CONTEMPORARY CONSIDERATIONS OF THE DIGITAL AGE: JUSTIFYING THE NEED FOR SUI GENERIS PROTECTION OF IMAGE RIGHTS IN UGANDA AMIDST THE RISE OF SOCIAL MEDIA AND GENERATIVE AI

MELISSA NINSIIMA

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DEDICATION

This work is dedicated to all scholars, past, present, and future, whose work has shaped and continues to shape the intersecting fields of Intellectual Property and Artificial Intelligence.

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ABSTRACT

The digital age has paved the way for the rise of social media and Generative AI which have transformed the way in which images and identities are commercially exploited. While these advancements have undeniably been beneficial in this regard, the legal implications of the drawbacks cannot be ignored. This research illustrates how these technologies expose major gaps in existing Intellectual Property frameworks, particularly in the area of image rights. In Uganda, where there is no specific (sui generis) law protecting image rights, individuals remain even more vulnerable to these forms of misuse and exploitation. The findings show how courts are increasingly forced to stretch existing privacy and copyright laws to fill these gaps, often without sufficient guidance. Whereas legal protections for image rights remain inconsistent globally, Uganda's lack of clear regulation places it in an increasingly precarious position. This study argues that the country must adopt a sui generis legal framework that reflects the unique challenges of image rights in the digital era, especially in light of the rapid evolution of Generative AI and the far-reaching influence of social media.

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LIST OF LEGAL INSTRUMENTS

The Constitution of the Republic of Uganda, 1995 as amended.

The Data Protection and Privacy Act, Cap 97

The Copy Right Act, Cap 222

CHAPTER ONE: GENERAL INTRODUCTION

1.0 INTRODUCTION

The benefits and drawbacks of both social media and Artificial Intelligence (AI) have dominated 21st Century discourse, not only because of their economic, social, and political significance but also because of their effect on legal principles and frameworks. Intellectual Property law, in particular, has had to constantly adapt to the evolving demands of technological advancement due to its nature. This field of law provides legal protection and remedies for unauthorised replication and unfair exploitation of works or the reputation of an individual.[1] With the rise of social media and Generative AI, abuse of Intellectual Property rights has reached unprecedented levels that have the potential to escalate even further.

Steps have been taken to ensure that global and domestic regulations are well-equipped to handle the challenges that are threatening Intellectual Property rights like copyright, trademarks and patents. An Intellectual Property right that has been adversely affected by social media and Generative AI is the image right, which refers to the right that an individual has over the use of their name, reputation, performance, or image for commercial purposes.[2] However, while progress is made towards global harmonisation of copyright, trademark and patent law, the legislation on the protection of image rights remains largely fragmented in some parts of the world while being notably absent in others. Unfortunately, Uganda is one of the countries that lacks legislation on image rights. As stated in Winnie Asege v Opportunity bank [3], Uganda possesses little jurisprudence on image rights, both statutory and by way of precedent. Uganda has no sui generis law on image rights, a Latin term that means "of its own kind" or "in a class by itself." In this context, sui generis protection refers to unique rights that are specifically designed for a peculiar type of subject matter that cannot be satisfactorily addressed by existing laws.[4] In the absence of

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[1] David I Bainbridge, 'Intellectual Property, Ninth Edition'
[2] Onang Christopher & Ors v Roofings Ltd & Anor (2018)
[3] 'Asege Winnie v Opportunity Bank (U) Ltd & Anor (High Court Civil Suit No 756 of 2013) 2016 UGCommC 39 (2 May 2016)'
[4] 'Artificial Intelligence (AI) and Sui Generis Protection for Image Rights' https://www.alliottglobal.com/insights/artificial-intelligence-ai-and-sui-generis-protection-for-image-rights/

an efficient legal framework, a lacuna has emerged that has left the image rights of Ugandan citizens susceptible to exploitation, more so in the era of social media and Generative AI.

The aim of this research, therefore, is to demonstrate the need for sui generis protection of image rights in Uganda. This justification has been accomplished by analysing the implications of social media and Generative AI on image rights in Uganda and examining the limitations of Uganda's current legal framework for their protection. In addition to making a case for sui generis protection of image rights, this research also calls attention to key considerations that should be taken into account if this protection is to be practical and effective, before concluding with a few recommendations to relevant stakeholders.

1.1 Background

While the adage 'A picture is worth a thousand words' has been widely used and accepted globally, today, it is worth noting that a picture can be worth a thousand dollars too, or even more. Consider the 'Billion Dollar Endorsement club' which is made up of celebrities that have leveraged their status and marketability to sign billion-dollar contracts for example Micheal Jordan and Nike's 1.3-billion-dollar contract. This partnership, which was created in 1984, is still lucrative today, nearly four decades later.[5] This is the concept of image rights – a property right that grants an individual the right to control and profit from how they are known.

The official terms for this right differ across jurisdictions. In the United Kingdom and various common law jurisdictions, they are generally referred to as "image rights." However, the terms "personality rights" and "publicity rights" are used more often in the European Union (EU) and in the United States of America (USA) respectively.[6] Despite their designated terminology, the scope of image rights goes beyond the rights that an individual has over the use of their image in terms of optical or graphic representation. It also includes the right to control the commercial use of one's name, likeness and other unequivocal aspects of one's identity.[7] For instance, singer and actress, Betty Midler in the case of Midler v Ford[8], sued Ford Motor Company for hiring a "sound-

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[5] 'Billion-Dollar Athlete Endorsements: 10 Highest-Paid Sports Deals Ever | Brand Vision' https://www.brandvm.com/post/biggest-athlete-endorsement-deals

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

[7] n 3

[8] 'Midler v. Ford Motor Co., 849 F.2d 460 (9th Cir. 1988)

alike" to advertise the Ford Lincoln Mercury using a song she popularised after she turned down their offer to do the same. The court held in favor of Betty Midler and Ford Motor Company left wiser, 400,000 dollars poorer and more hesitant to exploit the likeness of celebrities for commercial gain. This is only one among many examples of how the legal protection of image rights has protected celebrities from exploitation including Formula 1 driver, Eddie Irvine and musician, Rihanna.

