

**IMAGE RIGHTS PROTECTION: A COMPARATIVE ANALYSIS OF
LEGAL FRAMEWORKS IN SELECTED JURISDICTIONS**

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Abstract

The protection of image rights has become increasingly significant in the digital age, where a person's image conveys social, commercial, and moral value beyond mere representation. Through a qualitative research methodology using doctrinal design, this article provides a comparative analysis of legal frameworks of image rights protection in Nigeria, the United States, France, and Germany. The findings revealed that in the United States of America image rights are recognised as the 'right of publicity' distinct from 'privacy rights' and are protected through state statutes and common law, allowing individuals to control and profit from the commercial use of their persona. While France protects image rights under the broader concept of 'personality rights' (droit à l'image), emphasising consent and post-mortem enforcement through civil and criminal provisions. Also, Germany protects 'personality rights' through constitutional principles and the Kunsturhebergesetz,

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focusing on human dignity while offering limited commercial protection. In contrast, Nigeria lacks a dedicated statutory regime for image rights, relying on a patchwork of constitutional privacy provisions, data protection laws, intellectual property statutes, and case law. This fragmented approach often fails to adequately protect both personal and commercial interests, leaving individuals, particularly celebrities, vulnerable to unauthorised exploitation of their likeness. The article highlights the urgent need for Nigeria to adopt a structured legal framework, either through a standalone statute or expansion of existing laws, to recognise image rights as both a personality and commercial interest.

Keywords: Image rights, Legal framework, Privacy rights, Personality rights, Right to publicity.

1.0 INTRODUCTION

Image plays a vital role in modern society. A person's image can convey various messages and symbolisms. Image tends to become independent of its subject, representing and acquiring an autonomous value, which may be informative, commercial, social, moralising or propagandist. The increasing autonomy of image from the person represented has been greatly facilitated and strengthened by the tremendous and previously unknown possibilities offered by technology, in terms of easy and rapid production and dissemination of the image.¹ In social media, a person's image, in addition to being an element of personhood in the context of a defensive rhetoric of protecting a human being's dignity, becomes a

¹ Tatiana Synodinou, 'Image Right and Copyright Law in Europe: Divergences and Convergences' (2014) 3 *Laws* 181.

striking feature of the person's social presence, and a content that enhances people's connection to social media communities.

In many jurisdictions such as the United States, Germany, France and Hungary, there is express statutory protection against the unauthorised commercial use of an individual's image by a third party in the context of publicity or personality rights.² In the US, these rights are known as the right of publicity. Under the Indiana Statute, for instance, persons entitled to this right of publicity are called 'personalities' (otherwise known as celebrities).³ Personality Rights in the United States are generally understood as being the amalgam of two different categories of rights, namely publicity rights and the right to privacy.⁴ Although English law provides no specific statutory legislation for the protection of the infringement of image rights, however, there are some decided cases in the United Kingdom on the subject matter which makes it clear as to the position of the law in the United Kingdom with respect to image rights and which can be of persuasive effect in Nigeria.⁵ Thus, although image rights are not recognised under English law, such rights are protected under other existing laws such as the law of passing off.

² C Coors and P Mezei, 'Image Rights: Exploitation and Legal Control in English and Hungarian Law' (2016) 57 *Acta Juridica Hungarica Hungarian Journal of Legal Studies* 10. Available at: https://www.researchgate.net/publication/314690629_Image_Rights_Exploitation_and_Legal_Control_in_English_and_Hungarian_Law accessed on 4th May 2024

³ The Statute defines a Personality as a living or deceased natural person whose name, voice, signature, photograph, image, gesture etc. has commercial value.

⁴ Alix Heugas, 'Protecting Image Rights in the Face of Digitalisation: A United States and European Analysis' (2021) 24(5-6) *The Journal of World Intellectual Property* 593.

