



A CRITICAL ANALYSIS OF IMAGE RIGHTS PROTECTION IN A DIGITAL AND SOCIAL MEDIA ERA: NIGERIA IN FOCUS

Pretty Tega Edema* & Taofeek Jaji**

ABSTRACT

The advent of social media platforms and the growing digital environment have dramatically transformed the landscape of image creation, dissemination, and consumption. The visual content has become increasingly ubiquitous and easily shareable, questions of ownership, consent, and privacy have gained prominence. This article considers certain digital and social media trends, such as online behaviour, user-generated content/marketing campaigns, rise of influencer culture, and memes. This paper examined how these trends intersect with the image rights of individuals, exemplifying the challenges of balancing individuals' rights with the growing demand for creative expression and online engagement. The paper further embarked on a thorough examination of the existing legal frameworks in Nigeria and their effectiveness or otherwise in safeguarding individual image rights. The paper relied on a doctrinal research methodology in analysing the issues raised therein. It made several findings, including that the Copyright Act of 2022 and the Nigeria Data Protection Act are inadequate to protect the image rights of individuals. The paper recommended, inter alia, a special legislation for the protection of image rights, such as the Image Rights Ordinance of Guernsey, should be made in Nigeria.

KEYWORDS: Copyright protection, Image Rights, Digital and Social media era

1. INTRODUCTION

A person's image more or less forms part of his identity, and one may even argue that it carries a flare of dignity. Generally, all humans are entitled to respect and protection for their personal lives and dignity. Such protection extends to the individual's right to secure his name, appearance, unique features, and even gestures from non-permitted reproductions or publications. However, in the modern and technological age, digital reproductions of a person's image are easily achievable and made accessible to a wide audience within split seconds through social media platforms. The emergence of social media platforms and the pervasive nature of digital content creation have raised concerns relating to privacy, consent and ownership of personal images.

The concept of image rights has assumed increasing legal significance in the twenty-first century as advances in digital technology have transformed the manner in which personal identity is created, communicated, and commercialized. A person's image is no longer confined to physical photographs or portraits rather, it encompasses a wide range of identifying characteristics, including facial features, voice, likeness, signature, gestures, mannerisms, and other attributes capable of distinguishing one individual from another. These characteristics constitute an integral aspect of personal identity and are closely associated with the values of human dignity, autonomy, privacy, and reputation. Consequently, unauthorized reproduction, publication, manipulation, or



commercial exploitation of an individual's image may amount to an infringement of legally protected interests, particularly where such use occurs without the person's knowledge or consent.

The recognition that every individual is entitled to respect for his or her personality has long been reflected in international human rights instruments and domestic constitutional frameworks. The right to dignity, privacy, and protection of one's personality has increasingly been interpreted to include control over the commercial and non-commercial use of one's image.

The rapid development of information and communication technologies has fundamentally altered the landscape within which image rights operate. Smartphones equipped with high-resolution cameras, artificial intelligence technologies, facial recognition software, cloud computing, and social networking platforms have made the creation, duplication, editing, and worldwide dissemination of digital images almost instantaneous. A photograph or video captured within seconds can be uploaded and viewed by millions of users across multiple jurisdictions without meaningful geographical limitations.

The emergence of social media platforms such as Facebook, Instagram, TikTok, X (formerly Twitter), Snapchat, and YouTube has further intensified these concerns. These platforms encourage users to create, share, and redistribute visual content continuously, often without adequate regard for the legal implications of reproducing another person's image. Images are frequently copied, altered through digital editing software, incorporated into advertisements, transformed into internet memes, or deployed in artificial intelligence-generated content without obtaining the consent of the persons depicted. Such practices raise difficult legal questions concerning ownership, consent, privacy, reputation, data protection, and the extent to which existing legal frameworks adequately safeguard individual personality rights.

Despite the growing international recognition of image rights, Nigeria has yet to enact a comprehensive legal regime specifically regulating their protection. Instead, individuals seeking legal redress must rely upon fragmented causes of action derived from constitutional rights to privacy and dignity, the Nigeria Data Protection Act, copyright law, passing off, defamation, breach of confidence, and the law of torts. While these legal frameworks offer limited protection in particular circumstances, they do not comprehensively address the unique challenges associated with the unauthorized capture, dissemination, commercialization, or digital manipulation of personal images. This fragmented approach has created considerable legal uncertainty regarding the scope, nature, ownership, enforcement, and remedies available in relation to image rights.

