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Beyond the Lens: *Re-Imagining Copyrights and Image Rights in Photographs Under Nigerian Law*

Introduction

The camera lens does more than capture light. It captures stories, identities, and increasingly, legal complexities. Under Nigerian law, the Copyright Act, 2022, gives the photographer the legal rights to their photographic work.¹ However, the rise of image rights is reshaping the debate on who truly controls the image within a photograph. Beyond traditional copyright considerations, the law is beginning to recognize that the subject of a photograph may also have protectable interests, especially when their identity or creation is used for commercial gain.

While the conversation is still developing in Nigeria, recent judicial decisions, are now forcing a re-examination of this delicate balance. It is against this backdrop that this publication considers the position of the law in Nigeria on the question of the ownership of copyrights over photographs and the remedies (if any), available to the person whose photographs are, without consent, exploited for commercial gain.

The Legal Backbone: Copyright in Photographic Works

Under Nigerian law, the primary legislation governing copyright is the Copyright Act, 2022 ("the Act"), which affirms that photographs are eligible works² for protection under the Act. The Act also clarifies that an author - the person who took the photograph (i.e. the photographer)³ has

¹ This was also the position under section 51(1) of the repealed Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004.

² See Section 2(1) (see the definition of artistic work in section 108 (1)).

³ See the definition of author in section 108(1). However, by virtue of Section 2(2), some effort must have been expended on the work to confer upon it an original character, and the photographs must be fixed in a medium of expression.

Copyright in Photographs



copyright over a photograph⁴. This copyright confers exclusive rights⁵ on the photographer to reproduce, publish, broadcast, exhibit, adapt the Photograph, or include it in an audiovisual work. The copyright typically lasts for 50 years from the end of the year of publication with the author's consent or 50 years from the year of creation if the work is not published within that period⁶.

In order to ensure a balance between the exclusive rights of the author(s) and the public interest in accessing and using creative works, the Act recognizes certain exceptions and limitations⁷ to the author's exclusive rights. Key exceptions include fair dealing⁸ for purposes such as non-commercial research, private study, criticism or review, and news reporting, provided the use is accompanied by sufficient acknowledgment of the author.

Additionally, the law permits incidental inclusion, where a work is unintentionally captured in another work, for example, a copyrighted photograph appearing in the background of a movie scene.

It should be noted that copyright, while powerful, is not absolute. It exists within a broader framework of personality rights, moral rights, property rights, and - recently - data and privacy protection rights.

The Pictured Subject - A Silent Co-Stakeholder?

As noted above, by virtue of the Copyright Act, a photographer - as author, is recognized as the holder of the copyright in an image produced by the photographer; however, the pertinent question is whether Nigerian law gives any right to the subject of a photograph? Many jurisdictions have evolved towards recognizing that while the image is the photographer's creation, the persona within the image remains inviolable. For instance, the law has been developed in England to recognize the subject's entitlement to control the commercial or public use of their identity – including their

⁴ Oluwadamilola Banire v. NTA-star TV Network Limited (2021) LPELR-52824(CA)

⁵ See Section 10(1). Adenuga v. Ilesanmi Press & Sons (Nig) Limited (1991) 5 NWLR (Pt. 189) 82

⁶ See Section 19(1)(c).

⁷ See Section 20(1)

⁸ In making a claim for fair dealing, consideration will be made to the purpose and character of the usage, substantiality of the portion used in relation to the work, the nature of the work and the effect of the use on the market value of the work.

name, likeness, photograph, voice, signature, and other distinctive personal features.⁹ This concept is known as image or personality rights.

While Nigerian law does not yet have a codified framework for image or personality rights, individuals whose images are used without their consent may explore existing legal remedies. These include: (a) A claim for breach of the constitutional right to privacy;¹⁰ and (b) A civil claim for unauthorized use of the image and passing off¹¹.

Although a claim for breach of the right to privacy may appear more plausible in most contexts, it may not be the appropriate remedy where the subject is a well-known public figure. In such cases, the subject may sue for the unauthorized commercial use of his /her image, which targets the exploitation of their identity, rather than an intrusion into private life. Importantly, the photographer's copyright in the image does not operate as a shield against these claims, particularly where the subject's identity is being commercially leveraged without consent.

The Judicial Attitude of Nigerian courts

In the case of **Oluwadamilola Banire v. NTA-Star TV Network Limited (2021) LPELR-52824(CA)**, which is instructive in the context of image rights and the boundaries of intellectual property law in Nigeria, the Appellant - a freelance journalist and former presenter with Virtual Media Network Limited, instituted an action at the Federal High Court, alleging unauthorized use of her images on billboards in Akure and Abeokuta by the Respondent - a broadcast company. She contended that the use of her image infringed her image rights, seeking declaratory reliefs and N50 million in damages.