In spite of its globally recognised significance, the legal framework for image rights protection remains comparatively underdeveloped among Intellectual Property rights like copyright, patents and trademarks. There is no unanimous law for their protection and only a few jurisdictions like France and the Bailiwick of Guernsey have statutory laws on the same. Instead, common law and a patchwork of related concepts like privacy and copyright are relied on for. Uganda is one of the jurisdictions that falls in this category.

As a matter of fact, before Adonyo J in Winnie Asege v Opportunity Bank[9] provided much-needed guidance on the law of image rights using common law, aggrieved parties and courts were relying on the laws of copyright and privacy to address facts that fell under the scope of image rights infringement. For example, in the case of Al Hajj Nasser v MTN[10], the plaintiff filed a suit against the defendant, a telecom company which was using his speeches as ringtones. This case was lost because he failed to prove that the use of his voice amounted to copyright infringement. The case outcome might have been different if the plaintiff had relied on the law of image rights since the defendant was using his likeness for commercial benefit. The fact that individuals whose Intellectual Property rights are being exploited might be precluded from seeking legal remedy due to a limited understanding of the concept of image rights in the absence of statutory guidance is cause for concern.

As though the state of image rights protection was not sufficiently precarious as it was, two variables emerged to further exacerbate the situation. Social media and Generative AI are outcomes of digital advancements in the broader technology revolution. Social media through easing accessibility of data has eased the exploitation of the name, image and likeness of not just

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[9] n 3

[10] 'AL Hajj Nasser Ntege Sebagala v MTN Uganda Ltd and SMS Media Ltd

celebrities, but the common man as well, thus turning identity into a commercially viable asset.[11] Generative AI has the ability to generate all kinds of data and content by learning the patterns and characteristics of given datasets[12], therefore giving rise to a new method of imitation and commercial exploitation of the likeness of an individual.

1.2 STATEMENT OF THE PROBLEM

Despite the increasing attention that image rights have been getting in Uganda in recent years, no steps have been taken toward the creation of a robust legal framework for their protection within the jurisdiction. The status quo places an undue burden on courts to apply common law and attempt to relate laws of privacy and copyright to the issues arising from exploitation of the image rights of citizens.

With the rise of social media and Generative AI, principles of image rights are changing to widen their scope of protection amidst the increased exploitation of the name, image and general likeness of individuals. Considering this context, Uganda's lack of sui generis protection, which accounts for the specific complexities of image rights, constitutes a foreseeable threat to these rights.

1.3 OBJECTIVES OF THE STUDY

1.3.1 General Objective

The primary objective of this research is to make a case for the immediate need for specific and comprehensive legislation for image rights in Uganda, with due regard to the escalating risks posed by social media and generative AI.

1.3.2 Specific Objectives

This study aims to achieve the following specific objectives;

1) To assess the implications of social media and Generative AI on image rights in Uganda.

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[11] Wafula June Nicole, 'Social Media and Its Effects on Personality Rights: The Case for a Defined Legal Framework on Personality Rights in Kenya'.
[12] Martin Musiol, "Generative AI'.

2) To explore the limitations of Uganda's current legal framework for the protection of image rights.
3) To identify key considerations for the creation of sui generis protection of image rights in Uganda.

1.4 Research Questions

This study seeks to address the following research questions;

1) How have the technological developments of social media and Generative AI impacted image rights in Uganda, inclusive of current and potential impact?
2) What are the limitations of Uganda's legal framework on the protection of image rights?
3) Why is there a need for a sui generis law on image rights in Uganda as opposed to an amendment of existing laws in the legal framework for the protection of image rights?
4) What aspects should be considered to ensure the creation of robust legal frameworks for the protection of image rights?

1.5 Significance of the Study

The significance of this dissertation lies in its contribution to a wider body of literature that advocates for the development of robust legal frameworks for the protection of image rights in Uganda. It builds upon the foundation of existing scholarship in three primary ways which are information, analysis and recommendations.

First and foremost, in terms of information, this dissertation is important because the legal regime on image rights in Uganda has not been largely explored.[13] Legal scholarship on the same must indicate an upward trajectory especially as Ugandans become increasingly aware of their image rights and courts experience an increase in suits against businesses and brands who seek to exploit these rights without compensation.[14] Therefore, this research will extend the current understanding of image rights within the wider field of Intellectual Property and the Ugandan context.

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[13] n 3.
[14] 'Image Rights Must Be Respected by Those That Take Commercial Benefit of Other People's Brands | Monitor' https://www.monitor.co.ug/uganda/oped/commentary/image-rights-must-be-respected-by-those-that-take-commercial-benefit-of-other-people-s-brands-4517408

Secondly, this research carries out critical analysis that advances discourse on image rights. The widely accepted understanding of image rights and its corresponding legal frameworks as applied and interpreted by Ugandan courts has been assessed in light of the advancements of social media and Generative AI. The conclusions drawn as a result of this analysis address existing gaps in literature and create room for new theories on image rights and their scope.

Lastly, this research suggests recommendations that can be implemented to create a robust legal framework for the protection of image rights in Uganda. From outlining the key considerations for the sui generis protection of image rights in Uganda to highlighting a few specific action points, this research provides a top-to-bottom approach that ensures that all relevant stakeholders play a part in the protection of image rights in Uganda.

1.6 JUSTIFICATION OF THE STUDY

This study is justified by its alignment with present circumstances both globally and in Uganda. The effects of social media and AI have been observed across all aspects of Intellectual Property in varying degrees, be it trademarks, copyrights, patents or geographical indicators. In most jurisdictions, these Intellectual Property rights all enjoy statutory protection. While this does not completely shield them from the adverse outcomes of the digital era, at a minimum, there is a clear preliminary framework that can be built upon. This is not the case for image rights, which are largely dependent on common law and do not even have a uniform term of reference in most jurisdictions.[15] This gap leaves them susceptible to exploitation resulting from the adverse effects of social media and Generative AI.