2. IMAGE RIGHT

Images simply refer to the image or identity of a person. Image rights are rights that cover or seek to protect the unique characteristics, features, or traits of an individual's personality. A person's image is to be understood in broad terms and may generally include name, voice, signature,



likeness, photographs, and illustrations of the personality.¹ An image includes a physical likeness or representation of a person, animal, or thing, photographed, painted, sculptured, or otherwise made visible, while image rights refer to the control over an image by the personality whose image is portrayed or by the image's creator.² Other rights that an individual can possess in his/her persona include appearance, silhouette, features, facial expressions (verbal or facial), mannerisms, and the like.³ This definition of image rights was affirmed in the case of *Wells v Atoll Media (Pty) Ltd & Anor*.⁴ The contention was the unauthorised publication of a minor's photograph by a surfing magazine. The plaintiff, acting as her daughter's guardian, sued the magazine's owner and editor for publishing the girl's photograph without consent, an image that was also aired on national television and went on to attract hurtful public commentary about the child. The court held that the publication amounted to an invasion of the girl's privacy and that features of a person's identity are generally deserving of legal protection, particularly where that identity is used for another's commercial gain. Judgment was entered in favour of the plaintiff.⁵

In *James Stunt v Associated Newspapers Limited*,⁶ it was held that personal data includes an individual's name or a photograph. These decisions also buttress the fact that the image/photograph is personal data under data protection law. Publication of personal data like images/photographs without the consent of the data subject is unlawful not to mention making commercial use of the same without the data subject's consent. In sum, image rights attach to the personhood of an individual. It embodies the totality of the individual's persona. This includes his or her charisma, appearance, style, poise, carriage, and personality.

3. OVERVIEW OF DIGITAL AND SOCIAL MEDIA TRENDS

The following digital and social media trends play a pivotal role in shaping and reflecting contemporary online and social behaviours.

1. **Paparazzi:** The Merriam-Webster Dictionary⁷ describes paparazzi as a freelance photographer who aggressively pursues celebrities to take candid photographs. Hence, paparazzi pictures are

* Lecturer, Admiralty University of Nigeria; tegaedema342@gmail.com.

** PhD Researcher, University of Ilorin; jajiseni@gmail.com.

¹Corinna Coors and Peter Mezei, 'Image Rights: Exploitation and Legal Control in English and Hungarian Law' *Hungarian Journal of Legal Studies* [2016] 1 (57) 11

<https://www.researchgate.net/publication/301702880_Image_rights_Exploitation_and_legal_control_in_English_and_Hungarian_law> accessed 3 August 2025

²Davidson Oturu, 'Protection of Image Rights', *Aelex publication*, 2019, <<https://www.aelex.com/wp-content/uploads/2019/10/PROTECTION-OF-IMAGE-RIGHTS-Part-1-3.pdf>> accessed 3 August 2025

³ibid

⁴[2010] 4 All SA 548 (WCC)

⁵SJ Cornelius, 'Commercial Appropriation of a Person's Image: Wells V Atoll Media (Pty) Ltd And Another (Unreported 11961/2006) [2009] ZAWCHC'

<[173https://repository.up.ac.za/bitstream/handle/2263/16701/Cornelius_Commercial282011%29.pdf?sequence=1&isAllowed=y](https://repository.up.ac.za/bitstream/handle/2263/16701/Cornelius_Commercial282011%29.pdf?sequence=1&isAllowed=y)> accessed 3 August 2025

⁶[2017] EWCH 695 (QB) 56

⁷Merriam-Webster Dictionary, <<https://www.merriam-webster.com/dictionary/paparazzo#:~:text=3A%20a%20freelance%20photographer%20who%20aggressively,by%20a%20swarm%20of%20paparazzi>> accessed 5th October 2023.



mostly taken by paparazzi photographers without the consent of celebrities. Nowadays, Paparazzi photographs have moved to the forefront of mainstream news and entertainment, reaching a broad audience via multiple platforms like gossip websites, major news outlets, fashion magazines, and social media.⁸ However, a fundamental dilemma in the paparazzi-image rights debate is the balance between an individual's right to privacy and the public's interest in celebrity news and the free press.

