



DUALE, OVIA &
ALEX-ADEDIPE

Photographs & Image Protection for Creatives



Introduction

Images are powerful tools for conveying messages, shaping identities and driving commercial endeavors in our digital world. However, with the widespread sharing and dissemination of images comes the imperative need to protect the rights of individuals and entities depicted within them.

In this edition of IP Watch, we explore the ownership, usage, and regulation of image and photograph rights, analyzing relevant laws, and current trends.

Understanding Image & Photograph Rights

Image rights pertain to the legal rights a person has over the commercial usage of their likeness, image, or persona. They incorporate the right to use a person's personality and prevent other parties from exploiting or using that person's image or likeness without his or her permission. The concept also encompasses the commercialization of such rights. In the realm of image rights disputes, photography stands as a focal point, hosting some of the most renowned cases.



For example, during Obama's presidential campaign, artist Shepard Fairey created an iconic poster featuring Barack Obama's image with the word "Hope". The photograph used as reference for the poster was taken by Associated Press photographer Mannie Garcia. Associated Press claimed that Fairey violated copyright law by using the image without permission.

More recently, a photographer Michaela Efford brought a copyright infringement lawsuit against Kanye West for using her photography without her consent. Kanye West posted a photo of the Vogue editor Gabriella Karefa-Johnson that was captured by Michaela Efford during Paris Fashion Week in September 2022. She claimed that Kanye's unauthorised usage of her photo harmed her ability to market and profit from her work.

Image rights present huge financial value to creatives and photographers alike and it is important to understand how to create, exploit, protect and benefit from such rights.



Photography & Image Right Considerations

The copyright ownership of a photograph and ancillary image rights remain one of the most controversial and debated areas of intellectual property in Nigeria. It is settled that copyright arises as soon as the work is created. In the realm of photography, as soon as the photographer presses the shutter button on his/her camera and creates an image, he/she owns the copyright to that image including the right to copy, display, create derivative works, or transfer the rights to others. However, ownership of copyright in a photograph/image does not translate to unlimited right to use that photograph/image.

Some considerations that may arise include the following:

a. Intellectual Property Appearing in the Photograph/Image

When a photograph or image is created, it may contain certain intellectual property, including a logo (for example a designer logo on an article of clothing), or a trademark. If the photograph/image for sale or is intended for commercial use, it is important that the photographer/creative gets permission from the owner of the trademark prior to such commercial use.



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b. Image Release from Models

Model photography comes with certain considerations. Apart from the intellectual property in the image (as already discussed), it may be necessary to secure a license (or "release") from the model. Typically, a 'model release' is granted to official photographers of an event/show. This is a written permission from the model that the photographer has their permission to use or sell photographs in which they feature. It is important to note the following:



i. Commercial Use

If the photograph/image is for sale (for example to agencies, stock image libraries, etc.), or where it may be used to promote a service or product for profit, it is considered to be for commercial use. In this instance, the photographer/creative will require a model release in order to use the photograph/image. This requirement balances the copyright of the photographer/creative as well as the need for the model to protect their product, brand, and likeness.

ii. Editorial Use

Editorial use entails the use of a photograph/image in the sharing of information (such as a magazine article, a newspaper column, etc.). In this instance, the photographer/creative does not require a model release in order to use the photograph/image.



iii. Work for Hire

Different scenarios can arise here. For example:

- **Photographer pays model for a photoshoot:** In this instance, the photographer owns the copyright and it is also an (implied) permission to use the image. However, where the image is slated for commercial use, it is best practice for the photographer to get a model release in writing.
- **Model pays photographer for a photoshoot:** In this instance, the photographer owns the copyright – except where he/she transfers ownership of the copyright in a written contract (typically called a Trade for Print or “TFP” contract). Under a TFP contract, the photographer retains copyright in the photograph, but grants the model the right to unlimited use of the photograph. Photographers should seek legal advice on crafting any contract contemplated here, so as to preserve some of their rights in the use of the photograph.



- **Company commissions a photographer for a photoshoot:** In this instance, the copyright shall initially vest in the photographer, however, the Company acquires a non-exclusive license to use the photograph for non-commercial purposes. Pursuant to Section 28 of Nigeria Copyright Act 2022, the Company also has the right to prevent the public distribution or exhibition of the commissioned work. See the case of *Banire v NTA*.

iv. Data Protection

A photograph of an individual is a unique identifier of that individual. It is the personal data of that individual, which is protected under data privacy and protection laws, such as the Nigeria Data Protection Act (NDPA) 2023. Photographers/creatives are advised to procure the consent/permission of a stranger whose photograph he/she intends to use as his/her work prior to such use, so as to comply with the NDPA.



Conclusion

A savvy photographer/creative is not only interested in understanding photography techniques or image designs, but also in appreciating the legal considerations of the resulting photograph/image. Adequate understanding of legal issues helps the photographer/creative to navigate any potential legal pitfall arising from the use of his/her work.