In Uganda, the situation is even more critical. The country is at a time where its talent in music and sports is putting it on the global stage. For example, the Uganda Cranes qualified for the FIFA World Cup for the first time in April 2025,[16] a move which is likely to invite more endorsement deals similar to the one signed by one of the players, Allan Okello.[17] In addition, the copyrights of

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[15] 'Legal Protections for Image Rights in Kenya. - Centre for Intellectual Property and Information Technology Law' https://cipit.strathmore.edu/legal-protections-for-image-rights-in-kenya/#sdfootnote2sym

[16] 'Historic Breakthrough: Uganda Cubs Qualify for First-Ever FIFA World Cup - FUFA: Federation of Uganda Football Associations' https://www.fufa.co.ug/historic-breakthrough-uganda-cubs-qualify-for-first-ever-fifa-world-cup/

[17] 'Sports Endorsements: Footballer Allan Okello Pens Deal with BLACK' https://kawowo.com/2024/10/04/sports-endorsements-footballer-allan-okello-pens-deal-with-black/

Ugandan artists are being actively protected by courts as seen in the case of Bruno K v Black Market Records [18]where the plaintiff was awarded 130 million in damages for infringement of his copyright by the defendant. Additionally, influencers and socialites are highly sought after by brands due to their marketability. For example, Uncle Mo, a Ugandan YouTube comedian, has mentioned how online visibility attracts attention from brands which enables influencers to earn money from endorsements.[19] Furthermore, in addition to celebrities, this study is essential to the protection of the ordinary Uganda citizen whose identity can be exploited on social media platforms and through use of Generative AI in the manner that shall be expounded on in Chapter 2 of the dissertation.

Collectively, the aforementioned factors underscore the need for a robust legal framework to prevent history from repeating itself, where absence of clear image rights law has denied individuals compensation which they are entitled to as seen in the case of Nasser v MTN.[20] On a more optimistic note, timely intervention through proactive intervention by relevant stakeholders will not only safeguard against current, but also future harms.

1.7 SCOPE OF THE STUDY

1.7.1 Temporal Scope

The general time frame of this research spans from 2015 to date. While Winnie Asege v Opportunity Bank[21], the case which was a defining point in Uganda's law of image rights was decided in 2016, this study includes 2015 due to the case of Nasser v MTN[22]. The decision in this case is necessary for comparative analysis that is relevant to my study. Additionally, many of the advancements in social media and Generative AI fall within this scope.

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[18] 'Kiggundu aka Bruno K v Black Market Records Entertainment - SMC Limited & 3 Others (Civil Suit 1025 of 2022) [2025] UGCommC 42 (1 April 2025)
[19] 'Makanika Uncle Mo Is Shy Off-Camera - The Observer' https://observer.ug/lifestyle-entertainment/makanika-uncle-mo-is-shy-off-camera/
[20] n 10
[21] n 3
[22] n 10

1.7.2 Geographical Scope

While the primary scope of this study is Uganda, this research occasionally refers to other jurisdictions for contextual and comparative purposes.

1.8 HYPOTHESIS

Social media and Generative AI are no longer abstract concepts that can be ignored in Uganda but are real occurrences that are impacting image rights of individuals. Given these contemporary considerations, it is more pertinent than ever that Uganda enacts a sui generis law for the protection of individuals from unauthorised exploitation of their name, image or likeness for the commercial benefit of another party.

1.9 THEORETICAL FRAMEWORK

This study is anchored in three main theories, which shaped the approach, analysis and recommendations of the research.

1.9.1 Theory of the right to one's image

This theory speaks to the ownership aspect of image rights whereby an individual has the right to decide when, how and by whom their name, image and likeness are captured, reproduced and published.[23] This right is neither transferable nor assignable to another entity. It can be compared to the moral right in copyright which ensures that the author is acknowledged as the owner and has the right to object to any alteration of the copyrighted work.[24] Similarly, this theory enables the image rights holder to maintain control over the commercial exploitation of their likeness.

1.9.2 Theory of the persona as property

This theory posits that the persona is a commodity capable of being assigned and transferred. The rationale for this is that where one has a special physical appearance that can be made a matter of merchandise, it should be for their benefit and if they wish, they can restrain others from using it for their gain. This theory provides for a concept similar to that of economic rights under copyright

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[23] 'Proline Soccer Academy Limited v MTN Uganda Limited, M/s CQ Saathi & Saathi & FUFA (U) Limited (Civil Suit 317 of 2011) [2024] UGCommC 13 (2 February 2024).
[24] S.9, Copyright and Neighboring Rights Act

law. In the case of Uhlaender v Henricksen, the court held that a celebrity has a legitimate proprietary interest in his public personality as they are considered to have invested years of practice and competition to achieve marketable status.[25] That identity, embodied in their name, likeness, and other characteristics, is the fruit of their labor and is a type of property.

1.9.3 Synthetic theory of law and technology

Law and technology are inseparable, especially in Intellectual Property and the synthetic theory of law and technology presents a new perspective to navigate their intersection.[26] It proposes that in times when technological change threatens interests that are traditionally protected by law, legal analysis should become more contextual and forward-looking and less deferential to traditional doctrine. The theory is 'synthetic' as it is based upon a synthesis of instrumental theories and substantive theories. The former theory, which often fails to consider the contextual complexities of technology, is merged with the latter which overemphasises the social impact of ways in which technological systems can exert 'control' over individuals, often without their knowledge, to create a balance. The synthetic theory is relevant to this research because the topic assesses the impact of technological advancements on legal principles.

1.10 LITERATURE REVIEW

This literature review follows a thematic structure by analysing existing scholarly perspectives on the central themes identified and the gaps that this research intends to fill.

1.10.1 Image Rights, Social Media and Generative AI

Image rights refer to the rights that one has over the use of their name, image and likeness whereby unauthorised use by another entity for commercial benefit carries legal repercussions. Unlike previous generations where one could not assign a right to the use of their name and likeness, several studies have provided insight into how the persona came to be legally recognised as

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[25] 'Uhlaender v. Henricksen, 316 F. Supp. 1277 (D. Minn. 1970)

[26] Arthur Cockfield and Jason Pridmore, 'A Synthetic Theory of Law and Technology A Synthetic Theory of Law and Technology A Synthetic Theory of Law and Technology', vol 8

property. George Armstrong [27] theorises that this development can be attributed to three allied processes, marketing and mass media, evolution of technology and changing concepts of value.