2. **Influencer culture:** This involves individual internet users nurturing online communities, enabling them to exert both commercial and non-commercial influence.⁹ As influencer marketing gains traction, the concept of an individual's identity, image, or personality as a property right is increasingly solidified. Consequently, ensuring the protection of individuals involved in such activities has become of paramount importance.¹⁰ A pressing concern arises when images of influencers are posted by individuals or paparazzi photographers without their approval.
3. **Social Media Marketing:** Social media platforms serve as networks for sharing and receiving information, enabling companies to engage with both current and potential customers in the digital marketplace.¹¹ The general public often shows a strong inclination to show interest in products or services when they see a familiar celebrity or popular figure associated with their advertising or promotion. This has resulted in the rampant exploitation of the image rights of celebrities especially for commercial purposes without their consent by social media marketers.¹²
4. **User-generated content:** This is content designed or produced by customers and is unique to a particular brand, often shared on social media and various other platforms. It comes in many forms, including images, videos, reviews, and testimonials.¹³ Social media posts on platforms such as Twitter, Facebook, or YouTube, to mention just a few, are examples of user-generated content. Therefore, whether it's an image shared on social media, a song discovered on a stock website, or any other creative creation, it constitutes the intellectual property of its creator.¹⁴ Questions that can surface with user-generated content pertain to the ownership of the created material.

⁸A Jerslev and M Mortensen, 'Taking the Extra out of the Extraordinary: Paparazzi Photography as an Online Celebrity News Genre' [2014] 17(6) *International Journal of Cultural Studies*, 619-636.

⁹UK Parliament, 'Influencer Culture: Lights, Camera, Inaction?'

<<https://publications.parliament.uk/pa/cm5802/cmselect/cmcomeds/258/report.html>> accessed 3 August 2025

¹⁰FL Geronimo, 'Image Rights in the Influencer Era', <<https://www.inhousecommunity.com/article/image-rights-influencer-era/>> accessed 3 August 2025.

¹¹O Mayowa, 'Image Rights in Nigeria and Other Jurisdiction' <<https://spaajibade.com/a-review-of-some-legal-issues-arising-from-the-use-of-celebrity-images-for-commercial-purposes-in-nigeria-oluwafulmilayo-mayowa/>> accessed on 3 August 2025

¹²ibid

¹³T Oladipo, 'A Straightforward Approach to User Generated Content that Connects', *Buffer* <<https://buffer.com/resources/what-is-user-generated-content>> accessed 3 August 2025

¹⁴Grin, 'The Do's & Don'ts of User-Generated Content Rights in Influencer Marketing' *Grin* <<https://grin.co/blog/user-generated-content-rights-dos-and-donts/>> accessed 3 August 2025.



5. LEGAL FRAMEWORK FOR IMAGE RIGHTS PROTECTION IN NIGERIA

While several laws in Nigeria relate to photography or images, the pertinent question for determination is whether these laws are adequate to protect personality rights. This section considers the legal framework for image rights protection in Nigeria.

a. Copyright Act, 2022

In 2023, the Copyright Act passed by the National Assembly in 2022 was assented to by the President, thus making it a law. This was a huge step in the history of copyright law in Nigeria, which had the erstwhile copyright law of 1988 in operation for more than 30 years. However, with the coming of the new Act, it is left to be considered whether or not its provisions are adequate and commendable enough for the protection it affords owners of images, particularly within the current digital environment.

First, it must be noted what the general objectives of the Copyright Act, 2022, are. Section 1 thereof provides that the objectives of this Act are to:

- (a) protect the rights of authors to ensure just rewards and recognition for their intellectual efforts; (b) provide appropriate limitations and exceptions to guarantee access to creative works; (c) facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions; and (d) enhance the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement of the provisions of this Act.

From the above, the Act recognizes the need to guarantee just rewards for intellectual and creative efforts while at the same time encouraging and promoting ingenious creativity. Notably, in the 2022 Act, the works eligible for copyright protection have been expanded to include audio-visual works, which are classified separately from artistic works. In the interpretation section, "audiovisual work" means,

the aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture using a mechanical, electronic, or other device, irrespective of the nature of the material on which the visual images and sounds are carried, and includes the soundtrack but does not include a broadcast. The Act further defines "author" in the case of-

- (i) audiovisual work to mean the person by whom the arrangements for the making of the audiovisual work were made unless the parties to the making of the audiovisual work provide otherwise by contract between themselves.



While this is commendable, the need to balance conflicting rights in the exercise of creativity, ownership, and consent was not covered by the Act in that the Act makes no specific provisions on image protection nor does it cater for the protection of deceased persons whose images or likeness may be reproduced digitally.

It has been argued that image rights may be subsumed and deemed protected under the provision of artistic works in the Copyright Act since the definition of artistic works includes paintings, drawings, etchings, lithographs, woodcuts, engravings, and prints; works of sculpture; photographs not comprised in a cinematographic film; and works of artistic craftsmanship. Hence, the argument is that these provisions will therefore apply to a person's personality that is reproduced in a photograph, painting, sculpture, and the like.¹⁵ To this end, the work as an artistic expression is deemed the proprietorship of the author, and the author's permission will be required to make use of the content, even by the person who is the subject of the photographic creation.

