

## NBC DIRECTIVE TO ONLINE BROADCAST SERVICE PROVIDERS AND SOCIAL MEDIA PLATFORMS OPERATING IN NIGERIA



### A. INTRODUCTION

On 10<sup>th</sup> June 2021, the National Broadcasting Commission (the “**Commission**”) published a directive in a [newspaper advertorial](#) directing all Online Broadcast Service (“**OBS**”) providers and social media platforms operating within Nigeria to apply for and obtain a broadcast licence for their service(s) (the “**Directive**”).

The Directive further stated that any OBS provider that fails to obtain a licence will be considered an illegal entity.

### B. EXAMINING THE LEGAL FRAMEWORK FOR THE DIRECTIVE

*a) Whether the Directive of the Commission was issued pursuant to the provisions of the Nigerian Broadcasting Commission Act<sup>1</sup> (the “**Act**”)*

The Commission stated that it was issuing the Directive in line with [Section 2\(1\)\(b\) of the Act](#) which provides that the Commission has power to, amongst others, “*receive, process and consider applications for the establishment, ownership or operation of radio and television stations including cable television services, direct satellite broadcast and any other medium of broadcasting*”. Section 2(1)(d) of the Act also empowers the Commission to regulate and control the broadcasting industry.

It appears that with this Directive, the Commission is looking to rely on the above provision to capture all social media platforms perhaps under the net of “any other medium of broadcasting”, thus being under the licensing and regulatory purview of the Commission. However, the key consideration here is whether the social media platforms are “media of broadcasting” as envisaged by the Act and the Nigeria Broadcasting Code 2016.

*b) The Commission’s Regulatory powers over OBS providers and social media platforms*

The Nigeria Broadcasting Code 2016 (the “**Code**”)<sup>2</sup> defines “Broadcasting” as *transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of a receiving apparatus*<sup>3</sup> while “Broadcasting Service” is defined as *any service which consists of the unidirectional transmission and distribution to television and/or sound broadcasting material by cable or wireless means from anywhere in Nigeria for reception by the public*.<sup>4</sup>

Pursuant to paragraph 2.0.3 of the Amendment to the Code, 2020 (the “**Amendment Code**”), all persons who wish to operate web/online broadcasting services in the Nigerian territory are required to be licensed by the Commission. The Amendment Code also provides that service providers or platform providers who breach any or all the provisions of the Code on web/online broadcasting, will be liable to sanctions provided in the Code, including a take-down order, a block or a shutdown order.<sup>5</sup>

**The Amendment Code further provides that international broadcasters who transmit**

<sup>1</sup> Cap. N11, Laws of the Federation 2004

<sup>2</sup> 6<sup>th</sup> Edition of the Nigeria Broadcasting Code 2016

<sup>3</sup> Definition Section of the Code

<sup>4</sup> *ibid*

<sup>5</sup> Paragraph 2.12.7.2 of the Amendment Code

**signals into Nigeria are required to take cognisance of Nigeria's broadcast laws and the international principle of reciprocity.**<sup>6</sup> By the combined reading of the Code and Amendment Code, to the extent that the OBS service providers operate in Nigeria, they fall within the regulatory purview of the Commission. On the other hand, OBS providers that do not operate in Nigeria but who transmit signals into Nigeria will be regarded as International Broadcasters and will only be required to take cognisance of Nigeria's broadcasting law and international principles.

While it can be argued that social media and television broadcasting have several connections and interrelationships,<sup>7</sup> social media platforms do not generally provide Broadcasting Service as envisaged by the Act and the Code.

Social media refers to forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos).<sup>8</sup> Social media includes social networking sites like Facebook, social review sites like Yelp, image sharing sites like Pinterest, video hosting sites like YouTube, community blogs like Medium and discussion sites like Quora.

The difference between broadcasting and social media lies in their very nature. Broadcasting operates on the principle of transmission from one to many while social media operates on the principle of one-to-one/many-to-many. Any individual can create and share content and instantly interact with other users. The social media platforms themselves are not the originators of the content transmitted via their platform. Users are responsible for creating content and sharing them via these platforms.

