

**PHOTOGRAPHIC COPYRIGHT IN THE DIGITAL AGE:
BALANCING CREATORS' RIGHTS AND SUBJECTS'
INTERESTS**

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Abstract

This work explored the tension between photographers' copyright and the rights of individuals depicted in photographs, with particular focus on Nigeria law. It examined the legal basis for photographic copyright under the Copyright Act 2022 (No. 8 of 2022), which repealed that of 2004 and established that original photographs are protected as artistic works, with the photographers as the author. The study analyzed the exclusive rights granted to photographers- such as reproduction, distribution, and communication to the public- as well as moral rights under the Act. It further considered the legal protection available to subject of photographers, noting the absence of a standalone "image right" law in Nigeria. Instead, subject rights

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were found to rely on constitutional provisions (sec. 34 and 37), the Data Protection Act 2023, and tort or contract principles. Using Doctrinal research, including case analysis such as *Ubom v Globacom (2025)*, the article identified a legal gap where subject, lacking copyrights, must seek redress via alternative legal framework. Comparative insights were drawn from US, UK, south Africa, where varying doctrines like the right of publicity, privacy law and personally rights offer broader subject protection. This study addressed contemporary digital challenges, including social media dissemination, AI-generated imagery, and deep fakes. It concluded that the current legal regime insufficiently safeguards subject interest in the digital age and recommended that enacting image rights legislation or amending the Copyright Act to mandate consent for commercial use of personal likeness, to better harmonize creators right with individual dignity and autonomy amongst others.

Key Words: Copyright Law, Photographic Works, Image Rights, Privacy, Digital Age

1. Introduction

Photography has evolved from a tool of artistic expression to a dynamic medium of communication in the digital era. It exemplifies the creative-technology where photographers invest skill and efforts to capture images, yet these images often feature people who have their own privacy and personality interest. This has become a pressing contemporary issue in Nigeria's digital society. In Nigeria, as elsewhere, this gives rise to as tension between the copyright owner (the Photographer) and the subject of the photo. The newly enacted Copyrights Act 2022 explicitly identifies a "photographic work" and treats its authors as "the person who took the photograph"¹. Copyrights vest in the photographers by default

¹ Copyright Act 2022, s. 2(2)(6), 108

(subject to commission agreement) and confers exclusive rights (reproduction, publication, etc) and moral rights (attribution, integrity, etc.)². But the subject of a framework-for example, rights of privacy or publicity recognized by the constitution and also the National Data protection Act³. In the digital age, photos spread rapidly via social media, and advances in AI (deep takes) can replicate or distort images without consent. These developments intensify conflict between creators' intellectual property and subjects; personal rights. The recognition of photography as a commercial medium in recent times places on significant monetary footing and a sought-after skill. It became an integral part of individuals business. Photography is part of plethora of indigenous digital platform such as Facebook, Whatsapp, twitter (X), Instagram, Pinterest etc. hence, as a rising commercial area, it sought protection from the law and in doing so the ownership of right to the photography needs to be determined (imperative and urgent). These questions that seems unanswered is therefore paramount. Who is the owner of the photograph? Is it the photographer or the Data subject (the individual whose image is taken)? This paper interrogates the extent to which Nigeria Copyright law protects the photographers right over images they create, while juxtaposing this with the evolving claims of image subject especially in line of the data protection and privacy developments. In so doing, its analysis the sufficiency of existing laws in safeguarding either party's interest and considers how courts, statutes and comparative jurisdictions are responding to the legal vacuum.

² Ibid (n¹), s. 10(1)

³ Constitution of the Federal Republic of Nigeria 1999, s. 37; National Data Protection Act 2023, s.26, 35-38

2. Conceptual Clarification

2.1 Copyright

Copyright literally means the “right to copy”⁴ or “the right to make some copies”⁵. Copyright denotes the exclusive right, a monopolistic control and legal right that a creator automatically obtains once an eligible work is expressed in a tangible medium. This right prohibits others from using, reproducing, or exploiting the work without the creator’s permission and it remains in force for a designated period⁶. Copyrights refers to the legally protected exclusive rights granted to author of original works. It is the power vested on an author to control the reproduction and adaption of an original work. In general terms, it is defined as the “*exclusive right to produce copies and to control an original literary, musical or artistic works*”⁷. Blacks’s Law Dictionary similarly describes Copyrights as a right granted to the author of a literary or artistic works, giving the creators the sole privilege of multiplying copies of the work and publishing or selling it.⁸ Under Nigeria law, the