This perspective was made more clear by the decision of the court in the case of *Banire v NTA-Star TV Network Limited*.¹⁶ The appellant sued after her image was displayed on billboards across Akure without her consent, while the respondent defended itself on the ground that it had obtained the photographs from Virtual Media Networks Limited under a licensing agreement. The Court of Appeal held that copyright in the photographs belonged to the photographer, Virtual Media Networks Limited, since photographs are classified as artistic works.¹⁷ The practical effect of this holding is that a photographer may commercially exploit an image without the consent of the person depicted in it.

According to the above provisions of the 2004 Act, which were also retained in the 2022 Act, the author of a photograph is the maker of the photograph. This rule was also applied in the case of *Skin Beauty Ltd v Okoro*,¹⁸ where the Respondent sued the appellant for using her image without consent to promote "Smooth Look Super Maxi Tone" and was awarded ₦10,000,000 in damages at trial, prompting the appellant's appeal. The Court of Appeal held that the respondent had failed to prove she was the rightful owner of the image, since under Sections 10 and 51(1) of the Copyright Act, 2004, ownership of a photograph vests in the person who created it, not its subject. Because the respondent never claimed to be the photograph's author, the court found she lacked the locus standi to sue for infringement, and the appeal succeeded. In *Okoro's* case, the respondent at the trial court did not assert in her legal claim that she was the author or creator of the image in question, which she claimed was infringed upon. Consequently, the court determined that, by the Nigeria Copyright Act of 2004, the respondent could not be recognized as the author of the photograph in

¹⁵D Otoru, 'Protection of Image Rights', *Aelex publication*, 2019 <<https://www.aelex.com/wp-content/uploads/2019/10/PROTECTION-OF-IMAGE-RIGHTS-Part-1-3.pdf>> accessed 3 August 2025

¹⁶(2021) LPELR-52824(CA).

¹⁷ Copyright Act 2004, s 51.

¹⁸[2017] LPELR-46285 (CA).



dispute and therefore lacked the locus standi to bring an infringement action against the appellant.

It must be noted that copyright law is grossly inadequate to protect image or personality rights. The trend has been for the courts to subsume image rights under the provisions of existing copyright laws on pictures or photography, i.e., artistic works. Currently, the Copyright Act protects photographic works taken or created by another person, and that person owns the copyright thereto. The Interpretation Section of the Copyright Act, 2022, provides that "author" in "the case of a photographic work means the person who took the photograph".¹⁹ Notably, the creation of copyrightable works based on another person's image can take various forms, such as capturing the image without the person's consent, unauthorised use of another person's image in an artistic project, either with or without modifications, use of a legitimately taken photograph in the private sphere in an artistic context, or using a performer's image in an advertisement or a video game.²⁰

From the above, the Copyright Act does not protect the person who is the subject matter of the picture or photography, nor does the law afford any protection to a person whose picture is taken randomly or without permission, especially where such a person is a public figure. Any such right must be claimed under privacy laws. However, it is the opinion of these writers that copyright protection should be extended to the personalities of individuals, especially where it is established that such individuals possess goodwill attached to their names or personas or that their image commands great appeal from the general public. In this case, it is the perceived goodwill or public appeal and acceptance that should be protected, not merely the taking, making, or creation of the photograph.

This submission of ours seems to be the position accepted and applied by the Courts in Paris. As noted by Synodinou, a recent ruling by the Paris High Court demonstrates the tension that may exist between the right to one's freedom and the issue of artistic freedom.²¹ In the case of *Tribunal de grande instance de Paris, Ordonnance de référé, Virginie G/Juan F.*,²² a well-known Spanish artist used photographs of his former girlfriend, some of them intimate, to create works of modern art, and she objected to their use once published. The artist relied on Article 10 of the European Convention on Human Rights to justify the use as an exercise of artistic freedom. The court held that her attendance at the ceremony where the artist received a prize for one such work could be interpreted as consent to that particular photograph, but found no evidence that she had consented to the reproduction and dissemination of the remaining photographs. Weighing the competing

¹⁹ Copyright Act 2022, s 108.

²⁰ T Synodinou, 'Image Rights and Copyright Law in Europe: Divergences and Convergences', (2014) *Laws*, 181-207, 190 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589140> accessed 8 November 2025.

²¹ *ibid*, n 20.