⁵ Oluwafunmilayo Mayowa, 'A Review of Some Legal Issues Arising from the Use of Celebrity Images for Commercial Purposes in Nigeria' (2019). Available at: https://spajibade.com/a-review-of-some-legal-issues-arising-from-the-use-of-celebrity-images-for-commercial-purposes-in-nigeria-oluwafunmilayo-mayowa/#_ftn12 accessed on 04/05/2024.

However, in Nigeria there is no specific statute that expressly recognises or protects image rights as a standalone intellectual property right within Nigerian law. Instead, the nation's legal architecture in relation to unauthorised use of one's image attempts to address related concerns by looking through a patchwork of several laws, including constitutional provisions on privacy, intellectual property statutes such as copyright and trademarks, and more recently, data protection legislation.⁶ All the above laws, notwithstanding, Nigerian courts have historically been reluctant or inconsistent in recognising image rights independent of established IP doctrines. A leading illustration of this judicial hesitation is the Court of Appeal's decision in *Banire v. NTA Star TV Networks Ltd.*,⁷ where the court held that image rights per se do not exist under Nigerian law and emphasised that copyright in a photograph vests in the photographer as the author of the work under the Copyright Act and not in the subject depicted. This judicial position highlights a notable gap: while individuals may be able to claim infringement of copyright or privacy breaches, there remains no clear statutory legal regime for the enforcement of image right that is autonomous and directly actionable.⁸

2.1 LEGAL FRAMEWORK FOR IMAGE RIGHTS PROTECTION IN NIGERIA

2.1.1 Constitution

⁶ Ifeoluwa Olubiyi, Aishatu Adaji & Ayokunle Adetula, Increasing the Commercial Value of Image Rights in Nigeria: Legal Possibilities (2020) *Journal of Intellectual Property Law & Practice* (Oxford Academic).

⁷ *Banire v NTA Star TV* (2017) CA/A/345/2017, Court of Appeal, Nigeria.

⁸ Image Rights and IP in Nigeria (The Barcode). <http://barcode.stillwaterslaw.com/1.1/2015/12/21/image-rights-and-ip-in-nigeria/>. Accessed January 5, 2025

Persons seeking to rely on relevant provisions of the Nigerian Constitution (1999) as amended, the protection of image rights is often implicitly anchored on the provision of section 37 of the Constitution of Federal Republic of Nigeria 1999 (as amended).⁹ Reliance is essentially placed on the Constitution in view of the fundamental fact that it guarantees the protection of right to privacy of the citizens concerning their homes, correspondence, telephone conversations, and telegraphic communications. Even though section 37 of the Constitution does not use the phrase ‘image rights’ or expressly mention photographs, it is the opinion of legal writers that a person may sue, under the provision, for breach of his right to privacy if he can establish his claim in a manner that convinces the court to construe the constitutional right to privacy as a right not limited to the intrusion of one’s private life but extending to the appropriation of a person’s name or likeness for another’s commercial benefit.¹⁰

Giving this modern conception of ‘privacy’ a practical application, the Federal High Court of Lagos in the recently decided case of *Amudat Adeleke v. Bukola Saraki & 3 Ors*,¹¹ ruled in favor of *Amudat Adeleke*, a non-celebrity, in a matter involving the unauthorised use of her image in election campaign advertisements by *Bukola Saraki* and others. In enforcing the applicant’s right against the unauthorised use of her image

⁹ Nwabueze and Olumekor, (n 4)

¹⁰ M Atoyebi & Patrick Emmanuel, ‘Understanding the Meaning and Scope of Image Rights Protection Under Nigerian Law’ (Opinion Nigeria, 22 July 2022) <https://www.opinionnigeria.com/understanding-the-meaning-and-scope-of-image-rights-protection-under-nigerian-law-by-oyetola-muyiwa-atoyebi-patrick-emmanuel/?utm> accessed 21 November 2025

¹¹ (Unreported) Judgment delivered on 27 April 2020 at the Federal High Court of Lagos in suit number FHC/L/CS/193/2019 coram Justice A.O. Faji

through the constitutional right to privacy, the court held that, since the term ‘privacy of citizen’ is not expressly defined or restricted in the Constitution, it should be given a broad and purposive interpretation. According to the court, the phrase should be interpreted ‘generally, liberally and expansively to include privacy of a citizen’s body, life, person, thought, conscience, feelings, views, decisions (including his plans and choices), desires, health, relationships, character, material possessions, family life, activities, etc.’¹²

