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Employer and Employee Relationship on The Use of The Internet from a Legal Perspective

Introduction

The Internet is the interconnection of many networks through many gateways traversing many countries and continents of the world. Because of its travesty over many continents and constant changes occurring within it, it has been near impossible for legislatures around the world to make and maintain binding legislations governing and regulating relationships transacted on the Internet.

For an employer of labour and its employees, the inevitability and the necessity of the use of the internet has also come at a price as there have being instances where employees are reported to use an employer's internet system to download copyright protected materials, infringing on others patents and trademarks, compromising the employer's business by spending more valuable time browsing the Internet than in performing their contractual obligations to the employer, utilising employers resources via the internet for personal employee business, expending valuable management time browsing on sites that are not beneficial to the employer or the employee, downloading pornographic materials into an employer's hardware system, passing some of these materials to other employees and exposing the employer to possible sexual harassment claims and other unwarranted litigation, etc.,

Legal issues that continue to arise as a result of the above worldwide include:

- To what extent can an employer of labour monitor employee's electronic communication without infringing the employee's common law and constitutional right to privacy of personal communication?
- What is the best methodology by an employer in regulating the use and the downloading of materials from its systems by its employees?

The Law

Section 31 of the Constitution of the Federal Republic of Nigeria, 1999 provides that "the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected". This right, like other private right, is not

absolute as Section 45 of the referenced Constitution provides that "(1) Nothing in Section 37, 38, 39, 40 & 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society ----- (b) for the purpose of protecting the rights and freedoms of other persons?".

It is clear from the above Section that whilst the Constitution of Nigeria recognises an employee's right to privacy, it also recognises an employer's corresponding right to protect, secure and maximise its business environment.

In order for an employer and in some cases, an employee, not to be in contravention of any constitutional rights or tortious infringement of private rights or criminal trespass, it is recommended that internal internet staff audit of the use of the internet be undertaken by the employer at regular intervals with the knowledge of the employees.

Recommendations

The following are further recommended:

- Develop employment contracts and policies that regulate access and use of the employer's Internet facilities. There should in addition be clauses that inform the employee of the employer's right to undertake Internet use audit of its employees at regular intervals. The employer should however exercise caution when conducting these audits. The outcome of these audits should also be properly managed as it has been discovered that improper management can impair the productivity of employees and affect them psychologically in the work environment.
- The employer should in a written memorandum define what constitute proprietary information and state that the employer owns any proprietary work done by the employee with the employer's resources.
- Educate and encourage senior managers on the need to handle sensitive company information via the Internet especially whilst outside the company's premises.
- Encourage disciplinary action for all infringement of company's policy on Internet use. However, employers are advised to obtain full facts with legal advice before acting especially where the decision is to terminate the employee's contract. This is to avoid unnecessary litigation.
- Post a notice on all employees computer system in the form of a warning clearly stating

that the system and materials exchanged on it are not private and will be audited.

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