⁴ O Toluwanimi and H Ayinde, *Balancing Copyright Protection and Creative Freedom in the Digital Age: Pathway for Adaptation of Creative Works on Digital Platforms in Nigeria* available @

<[https://www.researchgate.net/publication/387303858_BALANCING_COPYRIGHT_PROTECTION_CREATIVE_FREEDOM_IN_THE_DIGITAL_AGE_PATHWAY_FOR_ADAPTATION_OF_CREATIVE_WORKS_ON_DIGITAL_PLATFORMS_IN_NIGERIA/citation/download?_tp=eyJjb250ZXh0Ijp7InBhZ2UiOiJwdWJsaWNhdGlvbiiIsInByZXZpb3VzUGFnZSI6bnVsbH19&__cf_chl_tk=ldz6G2OAU._CrCH55z1SzP1dDr8qdiKpsbBG15fbOwE-1751239162-](https://www.researchgate.net/publication/387303858_BALANCING_COPYRIGHT_PROTECTION_CREATIVE_FREEDOM_IN_THE_DIGITAL_AGE_PATHWAY_FOR_ADAPTATION_OF_CREATIVE_WORKS_ON_DIGITAL_PLATFORMS_IN_NIGERIA/citation/download?_tp=eyJjb250ZXh0Ijp7InBhZ2UiOiJwdWJsaWNhdGlvbiiIsInByZXZpb3VzUGFnZSI6bnVsbH19&__cf_chl_tk=ldz6G2OAU._CrCH55z1SzP1dDr8qdiKpsbBG15fbOwE-1751239162-1.0.1.1-QrSyuMh7JMNgmzX6ofrbJ2wt6uknQpebXKRWGeWq4oE)

1.0.1.1-QrSyuMh7JMNgmzX6ofrbJ2wt6uknQpebXKRWGeWq4oE > accessed @ 2nd June, 2025

⁵ A O Oyewunmi, *Nigerian Law of Intellectual Property* (1st edn, Lagos: University of Lagos Press and Bookshop Limited, 2015)

⁶ A O Akorede Yusuf, *Copyright in Image Capturing (Photography) and Right of Subsequent Use,*” *World Trade Organization*, 2018, available at <https://www.wto.org/english/tratop_e/trips_e/colloquium_papers_e/2018_african/chapter_14_2018_african_edition_e.pdf>, accessed 29 June 2025

⁷ Dictionary.com, *Copyright*, available at:

<<https://www.dictionary.com/browse/copyright>>, accessed 29 June 2025.

⁸ B A. Garner (ed), *Black’s Law Dictionary* (11th edn, USA: Thomson Reuters, 2019) 1805.

Copyright Act, 2022, enumerates the classes of protected works including literary musical or artistic works and provides that copyright vests initially in the author of the work. The Universal Declaration of Human Rights also recognizes an author's rights to the protection of the "*material and moral interest*" arising from any literary or an artistic production of which they are the authors⁹. In line with Nigeria treaty¹⁰ commitment administered by the World Intellectual property Organization (WIPO), Copyright subsists automatically upon creation of a qualifying work. Copyrights in Nigeria is regulated by the Nigeria Copyrights Commission, which is also the agency responsible for protection of intellectual property rights of Nigeria in general¹¹. In practice this means that the first owner of the copyright is the creator (photographers, writer, composer, etc.) who may then license or assign those rights.

2.2 Photographic Works

A photograph or photographic works is an image produced by a camera or equivalent light-recording device¹². Photography is the art of producing images, on the process of taking pictures with a camera under the Nigeria Copyrights Act, photographs are treated as artistic works and confer authorship on the photographers in the sense that he contributed significantly by determining, "as to what to photograph", "the positioning, arrangement of the scene, editing, cleaning of the photograph and other skills, judgement and labor in the creation of the photograph and its general output"¹³. In practical terms, this means that the photographer automatically owns the

⁹ D.O. Olufowobi, 'Legal Regime of Copyright of Photographs in Nigeria' *NAU Law Review* (1)(1) (2020) 86.

¹⁰ Paris Convention 1963; Berne Convention for the protection of literary and Artistic Works, 1993

¹¹ (n¹), s.77-78

¹² A A Abubakar, *Photographers Copyright and Data Subjects' Rights: Balancing the Entangled Rights*, available at: <https://thenigerialawyer.com/photographers-copyright-and-data-subjects-right-balancing-the-entangle-rights/#_ftn1>, accessed 2 June, 2025.

