

Caribbean Advertising and Marketing Law Seminar
21st Century Legal Challenges for Advertising and
Marketing in The Caribbean:
The Impact of Intellectual Property Rights,
Social Media and Privacy

SPEAKING NOTES

"The Evolving Role of Media in the
Caribbean"

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SALUTATIONS

The wide ranging theme of your Seminar is timely and of great relevance. While your focus is on the Region, the linkages of communication and technology in today's global village dictate that much of your deliberations will of necessity have to extend beyond our Caribbean borders to the wider world we share.

I have been briefed to speak on the topic "**The Evolving Role of Media in the Caribbean**" but fortunately, not provoked to address the wider subject of Media Policy which would demand a prohibitive fee. For we are dealing with a region where media policy consists of a concoction that mixes laws and regulations with unwritten rules of practice, varying from one country to another.

I shall nevertheless endeavour to share my perspectives within the broad contours of my involvement in the law and regional decision making.

Timeline of the Evolution

The Caribbean has a rich and dynamic history in relation to indigenous media content.

Jamaica's first printed newspaper, the "Weekly Jamaica Courant" was published in 1718.

The Gleaner Company was founded and issued its first publication, a four-page weekly newspaper in September, 1834 – 4 years before slavery was abolished.

"The Nassau Guardian" in 1844;

"The Advocate" in Barbados;

"The Guardian" in Trinidad are of similar vintage.

- The majority of the population could not read or write.
- Due to the high costs of printing, only the wealthy and elite few could engage in the ownership of newspapers. But for them, there was good reward for their investment. Newspapers were there to reflect the views of the plantocracy and to perpetuate that imperial system from which the aristocracy had everything to benefit.

- Before Jamaica's first commercial radio broadcasting network there was ZQI. The advent of RJR helped to showcase local talent. The outreach was broadened by Rediffusion where the box could be heard in the yard or business premises.
- On June 15, 1959 the JBC radio channel was launched by Norman Manley as a national broadcast corporation, with a focus on Jamaican culture, making available airtime to Jamaican artistes and musicians.
- On the first anniversary of Jamaica's independence (August 6, 1963) JBC Television aired its first broadcast.

The Advertising Media Association Limited was established in 1964 as a trade association to serve as a link between media organizations and the advertising industry.

Regional Starts

In 1967 the Caribbean Heads of Government Conference considered the role of mass communication in strengthening the integration movement. Their meeting proposed the establishment of a regional News Agency.

Three years later in 1970 – The Caribbean Broadcasting Union (CBU) was founded as a not-for-profit association of public service and commercial broadcasters in the Caribbean.

The **Caribbean News Agency** (CANA) began operations on January 7, with the aid of UNESCO and West Germany, as a successor to Reuters Caribbean service. CANA was created by the Caribbean region's print and broadcast media outlets to disseminate, for the first time, news and information about the Caribbean within and outside the Region, using both print media and radio.

In June 2000 the Caribbean Media Corporation was established through the merger of the Caribbean Broadcasting Union (CBU) and the Caribbean News Agency (CANA). The Caribbean Media Corporation mainly serves as a regional clearinghouse of regional news and information in the countries of CARIFORUM. In addition to the CMC's regional media stake-holders, the CMC also caters to several International associate media organizations.

The convergence of Information and Communication technologies with broadcasting and telecommunications has revolutionized the means and the speed at which we are able to communicate and disseminate information. **As more and more persons are able to access through the internet various forms of content we have been witnessing a transition from Old Media to New Media.**

The Advent and Impact of Technology

In the 1990s the ICT revolution took the world by storm. We in the Caribbean were not immune to its effect. Through strategic government policies, the Caribbean has benefitted tremendously from the liberalization of our telecommunications markets, resulting in the dominance of mobile phones and the increasingly widespread access to and high speed broadband internet services.

Prior to digital media, the costs to broadcast or print a newspaper favoured monopolies and duopolies. ICT's have considerably democratized publishing, creating the quandary of how we hold accountable and regulate digital publishers and publications, given the multi-jurisdictional nature of the Internet.

Due to ICTs, media at one and the same time is global, regional, local and even parochial. With the use of a smart cell phone, an ordinary citizen can now be a videographer, broadcaster, editor and publisher. The previously prohibitive costs for entry into the business of mass media publications have been neutralized by technology.

A simple video, image or story can go viral on social media; viewed and shared by millions of users around the world in a couple of hours. Advertisers, using social media, have their products and services viewed by millions at an unprecedented scale and rate.

Social media is no longer the simple vehicle for people to stay in touch and connected with friends and family. It is now a transformational tool in the marketing and sale of goods and services at a fraction of traditional advertising costs.