2.1.2 Nigeria Data Protection Act (NDPA) 2023

The Nigeria Data Protection Act (NDPA) 2023 represents a strong legal instrument now being relied upon by right holders for the protection of image rights in Nigeria. This is because it expressly brings photographs, videos and other likenesses that identify (or could identify) a person within the definition of personal data. The Act evolved from the constitutional right to privacy. The primary objective of the Act is founded on safeguarding the fundamental rights and freedoms of individuals, particularly the right to privacy, as enshrined in Section 37 of the Nigerian Constitution.¹³ In the light of the foregoing, certain relevant provisions of the NDPA serve as a legal recourse for image rights protection. Specifically, provisions relating to the meaning of personal data, principles governing processing of personal data, and rights of data subjects have been held significantly relevant for image rights

¹² See the detailed analysis of the case in: N Itanyi & C Aniukwu, ‘Seeking Protection for Use of Images in Commercial Practices in Nigeria: A Pathway to Intellectual Property Reform and Development’ in A. Lawal-Arowolo, & K. Ola (Eds.), *Nigerian Intellectual Property Law: Reform and Development* Routledge (Informa UK Limited, 2022) 10-11

¹³ Nigeria Data Protection Act 2023, s. 1

protection.¹⁴ The decision of the court in the recent case of *Adunni Adewale v Polance Media Ltd. & Anor*¹⁵ clearly demonstrates the practical application of the NDPA on matters involving image rights. In the case, a Nollywood actress, *Adunni Adewale*, sued Polance Media Limited and another party for publishing her name and image in a false story linking her to a politician, *Dino Melaye*. She claimed the publication invaded her privacy by portraying her in a misleading and offensive way and violated the Nigeria Data Protection Act 2023 by using her personal data without consent and in an inaccurate manner. In deciding the matter, the court considered the applicant's image as personal data in the light of the NDPA, and ruled that the respondent's actions breached the provisions of the Act for processing the actress's personal data unfairly, unlawfully, and inaccurately.

In the light of the court's decision in the above stated case, commenting that the NDPA serves as a legal recourse in the enforcement of image rights in Nigeria, Babalola expressed that, 'though the specifics were unique to the case, the ruling confirms that the NDPA is an enforceable legal standard against misuse of an individual's image and personal data.'¹⁶ It is therefore logical and correct to state that the decision, while setting a precedent, firmly affirms the view that the NDPA is applicable to

¹⁴ See the case of *Adunni Adewale v Polance Media Ltd. & Anor* (2024) Suit No. LD/17781MFHR/2024

¹⁵ *ibid*

¹⁶ Olumide Babalola, 'Landmark Nigerian High Court Judgment Expands Privacy Jurisprudence: 'False Light' Recognised Separate from Defamation as Court Awards Damages in Favour of a Nollywood Actress – 'Adunni Ade'' (DNL Legal & Style, 7 October 2025) <https://dnllegalandstyle.com/dnl/landmark-nigerian-high-court-judgment-expands-privacy-jurisprudence-false-light-recognised-separate-from-defamation-as-court-awards-damages-in-favour-of-a-nollywood-actress/> accessed 22 November 2025.

image rights protection in Nigeria; even though the Act is not specifically designed for the protection of image rights, considering the underlying meaning of the concept.

2.1.3 Intellectual Property Laws

Due to the lack of any specific law designated for the protection of image rights, intellectual property laws have also become one of the most explored legal options by individuals whose image rights are violated. These intellectual property laws are few of those existing legal codes that give credence to some form of protection of these rights in Nigeria. This is particularly typical of Copyright and Trademarks laws among the broad categorization of IP laws. In Nigeria, Copyright Act 2022 represents the primary legislation for the regulation of copyright system. On the other hand, Trademarks Act 1965 (as amended) governs the registration and protection of trademarks in Nigeria.