²² Tribunal de grande instance de Paris, Ordonnance de référé, Virginie G/Juan F., 10 janvier 2013

<http://www.legalis.net/spip.php?page=jurisprudence-decision&id_article=3590> in Tatiana Synodinou, 'Image Rights and Copyright Law in Europe: Divergences and Convergences' (2014) *Laws*, 181-207, 190.



interests, the court ruled in her favour on those photographs, holding that consent was absent notwithstanding the unequivocally artistic nature of the work.²³

However, in order not to completely deny the efforts of the photograph or image's creator, it is suggested that joint authorship should be accorded to both the creator of the image and the person who is the subject of the image. This recommendation aligns totally with the definition of joint authorship in the Interpretation Section of the Nigerian Copyright Act, which states that a work of joint authorship is;

a work produced by the collaboration of two or more authors in which the contributions of the authors are merged into inseparable or interdependent parts of a whole.

Ascribing joint authorship to works involving personality or image rights, as explained earlier, will afford equal recognition of the rights of both classes of persons, i.e., the creator and the data subject. In this instance, the creator simply cannot take a photograph or image or use a person's traits without his prior permission, nor can the individual, subject matter of the creation, use the image without the permission, authorization, or acknowledgement of the creator. Just as in the joint authorship of literary works. The need for joint ownership is underscored by the fact that the current internet and social media era possesses the capability of attracting massive popularity and support. This, in turn, produces huge economic fortunes for the people involved in the activity uploaded to the internet. To therefore refuse to acknowledge the contribution of a party in the creation of a digital work is to deny such a party the potential benefits he stands to reap from the work.

b. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)

In a world where technology's influence continues to grow and people's online presence becomes more prominent, a crucial query emerges: does the Constitution adequately protect the complex domain of image rights? The Constitution of the Federal Republic of Nigeria (CFRN) provides for the protection of the privacy of all citizens, and it states thus:

The privacy of citizens, their homes, correspondence, telephone conversations, and telegraphic communications is hereby guaranteed and protected.²⁴

The above provision has received judicial affirmation in the case of *Incorporated Trustees of Digital Rights Lawyers Initiative & Ors v Nimc*,²⁵ the Court of Appeal elucidated the extent of privacy protection specified under Section 37 of the Constitution of the Federal Republic of Nigeria

²³ 1709 Blog, 'Right of Publicity Trumps Artistic Freedom of Expression' *The 1709 blog* (23 January 2023) <http://www.the1709blog.blogspot.co.uk/2013_01_01_archive.html> in Tatiana Synodinou, 'Image Rights and Copyright Law in Europe: Divergences and Convergences' (2014) *Laws*, 181-207, 190.

²⁴ Constitution of the Federal Republic of Nigeria 1999 (As Amended), s 37.

²⁵ (2021) LPELR-55623(CA)



(CFRN), 1999. The court emphasised that the scope of 'privacy of citizens' as guaranteed by the Constitution is not defined.

The Court referred to the case of *Nwali v EBSIEC*,²⁶ where it was held that inter alia, the Privacy of Citizens is general and is not limited to any aspect of the person or life of a citizen. It was further held that the privacy of the home, correspondence, telephone and telegraphic communications protected by section. 37 are definable and determinable as to their nature and scope. However, the meaning and scope of "privacy of citizens" as guaranteed by the Section has not received a clear definition/interpretation in the Constitution. The trial court had, in my view, rightly held above, that the right to "privacy of citizens" as guaranteed under the Section includes the right to protection of personal information and personal data. Hence, the Court interpreted that the privacy of citizens includes the protection of personal information or personal data of citizens.

Furthermore, in the case of *Bi-Courtney Aviation Services Ltd v Kelani*,²⁷ the contention was whether commercial use of a person's photograph without consent breaches the constitutional right to privacy. The court held that a person's image represents their identity, and that a business capturing and publicly showcasing someone's picture for financial gain without consent violates that person's constitutionally protected right to privacy. Privacy rights and Image rights are no doubt interconnected however they are not identical. While privacy rights offer broader protection for an individual to exercise his right to private life, image rights on the other hand specifically address the control and use of an individual's likeness or image for commercial gain.

c. The Nigerian Data Protection Act, 2023 (NDPA)

The confluence of image rights and data protection law sparks thought-provoking inquiries about how effectively individuals' rights over their images can be upheld within the data protection legal framework. This is especially pertinent in today's digital era, where the utilisation and sharing of images have proliferated. To begin, the National Information Technology Development Agency (NITDA) introduced the Nigeria Data Protection Regulation (NDPR), 2019, to promote widespread data usage and align with Nigeria's Fourth Industrial Revolution goals.²⁸ On June 12, 2023, President Bola Ahmed Tinubu's government signed the Nigeria Data Protection Act (NDPA), 2023, into law, replacing the NDPR. The main objective of the Nigeria Data Protection Act, 2023 like its predecessor, the NDPR, is to protect the fundamental rights of data subjects as guaranteed by the 1999 Constitution of Nigeria.²⁹

In the old NDPR, images and photographs were examples of personal data. However, the updated NDPA provides a broader definition of personal data. It now includes any information connected

²⁶(2014) LPELR-23682(CA).