¹³ Ibid

Copyrights in a picture they take, unless there is a written agreement or employment contract to the contrary¹⁴. The Copyright Act's interpretation section clarifies that an "author" of a photographic works is "the person who took the photograph"¹⁵. In the case of *Benire v NTA-STAR TV Network Ltd*¹⁶

It was held that ...

it is the act of virtual media Network being the ones who took the photographs that makes it the author of the photograph. By taking the photographs, they automatically have rights except there is an agreement otherwise¹⁷.

Thus, Nigeria law follows, the common practice of vesting photo copyright in the shooter¹⁸. Photographic work is simply the visual record of a scene or subjects, fixed in film or digitally. In other jurisdictions, the definition is similar. For example, the UK, Act define photograph as any recording of light on a medium¹⁹. In summary, a photographic work is any image produced by photographic means, and by statute in Nigeria it is treated as an artistic work around (at creation) by the photographers.²⁰

2.3 Image Right

Image rights refer to the personal interest of an individual in controlling and exploiting their likeness or persona. An image is a physical likeness or representation of person, animal or thing that

¹⁴ (n¹), s.108

¹⁵ Ibid

¹⁶ (2021) LPELR-52824(CA)

¹⁷ *Creation Records Limited v New Group Newspaper* (1997) EMLR 444, [1997] EWHC Ch 370

¹⁸ (n¹), s.5(1)(a), 9(1), 13(1)

¹⁹ United Kingdom Copyright, Designs and Patents Act 1988, s.4(2)

²⁰ (n¹³), (1)(e)

has been snapped, virtually available, painted or even sculpted²¹. Image right refers to the right to explore one's personality in the public space²². It has also been defined as the right to use a person's personality and to prevent others from using that person's image or likeness without permission. In Nigeria, image rights allow individuals, especially public figures to stop unauthorized commercial exploitation of their identity and affording individuals the authority to regulate the utilization of their likeness. It is also pertinent to note that there is no specific legislation or statute in Nigeria that directly provides for the protection of image rights. whether you are a public figure or not, you are entitled to protecting your image. Image right can be enforced through other legal avenue/provision such as; copyright owners (if it was the photographer's work) or by involving related doctrines like, defamation, passing-off, breach of rights to privacy etc²³. In South Africa, similar interest in a person image are protected by the *actio iniuriarum* as part of "dignitas" a common law concept (one's dignity and identity)²⁴. In the United States, there is the right of publicity- a state law property right to control commercial use of one's name or likeness. In the United Kingdom, image rights protection comes under passing -off or privacy law²⁵. Thus, while Nigeria lacks a standalone image-

²¹ S Ngwu, *Friction of Rights: Copyrights in a Photograph, Image Rights and Data Protection Rights of the Photographed – Balancing the Rights*, available at: <https://www.mondaq.com/nigeria/privacy-protection/1210880/friction-of-rights-copyrights-in-a-photograph-image-rights-and-data-protection-rights-of-the-photographed-balancing-the-rights>, accessed 3 June, 2025.

²² **O M Atoyebi**, *Image Rights in Nigeria: A Legal Perspective*, available at: <https://lawpavilion.com/blog/image-rights-in-nigeria-a-legal-perspective/>, accessed 29 May, 2025.

²³ *Ubom v. Globacom (Nig.) Ltd* [2025] 6 NWLR (Pt.1985) 157 (SC)

²⁴ L Swart, *Protection of image rights in South Africa* available at: Swart Attorney Law

<[²⁵ C Bryan-Isaacs, *What Are Image Rights in the UK?* available at: <<https://brandsmiths.co.uk/blog/view/what-are-image-rights-in-the->](https://www.swart.law/post.aspx?id=68#:~:text=Like%20in%20most%20other%20countries%2C,inclusing%20privacy%2C%20dignity%20and%20identity,>> accessed 3 June, 2025.</p>
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rights law, the concept is recognized through its overlap with copyright, trademarks and constitutional provisions of the right to personal dignity and privacy.