2.1.4 Cybercrimes (Prohibition and Prevention) Act 2015 (as amended)

Cybercrimes (Prohibition, Prevention, etc.) Act 2015 (as amended) is yet another alternative legal instrument that could be relied upon in Nigeria for the protection of image rights. Although the Act is primarily aimed at combating cyber-fraud, cyberstalking, identity theft, and related computer-enabled offences, some of its provisions indirectly safeguard a person's image by criminalising unauthorised use, impersonation, manipulation, or publication of a person's visual identity in cyberspace. One of such relevant provisions is section 22 of the Act, which criminalises cyberstalking, harassment, and the unauthorised distribution of personal data or images capable of causing distress.

According to Olubiyi, Adaji, and Adetula,¹⁷ ‘section 22 (3) makes it an offence for any person to fraudulently impersonate another entity or person, living or dead, with the intent to gain advantage for themselves or another person, or cause disadvantage to the entity or person being impersonated or another person.’ However, while the purpose of this section is regulatory and punitive rather than commercial,¹⁸ it could be relied upon in cases involving the non-consensual release of images, especially where such images are used to impersonate a person or create a false association.

2.1.5 Case Law

Case law is yet another legal mechanism through which image rights are protected in Nigeria. Although Nigerian case law on image rights is still evolving and relatively limited, with courts relying on existing legal standards such as copyright, passing off, and privacy to resolve disputes, case law plays a central and compensatory role in protecting image rights. Over time, Nigerian courts have consistently treated disputes over unauthorised use of photographs, likenesses and endorsements as issues to be resolved by applying existing legal standards relating to copyright, passing off, privacy and, increasingly, data-protection principles. Judges provide remedies from these familiar heads of law to fill the statutory gap. This means litigants seeking to block or obtain redress for unauthorised commercial use of their image must frame claims within these established causes of within these established causes of action.

Before Nigeria began to formally acknowledge image rights within its legal framework, Nigerian courts often relied on persuasive judicial

¹⁷ Olubiyi, Adaji, and Adetula (n 1) 196

¹⁸ *ibid*

precedents from foreign jurisdictions to resolve disputes involving unauthorised use of personal likeness. A notable example is the case of *Banire v NTA-Star TV (supra)*,¹⁹ where the court considered the unauthorised use of the claimant's image in a television advert. In explaining the legal stance on image rights in Nigeria, the court began by identifying the legal grounds under which such rights could be enforced. The court turned to English case law for guidance, particularly referencing the two cases of *Irvine v Talksport Ltd (2002) F.S.R. 60* and *Robyn Rihanna Fenty v Arcadia Group Brands Ltd (t/a Topshop) & Anor (2012) EWHC 2310 (Ch)*. In both cases, the claimants challenged the unauthorised commercial use of their images, relying on the tort of passing off. The Nigerian court, drawing from these precedents, affirmed that image rights violations can be pursued through passing off claims. Consequently, the court acknowledged passing off (and established principles applicable) as a viable legal route for protecting personal likeness from unauthorised exploitation.²⁰

2.2 IMAGE RIGHTS PROTECTION IN THE UNITED STATES

In the United States, image right is jurisprudentially regarded as the 'Right of Publicity', which was introduced by Judge Jerome Frank in the landmark case of *Haelan Laboratories v. Topps Chewing Gum*.²¹ In the case, Judge Frank made a pronouncement that transformed the understanding of publicity right, separating it from the purview of right to privacy. He emphasised that individuals have a valid interest in protecting

¹⁹ See (n 18)

²⁰ See (n 20)

²¹ Adnan Hamid and Adilla Itan, 'The Existence of Identity Value and Image Protection on Legal Frameworks of United States of America (US) and United Kingdom (UK)' (2022) 1 (2) *Journal of Law Theory and Law Enforcement* 31

their publicity, which is distinct from their right to privacy. Equally, in the dissenting pronouncement made by Judge Holmes in the case of *O'Brien v. Pabst Sales Co.*, he argued that:²²