²⁷(2021) LPELR-56365(CA) 29-29, A-D.

²⁸ I A Pantami, 'The Journey towards the Nigeria Data Protection Act, 2023', *Online Punch Newspaper* (3rd July, 2023) <<https://punchng.com/the-journey-towards-the-nigeria-data-protection-act-2023/>> accessed 3 August 2025.

²⁹ Nigeria Data Protection Act 2023, s 3(1) (a-c).



to an individual that can directly or indirectly identify them. This identification can result from various factors, such as their name, ID number, location data, online identifiers, or a combination of factors related to their physical, genetic, psychological, cultural, social, or economic identity.³⁰ This expanded definition of images is significant as it extends the scope of items that could qualify as personal data in the present day. Even a silhouette or photograph can be considered personal data if it can be used to identify a living individual and as a result fall under the scope of data protection laws.

It is important to recognise that, according to NDPR and the current Act, an image or photograph is considered personal data. The handling of an image or photograph, including its publication, must primarily adhere to any of the lawful bases for processing personal data. The NDPA specifies that “Data processing is lawful when (a) the data subject has given and not withdrawn consent for the specific purpose for which personal data is intended to be processed.”³¹

This section outlines the conditions under which personal data, including images, can be collected, stored and used including obtaining explicit consent from the data subject, processing for contractual purposes, or legitimate interests pursued by the data controller.

Section 26 of the Act requires data controllers to obtain clear and specific consent from data subjects before processing images as personal data. The Consent must be freely given, informed, and unambiguous. This provision is significant in that it outlines the importance of obtaining explicit or informed consent from a data subject.

Section 36 of the NDPA grants data subjects the right to object to the processing of their images, for reasons related to their particular situation. Nonetheless, there are certain legitimate interests under which an image or photograph can be made public without the data subject's consent. These exceptions include cases related to crime prevention, investigation, detection, or prosecution, as well as processing connected to national public health emergencies, national security, public interest, and other exceptions outlined in the Act.³²

While the NDPA focuses on protecting the information privacy rights of data subjects, it may not adequately safeguard the specific rights associated with images or photographs. This is particularly so where commercial gain flows from the use of such images/photographs. For instance, a celebrity or public figure whose image is taken in the public domain as a public figure, may not be able enforce a breach of image rights under the provisions of the Constitution or the NDPA even though they may sparingly succeed under a claim for breach of data privacy. This is because public figures or celebrities have less expectation of privacy compared to ordinary individuals. Hence, in a

³⁰ NDPA2023, s 65.

³¹ NDPA 2023, s25(1)(a).

³² Nigeria Data Protection Act, 2023, s 3 (1)- (4).



situation where the creator of an image or photograph of a celebrity uploads the same to the internet for commercial gain, the celebrity may not necessarily have a strong claim for privacy breach or image rights infringement under our current laws.

d. Image Rights Protection Ordinance of Guernsey, 2012

However, the above position is in sharp contrast to what obtains under the Image Rights Protection Ordinance of Guernsey, 2012 (hereafter IRO), the expression "image" under the IRO pertains to a celebrity's identity, covering various aspects like their name, voice, signature, likeness, physical appearance, silhouette, facial features, expressions (whether verbal or facial), gestures, mannerisms, and any other distinct traits or personal attributes that distinguish that individual celebrity. It also includes any form of visual representation, such as photographs, illustrations, images, pictures, moving images, or electronic depictions ("images") of that specific celebrity or personality.³³

This legal concept exclusively pertains to the protection of the rights of that particular individual celebrity. Therefore, it's important to understand that the 'image or photograph' protected by the Nigeria Data Protection Act as personal data differs from the 'image rights' safeguarded under the IRO. The scope of protection provided by the Nigeria Data Protection Act (NDPA) is to safeguard the image or photograph of a data subject from privacy breaches and the security of personal data.³⁴ On the other hand, the IRO primarily aims to protect individuals from unauthorized commercial exploitation of their image or personal reputation.³⁵ Consequently, individuals seeking to assert their image rights under the IRO, must prove that the image was registered at the time of the infringement and that it holds inherent economic value. It is worth emphasizing that the definition of an 'image or photograph' as defined in the NDPA does not necessitate mandatory registration or the establishment of inherent value to prove a case of privacy breach.³⁶