2.4 Privacy

Privacy generally denotes the individual's rights to be free from unwanted intrusion or publicity. In common parlance, privacy is often described as the "right to be let alone" or "the right to a private life"²⁶ privacy is the act of exclusively entitling an individual to their private information. Under Nigeria Law, Privacy is also constitutionally protected. The 1999 Nigerian constitution guarantees that "the privacy of citizens, their homes, correspondence, telephone communications is hereby granted and protected"²⁶. This broad provision has been interpreted to mean that the state (and by implication private actors) should not intrude upon a person's private homes, communications or personal data without lawful justification to wit, that an individual's information should not be a breach when an individual's picture is taken and exploited without his consent²⁷. The court of Appeal in *Digital Right Lawyers Initiatives v National Identification Management Commission* held that the right to privacy extends to data protection which by definition of personal data includes image or photograph that give rise to image right". Again, in *Incorporated Trustees of Digital Rights lawyers Initiatives & ors v NIMC*²⁸ the courts held that "the right of privacy is not limited to his home but extends to anything

uk#:~:text=Eddie%20Irvine%20v%20TalkSport%20This,by%20the%20words%20E2%80%9CTalk%20Radio%E2%80%9D,> accessed 3 June, 2025.

²⁶ *Olmstead v. United States*, (1928) 277 U.S. 438; Y Olomjobi, 'Right to Privacy in Nigeria' *Babcock University School Journal of Security Studies* (1) (2) (2017) SSRN Electronic Journal <<https://ssrn.com/abstract=3062603>> accessed 1 June, 2025.

²⁶ (n³)

²⁷ N A Moreham, 'Privacy in Public Places' *Cambridge Law Journal* (3) (65) (2006) 167

²⁸ (2021) LPELR- 55623 (CA)

that is private and personal to him including communication and personal data” Internationally, privacy rights are enshrined in instrument like the Universal Declaration of Human Rights²⁹ and The International Covenant on Civil and Political Rights³⁰. In practical terms, a violation of privacy could include unauthorized publication of personal correspondence or surveillance. Nigeria’s emerging Data protection legislation also recognizes information privacy by regulating personal data. Relatively, the European convention on Human rights protects “private life”³¹, while U.S. jurisprudence does acknowledge zones of privacy as seen in the case of *Griswold v Connecticut*³². Overall, privacy right in Nigeria mean that a person has a reasonable expectation that their personal life and communication will not be publicly disclosed or exploited without their consent.

2.5 Personal Rights

Personal rights refer to the use of legal protectors granted to individuals over the use of their identity, including their name, image, likeness and personal attributes, these rights are important because they help protect a person’s dignity, reputation and control over how their identity is used, especially in public or commercial context. In Nigeria, personality right is not explicitly codified in a single statute, but they can be enforced through constitutional provisions (the right to dignity)³³, tort law (such as defamation or passing off), and the new Data protection Act³⁴. Other jurisdictions like the U.S, UK and South Africa have more developed framework, recognizing the rights of publicity and privacy to protect individuals

²⁹ Universal Declaration of Human Rights 1948, Article 9,12;

³⁰ The International Covenant on Civil and Political Rights 1973, Article 12

³¹ European Convention on Human Rights 2003, Article 8

³² (1965) 381 U.S. 479

³³ CFRN 1999, s. 34

³⁴ National Data Protection Act 2023

from unauthorized use of their identity, especially for commercial purposes.

3. Legal Framework of Photographic Copyright in Nigeria

Under Nigeria legal jurisprudence, there is an absence of a specific legislation that addresses the protection of photographic copyright or image right. However, there are certain legal instrument that provides a legal ground for the protection, recognition and safeguarding of these rights³⁵. These legal frameworks include

1. The Constitution of the FRN 1999 (as amended)
2. Copyright Act 2022
3. Nigeria Data Protection Act 2023
4. Cybercrimes (Prohibition and Prevention) Act 2015 (As Amended 2024)

3.1 Constitution of the Federal Republic of Nigeria 1999

The Constitution is the grundnorm and *fons et erigo* in Nigeria, it establishes and provides the legal basis for safeguarding privacy rights. It provides fundamental rights that shapes the scope of both creators and subject's interest. Most importantly, section 37 of the CFRN safeguards Nigerians' right to privacy concerning their homes, correspondence, telephone conversations, telegraphic communication. It has been interpreted to shield personal communication and the non-consensual capturing or dissemination of private images. While the photographers may have the right to expression and the press, it should understand and strike a balance between his rights to capture and publish images and information, and the right to privacy of human dignity of the subject. The constitution provision does not explicitly mention image but the "right to privacy of citizens is protected and guaranteed from interpretation of that section. It also provides a legal footage to argue

³⁵ (n¹⁹)

that non-consensual, subreption or gratuitous photography or image of individuals counters constitutional provisions. The Constitution of the FRN indeed sets a plain foundation for balancing artistic and informational expression by photographers against the privacy right and dignity of those in question.