[t]he right of privacy is distinct from the right to use one's name or picture for purposes of commercial advertisement. The latter is a property right that belongs to every one; it may have much or little, or only a nominal, value; but it is a personal right, which may not be violated with impunity

These pronouncements recognised the 'Right of Publicity' as a property right rather than just a personal right.²³ By necessary inference therefore, in the U.S., the right of publicity is distinct from (though historically connected to) the classical right to privacy. The older right to privacy protected against unwarranted intrusion or publication of private life. But as mass media, advertising, and celebrity culture grew, courts started recognising that public figures could suffer commercial exploitation of their persona, not just personal indignity, and as such, are entitled to recover the reasonable value of the use of their persona.²⁴ However, publicity right enjoys definitive and stronger protection in the United States. Over time, the protection of image rights in the U.S. has developed through a mixture of state statutes, common law doctrines, and influential judicial decisions.²⁵ Notwithstanding, Heugas noted that, 'there is no federal law on the Right of Publicity in America, but rather each State

²² Noa Dreyman, 'John Doe's Right of Publicity' (2017) 32 Berkeley Technology Law Journal 678

²³ Hamid and Itan (n 55)

²⁴ Reid Weisbord, 'A Copyright Right of Publicity' (2016) 84(6) Fordham Law Review 2803, 2810

²⁵ Kateryna Moskalenko, 'The Right of Publicity in the USA, the EU, and Ukraine' [2015] International Comparative Jurisprudence 113, 114–115

individually determines its scope of recognition, including post-mortem personality rights' recognition, leading to a wide variance within the country'.²⁶ Since there is no national statute for the protection of publicity right in the U.S., the enforcement of the rights 'therefore arise under state law, which is based on the common law in twenty-one states and statutory law in eighteen states where legislatures have acted to protect publicity rights'.²⁷ States that have designed statutory protection for publicity rights in the United States include California, Florida, Illinois, Indiana, Kentucky, Massachusetts, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin.²⁸

2.3 IMAGE RIGHTS PROTECTION IN FRANCE

In France, image rights are regarded as Personality Rights, known as *Droit à L'Image*.²⁹ Unlike the United States, where image rights evolved largely through publicity rights and commercial interests, the French system is grounded in *droit à l'image* (the right to one's image), which falls under the broader canopy of the *droit de la personnalité* (personal rights).³⁰ The jurisprudential root of right of image, as a personality right, in France, is traceable to case law, where an individual was allowed to prevent the unauthorised fixation and reproduction of his or her image.³¹

²⁶ Alix Heugas, 'Protecting image rights in the Face of Digitalization: A United States and European Analysis' (2021) 24 *The Journal of World Intellectual Property* 344, 346

²⁷ Weisbord, (n 56) 2811

²⁸ *ibid*

²⁹ Elisabeth Logeais and Jean-Baptiste Schroeder, 'The French Right of Image: An Ambiguous Concept Protecting the Human Persona' (1998) 18 (3) *Loyola of Los Angeles Entertainment Law Review* 511, 513

³⁰ *ibid*

³¹ *ibid*, 514

Subsequent upon the decisions of the court in the cases involving right of image, the French Legislature enacted specific protection for the right in French statutory law. In this regard, the Law of July 17, 1970, introduced Article 9 into the French Civil Code,³² emphasising respect for private life and empowering courts to issue injunctions against intrusions. Article 226-1 of the French Criminal Code³³ imposes penalties for unauthorised recording or transmission of a person's image in private settings. Additional laws in the 1990s addressed performers' and models' rights. Although not explicitly defined as a comprehensive right, the 'right of image' is recognised as an autonomous personality right through case law, based on Article 1382 of the French Civil Code.³⁴

These personality rights, as recognised in France, are considered to be 'the moral rights of authors: the right to privacy, the right to protect one's honor and reputation, and the right to control the use of one's image.'³⁵ These rights are protected through a dual system, in which two forms of image rights exist side by side: the personal right to one's image and the commercial right over one's image. The personal right stems from privacy laws and grants individuals control over how their image is used. The commercial right, on the other hand, is treated as a property interest, which allows individuals to profit from the use of their image.³⁶ The former relates to Right to Privacy, which is specifically covered under Article 9 of the French Civil Code. whereby everyone has the right to respect for their private life, regardless of whether they are a celebrity or

³² Law No. 70-643 of July 17, 1970, J.O., July 19, 1970, p. 6751 (codified in C. ciV. Art. 9 (Fr.))