Thus, to the extent that social media platforms do not provide broadcasting services as contemplated by the Act, the Code and the Amendment Code,<sup>9</sup> it is difficult to sustain an argument that social media platforms fall within the regulatory purview of the Commission.

*c) The licensing regime for OBS providers and the social media platforms in Nigeria*

The Code provides for the categories of broadcast license that may be issued by the Commission including Internet Broadcasting license.<sup>10</sup> OBS

providers operating in Nigeria are required to apply for an internet broadcasting license to carry out their operations.

An applicant must:<sup>11</sup>

- i) register as a body corporate under the Companies and Allied Matters Act or be a station owned, established or operated by the Federal, State or local government;
- ii) satisfy the Commission that it is not applying on behalf of a foreign interest;
- iii) show that it can comply with the objectives of the National Mass Communication Policy as is applicable to the electronic media, that is, radio and television;
- iv) an undertaking that the licensed station shall be used to promote national interest, unity and cohesion and that it shall not be used to offend the religious sensibilities or promote ethnicity, sectionalism, hatred and disaffection among the peoples of Nigeria.

An application for a licence is addressed to the Director-General of the Commission and in the form prescribed in the Act. All regulations governing news, programmes, advertising and sponsorship also apply to this category of broadcasting.

None of the licences currently prescribed by the Code adequately covers the activities of social media platforms.

<sup>6</sup> Paragraph 2.12.8 of the Amendment Code

<sup>7</sup> Lorenzo Zanni (2017) "Analysis: Social Media and Broadcasting – Competition or Partnership?" <https://www.ibr.org/trends/social-media-versus-broadcasters-/2124.article> accessed on 13th June 2021.

<sup>8</sup> <https://www.merriam-webster.com/dictionary/social%20media> accessed on 12<sup>th</sup> June 2021.

<sup>9</sup> That is, in the form of unidirectional transmission and distribution to television and/or sound broadcasting material by cable or wireless means from anywhere in Nigeria for reception by the public.

<sup>10</sup> Paragraph 2.3.1 of the Code. Other license categories include: Satellite Broadcast; Subscription DTH (Audio and Video); Cable Television Subscription; Community (Radio and Television); Networking (Radio and Television); FM Radio Broadcasting; Broadcast Signal Distribution; Digital Terrestrial (Free-To-View) TV; Direct Satellite Broadcast; Mobile/Handheld (DVB-H); Digital Subscription Television; Electronic Programme Guide EPG; and Over the Top (OTT)/Video on Demand (VOD).

<sup>11</sup> Section 9 of the Act

### C. COMMENTARY

It is incontrovertible that Section 2(1)(b) of the Act as well as the Code and Amendment Code grant the Commission wide powers to control and regulate the broadcasting industry in Nigeria, including OBS providers operating in Nigeria. However, whether those powers extend to social media platforms largely depends on whether social media platforms provide “Broadcasting Services” as contemplated by the Act, Code and Amendment Code.

As currently drafted, the Act, Code and Amendment Code do not capture the activities provided by social media platforms neither do they capture social media platforms who operate from outside of Nigeria. Therefore, for the Directive to be effective in the long run and align with the current operating model of social media platforms, there is the need to amend the Act and the Code to:

- i) expressly capture the increasingly expanding and evolving scope of services provided by social media platforms to ensure that these platforms are legally captured as coming

within the regulatory purview of the Commission; and

- ii) provide clarity on what constitutes operations in Nigeria such that it captures the operating model of social media platforms which does not require a physical nexus.

Notwithstanding the analysis above on the legal framework for the Directive, it is advisable for social media platforms and other OBS to comply with the Directive and apply for the requisite license from the Commission. Unfortunately, the Directive does not provide a deadline for compliance leaving stakeholders unsure of the legality of their operations.

In the meantime, and in advance of obtaining the requisite license from the Commission, social media platforms are advised to take cognizance of Nigeria’s broadcasting law and international principles, which is the standard requirement for international broadcasters under the Code and the Amendment Code.

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