Media is no longer restricted to printed newspapers and broadcast radio stations. Media now encompasses digital media with social media platforms often the prime source of news and information. Technology advances and the increasing use of social networks in the region will continue to alter the media landscape

The ordinary Caribbean citizen is now able to access and produce content that spawn local and regional websites, blogs, podcasts, and online radio stations, which reflect current thinking and views of our own people. This is in sharp contrast to the previous decades when content was a one way street, coming predominantly from US airwave sources.

Media evolution, in the last 30 years, was aimed both at increasing the involvement of local entrepreneurs and established enterprises in the diversification of the industry and at the same time providing for a greater spread of information sources.

As Caribbean countries move closer towards implementation of the CSME, media practitioners and communications professionals have to be viewed as major stakeholders. They ought to be in the vanguards of conduits for the integration process.

Who is the customer in the Caribbean Single Market that the variety of media voices and instruments must seek to reach, to engage, to cultivate?

The Caribbean Person

Twenty years ago, I chaired a Caricom Summit in Montego Bay which focused substantially on the human development aspect of the Community's preparation for life in the new millennium. We adopted a statement on the ideal Caribbean person which I fully believe remains valid today.

The ideal Caribbean Person should be someone who is imbued with a respect for human life since it is the foundation on which all the other desired values must rest;

Is emotionally secure with a high level of self-confidence and self-esteem; sees ethnic religious and other diversity as a source of potential strength and richness;

Is aware of the importance of living in harmony with the environment; has a strong appreciation of family and kinship values, community cohesion and oral issues including responsibility or/and accountability to self and community;

Has an informed respect for the cultural heritage;

Demonstrates multiple literacies, independent and critical thinking, questions the beliefs and practices of past and present and brings this to bear on the innovative application of science and technology to problems solving;

Demonstrates a positive work ethic;

Values and displays the creative imagination in its various manifestations and nurture its development in the economic and entrepreneurial spheres in all other areas of life.

Such a person would be personally equipped to be in the truest sense a productive citizen of country, region and the world because he or she –

Has developed the capacity to create and take advantage of opportunities to control, improve, maintain and promote physical, mental, social and spiritual well-being and to contribute to the health and welfare of the community and country

And,

nourishes in him/herself and in others, the fullest development of each person's potential without gender stereotyping and embraces differences and similarities between females and males as a source of mutual strength.

Media Policy Issues

In the light of the cataclysmic changes which have revolutionized the information industry, how do we define the media? Who is a journalist and who is simply a user of the internet?

In the remainder of my allotted time, I shall attempt to supply some further and better particulars but also forced to pose a number of interrogatories for your consideration.

- There is need to balance privacy rights and freedom of the Press and legitimate security concerns over content.
- There is an urgent need for social media literacy and maturity given the wide variety of online content sources and the increasing on reliance online content for information, including news.
- We are witnessing the consolidation of media houses which is juxtaposed with the ever increasing variety of online sources of information.
- Can mergers and acquisitions in this area be prevented? What is the role of the telecommunications company versus a traditional broadcaster.
- What is fake news? How can we protect our people from targeted campaigns of misinformation? What is the role of media and media associations in this new landscape?

Regulatory Framework

With centuries-old traditions of a free press, Newspapers have never been subject to any form of regulatory control.

Radio and Television, however, are constrained by the availability of spectrum, which governments or their agents control the world over. Those media are also the ones with the greatest reach and immediacy of impact.

Our Broadcasting Commissions have in the main and despite a few glitches here and there worked assiduously to manage the licensing and regulatory processes in a fair and transparent manner. They have also sought to educate the public about their own responsibilities as well.

In the case of radio, the growth has been exponential. The Administration of the 1980s had privatized the three regional JBC radio stations, paving the way for further expansion of sound broadcasting.

The process was taken to another level in the next decade. There are now more than 30 radio stations in the country, with fewer than 6 having only limited area reception.

The widening of the media landscape clearly has done more than offer greater choice of entertainment. It gave us more news sources, more opportunity for news, international, national, and more community focused. Very importantly, it has provided a voice for the people as much as it gave them choice.

The talk radio component of local broadcasting has allowed for that interactive two-way expression of views and sharing of information which has played a major part in widening the national information and opinion base.

Talk show hosts, listeners from every social stratum, political leaders, providers of goods and services, students have an opportunity to learn from persons in every corner of the country, and can benefit from what is said by individuals who would otherwise have been ignored.

This aspect of the media policy has certainly changed the nature of communication and flattened the information pyramid. No longer can a single dominant voice speak without challenge to the broad mass of the population. The "little person" now has a voice.

