



PHOTOGRAPHY: UNDERSTANDING THE INTERPLAY BETWEEN THE RIGHT TO OWN AND THE RIGHT TO PRIVACY IN NIGERIA



**Beulah
Lekwauwa**
Intermediate
Associate



James Amende
Intermediate Associate



INTRODUCTION

Photography is a powerful tool for storytelling, artistic expression, and documentation. In an era of digital media and pervasive surveillance, a significant legal and ethical dilemma arises: where does the photographer's right to capture and own an image end, and where does an individual's right to privacy begin? In Nigeria, this issue is particularly relevant given the increasing use of smartphones, Closed-Circuit Television ("CCTV") cameras, and social media for personal and public purposes. While photographers and content creators have the right to own and distribute images under intellectual property laws, individuals have the right to privacy, enshrined in statutory provisions.

These rights can both complement and conflict with each other, depending on the circumstances. In an instance where a photographer captures an image of a subject with the subject's consent, the photographer owns the image while respecting the privacy of the person captured. However, where a photographer takes a picture of someone without their consent in a private setting, it may violate their right to privacy even though the photographer owns the image, technically. Given this interplay, this article will delve into exploring the intersection between artistic copyright and the right to privacy, while emphasizing the need to balance both in the digital age.

THE RIGHT TO OWN COPYRIGHT IN A PHOTOGRAPH

Under Nigeria Copyright Law, the right to own a copyright work is primarily governed by the Copyright Act, 2022 (the "Copyright Act"). The Act provides that any form of creative work, including literary, musical and artistic works that are original and expressed in any medium, will be eligible for copyright protection. It is the legal right granted to the creator of an original work, which gives them exclusive control to use, reproduce, publish and broadcast an artistic work.¹ Artistic work is defined to include photographs, thus when a photograph is taken, the photographer owns the copyright in the photograph. In *Banire v. NTA- STAR TV Network Ltd*², the Court of Appeal upheld the copyright of the photographer, and not the muse in the photograph. The Court stated that what is evident is that the person who is a muse, or the person in the photograph is not in fact the author, and therefore he/she does not have copyright in the photograph.

¹ Section 10 of the Copyright Act, 2022.

² (2021) LPELR – 52824 9 (CA)



THE RIGHT TO PRIVACY

The right to privacy allows an individual to live free from unwanted intrusion, surveillance or interference by others. The right to privacy is crucial for personal autonomy and the protection of human dignity. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the right to privacy of citizens.³ The Nigerian Data Protection Act, 2023 (“*NDPA*”), protects individuals’ personal data including images in photographs, from unauthorized use. This right to privacy means the ability of an individual to determine when, how and to what extent their personal information can be shared with others. The right to privacy enables individuals to establish boundaries and barriers to shield themselves from external influences.

THE INTERPLAY BETWEEN THE RIGHT TO OWN AND THE RIGHT TO PRIVACY

In Nigeria and globally, the right to own and use a photograph is not absolute. While photographers have intellectual property rights over photographs taken by them, privacy laws provide individuals with legal protection against unauthorized use of images. In *Nwankwo v. The State*,⁴ the Supreme Court recognized the right to privacy as a fundamental right in Nigeria. The Court held that photography that intrudes into someone’s private life without consent could be challenged on privacy right.

With the rise of digital media, artificial intelligence, and surveillance technologies, the issue of privacy infringement may significantly increase. CCTV cameras capture individuals in public places, while content creators on social media post viral images of individuals without their consent. Thus, even though a photographer holds copyright over the photographs taken by them, publishing or distributing images that infringe on an individual’s privacy could result in legal liability for privacy infringement. The widespread publication of a photograph of someone which reveals him to be in a situation of humiliation or severe embarrassment, even if taken in a public place, may be an infringement of the privacy of his personal information. Likewise, the publication of a photograph taken by intrusion into a private place (for example, by a long-distance lens) may be an infringement, even if there is nothing embarrassing about the picture itself. A person does have a right to privacy in respect of his or her identity as contained in a photograph.