The Respondent, in its defence, claimed that the images were supplied under a Channel License Agreement with Virtual Media. The evidence also showed that the Appellant had participated in a photo session with Virtual Media during her engagement, and that the images were used to promote its channels. The Respondent also argued that the copyright in the images belonged to Virtual media as the entity who took the photographs. In sum, the Federal High Court agreed with the Respondent and dismissed the claim, on the grounds that the Appellant's failure to join Virtual Media was fatal to her case. This dismissal was affirmed by the Court of Appeal.

Significantly, the Court of Appeal also examined the nature of the claim presented before the Federal High Court and classified it as a copyright claim on the premise that copyright is the only intellectual property right expressly protected by the Copyright Act and as such the claim can only be classified as a copyright claim. However, this restrictive interpretation appears to have been overtaken by the more progressive stance of the Supreme Court in the recent case of **Ubom v. Globacom (Nig) Ltd (2025) 6 NWLR (Pt. 1985) 157**, where the Apex Court held that a claim for unauthorized commercial use of an individual's image is distinct from a copyright action.¹²

Specifically, in **Ubom's case**, the Supreme Court considered the proper forum for actions relating to the unlawful use of a person's image. The Appellant had instituted an action before the High Court of Rivers State, alleging that the Respondent unlawfully used her photograph on billboards to advertise its 2011 GLO Naija Sings competition. The Respondent challenged the jurisdiction of the court, contending that the suit was essentially a copyright claim falling within the exclusive jurisdiction of the Federal High Court. However, the Supreme Court reversed the concurrent findings of the High Court and the Court of Appeal, holding that the claim was for the unauthorized commercial use of the Appellant's image - not

⁹ Irvine v. Talksport Ltd (2002) F.S.R. 60; and Robyn Rihanna Fenty v. Aracadia Group Brands Ltd (T/A Topshop) & Anor (2012) EWHC 2310 (CH).

¹⁰ See Section 37 of the Constitution of the Federal Republic of Nigeria.

¹¹ See Ubom v. Globacom (Nig) Limited (2025) 6 NWLR (Pt. 1985) 157.

¹² The Supreme Court also held that a claim for unauthorized use of one's image would properly lie before the State High Court, not the Federal High Court, as they do not constitute copyright claims in the strict sense that would deprive the State High Court of jurisdiction.

a copyright action - as the Appellant did not claim authorship or ownership of the photograph itself but sought for reliefs arising from the commercial use of the photograph.

The Supreme Court's decision in *Ubom's case* marks a significant jurisprudential shift in Nigeria's approach to image rights. By drawing a clear line between a copyright claim and a claim for the unauthorized commercial use of an individual's image, the Supreme Court has effectively opened the door for image right litigation to proceed in State High Courts, without being confined to the narrow confines of the Copyright Act. This distinction affirms that the subject of a photograph has an independent, protectable interest in their identity, separate from the photographer's copyright, and reinforces the principle that commercial exploitation of a person's image without consent can give rise to actionable claims.

Consent as a Tool of Balance

One of the most practical and legally sound ways to navigate the tension between a photographer's rights and a subject's is consent. In professional practice, this often takes the form of model release forms.¹³

In the Nigerian law context, while there is no statutory requirement for model releases or reproduction licences, adopting these tools as a matter of best practice can provide significant legal protection. They help avoid potential claims particularly where the photograph will be used in ways that may suggest endorsement, association, or commercial partnership. Indeed, the import of the recent judicial discussion is to signal to advertisers, media companies, and content creators that due diligence and prior consent may no longer be merely best practice, but a legal necessity.

Conclusion

As Nigerian law continues to evolve, the conversation around photographs and image rights is likely to intensify. The Supreme Court's decision in *Ubom's case* has already drawn a critical line between copyright claims and image rights claims, affirming that the subject of a photograph can have a distinct, protectable interest in their image. This development creates new opportunities for redress but also new responsibilities for photographers, publishers, and businesses.

The safest and most forward-thinking approach is to integrate consent as a standard practice before capturing or commercially exploiting any person's image. This not only reduces legal exposure but also fosters respectful, transparent relationships between creators and subjects.

If you require any further clarification, do not hesitate to contact us.

¹³ A model release is a written agreement granting permission to use a person's likeness for specified purposes.