3.2 Copyright Act 2022

Under the Copyright Act, image/ photographic rights are protected. Copyrights is the right of authors or creators over their musical, literary, or artistic works which is an intellectual property that grants exclusive rights to the copyright owner³⁶. The Act provides that a photographer is the “*author*” of a photographic work and vest in that author the exclusive rights of reproduction, publication, adaptation, distribution³⁷ etc. The Act defines “*photographic work*” as one created by the person taking the picture. Photographic works fall under artistic works and cinematographic films and eligible for copyright protection. These may include representation of an individual’s personality or likeness through mediums like photographs, painting, sculptures, or motion pictures. Once these expressions are fixed in any of these forms, they automatically enjoy legal protection under copyright law in Nigeria, even if they have not been formally registered with the Nigeria Copyright Commission.³⁸

3.3 Nigeria Data Protection Act, 2023 (ADPA)

The NDPA, 2023 contributes significantly to the protection of individuals image data. The NDPA 2019 has defined personal data to include an image of a person³⁹, hence, any photograph of an identifiable person is classified as personal data. Its collection and publication must comply with stored data-privacy rules. Images may

³⁶ Copyright Act 2022, s.1(1)

³⁷ Ibid, s 108

³⁸ Ibid, (n³⁶), s. 77

³⁹ Nigerian Data Protection Regulation 2019, Art.1.3, Xix

only be “*processed in a fair, transparent and lawful manner, for specific, and legitimate purposes*”⁴⁰. The Act explicitly requires that data subjects provide consent to the processing of their personal data, or else the processing must satisfy narrow lawful bases (such as, contractual grounds, public interest, etc.)⁴¹. In application to this discourse, a photographer or publisher must first obtain the subject’s consent before posting or selling their images (especially for commercial promotional use). The Act also empowers individuals with privacy controls over their images such as the right of access, correction, objection and even erasure as long as their personal information is concerned⁴². Thus, a person in a photograph can instruct a photo-owner or platform to cease processing or to delete the image. NDPA tilts the balance towards the subject (photographers) as data controllers and it grants individuals agency to restrict unauthorized dissemination.⁴³

3.4 Cybercrimes (Prohibition, Prevention, etc.) Act, 2015 as amended (2024)

Under this Act, a breach can only be established where the unauthorized use of an image involves material that qualifies for copyrights or trademark protection, particularly within the scope of online promotion and advertising activities. It creates criminal liabilities for certain digital abuses that affects photographic subjects. Notwithstanding, its online focus, it encompasses provision directly relevant to imagery and identity. It is pertinent to note that, sections on cyberstalking and harassment make it an offence to transmit threatening or harassing communications via computer systems^{44, 45}. If a photograph is used to cyberbully or

⁴⁰ (n³³) s. 24

⁴¹ Ibid, s. 25(1)(2), 26

⁴² Ibid, s.34-38

⁴³ Ibid

⁴⁴ Cybercrimes Act 2015, s. 24

⁴⁵ A C A & A LGP Dentons, *Protection of Image Rights under the Nigerian Data Protection Act, Insights*, 31 May 2024, available at: <https://www.dentonsacaslaw.com/en/insights/articles/2024/may/31/protection->

threaten a person (for example, by creating a menacing meme or implicating them falsely) the perpetrators may be prosecuted under this Act. In sum, the cybercrimes Act supplement civil copyright and privacy claims by imposing punitive sanctions or egregious online misuse of images, thereby reinforcing the protection of subjects in the digital realm⁴⁶.

3.5 A brief Comparative Analysis of Copyright Laws in the United States, the United Kingdom, and South Africa.

In the copyright law of most countries in Africa and in other parts of the World, Photographic belongs to the photographer who exercises the essential rights of a recognized author of the work. Beyond Nigeria, comparative framework offers instructive models for balancing creator and subject rights. In the United States, individuals have a well-established “*right of publicity*” it is a state law intellectual property right allowing a person to control commercial exploitation of their name and likeness. This right of publicity is not recognized by federal law but state law⁴⁷. Typically, the U.S right of publicity bars anyone from using a person’s image or identity in advertising or merchandise without consent.

Let’s take a look at New York’s Civil Rights law which provides that “[a]ny person whose names, picture, or voice is used... for advertising purposes... without the written consent”⁴⁸ may sue for relief. Impressively, U.S laws generally protect all persons (including non-celebrities; even a non-famous individual’s photo cannot be used to sell product without permission. Hence, if a

of-image-rights-under-the-nigerian-data-protection-act#:~:text=According%20to%20the%20definition%20of,which%20shall%20be%20discussed%20below,accessed1June,2025.