However, Armstrong's focus on the celebrity as the subject of image rights reflects a gap whereby the common man's image rights are often undermined. Nimmer[28] even goes ahead to suggest that image rights usually become important only when the plaintiff (or potential plaintiff) has achieved some degree of celebrated status. Anderson and McCarthy[29] also aver that the right to publicity was largely developed by the desire of advertisers to attract attention to their goods and services by using the identity of prominent athletes without paying for that value.

Noting the focus of image rights scholarship on celebrities, Thakur[30] makes a key point when he highlights that the common, albeit misguided reference to image rights as "celebrity rights" is limiting nomenclature since the scope of image rights goes beyond celebrities. Jennings [31] underscores this perspective where he states that commercial entities use social media forums as promotional vehicles by levering the identity of users. Thakur[32] also talks about the threat posed by Artificial Intelligence (AI) in terms of appropriation of the likeness of human features. He explains how evolving deepfake technology with its easy access through social media has made it possible for personality rights of a common person to be exploited for commercial gain.

Further still, Martin Musiol[33] states that the rapid maturation and adoption of Generative AI outshines the evolutionary arcs of many preceding technologies and he presents Intellectual Property concerns as the primary ethical considerations that arise from the use of Generative AI. Splagounias[34] explores similar concerns where he states that the most profound misappropriation of image rights brought about by exponential leaps in technology has been through Generative AI

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[27] George M Armstrong, The Reification of Celebrity: Persona as Property Repository Citation Repository Citation', vol 51 (1991)
[28] Melville B Nimmer, Louis Brandeis and Samuel Warren, 'The Right of Publicity'
[29] J Thomas Mccarthy and Paul M Anderson, 'Protection of the Athlete's Identity: The Right of Publicity, Endorsements and Domain Names', vol 11 (2001)
[30] Viraj Thakur, 'Redefining Personality Rights in the Digital Age'.
[31] Jonathan S Jennings, 'American Bar Association Section of Intellectual Property Law Program Entitled: "Social Media and the Potential Implications of the Right of Publicity and Other Intellectual Property Issues" "Right of Publicity Law Meets Social Media"' (2012)
[32] Thakur (n 30).
[33] Musiol (n 12).
[34] Thomas Splagounias, 'Rethinking the Right of Publicity in The Era of Generative AI', vol 65

platforms. He illustrates how these platforms misappropriate publicity rights through their ability to create outputs of seemingly authentic images, videos, and songs from data inputs of individuals.

However, there is an empirical gap in that these scholarly works do not account for the way in which the intersection between image rights, social media and Generative AI, has impacted image rights within the Ugandan context.

1.10.2 Limitations of Uganda's Current Legal Framework for Protection of Image Rights

Legal scholarship addressing image rights protection in Uganda and its corresponding frameworks is relatively scarce, which highlights an empirical gap. Musoke[35] echoed this fact in his research that mentioned how Uganda lacks statutory recognition of image rights leaving courts to rely on common law and related laws of privacy and copyright.

The limitations of this approach have been explored by scholars globally. Synodinou[36] establishes the inadequate nature of common law in granting protection to the right to one's own image in the United Kingdom (UK), since it is based on a broad interpretation of the classic torts of breach of confidence and passing off, which fail to provide a coherent and effective legal framework for protecting image rights. Uganda, which relies on a similar approach, is subject to this criticism as well.

Additionally, Nimmer[37] observes that the image right cannot be legally protected either under a privacy theory or under any other traditional legal theory. The privacy doctrine, he reasons, might protect the privacy of a celebrity's non-professional life, but it does not protect them from the appropriation by others of the valuable use of their likeness, which is the role of image rights protection. This argument reinforces the need for sui generis protection of image rights law. Dogan and Lemley[38], in their defence of an independent law for image rights, emphasise that no matter how much analogous laws like trademark law, and in Uganda's case privacy and copyright law,

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[35] Musoke Christopher, 'Intellectual Property Law in Uganda: The Need to Codify Image Rights Law Protection' (2019).
[36] Synodinou (n 6).
[37] Nimmer, Brandeis and Warren (n 28).
[38] Stacey L Dogan and Mark A Lemley, 'What the Right of Publicity Can Learn from Trademark Law', vol 58 (2006).

extend to address image rights, there will always be some elements that are specific to each that must be catered for via separate laws.

Finally, Adebowale et al.[39] make a fundamental observation that Uganda's Intellectual Property legal regime is not ready to balance Intellectual Property and AI. They further state that any amendments should consider the country's local reality in terms of technological development, and balance that with the need to incentivise innovation.

This research intends to synthesise the insights from these scholars to generate new findings that not only point to the inadequacy of the Ugandan legal framework for image rights protection but also illustrate why the limitations are considered so.

1.10.3 Key Considerations for the Creation of Sui Generis Protection of Image Rights in Uganda.

Image rights do not exist in a vacuum. A robust legal framework must take into account the internal dynamics of image rights as well as its relation to the general framework of Intellectual Property law. Pound[40] posits that in determining the scope and subject matter of a legal system, the following must be considered: (1) the main interests to be recognised and secured (2) the principles upon which these interests are to be selected; (3) the principles upon which conflicting interests should be weighed or balanced in order to determine the extent to which the respective interests are to be given effect; (4) the means by which the law may secure the interests which it recognises; and (5) the limitations upon effective legal action which preclude complete recognition of all these interests to the full extent which ethical considerations might require.

Pound highlights a conflicting interest, which has been underscored in a number of scholarly works, and that is the conflict with the law of copyright. This conflictual relationship between image rights and copyright law was also mentioned by Synodinou[41] and discussed in depth by Weisboard.

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[39] Hassan Ismaila Adebowale and others, 'Intellectual Property Law and Artificial Intelligence in Uganda: Trending Issues and Future Prospects' (2024) 6 Kampala International University law journal 224

[40] Roscoe, 'Interests of Personality', vol 28 (1915)

[41] Synodinou (n 6).

Weisboard [42] explores the intersection between publicity rights, copyright and the First Amendment. He argues that by providing for transformative use as a limitation to publicity rights, the First Amendment acts in favor of copyright holders in a way that creates negative implications for the future of publicity rights. This asymmetry is especially emphasised through the significantly advantageous legal consideration that authorial copyright rights holders receive compared to publicity rights holders.