³³ Code Penal [C. PEN.] art. 226-1 (Fr.)

³⁴ Logeais and Schroeder, (n 108) 515–516

³⁵ Heugas, (n 58) 354.

³⁶ *ibid*

not. The latter (the commercial Right on One's Image) is 'protected under Article 1382 of the French Civil Code, where both moral and economic damages are covered.'³⁷

However, French system also recognises the post-mortem protection of image rights.³⁸ Although the right was not particularly recognised at first, 'case law has increasingly recognised the inheritability of the commercial side to Personality Rights.'³⁹ Through this judicial recognition, heirs may control the use of a deceased person's image, provided they can show a legitimate interest, such as commercial exploitation or protection of the deceased's memory. A practical example is the *Raimu* case in 1988.⁴⁰ In the case, the late actor's widow filed a lawsuit against a company that had used her deceased husband's image in an advertising campaign. The court awarded her compensation, holding that the economic aspect of image rights can devolve onto heirs if the person's image had gained commercial value while alive.

2.4 IMAGE RIGHTS PROTECTION IN GERMANY

In Germany, image rights are generally termed personality rights.⁴¹ Personality right was established by the Federal Supreme Court using several legal rules.⁴² The development was based on Articles 1 and 2 of the German Constitution, which protect human dignity and personal freedom; Article 8(1) of the European Convention on Human Rights, which protects private life; and Section 823 of the German Civil Code

³⁷ *ibid*

³⁸ Heugas (n 58) 355

³⁹ *ibid*

⁴⁰ T.G.I. Paris, Ord. Ref., Feb. 27, 1970, Jcp 1970, Ii, 16293, cited in Heugas, (n 55) 355

⁴¹ Heugas (n 58), 353

⁴² *ibid*, 352–353

(*Bürgerliches Gesetzbuch-BGB*), which allows people to claim damages if their rights to life, body, or health are harmed.⁴³ Apart from the general right of personality, protection for a person's image and likeness is grounded primarily in the special manifestation of the right of personality (*Persönlichkeitsrecht*), especially through provisions in the law known as the *Kunsturhebergesetz (KunstUrhG)* the German Act on the Protection of Copyright in Works of Art and Photographs.⁴⁴ According to Coor, 'one recognised aspect of an individual's personality is the right in one's own picture.'⁴⁵ Hence, section 22 of the Act (KUG) provides that, 'pictures or portraits may be distributed or displayed only with the consent of the person portrayed'.⁴⁶ Typically therefore, under the German law, using someone's image for advertising or commercial purposes generally requires the consent of the depicted person. Because of the special nature of the right of personality (how broad and flexible it is), its scope, in the German law, is not absolutely restricted and can cover various aspects of a person's identity.⁴⁷ By implication, German law protects against not only the unauthorised commercial uses of an individual's picture, but also name, voice, and other persona elements.⁴⁸

⁴³ *ibid*, 352–353

⁴⁴ Corinna Coors, 'Image Rights of Celebrities vs. Public Interest – Striking the Right Balance Under German Law' (2014) 9 (10) *Journal of Intellectual Property Law & Practice* 835

⁴⁵ *ibid*

⁴⁶ Matthew Savare, 'Image is Everything' (54 *Intellectual Property Magazine*, March 2013) https://www.lowenstein.com/media/4712/publicity-rights.pdf?utm_ accessed 4 December 2025

⁴⁷ Coors, (n 128) 2

⁴⁸ Savare, (n 130)

