the fact that information placed on the internet enjoys some degree of permanence and is in no wise transient. The idea then would be to categorize internet defamation as libel other than slander because of the permanent nature of defamatory statement made online.

There appears to be a position reached in the United States by the New Jersey Supreme Court in *W.J.A v. D.A*[94] where the court held that the presumed damages doctrine applies and is recognized on internet related defamation. The court however recognized that only nominal damages are to be awarded precluding compensatory damages absent proof of actual harm. The claimant is however allowed to prove actual damage which is difficult though as reputational harm is extremely hard to measure.

It is submitted that in accordance with the United Kingdom's Communication Act of 2003, and also at common law, internet communications may be deemed to be in permanent form and therefore defamatory statements on the internet

[88] See http://www.reputationhawk.com/onlinedefamation.html (accessed on 5 July, 2014).
[89] Blogger, *What are your Community Guidelines?* Available at: http://www.blogger.com/what-are-your-community-guidelines (accessed on 25September, 2014). See also Brad Stone, *A call for Manners in the world of Nasty Blogs* NY Times April, 2007 at A1.
[90] O'Reilly Radar, *Call for a Bloggers Code of Conduct,* available at: http://radar.Oreilly.com/archives/2007/03/call-for-a-blog-1.html (accessed on 9 August, 2014).
[91] Wotherspoon & Taylor, *op. cit.* p. 16.
[92] *Ibid.* p. 17.
[93] Wotherspoon and Taylor, *op cit.* at p. 10.
[94] *Supra*.

may be considered to be libelous.[95]

It is submitted that this position of maintaining presumed damage serves a utility as the claimant should be able to get some remedy for the reputation assassination, but like the court held, such damage awarded should and ought to be minimal (by way of nominal damages and giving room to establish the extent of damage to his reputation so that he does not take undue advantage of the law to claim a reputation he does not have).

The Dow Jones Jurisdiction Settlement

Several arguments have been raised that to make the claimant's residence or where he operates his business the appropriate jurisdiction would mean the defendant (particularly web sites owners, administrators, hosts and service providers) is potentially liable to the whole world as he would have to be abreast with the laws of the whole world. It was submitted on this point; "the consensus among media lawyers is unexciting: publishers know the people they are about to chastise and therefore they will know the country where damage to reputation would occur…"[96] This position is submitted to be the correct reasoning as the claimant in internet defamation cannot bring an action in just any country other than where he has minimum contact or at least has suffered some damage.

Media lawyers from more than a score of countries discussed the issues relating to jurisdiction on defamation made on the internet at the International Bar Association Conference in Durban, South Africa recently.[97] They recognized that a claimant may not be able to recover large damages due to the limited nature of the publication in that claimant's jurisdiction. They produced what is known as the "Durban Principles" set out hereunder;

- A court may hear a complaint if the court is in a forum where the claimant lives, the defendant lives or the parties consent to jurisdiction.
- The court should apply the law of the jurisdiction with the most significant connection on the internet site. This would ordinarily be where the editorial work was completed.
- In any case arising from the content of an internet site posting, it should be a complete defence to liability if, within 24 hours the Internet Content Provider posts a notice that a complaint has been made and provides a link to the text of the complaint on its site.

The Durban Principles are very novel suggestions to establish a legal framework for Internet Defamation but the second rule therein is flawed by this work. The position here is that the defendant should be allowed to sue where he has a reputation to protect; that is, the place of download of the material other than the place of upload as suggested by the Durban Principles.