Cyber-threats and dangers to our Democratic System

Notwithstanding the clear benefits of technology, ICTs have proven to be a twin edged sword. With the increasing dominance of the internet in our routine activities, from the widespread use of social media platforms, like Facebook, Twitter, Instagram, and WhatsApp, the vulnerability to cyber attacks has also risen. The abuse and distortions threaten free and fair elections which are at the core of every democracy. We need only look to our North American neighbour to see how technology can be used to interfere with and threaten democratic traditions.

We in the Caribbean are not immune to cyber security threats which are on the rise. All Caribbean countries need to guard against cyber attacks on our critical infrastructure and be vigilant if we are to prevent the use of bots on social media platforms to systematically shape public opinion and perception, and thereby shake the confidence in our democratic system.

In order to know whether the message is real or false we are obliged to make sure the messenger is reliable and not an impostor.

Monopolies and Mergers – The larger conglomerates

Ideally, the media works best when people receive accurate information and access to a variety of viewpoints on critical issues.

Mergers, media acquisitions and media convergence are now the order of the day. How will conglomerate media ownership impinge on freedom of speech within our democracy?

The ability for citizens to make informed decisions is crucial for a free and functioning democracy but may at times, become threatened with overdue concentration in ownership. Media institutions survive on advertising fees, which can lead to the media outlet being influenced by various corporate interests. Other times, the ownership interests may affect what is and is not covered. Stories can end up being biased or omitted so as not to offend advertisers or owners.

The Trend

Is the trend inevitable?

ATT to merge with Time Warner

Comcast and Murdoch fighting for takeover of Sky News

Gleaner/RJR

Local media powerhouses, The Gleaner Company Ltd. and Radio Jamaica Limited have merged to create a single media entity.

The rapid growth of Internet audiences and an outstanding smart-phone penetration rate, drive domestic audiences to find alternative sources for media content.

“In a competitive and rapidly changing environment, two traditional Jamaican media companies feared marginalization. They sought to combine their respective strengths so as to leverage economies of scale in order to provide better products and services to the public and better returns to shareholders”.

Cable & Wireless

The acquisition by regional telecommunications carrier Cable & Wireless Communications of Columbus International Inc., which owned regional content provider Flow networks in seven markets and Karib Cable in one, allowed Cable and Wireless to immediately get into the cable business and become a triple-play operator.

Balance

There is need to balance privacy rights and freedom rights and freedom of the Press and legitimate security concerns.

In *Capital Television Jamaica Limited v. CVM Television Limited*, CVM contended that it had not breached TVJ's exclusive licence to broadcast the IAAF's World Championships as it had not intercepted any broadcasting signals. Rather, it asserted that it got its footage from IAAF's livestream. It argued that because it had not received the content by the same delivery means as TVJ, it had not breached TVJ's licence with the IAAF.

Chief Justice Sykes ruled that “Once a person, natural or otherwise, has an exclusive licence, then no other person, natural or otherwise, can do any of the acts the exclusive licensee can do by accessing the exclusively licensed material from some other source, unless there is a legal exemption or lawful excuse.

We have seen the need for cyber protection.

The Data Protection Act is considered an essential pillar to Jamaica’s ICT legal and regulatory framework.

On Tuesday February 20, 2018 The Press Association of Jamaica (PAJ) called for the practice of journalism to be exempted completely from the provisions of the Data Protection Act now being examined by a Joint Select Committee of Parliament. We know the value of news reporting which is current

Stale news sells like stale bread

Getting it First should not trump getting it right –

“fake news”

Being right and remaining credible to warrant trust – essential to preserve the rights of the 4th estate to inform and enlighten

What is fake news? What are the filters to prevent?

How can we protect our people from targeted campaigns of misinformation?

What is the role of media associations in this new landscape?

CONCLUSION

News media brings with it new risks, challenges and consequences

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We need to recognize these new challenges and forge some sort of consensus which allows Jamaicans to fully benefit from access to a variety of media platforms which its users, as distributors, recognize some level of social responsibility.

If this narrative on the evolution of the media is to serve a meaningful purpose to your discourse, let it remind you that the freedom of the media, which we must preserve and promote, stems from the obligation to inform and educate.

The right belongs to the public to know. The 4th Estate has no right to falsify and willfully mislead. Hence the need, indeed an imperative in view of technology spread, to separate the real media from the fake – to differentiate between the journalists and false pretenders.

Ubi ius – ibi remedium

Whether in the law of defamation, or the cyber crime act, journalists like every citizen, are entitled to their own opinions but not their own facts.

I retain the hope that we never lose sight of the ideas captured in the 1997 Montego Bay statement of our Caribbean Leaders.

I retain the hope that the new media landscape will help us to realise the potential that this country and our Caribbean Region still possess so as to become a zone of peace as well as a focal point of social, cultural and economic power within this hemisphere and in the larger global community.