⁴⁶ Ibid (n⁴³) s.25

⁴⁷ R C Clarida, *Beware the Right of Publicity*, available at: <https://graphicartistsguild.org/beware-the-right-of-publicity/#:~:text=Unlike%20copyrights%20and%20trademarks%2C%20the,so%2C%20like%20California%2C%20recognize%20both>, accessed 30 June, 2025.

⁴⁸ Ibid

photographer uses a subject's picture for advertisement or commercial purposes without consent risks liability for infringement. Thus, this shows the efforts of the U.S to protect the subject when it has to do with commercialization of his images. While the copyrights protect the photographer's rights in the image, the publicity's right also protects part of the subject's personal interest⁴⁹.

In the United Kingdom, no single statute enshrines an “*image right*” but there is plethora of doctrines which intersect to protect subjects' privacy law in the UK has evolved through the Human Rights Act and the tort of misuse of private information. Courts can prohibit publication of photographs in which subjects have a reasonable expectation of privacy unless there is an overriding public interest⁵⁰. Publishing initiate personal photos without consent could be restrained as a breach under the European Convention on Human Rights⁵¹. Similarly, Uk passing-off law offers a remedy when a person's image is sued to falsely imply endorsement. In the case of *Rihanna v Topshop*⁵², the court of appeal held that unauthorized use of Rihanna's photo on T-shirt amounted to passing-off because it misled consumers into thinking she had endorsed the product. These UK principles protect subject against deceptive commercial image use.

In south Africa, image and personality rights are rooted in common law. The *actio iniuriarum*, recognizes a person's right to physical integrity, reputation, privacy and identity. The courts have treated an unauthorized use of someone's image for advertising as a falsification of personality, infringing dignity.⁵³

⁴⁹ *Itsaellen laboratories v Tropps Chewing Gum Inc*, (1943) Inc, 2020 F.2d 866

⁵⁰ S Ibbetson and P Jordan, *Right of Publicity in the United Kingdom*, Lexology, 26 March 2019, available at: <https://www.lexology.com/library/detail.aspx?g=c40ff17e-a8d9-474a-871c-3473fe3ea54b>, accessed 31 May, 2025.

⁵¹ European Convention on Human Rights, Article 8

⁵² [2013] EWHC 2310,

⁵³ *Kumalo v Cycle Lab (pty) Ltd* (2011) (31871/2008) ZAGPJHC 56

4.0 Balancing Creator's Right and Subject' Interest

The protection of creative works under copyright and related laws often creates a tension between the rights of the creator to control, profit from, and receive recognition for their work, and the interests of the subject whose identity, likeness, or personal attributes may be represented in such works. Striking a balance between these competing interests is essential to ensure that the law both encourages creativity and safeguards individual dignity and privacy. This balance becomes particularly delicate in cases involving photographs, portraits, or biographical works, where the boundary between artistic expression and personal rights must be carefully maintained.

4.1 Photographer's Legal Rights in Nigeria

Under the Nigeria Copyright Act 2022, the photographer who “takes” a photograph is the author and copyright owner of that image⁵⁴. Copyright gives the author the “*exclusive right*” to the photograph especially all rights to control its reproduction and exploitation.⁵⁵ Section 10(1) of the Act specifically enumerates these acts as the sole province of the copyrights holders⁵⁶. Practically, this means the photographer (or other right-holder) alone can copy or reproduce the image, publish or distribute it (including online or by broadcast), include it in film or multimedia works, adapt or create derivative works, and communicate it to the public (for example, by posting on the internet). These exclusive rights allow the photographer to license or sell images commercially and to decide if, when, and how the photograph is used.

By default, copyright vests initially in the author (the photographer) unless there is an agreement otherwise⁵⁷. Notably, the Act provides

⁵⁴ (n¹)

⁵⁵ Ibid, s.10

⁵⁶ (n⁵³)

⁵⁷ Ibid, s. 28

special rules for commissioned work. If a person privately commissions a photographer to take images (for personal or domestic use), the commission obtains a non-exclusive license to use the photographs for non-commercial purposes.

This means that even a private client cannot thereafter commercially exploit or further license the images without the photographer's agreement. However, the photographer retains ownership of copyright, and the commissioner is limited to the terms of the implicit license (and can even restrain under publication if desired)⁵⁸.