While these scholarly works convey the nuances of image rights law, the jurisdictions explored therein have a more developed law on publicity rights or image rights as compared to that of Uganda. The absence of a sui generis law to protect image rights in Uganda poses an even higher risk. By focusing on the Ugandan context, this research contributes to the literature.

1.11 METHODOLOGY

The objective of this research is to make a case for the need for legal reform in the framework for the protection of image rights law in Uganda by following a bilateral approach. First, the implications of social media and Generative AI on image rights will be discussed followed by an analysis of the limitations of Uganda's legal framework and making recommendations to address these limitations. To achieve these objectives, the research follows a qualitative methodology with the methods of choice being documentary analysis, action research and, in one instance, a case study.

In this context, the qualitative methodology is the most appropriate as it allows for detailed description and interpretation of observations, using subjective analysis. The resources relied on consist of mainly secondary sources including reports, books and journal articles. However, additional primary sources include the Constitution, the Copyright and Neighbouring Rights Act, and the Data Protection and Privacy Act.

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[42] Reid Kress Weisbord, 'A Copyright Right of Publicity,' vol 84

1.12 CHAPTER SYNOPSIS

Chapter 1 is an introduction to the study. It contains preliminary content like the background, statement of the problem, justification, literature review and methodology among others, which are the foundational aspects upon which the subsequent parts of the dissertation are based.

Chapter 2 navigates the intersection of image rights, social media and Generative AI with a focus on Uganda. It analyses how these two factors have impacted the traditional approach to image rights protection and exposed the need for their sui generis protection in Uganda.

Chapter 3 critically examines Uganda's legal framework on the protection of image rights and mentions key considerations for the creation of sui generis law on image rights.

Chapter 4 provides a summary of findings of the preceding chapters and gives recommendations based on these findings as well as the conclusion of the study.

CHAPTER TWO: IMPLICATIONS OF SOCIAL MEDIA AND GENERATIVE AI ON IMAGE RIGHTS IN UGANDA

2.1 INTRODUCTION

This chapter delves into how the traditional application of image rights law has placed emphasis on the protection of the celebrity and sidelined the common man. It then illustrates how the coming of social media has necessitated consideration of the commercial value of the common man before exploring the current and potential ways in which image rights are affected by social media. Lastly, it gives a brief introduction to Generative AI and thereafter proceeds to demonstrate its effect on image rights. Each discussion is ultimately situated within the Ugandan context.

2.2 THE CELEBRITY AND THE COMMON MAN

Every person, celebrity or non-celebrity, has image rights which enable them to control the use of their likeness and protect it from uncompensated exploitation.[43] Therefore both celebrities and common men are protected from the unauthorised commercialisation of their likeness. However, the commercial aspect of image rights affords celebrities greater protection and likelihood of compensation. This is due to the significantly higher commercial value and marketability they possess as opposed to an ordinary individual.

This interpretation is exemplified by Nimmer's 'Right to Publicity'[44] where it is claimed that the right of publicity usually becomes important where a plaintiff (actual or potential) has achieved some degree of celebrated status. He insists that image rights must be recognised as a property rather than a personal right, and therefore the measure of damages should be computed in terms of the value of the publicity appropriated by the defendant rather than in terms of injury to the plaintiff's privacy.

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[43] n 23

[44] Nimmer, Brandeis and Warren (n 28)

Initially, celebrity status was attained whereby an individual was recognisable by virtue of their contribution to politics, broadcasting media, literature, music, film or sports industries. Where such personalities endorse a product, their high profile and positive publicity have the potential to increase a consumer's brand awareness, enhance a brand image and, as a result, increase consumer sales.[45] Many companies recognised that supplementing attractive packaging and respected trademarks with the compelling reputation of public figures would add substantial market value to products that might otherwise remain anonymous.[46] Worldwide, image rights of celebrities have been exploited in three major ways: endorsement, sponsorship and merchandising.[47]

Endorsements occur whereby celebrities leverage their status and personal credibility to grant visibility to a particular product or brand and boost their sales. This enables brands to use the fanbase that celebrities have earned to build awareness, improve sentiment, and increase sales for their products or services. For example, in 2024, Rihanna, who was pregnant with her second child, partnered with Louis Vuitton to promote the luxury brand's new leather bag collection. This approach by the brand received positive attention from the public as a challenge to traditional maternity fashion norms by making a powerful statement about breaking barriers and embracing individuality.[48] While one might struggle to make the connection between maternity fashion liberation and luxury brand leather bags, the success that Rihanna's inclusion brought to the campaign is irrefutable thus illustrating the lucrative nature of image rights.

On the other hand, sponsorship arrangements are primarily for exposure whereby brands offer financial or in-kind compensation to celebrities in exchange for general product marketing by the celebrity, for example through logos on uniforms, banners, and media rights.[49] Sponsorships are commonly executed through partnerships between sports teams and sports brands. For instance, in 2015, Adidas signed a record-breaking 10-year, $1.3 billion sponsorship deal with the English Premier League soccer club, Manchester United which marked the largest kit sponsorship deal in

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[45] 'Image Rights & Their Importance in Uganda's Legal Framework - KTA Advocates' https://www.ktaadvocates.com/image-rights-their-importance-in-ugandas-legal-framework/
[46] Musoke (n 35).
[47] n 23
[48] '12 Best Celebrity Endorsements of 2024 | GRIN' https://grin.co/blog/best-celebrity-endorsements/
[49] 'Impact of Sponsorship and Endorsements in Sport Management - Lindenwood University Online' https://online.lindenwood.edu/blog/impact-of-sponsorship-and-endorsements-in-sport-management/

sports history at the time and further cemented Adidas' status as a major player in the global sports market.[50]

Lastly, the type of merchandising that relates to image rights is known as personality merchandising. This is where celebrities apply their brand to a range of products that are adorned with their essential attributes (name, image, voice and other personality features). [51] The merchandising ventures of celebrities, ranging from perfumes and apparel to drinks, makeup, and tech, have evolved into a thriving multi-million-dollar business as illustrated by the partnership that allowed LeBron James to have his own line of headphones with Beats by Dre.[52] Personality merchandising, which is sometimes referred to as reputation merchandising, is successful because of the awareness that it is not so much the product which is of principal importance to the consumer, but rather the name or image which it bears, that is the main marketing and advertising vehicle.[53]