On a final note, even though the NDPA and the IRO have a common requirement; they both necessitate obtaining consent from either the data subject or the registered proprietor of the image rights, respectively. However, it is essential to recognize that not every image or photograph qualifies for protection under the IRO, whereas every image or photograph of an identified individual is safeguarded under the NDPA. Conversely, the NDPA is inadequate to protect all the rights of a registered proprietor of an image unlike the IRO provide for.

e. The Common Law Tort of Passing Off

It has also been argued that image rights can be protected and enforced using the principles of passing off, by which one is restrained from representing a person's goods or business as those of

³³Angela Andrian, 'Image is Everything™: The New Image Right of Guernsey', *Icondia Personality Matters* <<http://www.icondia.com/wp-content/uploads/2014/04/Image-is-Everything.pdf>> accessed 3 August 2025

³⁴ s 1(a-c).

³⁵ (n31).

³⁶ *ibid*.



another through the use of similar or strikingly identical names, marks, colours or business insignia. With image rights, a person uses the image or likeness of another in such a way as to represent to the public that the said individual whose image or likeness was used authorized the usage or creation, then such a person may institute an action claiming passing off of his image or personality or the unauthorized exploitation of his personality. The set of cases to which this has mostly been applied are cases involving merchandise or products branded with the image or insignia of the person complaining of unauthorized usage. In the case of *Rihana vs Topshop*³⁷ where the face of Rihana, a popular pop star, was branded on T-shirts, it was held that the use of her image on the merchandise amounted to holding her out as endorsing that brand. This is more so as Rihana also had a clothing line of her own, and there was the likelihood of the public confusing one brand for the other. It is to be noted that not every case will present facts similar to *Rihana's case*, i.e., involving merchandise. Therefore, we contend that the common law tort of passing off does not completely provide adequate protection for the scope or peculiarities of image rights within the current digital and social media era.

f. Trademark Law vis-à-vis Image Rights Protection

The case of *Ferodo Ltd & Onor v Ibeto Industries Ltd*,³⁸ presents certain similarities between image or personality rights and trademarks. The appellants sued the respondent for infringing their registered "FERODO" trademark, passing off its brake linings as theirs, and using similar packaging. The trial court held that there was no infringement, since only "FERODO" was registered and "UNION" or "UNION SUPA" did not infringe on it, and that the passing-off claim failed because the red, black, and white colour combination was common in the industry and not distinctive. The Court of Appeal upheld this decision, and the appellants' claims were ultimately dismissed by the Supreme Court as well.

The Trade Marks Act 2004,³⁹ was roundly considered by the Supreme Court. The Supreme Court determined that the definition of a "mark" in the Trademark Act encompasses various elements like devices, brands, headings, labels, tickets, names, signatures, words, letters, numerals, or combinations of these elements. Section 67 of the Trademarks Act defines a trademark, except for a certification trademark, as a symbol or sign used or intended to be used on goods to show a trade connection between the goods and a person who has the legal right to use the mark, whether or not the identity of that person is indicated. In the context of a certification trademark, it refers to a mark that is registered or treated as registered under Section 3 of the relevant Act. In the same definition section, "registered trade mark" is defined to mean a trade mark that is actually on the register.

This provision draws some striking similarities with image rights under the IRO, where image is defined as exclusive rights in the images associated with or registered against the registered

³⁷[2013] EWHC 2310 (Ch).

³⁸(2004) LPELR-1275(SC).

³⁹Trade Mart Act 2004, s 67.



personality.⁴⁰ In *Ferodo's* case,⁴¹ the Supreme Court determined that the definition of a "mark" in the Trademark Act encompasses various elements like devices, brands, headings, labels, tickets, names, signatures, words, letters, numerals, or combinations of these elements. Consequently, the term "image" as used in the Image Rights Ordinance of Guernsey and the term "mark" in the Trademark Act of Nigeria share similarities because they both include these same elements. This similarity leads an author to argue that a registered trademark can be employed to safeguard one's image rights.⁴²

Nevertheless, there is a prevailing viewpoint that trademarks are primarily designed to serve as a unique identifier of the source (such as the manufacturer) of goods or services, rather than symbolizing an individual's personality or image.⁴³ Furthermore, our courts have consistently ruled in numerous cases that the fundamental purpose of a trademark and its registration is to prohibit others from utilizing a registered mark belonging to someone else.⁴⁴ In *Holden International Ltd v Petersville Nigeria Ltd*,⁴⁵ the Supreme Court held that the primary aim of a trademark is to prevent the use of another's registered mark, and a valid registration provides exclusive rights to use the trademark for the specified goods, serving as proof of ownership.