At common law, Nigerian courts have not yet recognized a standalone "right of publicity" or personality. Subjects may sometimes resort to defamation or passing-off or breach of contract to combat unauthorized image use. In *Ubom v. Globacom*⁵⁹, the plaintiff (subject) sued a telecom company for using her photo on billboards without consent. The Supreme Court held that because she was not the copyright owner or licensee, her claim was not a copyright case. The Court remitted the matter to state court as a contract/tort claim. The Court noted that simply using one's image without permission "*may not always amount to copyright infringement, but it can ground a claim in contract or tort*". This implies that persons whose images are misused must rely on general principles (e.g. breach of confidence or agency) rather than statutory rights.

Limitations

The photographer's rights under the Act are subject to the Act's built-in exceptions and limitations. Part II of the Act contains "*fair dealing*" exceptions for certain non-commercial uses⁶⁰. For

⁵⁸ (n²⁶)

⁵⁹ (n⁴)

⁶⁰ Copyright Act 2022, s. 20

example, unlicensed copyright for private study, research or criticism is permitted, and incidental inclusion of an artistic work in a broadcast or film is allowed⁶¹. Practically, this means a photographer cannot prevent a person from making a single private copy of a picture or quoting it in a new report. (with attribution). These exceptions arise relatively narrow and carefully circumscribed in Nigeria law. More broadly, photographer may choose to license their works under contracts or creative common-style terms, but absent permission or a statutory exception, all other uses are reserved.

In all, Nigeria law treats photographs as protected artistic works, conferring on the photographer robust exclusive rights of reproduction, distribution and public communication⁶². These rights are fundamental to the photographer's ability to exploit images commercially, subject only to limited fair-use exceptions and only private contractual agreement.

4.2 Subject's Legal Interest in their Images

Contrary to the robust legal framework that grants photographers legal protections over their "*artistic work*" the Nigeria Legal Framework grants no direct, standalone "*Image Right*" to individuals in their likeness. A subject's interest in an image could be accessed through under laws like the CFRN and Data protection laws for their privacy and personality.

In the CFRN, the right of citizens privacy in their homes, correspondence, telephone conversations and other communications, implicitly covering one's likeness are protected⁶³. Similarly, section 34(1) guarantees, every person's right to human dignity⁶⁴. Courts have recognized that an individual's visual

⁶¹ Ibid

⁶² (n⁵⁹), s 10

⁶³ Constitution Federal Republic of Nigeria 1999, s. 37

⁶⁴ Ibid, s. 34

likeness is part of their private identity⁶⁵. Thus, the unauthorized commercial exploitation of someone's image, such as using their photograph in advertising or endorsement can be seen as violating these constitutional rights. It is my own opinion that, a citizen/individual can invoke his right to dignity and privacy against a humiliating or photographic image without his consent.

To the advantage of the subject, the Data Protection Act⁶⁶ further busters an individual's control over their image when it qualifies as personal data. Photographs or videos in which a person is identifiable are considered personal data under the Act. As such, any processing of these images (e.g. storing, sharing or publishing them) generally requires the data subject's consent. The Act specifies that silence or inactivity cannot be taken as consent⁶⁷. Moreover, subject may withdraw consent at any time, and can object to any subsequent processing of their personal data. In effect, this means that using someone's photographic image without permission, especially for a new purpose or an extended campaign/would violate the Act unless a clear consent was obtained and not revoked.

Nigeria lacks an explicit statutory right of publicity or image, license. Individuals rely on a combination of constitutional privacy/dignity guarantees or data protection rights to assert control over their likeness. These are the legal provisions that back an individual whose rights are infringed upon notwithstanding absence of a specific legislation

4.3 Challenges in the Digital Age

Balancing photographer's right and subject's image right are not without challenges in the digital age. The advent of digital

⁶⁵ *Aubry v Editions vice-versa inc* (1998) 1SCR.591; *Benire v NTA-STAR TV Network Ltd*

⁶⁶ Data Protection Act 2003, s 26

⁶⁷ O M Atoyebi, "Image Rights in Nigeria: A Legal Perspective", LawPavilion Blog, available at: https://lawpavilion.com/blog/image-rights-in-nigeria-a-legal-perspective/#google_vignette, accessed 29 May, 2025.

photography and interest has complicated the balance between photographer's and subjects. These challenges include

4.3.1 High Level of Illiteracy amongst Photographer

In the digital era, many photographers are not accustomed with digital devices and their mode of operation. Photographers often lack resources or know-how to protect their work. They are ignorant of the provision of the law has made and how to take advantage of it. When photographers are not adequately informed, it then becomes difficult to balance their rights in the digital age.