Under the German law, ‘individuals do not need to commercialise their identity to have a protectable right of publicity,⁴⁹ because by judicial recognition, ‘a potential commercialisation is no precondition for a protectable right of publicity.’⁵⁰ Because personality right in images belongs to the person depicted, a person whose image is used without consent may bring a civil claim against the publisher or user of the image without consent. Remedies typically include cease-and-desist orders, injunctive relief (to stop publication or further distribution), and claims for damages or compensation for harm to dignity, privacy, or economic interests (if the use is for commercial purpose).⁵¹

Also, in Germany, posthumous personality rights are protected through the justification of human dignity,⁵² albeit with strong limitations.⁵³ Thus, while the general right of personality ends at death, courts may still protect the dignity, reputation, and memory of the deceased, especially in cases of serious distortion or misuse.⁵⁴ Hence, based on case law in Germany, the right to control the use of a person’s image extends for 10 years after death and passes to the heirs.⁵⁵ It is worthwhile to point out that Germany does not recognise a broad commercial post-mortem right

⁴⁹ *ibid*

⁵⁰ *ibid*

⁵¹ *ibid*

⁵² Hannes Rösler, ‘Dignitarian Posthumous Personality Rights: An Analysis of U.S. and German Constitutional and Tort Law’ (2008) 26 (1) *Berkley Journal of International Law* (BJIL) 168. Rösler examines the constitutional basis (human dignity, personality rights) of post-mortem protections in Germany. He argues that although Germany does afford some protection after death, these are primarily defensive rights to prevent misuse or distortion, not always compensatory or proprietary in nature.

⁵³ Welser (n 133) 33

⁵⁴ Heugas (n 58) 355

⁵⁵ Welser (n 133) 33

of publicity like in the other jurisdictions.⁵⁶ Instead, the focus is on protecting non-economic personal interests, and courts balance these against artistic freedom and public interest. Therefore, in the 1971 landmark case of *Mephisto*,⁵⁷ the German Constitutional Court ruled that the dignity of the late Gustaf Gründgens outweighed the author's freedom of expression, as the novel written by the defendant featured and portrayed a character based on the deceased personality. Since this was seen as a violation of his posthumous personality rights, the court prohibited the publication of the book.⁵⁸

3.0 COMPARATIVE ANALYSIS OF THE SELECTED JURISDICTIONS

Having examined the legal frameworks for image rights protection in Nigeria, the USA, France, and Germany, it is clear that, while Nigeria does not have a dedicated legal framework for image rights, but rather relies on general laws such as privacy, intellectual property laws, common law tort of passing off, Cybercrimes law, and by extension, case law, other jurisdictions provide more purposively structured and enforceable protection mechanisms, through statutory laws, constitutional provisions, and judicial interpretations.

A major point of differentiation across the four jurisdictions is that unlike the U.S., France, and Germany, Nigeria lacks a legally independent image-rights or personality-rights regime. Critical and in-depth study reveals that each of the legal frameworks under which image right is protected carries its limitations. Consequently, a close comparison of legal

⁵⁶ *ibid*

⁵⁷ BVerfGE 30, 173

⁵⁸ Heugas (n 58) 355

practices shows that while section 37 of the Nigerian Constitution has been judicially interpreted broadly, it is still primarily drafted as a personal privacy right and not as a commercial personality-right, which is the extensive essence of image rights. Even though the right finds its genesis in the right of privacy from the three other jurisdictions, image rights have been distinguished from privacy right.⁵⁹ Thus, from the three other jurisdictions, it is clear that the right of publicity and the right to privacy, though related, are distinct legal concepts. The right of privacy protects individuals from unwanted intrusion or exposure. Its focus is on personal dignity and emotional harm. In contrast, the right of publicity allows individuals to control and profit from the commercial use of their identity, such as name, image, or likeness. In the U.S., both rights are recognised, but the right of publicity (as it is formally called) was especially developed and is treated as a property right.