Since trademark registration is designed to protect marks used in commerce, such as logos, brand names, and symbols, which are associated with specific goods or services and help consumers identify the source of those goods or services, it is concluded that the same is insufficient to protect the image rights of citizens. While both types of registration involve intellectual property protection, they serve different purposes and protect different aspects of intellectual property. This further strengthens the argument of the authors of this paper that there is a need for a separate legislation to protect the image rights of individuals in Nigeria, just like the IRO of Guernsey.

4. CONCLUSION

The above analysis underscores the urgent need for the passage of a law specifically on image rights protection. Supposing there was a similar law like the IRO at the time *Skin Beauty Ltd v Okoro* was filed, the respondent would have been able to claim that it was her personhood that was infringed upon and not the authorship in the making of the photograph. This is because in proving that a registered personality's image rights have been infringed, the owner must establish that his

⁴⁰ Image Rights Ordinance, 2012, s 5(1).

⁴¹ (2004) LPELR-1275(SC)

⁴² Idara Etiebet, 'The Legal Regime For Image Rights Protection Under Nigerian Law', *Mondaq* <<https://www.mondaq.com/nigeria/trademark/1200696/the-legal-regime-for-image-rights-protection-under-nigerian-law>> accessed 3 August 2025.

⁴³ Angela Andrian, 'Image is Everything™: The New Image Right of Guernsey', *Icondia Personality Matters* <<http://www.icondia.com/wp-content/uploads/2014/04/Image-is-Everything.pdf>> accessed 3 August 2025

⁴⁴ *Holden International Ltd v. Petersville Nigeria Ltd* (2013) LPELR-21474, *Intl Tobacco (Nig) Ltd & Ors v. B.A.T(Nig)Ltd & Anor* (2023) LPELR-60272.

⁴⁵ (2013) LPELR-21474.



registered image rights have been exploited for a commercial purpose without the consent of the proprietor of the personage.⁴⁶

If the decision in the above case were to be put in practice in modern times, then, where a paparazzi takes a picture of a person and uploads the same online, which then goes viral, by the token of the Copyright Act, the earnings and revenue from such a photo will accrue to the photo maker alone, even if such was done without the permission of the owner of the image. By doing so, the both the Copyright Act and the Nigeria Data Protection Act failed to take cognisance of the dynamics of photo-making in the present digital era.

It is also our argument that the image rights protected under the fundamental rights to life or privacy is quite different from image rights protected under the image rights laws in other jurisdictions where image rights are recognised. Hence, there is a need for the recognition of image rights as a separate class of rights. Image rights aim to protect the personality of an individual to which the image relates, not necessarily the artistic expression thereof. Mere artistic expression lies within the scope of copyright laws. In the current digital and social media era, there is a need for recognition and protection of the personalities of individuals. In the social media era, not only the making of images but also the publication of images has become highly decentralized, cheap, and easy to do, hence the need for more layers of protection of ownership of images of individuals.

5. RECOMMENDATIONS

1. Enact a Dedicated Image Rights Act:

Nigeria should enact a comprehensive Image Rights Act, modelled on the Image Rights (Bailiwick of Guernsey) Ordinance, 2012, to establish image rights as a distinct proprietary right. The Act should create a registration system through which an individual's name, voice, signature, likeness, and other distinctive personal attributes can be registered and protected independently of copyright and data protection laws. This would provide legal certainty and enable individuals to enforce their image rights against unauthorized commercial exploitation.

2. Amend the Copyright Act, 2022:

The Copyright Act, 2022 should be amended to recognize joint authorship between the photographer and the subject of a photograph, ensuring that neither party may commercially exploit the image without the consent of the other. The Act should also include clear provisions governing the commercial use of the images of deceased persons to eliminate the current legal uncertainty.

⁴⁶Angela Andrian, 'Image is Everything: The New Image Right of Guernsey', *Icondia Personality Matters* <<http://www.icondia.com/wp-content/uploads/2014/04/Image-is-Everything.pdf>> indicate that Nigeria does not have a law designed to protect image rights, and the laws it has enacted to do so were never intended for that purpose > accessed 3 August 2025.



3. Amend the Nigeria Data Protection Act, 2023:

The Nigeria Data Protection Act, 2023 should be revised to clarify that although public figures may have a reduced expectation of privacy, they do not have a reduced expectation of consent where their image is used for commercial purposes. This amendment would strengthen protection against unauthorized commercial exploitation of personal images.

4. Develop Judicial Jurisprudence on Image Rights:

Nigerian courts should consciously develop a coherent body of jurisprudence recognizing image rights as a distinct legal right separate from privacy, copyright and trademark rights. This would provide clearer legal principles for resolving image rights disputes and promote consistency in judicial decision-making.