While all the above examples are mutually beneficial outcomes of celebrity identity commercialisation, both on the side of the celebrities and the corporations leveraging their identities, it is not always a bed of roses, particularly on the side of the celebrities. Simply put, the exploitation of the names, voices, likenesses, images and general identities of athletes, musicians, actors and other celebrities for commercial gain does not always translate into their compensation. Unauthorised exploitation of the image rights of celebrities has been well illustrated by cases within the Ugandan jurisdiction. The case of Winnie Asege v Opportunity Bank[54] is a notable example of this phenomenon. In this case, the plaintiff sued the defendant for use of her images to advertise the defendant's Agro Save account through huge billboards, fliers, brochures and calendars without her prior consent. While she may not have been a celebrity in the conventional sense, her success in commercial farming had led to her popularity in the Teso region of Uganda, where she was even visited by the President. Because she was widely known, using her image to

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[50] 'The Best Sports Sponsorship Examples in 2025 | Jersey Watch' https://www.jerseywatch.com/blog/sports-sponsorship-examples .
[51] n 23
[52] https://festivaltopia.com/how-celebrities-turn-merch-into-millions-the-secret-to-printing-money-with-products/#:~:text=Rihanna's%20Fenty%20Fashion%20line%2C%20Kanye's,and%20capture%20a%20specific%20demographic
[53] *WIPO Intellectual Property Handbook* ([World Intellectual Property Organization (WIPO)] 2008).
[54] n 3

advertise an agro save account – a fact which only came to her knowledge when she was informed by people who recognised her – was an exploitation of her image rights by the defendant.

Further still, Proline Soccer Academy v MTN[55] exemplified how the rights of athletes are susceptible to exploitation, even where there is an initial contract for their remuneration. In this case, MTN entered a contract with Proline, the players' originating development soccer club, allowing it to use the players' images for advertising from 7th September 2007 to 8th December 2008. However, MTN continued to use these images upon expiration of the contract for its promotion as well as other nationwide activities.

In these cases, the celebrities were only able to obtain compensation due to the developing legal framework of image rights in Uganda. However, we begin to see cracks in the legal framework for image rights when it comes to the common man whose concerns in relation to the protection of their image rights are largely undermined. This gap has not gone unnoticed, especially with the coming of social media which broadened the scope of image rights by redefining what it means to be a celebrity and elevating the commercial value of the common man's identity.

2.3 SOCIAL MEDIA IMPLICATIONS

2.3.1 The rise of the influencer

Prior to the advent of social media, the distinction between the common man and the celebrity was clear. However, with the widespread use of social media, this once-obvious difference is becoming increasingly difficult to pinpoint. A widely accepted reason for this is the rise of influencer culture. Social media influencers are individuals who are able to affect the purchasing decisions of others due to their knowledge, position, or relationship with their audience. This occurs through the creation of relatable and seemingly authentic content which builds a sense of community and trust with their followers. Recognising that traditional advertising methods often lack such attributes, brands leverage these figures for endorsements, brand partnerships, sponsored content, and affiliate marketing.

While influencer culture includes mega influencers who are usually celebrities or very well-known personalities with huge reach, it also encompasses macro influencers who are niche experts, or

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[55] n 23

internet personalities, with an influence in a specific area. It goes on to include micro influencers, who have a smaller reach but have much more engaged audiences that trust their recommendations.[56]By this definition, anyone with social media can become a 'celebrity' in a broader sense thus widening the scope of image rights application to include individuals who, pre-social media, would have fallen under the common man classification.

In his article, 'Are social media influencers the new celebrities in Uganda', Muyingo highlights how digital transformation has given rise to social media influencers as the new class of celebrities – ordinary individuals who have leveraged these platforms to transform their passions into creative careers. Examples given included fashion and lifestyle influencer, Zari 'Boss Lady' Hassan, entertainment influencer, Sheilah Gashumba, and wellness X influencer, Dr. Kasenene.[57]

The increasing number of people who are considered celebrities signals an increase in the value of having a product or service associated with them.[58] As a result, the distinction between celebrities and non-celebrities is becoming increasingly subjective. Social media platforms made marketing accessible and affordable to the public through diversification beyond mere payment for advertising space on television screens and billboards to phones, tablets and laptops.

2.3.2 The increased commercial value of the common man's identity: A case study of Fraley et al. v Facebook

The key objective of image rights law is to protect the name, image, and likeness of individuals from uncompensated exploitation. Therefore, as earlier mentioned, the significantly higher commercial value and marketability of celebrities was the given justification for considering their image rights at a greater risk than those of ordinary individuals.

However, social media has transformed the common man's identity into a marketing goldmine that corporations are benefiting from while non-celebrities struggle to invoke the law of image rights in courts by proving their commercial value. In the landmark case of Fraley et al. v Facebook[59], the plaintiffs sued Facebook for the violation of their publicity rights through unlawful

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[56] 'Influencer Culture and Authenticity | ONBOARD Magazine' https://www.obmagazine.media/influencer-culture-and-authenticity/

[57] 'Are Social Media Influencers the New Celebrities in Uganda? - Charmar' https://charmarnews.com/are-social-media-influencers-the-new-celebrities-in-uganda/

[58] Musoke (n 35)

[59] 'Fraley v. Facebook, Inc.

misappropriation of their names, photographs, likenesses, and identities for use in paid advertisements without obtaining consent. Facebook's advertising service, known as "Sponsored Stories," was a form of paid advertisement that appeared on a member's Facebook page consisting of their friend's name, profile picture, and an assertion that the person "likes" the advertiser. Unknown to the plaintiffs and millions of Facebook users worldwide, it was enabled for all members by default which the plaintiffs challenged on grounds that this new form of advertising drafted millions of Facebook members as unpaid and unknowing spokespersons for various products.

In this case, the court agreed that the plaintiffs had articulately advanced a coherent theory of the economic value of their endorsement to advertisers. Evidence presented included quotes from Facebook CEO, Mark Zuckerberg and COO, Sheryl Sanberg referring to identity of the common man as the "Holy Grail of advertising." Additional quotes included statements about how "nothing influences people more than a recommendation from a trusted friend" and "making your customers your marketers" was the elusive goal that they had been searching for. The court dismissed the defendant's argument that because the plaintiffs were not celebrities, they needed to demonstrate some pre-existing commercial value to their names and likenesses, such as previous remuneration for their use, or any attempts to obtain such remuneration.