In the UK case of *Campbell v MGN*,⁵ Naomi Campbell was photographed on a public street, coming out of a drug rehabilitation clinic. The court held that her right to privacy had been breached, even though there was a public interest in the story, and even though she had previously claimed not to have taken drugs. The court held that the nature of the information revealed was deeply private and placed weight on the fact that Campbell had been the source of considerable harassment by the press in previous years. However, in a

³ Section of the 37 Constitution of the Federal Republic of Nigeria, 1999 (as amended)

⁴ (1983) 1 NCR 366

⁵ *Campbell v MGN* [2004] UKHL 22, at para 73



more recent Nigerian case of *Emerald v. British Broadcasting Corporation (BBC)*,⁶ a Nigerian documentary subject sued the BBC for airing an investigate report that included her private images without consent, the Nigerian court found a breach of privacy but balanced it with the public interest in the story, and the court held that journalistic freedom which includes taking of photographs must be balanced against privacy rights.

The general rule is that there is no expectation of privacy in public places, meaning a photographer can capture images of people in public without consent and will have a right to such images, however, certain exceptions apply, such as: images that place the subject in a false light, images taken for commercial purposes without consent and images of children or vulnerable individuals without parental/guardian consent.

THE POSITION UNDER NIGERIA PRIVACY LAWS

The NDPA defines personal data to mean any information relating to an individual, who can be identified or is identifiable directly or indirectly, by reference to an identifier such as name, an identification number, location data, an online identifier, or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of an individual.⁷ The definition of personal data includes images, since it can be used to identify an individual. It is important to state that although the provisions of the NDPA do not apply to processing of personal data for household purposes, which may include the taking of photographs for private and non-commercial use, the underlining condition is that such processing must not violate the privacy of data subjects.⁸ The General Application and Implementation Directive (GAID) 2025,⁹ provides a guide on photographs taken at events. It stipulates that there is constructive or implied consent where a data subject participates in a public event and the images taken in that event may be used for a report of the event – provided that such images shall not be used for profit or commerce-oriented advertisement without the express consent of the data subject. In this instance, the GAID¹⁰ provides that the data controller is to ensure that images captured do not portray the data subject in a bad light and the data controller may also take the next steps of putting the participants on notice that images captured may be used for reporting, journalism or other purposes permitted by the NDPA.

The impact of Digital Tech, artificial intelligence and social media on photography and privacy therefore raises the need for the balancing of both the photographer right and the right of the subject of photography, hence the need for compliance with the relevant data privacy laws. The position in Nigeria adopts a consent-based approach, requiring express

⁶ (2021) Suit No. FHC/L/CS/356/2021 (Federal High Court, Lagos)

⁷ Section 65 of the Nigeria Data Protection Act, 2023

⁸ Section 3(1) of the Nigeria Data Protection Act, 2023

⁹ Article 17 (8) (a) of the General Application and Implementation Directive, 2025

¹⁰ Article 17 (8) (a) of the General Application and Implementation Directive, 2025



permission before using an image for commercial or public purposes, especially where individuals have a reasonable expectation of privacy.

CONCLUSION

The intersection of photography and privacy presents an evolving legal and ethical challenge in Nigeria. While photographers have a clear right to own and distribute their works under copyright law, individuals are increasingly asserting their right to privacy, particularly with the rise of digital and social media. As technology advances and photography becomes even more widespread, achieving a balance between ownership and privacy will be critical in upholding both artistic freedom and personal dignity. Photographers should ensure that consent is obtained where necessary, to avoid infringement on an individual's privacy rights.





Lagos - 1, Perchstone & Graeys Close Off Remi
Olowude Way, Lekki, Lagos
Tel: +234 704 598 4788

Abuja - D3, Jima Plaza, Plot 1267, Ahmadu Bello
Way, Opp. GTBank, Area 11, Garki, Abuja
Tel: +234 09-2919191, 0704 598 4792, +234 704 574 3012

Benin - 40, Adesogbe Rd, Benin City, Edo State
Tel: +234 704 553 0230

London - 107, Kingston Hill, Kingston-Upon-Thames, London
Tel: +447526535389

Email: counsel@perchstoneandgraeys.com
info@perchstoneandgraeys.com

Copyright: All rights reserved. No part of publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means without the prior permission in writing of Perchstone & Graeys.

Disclaimer: We invite you to note that the content of this article is solely for general information purposes only and should in no way be construed or relied on as a legal opinion. We urge you to contact us should you require specific legal advice on any of the topics treated in this publication.