It may appear problematic that since internet defamation has been suggested in this work to be treated as libel, then there is the likelihood that the claimant may enjoy damages which he does not merit owing the principle of presumed damage in libel cases. This fear is laid to rest as it was suggested that only nominal damages should be awarded by the court except where the claimant can prove special damage.[98]

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[95] Joseph, *op. cit.* at p. 1.
[96] B. Lane, "Nowhere to Hide", *The Australian*, 14 December, 2002 as cited in Dixon, *op. cit.* at p. 22.
[97] "Court Misses Internet Opportunity" *The Age*, 15 December, 2002, as cited in Dixon, *op. cit.* at p. 18.
[98] See *W.J.A v. D.A (Supra).*

It is suggested that the position of the court reached in *Dow Jones v. Gutnick*[99] be the adopted. That is; the place where the defamatory content is downloaded should be the place with jurisdiction, which can be seen as the place where the tort was committed. This position is supported hereunder;

> The High Court (as indeed Justice Hedigan did in Victoria) has treated internet publishing in much the same way as other means of mass communication-and rightly so. If information is "uploaded" from a server on the other side of the world it should be irrelevant to the harm it may cause in the home country of the person who is its subject. The real issue is where a person reads or hears and comprehends the material, not where it may have come from. To have news agencies such as CNN expressing great concern over this decision because they may be liable to defamation actions in every country on earth is a good example of uninformed panic rather than rational consideration of the matter generally and the judgement itself. The context in which the decision is made is no different to what has occurred in radio, television or other forms of international communication in the past. The only real difference is that the internet has offered a greater reach and immediacy than previous forms of mass communication. The advent of cyberspace has not done the mayhem in this area of the law that many observers would make us believe.[100]

Nicholas Pullen further argued that United States, arguably the largest publisher on the internet, would become the *de facto* forum for settling these types of disputes. Put another way, US laws would control the rights to one's reputation throughout the world.[101] For the High Court of Australia to decide otherwise would not have been in step with similar overseas decisions concerning the internet.

Regardless of their jurisdiction of origin, statements are actionable in the jurisdiction of publication and damage to reputation. The court commented that traditionally, defamation occurs at the place where damage to reputation occurs. Harm occurs where and when the material is read. Jurisdiction therefore can be established at that location in a defamation action;

> In the case of material on the World Wide Web, it is not available in comprehensible form until downloaded on to the computer of a person who has used a web browser to pull the material from the web server. It is where that person downloads the material that the damage to reputation may be done. Ordinarily then, that will be the place where the tort of defamation is committed.[102]

It is suggested that this position be maintained as it is in tandem with traditional defamation rules as the authourity without altering the form and nature of the tort of defamation has yet accommodated internet defamation situations.

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[99] *Supra.*
[100] N. Pullen, "Defamation on the Internet: a tangled web", *The Age*, 11 December, 2002, as cited in Dixon, *op. cit.* at pp. 28-29.
[101] *Ibid.* at pp 29-30.
[102] *Dow Jones v. Gutnick (Supra)* at p. 44.

Single Publication Rule as Solution

Traditionally, republication of a defamatory statement constitutes a fresh cause of action.[103] To maintain this position regarding internet defamation may not be a rational thing to do bearing in mind the uniqueness of the internet. This is perhaps the only point in the course of this work where it is suggested that traditional defamation rules be altered.

Different jurisdictions have arrived at different positions on the issue as earlier discussed but it is suggested that the single publication rule be adopted since defamatory content online is somewhat permanent. Refusing to uphold the single publication rule would amount to unending litigation on the same substance.

It is logical to hold republication in traditional defamation as defamation in that some consciousness is established on the part of the defendant as he ought to know that he is re-publishing a defamatory matter. However, in internet defamation cases, the mere click of a button can make a person a defendant for republication of defamatory content on the internet. This position is however suggested to be left flexible that if the claimant can establish malice on the part of the defendant then the single publication rule should not apply but be seen as republication of the defamatory content.

The rationale behind holding that the single publication rule be adopted is hinged on the dictum of the court in *Loutchansky v. Times Newspapers Ltd.*[104] regarding republication on the internet. Commenting on the balance between the social utility of archiving materials and the protection of reputation under the circumstances, the court held that; "archive material is stale news and its publication cannot rank in importance with the dissemination of contemporary material".

There would therefore be the need to statutorily provide that the single publication rule be applied to defamation on the internet except where the claimant in such action can prove malice on the part of the defendant.