In response to this argument, the court stated that "while traditionally, advertisers had little incentive to exploit a non-celebrity's likeness because such endorsement would carry little weight in the economy at large, plaintiffs' allegations suggest that advertisers' ability to conduct targeted marketing has now made friend endorsements a valuable marketing tool, just as celebrity endorsements have always been so considered." This supports the assertion herein that the coming of social media has altered a foundational principle of image rights law which requires an individual to be a celebrity for their identity to have commercial value. Therefore, the general scepticism with which courts address the commercial value of the common man's identity should become a thing of the past. As explored in this section, whether celebrity or non-celebrity, no one's identity is safe from exploitation.

2.3.3 Social media Exploitation of Image Rights

Social media exploitation of image rights generally occurs in two ways, primary and secondary. Primary exploitation occurs where the social media platform is used by its owners to exploit the

name, image or likeness of its users for commercial benefit as explained above through the case of Fraley v Facebook. [60] While social media platforms allow users to present their identities to larger audiences than ever before, where these online forums as commercial entities begin using these identities as promotional vehicles, the potential arises for claims of image rights exploitation.[61]

Uganda has approximately 11.77 million social media users who engage with platforms such as Facebook, Twitter, Instagram, TikTok and Snapchat daily[62] and are ignorant of the ways their image rights are being exploited. With each click of "Invite Friend/Contact" on WhatsApp, they indirectly allow their identities to be used as unpaid marketing tools for these social media companies who gain financial advantages from each new user. With each public post on Instagram, they provide accessible images for anyone who may want to commercially benefit from the unauthorised use of their images.

Conversely, secondary exploitation occurs where the users of these platforms exploit the identities of fellow users or other individuals for commercial gain. TikTok gifting manipulation is an example of this, whereby scammers broadcast celebrity Instagram and Snapchat live recordings to grab their fans' attention. These scammers obtain commercial benefit from these impersonations in one of three ways; digital gifts presented by fans that can be cashed out, reselling cheap beauty products at a steep markup to impressionable young audiences or adding affiliate links to adult dating websites that earn them money for each click made into said platforms.[63]

Secondary exploitation also occurs where event hosts and organisers use the images of attendees as a form of advertisement. 'Enjoyment' culture in Uganda[64] is flourishing as art exhibitions, restaurant weeks, brunches and concerts become an integral part of urban lifestyle. Equally common are conferences, career expos and mentorship sessions from successful individuals in the given fields. However, with the coming social media, post-event visuals have gained traction,

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[60] ibid
[61] Jennings (n 31)
[62] 'Is Uganda's Gen(Z) Safe on Social Media? – Economic Policy Research Centre' https://eprcug.org/blog/is-ugandas-genz-safe-on-social-media/
[63] '"Gifting" Feature on TikTok — Manipulation of Well-Intended Features Enables Abuse | by Cornell Social Media Lab | Social Media Stories | Medium' https://medium.com/social-media-stories/gifting-feature-on-tiktok-manipulation-of-well-intended-features-enables-abuse-ec9ebbc594f3
[64] 'The Economics of Enjoyment: An Analysis of Uganda's Entertainment Economy Across Its Nightlife, Festivals and Weddings — JEPA'

where flattering images and videos of attendees are posted on social media accounts of the hosts or sponsors as a means of publicity. This genius marketing tactic is a common example of secondary exploitation of image rights in Uganda since these are often posted without the express consent of the attendees. Worth noting is the fact that attendance is not synonymous with consent unless expressly indicated prior to the event.

In its initial stages, the risks posed by social media had narrow implications as these platforms mainly exploited images and names. However, with the emergence of Generative AI, the exploitation of image rights has broadened even further to compromise additional aspects of one's identity, for example, recreation of voices and animation of likenesses. The use of Generative AI not only mirrors the risks to image rights mentioned in the sections above but also magnifies them by creating new forms of exploitation, resulting in what one might refer to as the ultimate convergence of the risk.

2.4 GENERATIVE AI IMPLICATIONS

2.4.1 Understanding Generative AI

Generative AI is the type of artificial intelligence that creates content across various mediums ranging from textual narratives to realistic images, audio and even lifelike videos. Martin Musol described three general capabilities of Generative AI: Data generation, data transformation and data enrichment.[65]

Under data generation, models learn patterns and imitate characteristics of given data inputs to create outputs that are similar to the original data. On the other hand, data transformation is where models create new variations of existing data samples which reveal new insights and create appealing outputs for various applications. Lastly, data enrichment involves generating new data samples similar to the original dataset to increase its size and diversity.

A key difference between data transformation and data enrichment is whereas data transformation focuses on improving the quality and usability of data, data enrichment focuses on expanding the

[65]Musiol (n 12).

breadth and depth of data.[66] While Generative AI models are not without benefits, any merits that can be attributed to their existence are accompanied by inherent risk to image rights of individuals.

2.4.2 Threats to image rights

Due to their capacity for adaptability and imitation, the concerningly realistic outputs produced by Generative AI models pose a risk to the image rights of both celebrities and the common man. Splagounias categorised the causes of action arising from misappropriation of image rights by Generative AI into two; Direct Misappropriation by a third party and Direct Misappropriation by the Generative AI Platform.[67]

Under Direct Misappropriation by a third party, a third party utilises Generative AI to replicate another's likeness and uses it for a commercial purpose.[68] Such outputs are referred to as deepfakes. During South Africa's 2024 elections, Generative AI technology was used to create an image of Cyril Ramaphosa, South Africa's current President, as Kaizer Chiefs player.[69] To an impressionable South African whose candidate of choice was Ramaphosa, this "endorsement" could have gained the Kaizer Chiefs a new fan hence illustrating unauthorised use of a public figure's identity to grant visibility to a brand with the aid of AI. While the original creator of this deepfake remains unknown, one cannot help but consider what this means for the identity of Ugandan political figures as 2026, the year of elections inches closer. The likelihood of their popularity being leveraged by individuals to advertise their brands and gain commercial advantage is no longer an abstract concept but an actual possibility, due to the emergence of Generative AI.

