

# Copyright in Photography — A Snapshot from Nigeria

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### Who Owns Copyright in Photographs?

Under Nigerian law, the general rule is that copyright in photographs belongs to the person who takes the photograph (i.e. the photographer), with the following exceptions:

- Where a photographer is an employee of a company instructed to take the photos or is an employee whose normal course of duties require photography, the photographer will be acting on behalf of his employer, and as such the copyright in photographs taken by the employee will belong to the company.
- If there is an written contract or an agreement signed by the photographer assigning copyright to another party.

In **Joseph Ikhuoria v. Campaign Services Ltd and Anor.**, the court noted that when a person commissions the taking of a photograph or the painting or drawing of a portrait or undertakes an engraving and pays or agrees to pay for it in money's worth and the work is made in pursuance of that commission, the person who so commissioned the work is entitled to any copyright in it as an original work.

**Relevant Provision:** Section 10 Copyright Act, CAP C28 Laws of the Federation of Nigeria, 2004.

### Is it against Nigerian law to publish or republish a photograph without authorization?

Yes it is. Under the Copyright Act, a person cannot publish or republish a photograph without the authorization of the copyright holder (some exceptions to this rule exist). The courts will also award additional damages in cases where it can be shown that the

infringement is deliberate and for commercial purposes. For example in **Peter Obe v. Grapevine Communications Ltd.**, after hearing the arguments on both sides, Judge Coram Mustapha held that the Defendant's act of publishing the Plaintiff's photograph without authorization or license infringed the Plaintiff's copyright in the photograph and in the book entitled "*Nigeria Decade of Crises in Pictures*". The Plaintiff was awarded the sum of N5,000,000 as general damages against the Defendant for the infringement of his copyright. He was also awarded the sum of N10,000,000 as additional damages for the Defendant's flagrant infringement.

"... it has been established before this court that the Defendant has flagrantly infringed the copyright of the Plaintiff in that in spite of the fact that the Defendant received the Plaintiff's letter... wherein the Plaintiff objected to the publication of the photographs taken by him during the Nigerian Civil War and even threatened to take immediate legal action against the Defendant, the Defendant after insolently replying the Plaintiff in a letter... went ahead to arrogantly publish the photograph..... followed it up with another publication on pages 5 and 39 of the August Edition of same magazine is indicative of the fact that the publications was calculated to make profit and had benefited from the publication... The Plaintiff is, therefore, hereby awarded the sum of N10,000,000.00 as additional damages..." Coram Mustapha J.

**Relevant Provisions:** Section 6 of the Copyright Act, and *Second Schedule to the Copyright Act: Exceptions from Copyright Control*.

### **How Long Does Copyright in Photographs Last in Nigeria?**

Copyright in Photographs lasts for 50 years after the end of the year in which the work was first published.

**Relevant Provision:** *First Schedule to the Copyright Act: Terms of Copyright*.

### **What if the photographer is working for someone else?**

If the photographer is an employee and takes photographs as part of their normal duties, then the copyright will belong to the employer (unless there is a contract stating otherwise). If the photographs were not taken in the normal course of their duties, the photographer retains the copyright.

**Relevant Provision:** *Section 10 Copyright Act, CAP C28 Laws of the Federation of Nigeria, 2004*.

### **What if more than one person is creating the work?**

Due to the fact that there may be several steps involved in creating an image i.e. decisions on composition, lighting and exposure etc, it may sometimes be difficult to decide on who owns copyright. Where there are two or more contributors and their contributions are not distinct it is assumed that ownership is equally shared and they are co-owners. For someone else to use a shared work permission would be needed from both creators. Any waiver of moral rights by one creator will not affect those of the other creator.

**Relevant Provision:** *Section 11(6) Copyright Act, CAP C28 Laws of the Federation of Nigeria, 2004.*

### **If a photograph is retouched or digitally altered does this amount to copyright infringement?**

Yes it does. Retouching a photograph or image without the explicit permission of the copyright owner amounts to copyright infringement. This is because copyright to intellectual property covers both the original and derivative works (in this case the retouched or digitally altered photos).

**Relevant Provisions:** *Section 6 of the Copyright Act, and Second Schedule to the Copyright Act: Exceptions from Copyright Control.*

### **What if the photograph is altered significantly?**

Where a photograph is digitally altered or retouched without the permission of the copyright owner, this amounts to infringement. Where retouching is carried out with the permission of the original copyright owner and there are significant changes to the photo, a separate copyright in the retouched work may exist. This new copyright will not affect the copyright ownership of the original work and the permission of the copyright owner in the retouched photo may need to be obtained by persons seeking to use the retouched photo.

*This article is intended to provide general information about the subject matter. Professional legal advice should be sought about specific circumstances.*