France emphasises privacy rights under Article 9 of its Civil Code, strongly protecting private life and image, while also recognising limited commercial image rights, especially for public figures and professionals through case law, on the basis Article 1382 of her Civil Code. Similarly, Germany, through her constitutional framework and the KUG (the German Act on the Protection of Copyright in Works of Art and Photographs), recognises personality rights that combine elements of both privacy and publicity, focusing more on human dignity than commercial interests; though some commercial protection is available, especially for famous individuals. Distinguishing between privacy and publicity in context of German law, Welser noted that:⁶⁰

⁵⁹ See Hamid and Itan (n 53) for the dissenting pronouncement made by Judge Holmes in the case of *O'Brien v. Pabst Sales Co.*

⁶⁰ Welser (n 133) 33

The right of privacy continues after an individual's death but is not inheritable. This means that the relatives are enabled to claim injunctive reliefs in case of violation of the decedent's right of privacy, but are not entitled to claims for damages. In contrast, the right of publicity is regarded as a financial asset whose use and exploitation can be transferred. Consequently, arising claims are transferable and inheritable without restrictions.

The difficulty associated with considering image rights within the ambit of right to privacy lies in the limitation of privacy law to protect celebrities or public figures from having their well-known identities unjustly exploited. In other words, privacy law is often insufficient to protect image rights, especially for public figures or celebrities, because it is rooted in personal dignity and emotional harm, not in economic interests. Celebrities often seek control over the commercial use of their identity, not just protection from intrusion. Privacy rights, typically, do not offer remedies for unauthorised merchandising, endorsements, or exploitation of fame; areas where the right of publicity proves critically relevant. Because, 'in a publicity rights suit, the plaintiff's complaint is not so much the violation of their right to be let alone, but rather that the plaintiff was deprived of the financial gain reaped from that publication.'⁶¹

Thus, while privacy guards against personal harm, it cannot adequately address the economic exploitation of one's public persona. The above analysis explains why privacy right under the Nigerian Constitution as well as the Nigeria Data Protection Act, is incapable of protecting image

⁶¹ Mulrooney (n 97) 1143

rights; a realisation pointing to the need to separate the wheat from the chaff, or better still expands the application of provisions of privacy laws to accommodate image rights.

4.0 CONCLUSION

From the comparative evaluation of image rights protection in Nigeria, the USA, France and Germany, it is abundantly clear that, while other jurisdictions have long developed structured, enforceable, and evolving legal standards to protect image rights, through diverse legal frameworks, such as statutory law, constitutional principles, and active judicial interpretation, Nigeria remains largely behind in this regard. The absence of a specific and clear legal regime for image rights protection in Nigeria has left individuals, especially celebrities, vulnerable to unauthorised commercial exploitation of their likeness. Considering the increasing relevance of image rights in the digital age, Nigeria needs to take lessons from other jurisdictions, and urgently take steps toward reform. Whether through an independent statute or by expanding the scope of existing laws such as the Copyright Act, Data Protection Act, or Trade Marks Act, it is profoundly essential to recognise image rights both as personality and commercial interests.

5.0 RECOMMENDATIONS

- i. Nigeria can take lessons from other jurisdictions by explicitly recognising image as both a privacy and property interest. If it appears cumbersome to establish a standalone statute for the recognition and protection of image rights, just as developed in Germany through her Act on the Protection of Copyright in Works of Art and Photographs, France through her Civil Code, and New York through her Civil Rights Law.

- ii. Nigeria can introduce image rights by expanding the provisions of her either copyright law, data protection law, or trademarks law, to treat image rights more explicitly as commercial value. Just as courts in the U.S. and Germany motivated the recognition, expansion, and clarification of image rights through consistent rulings, judicial activism regarding image rights in Nigeria.
- iii. Nigerian courts can lay the foundation for a more structured and enforceable image rights regime that adapts to evolving societal and technological realities.
- iv. Post-mortem protection of image rights is an area Nigeria can consider in the development process. As can be seen in the previous discussions, U.S. and Germany offer varying degrees of posthumous publicity rights, for a defined period after death. France, on the other hand, allows descendants to challenge the misuse of a deceased person's image.