CONCLUSIONS AND RECOMMENDATIONS

This paper; "Towards Developing a Legal Framework for Internet Defamation" has discussed the traditional tort of defamation and most importantly was discussed the internet and internet defamation which is an emerging area in the law as the internet is just a few decades old.

The reason for this research being that a claimant in defamation made on the internet should like his counterpart in traditional defamation be entitled to a right of action against such defendant who without justification has caused him reputational loss.

It had been suggested earlier that owing to the uniqueness of the internet, particularly its permanence of information placed thereon and the utility of archived materials, it would amount to unending litigation on the same fact if every republication is considered to found a new cause of action as it is in traditional defamation. It was suggested that the Single Publication Rule be employed to treat publication of such defamatory statement as a single publication except where it is found that the defendant "knowingly" republished such matter out of malice.

The second question raised as to whether a claimant in internet defamation is not entitled to a remedy had been addressed as one would wonder why such a claimant should not be, simply because the defamation was made online. If a claimant in traditional defamation has a right to sue because he suffered reputational loss, then why not the online

[103] *Yusuf v. Gbadamosi (Supra).*
[104] (*Supra),* per Lord Phillips MR CA. It is important to note that the court did not however stick to the position of single publication rule.

defamation claimant? What the law seeks to protect is reputation and it is submitted that the method by which such reputation is tarnished is not the more so important than the reputation itself, save in proving the extent of damage. It can therefore be answered affirmatively that such online defamation claimant is entitled to a remedy, thereby recognizing defamation made on the internet as being contemplated when discussing defamation generally.

An important point of note within the course of the work that was considered and suggested is the fact that the defamatory matter is considered published where the material was fully downloaded from the internet and not where it was uploaded. Again, the issue of jurisdiction as to which court is the convenient forum where both claimant and defendant are in different jurisdictions flows from the issue of publication, being where the material was downloaded from the internet as the place where the tort is committed since it is where the claimant has a reputation to protect.

The research methodology adopted in the course of the work was qualitative with reference to text books, journals, cases, statutes and online sources. There was however some bottlenecks in the course of the research which borders on limited materials available on the subject of internet defamation.

Since the internet is a technological advancement that has gained acceptance across the globe, it is not odd that such a research is imperative to ensure that users of such technological facility do so with some civility and not cause other persons some detriment whilst expressing their constitutionally guaranteed freedom of speech.

The following recommendations are made hereunder;

- The National Assembly should enact a law that would hold web site administrators and owners responsible for defamatory content on their sites just as traditional publishers are held liable.

It is admitted that holding website administrators and owners responsible for defamatory content on their site would be a bit difficult task as they do not have the power of prior restraint in the same manner as newspaper editors especially given the volume of prospective content.

Whatever the case, it is submitted that if a degree of liability is placed on them, they would be compelled to fashion out Site Content Rules based on the cultural values and social norms which they wish to promote, bearing in mind the difficulty of identifying the defendant especially if the defamatory content was placed on a public computer.

- There should be both legislative and technological ban on anonymous and pseudonymous web postings. The rationale being that a defendant could be easily identified should a defamatory content be published.

It is submitted that advocates of anonymous speech who consider it as part of free speech rights are not altogether correct as a person should be able to defened his speech if what he is asserting is actually true. The idea is that if anonymous speech is continued, then unscrupulous persons can knowingly publish false statements which would cause reputational harm on others.

- Website owners, administrators and providers are to create a Bloggers Code of Conduct or Site Content Rules which specifically licences the deletion of abusive, threatening and invasive content.

This is a situation whereby site administrators or service providers caution users of the user's full liability should there be any defamatory content. This would bring to mind for instance exclusion clauses and limiting terms under the Law of Contract whereby one party escapes liability by the other party signing some document in agreement. The user clicks on

an agreement button as evidence of agreeing to the terms of Site Content Rules and the site owners and administrators thereby escape liability.

- Website owners and administrators designing their web pages to having a publicly available comments section immediately after the post or section containing the allegedly defamatory speech.