4.3.2 Absence of Standardized Model Releases

Many photographers in Nigeria, particularly freelancers, do not use formal letter forms. These informal practices can create uncertainty without a written agreement, may be hard to prove that the subject actually gave his consent thereby making licensing and litigation more difficult

4.3.3 The Emerging Legal Issues: AI-generated Images/ Deepfakes

It is increasingly possible to synthetically generate or heavily manipulate photos of real people without their approval. In Nigeria, there is currently no specific provision for these issues. A deepfake video or an AI-generated portrait resembling a subject, would not be caught by copyright (no human author) but could infringe privacy or dignity.

4.3.4. Inadequate Funding/ Poor Enforcement

The Nigeria Copyright Commission (NCC) and other agencies face chronic underfunding and infrastructure shortfalls, making enforcement uneven⁶⁸. Despite tougher penalties in the 2022 Act,

⁶⁸ P Fasoyin, "Challenges of Copyright in the 21st Century: A Nigerian Perspective," Harlem Solicitors Blog, 19 April 2024, available at: <https://www.harlemsolicitors.com/2024/04/19/challenges-of-copyright-in-the->

online infringement (unauthorized reposting of images, piracy, etc.) is widespread, and photographers often lack resources or know-how to police their works. Studies note that the NCC suffers “*poor financing*” and “*poor enforcement mechanism*,” which frustrate legitimate rights holders⁶⁹. As a result, digital images often circulate freely once released, blurring the line of legal control.

5. Conclusion and Recommendations

This article has explored the legal reasons and gaps that arise between the photographers and the subject. Particularly in relation to photography in Nigerian’s digital age. It established that while the Nigerian Copyright Act 2022 provides strong protection for photographers as creators of original artistic works, there is a noticeable deficiency in the statutory recognition of the rights of individuals while images are captured and potentially exploited. The gap has become more pressing with the proliferation of digital platforms where photographs are easily shared, altered, and monetized, sometimes without the knowledge or consent of the subject. The *Ubom v Globacom* (supra), decision, among others, illustrate the difficulties that arose when subjects of photograph seek legal redress under existing legal regimes, which primarily include tort, constitutional rights, and data protection laws.

The absence of clear boundaries and procedural tools such as standardized model releases further compounds, the risk of rights violation and legal uncertainty for both creators and subjects. Hence, the need for the following recommendations

21st-century-a-nigerian-perspective/#:~:text=faced%20with%20a%20plethora%20of,27, accessed 3 June 2025.

⁶⁹ J Nworie, “Challenges of Copyright Enforcement in Nigeria,” *The Guardian newspaper* (Nigeria, Abuja: 16 June 2024), available at: <https://guardian.ng/features/law/challenges-of-copyright-enforcement-in-nigeria/>, accessed 3 June 2025.

1. **Enact a Standalone Image Right or Personality Right Law:** Nigeria should enact a comprehensive statute that formally recognizes the right of individuals to control the commercial use of their likeness, image and persona
2. **Amendment of the Copyright Act:** The copyright act should be amended to require subject's consent. It should provide for a balance between the photographer's copyright and the individual's right to privacy. It should explicitly state the consent of the subject particularly in instances where photographs are to be used for commercial, promotional or high-visibility public campaigns.
3. **Adoption of a Standard Model Release Framework:** A model that stipulates how and where photographs should be released should be adopted and should be endorsed by the government and approved by the NCC. This would reduce legal uncertainty and ensure mutual clarity between photographers and subjects.
4. **Public Awareness and Professional Training:** There should be consistent public education efforts (via the Nigeria copyright commission and legal institutions) to inform photographers, media houses, content creator and the general public in the ethical and legal implications of using images without consent. Practically, they should be guarded in the creations of "*Memes*" to avoid encroaching into people's privacy. Conferences and seminars should be held in both rural and urban areas to help eradicate ignorance.
5. **Strengthening Enforcement Mechanisms:** While acknowledging the existence and provision of the laws (NDPA) and CFRN) stringent measures should be taken to enforce them. Also, judicial activism and legislative reforms should be pursued, the laws should be set in motion through litigation on matter revolving image right and culprit should be adequately published.

6. **Collaboration from Information Practices and Jurisprudence:** Nigeria should take a snippet from other jurisprudence who are progressive on image right to enhance their own laws.