This is more or less a self help mechanism that can help the victim of internet defamation to come to his own rescue by defending himself on the same page where his reputation has been harmed. The perhaps most popular interactive website; Facebook allows this comments section where the potential claimant can rebut or respond to the defamatory allegation.

If these proposals are enforced, it can be submitted that the stage is set for the tort of defamation to include defamation made on the internet bearing in mind that Nigerian courts now allow admissibility of computer generated evidence in the spirit of the Evidence Act, Section 84.

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67. Wotherspoon and Taylor, *op cit.* at p. 10.
68. (2009) ONCA 59 (Can LII) p. 29.
69. A – 77 – 1- (May 16, 2012). See generally gdn@gdnlaw.com, (accessed on 1 July, 2014).
70. See *Madukolu v. Nkemdelim* (1962) 1 All NLR 581.
71. (2002) HCA 56, 10 December, 2002.
72. 315 S.W. 3d 389, 391-92 (MO.Ct.App.2010), available at http://www.courthousenews.com/2010/07/19/28948.htm (accessed on 7 August, 2014).
73. See also *Calder v. Jones* 465 U.S 783 (1984); *Pfeiffer v. International Academy of Biomagnetic Medicine* 521 F. Supp. 1331 (WD MO 1981).
74. *Ibid.* at 397-98.
75. N. Dixon, *Defamation and the Internet: A New Challenge*, Queens Law Parliamentary Library (n.d), available at: www.parliament.qld.gov.au/documents/explore/ResearchPublications/ResearchBriefs/2003/200311.pdf at p.5 (accessed on 5 May, 2014).
76. *Ibid*.
77. *Supra.*
78. *Duke of Brunswick v. Harmer* (1849) 14 QB 185.
79. 2008 BCSC 1424 (Can LII) (Crookes 2).
80. *Ibid*. at Para. 24.
81. *Ibid.* at Para. 30.
82. Nos. 2-5 (2002) QB 783 at 813, per Lord Philips M.R (C.A).
83. *Ibid.* at Para.74.
84. (2003) 64 OR (3d) 599 (SCJ).
85. (2005) BCCA 395 (Can LII).
86. *Ibid*. at Para. 20.
87. See *Firth v. State of New York*, 775 NE 2d 463 (Ct. App. 2002).
88. See http://www.reputationhawk.com/onlinedefamation.html (accessed on 5 July, 2014).

89. Blogger, *What are your Community Guidelines?* Available at: http://www.blogger.com/what-are-your-community-guidelines (accessed on 25September, 2014). See also Brad Stone, *A call for Manners in the world of Nasty Blogs* NY Times April, 2007 at A1.
90. O'Reilly Radar, *Call for a Bloggers Code of Conduct*, available at: http://radar.Oreilly.com/archives/2007/03/call-for-a-blog-1.html (accessed on 9 August, 2014).
91. Wotherspoon & Taylor, *op. cit.* p. 16.
92. *Ibid.* p. 17.
93. Wotherspoon and Taylor, *op cit.* at p. 10.
94. *Supra*.
95. Joseph, *op. cit.* at p. 1.
96. B. Lane, "Nowhere to Hide", *The Australian*, 14 December, 2002 as cited in Dixon, *op. cit.* at p. 22.
97. "Court Misses Internet Opportunity" *The Age*, 15 December, 2002, as cited in Dixon, *op. cit.* at p. 18.
98. See *W.J.A v. D.A (Supra).*
99. *Supra.*
100. N. Pullen, "Defamation on the Internet: a tangled web", *The Age*, 11 December, 2002, as cited in Dixon, *op. cit.* at pp. 28-29.
101. *Ibid.* at pp 29-30.
102. *Dow Jones v. Gutnick (Supra)* at p. 44.
103. *Yusuf v. Gbadamosi (Supra).*
104. (*Supra),* per Lord Phillips MR CA. It is important to note that the court did not however stick to the position of single publication rule.