Conversely, Direct Misappropriation by the Generative AI Platform can either be output-based or dataset-based. Output-based misappropriation occurs where a Generative AI Platform creates outputs that infringe on the image rights of an individual.[70] Scarlett Johansson, a celebrity well known for her opposition to the unauthorised use of her likeness by AI, took action against Lisa AI, an app which had artificially replicated her face and voice to advertise their product. Her lawyer

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[66] 'Data Transformation: Clean, Enrich, and Transform | Decube' https://www.decube.io/post/data-transformation-process
[67] Splagounias (n 34).
[68] ibid
[69] 'Generative AI and Its Influence on South Africa's 2024 Elections | DGAP'
[70] Splagounias (n 34).

stated that such matters were not taken lightly, and legal recourse would be sought as per the usual course of action.[71]

Contrastingly, in the Ugandan case of Al Hajj Nasser v MTN[72], the plaintiff sued the defendant for use of his speeches as caller tunes for their telecom network, a venture which they were commercially benefiting from. Unfortunately, due to lack of a sui generis law on image rights, the Plaintiff proceeded under copyright and this claim failed to meet the standards required for copyright protection. The contrast between these two circumstances underscores the need for development of a comprehensive legal framework for the protection of image rights in order to give Ugandans similar confidence in the law's ability to protect these rights.

Dataset-based misappropriation occurs where the datasets on which the systems are trained, contain misappropriated likenesses.[73] A more sinister but disconcertingly lucrative way that image rights this can be illustrated is through AI-Generated Child Sexual Abuse Material (CSAM)[74]. There are two ways for Generative AI to create CSAM. Models must either have been trained on adult pornography and thereafter create CSAM from that or directly trained on CSAM. In both cases, the content in the training datasets is critical. Training datasets can be manually created to meet specific parameters or through the unrestricted scraping of images from the web. Researchers at the Stanford Internet Observatory discovered a substantial volume of explicit content, including CSAM in a training dataset which was fed by unguided internet crawling.[75]

The existence of AI-generated CSAM has led to a rise in the commercialisation of child sexual exploitation. In addition to the buying and selling of such content and models, new methods of extortion and sextortion have proliferated, due to the ease with which perpetrators can now create CSAM.[76] This does not paint a good picture for Uganda. In the USA, where the image rights law is considerably developed, the child pornography trade is a 20-billion-dollar industry that

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[71] 'Scarlett Johansson Takes Legal Action against Use of Image for AI - OECD.AI' https://oecd.ai/en/incidents/47696
[72] n 10
[73] Splagounias (n 34).
[74] Generative AI, 'A New Threat for Online Child Sexual Exploitation and Abuse.'
[75] 'Identifying and Eliminating CSAM in Generative ML Training Data and Models | Stanford Digital Repository' https://purl.stanford.edu/kh752sm9123
[76] n 74.

continues to expand.[77] Without a sui generis law in Uganda for image rights protection that accounts for the harms of Generative AI, this issue is cause for serious concern.

2.5 CONCLUSION

This chapter has critically examined the evolving impact of social media and Generative AI on image rights by demonstrating how they have challenged the foundational legal principles governing this concept. It has also illustrated that the rapid proliferation of these platforms and AI-generated content has significantly complicated the protection and enforcement of individual image rights in Uganda. Through the various examples and analysis, the chapter has shown need for a robust and effective legal framework for the protection of image rights in Uganda.

[77] 'Measuring the Child-Porn Trade - WSJ' https://www.wsj.com/articles/SB114485422875624000

CHAPTER THREE: LIMITATIONS OF UGANDA'S LEGAL FRAMEWORK ON IMAGE RIGHTS

3.1 INTRODUCTION

This chapter critically examines Uganda's legal framework on the protection of image rights with the aim of demonstrating the limitations which make it ineffective thus justifying the need for sui generis protection.

3.2 OVERVIEW OF UGANDA'S CURRENT LEGAL FRAMEWORK

Uganda has no statutory framework for the protection of image rights but rather relies on a patchwork of laws to obtain legal protection in this regard. The domestic framework is primarily made up of the constitution[78] and common law.

The two articles enshrined in Uganda's constitution that are implemented to address the protection of image rights are Article 26 and Article 27. Recognising that image rights are proprietary rights, Article 26(1) and (2) provide for the right to property whereby every person has the right to own property, either individually or in association with others and no person shall be compulsorily deprived of any interest over property subject to the given exceptions. Additionally, Article 27(2) provides for the right to privacy whereby no person shall be subjected to the interference of their home, correspondence or property, supplemented by Section 33 of the Data Protection and Privacy Act.[79] The limitations of the right to privacy in adequately addressing the protection of image rights will be discussed later on in this chapter.

While some cases whose facts reflect unauthorised exploitation of image rights have been brought before Ugandan courts under the law of copyright, it is key to note that copyright law does not avail any legal protection to the individual whose name, image and likeness have been exploited without their consent. As seen in Nasser v MTN[80], the threshold for copyright protection cannot be met by an individual who requires legal redress under image rights law. It is for this reason that

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[78] 'Constitution of the Republic of Uganda
[79] 'Image Rights in Employment' https://kakuruadvocates.co.ug/image-rights-employment
[80] n 10

this research does not consider the Copyright and Neighboring Rights Act (CRNA) as part of the domestic framework for the protection of image rights.[81] Additionally, there is no harmonised international framework for image rights protection.[82]

In April 2019, Musoke analysed Uganda's domestic IP framework with emphasis on the institutional and policy frameworks for the protection of the image rights.[83] This general legal framework for governance has not changed much since then, which in itself is a problem. Even the National IP Policy, which was published in May 2019, does not provide for image rights.[84] Musoke's research included an interview with an officer at the Intellectual Property Registration Office which illustrated the concerning laissez-faire approach to image rights legislation in Uganda. This official named Mr. Baatta Joseph stated that enforcement of image rights is an individual effort therefore it is upon one to ensure that their images are not commercially appropriated. Where an individual fails to take all reasonable measures, then there is no way the institute can aid.[85]

This has imposed an undue burden on courts to singlehandedly generate image rights jurisprudence in Uganda. By majorly relying on common law, the right to privacy, and copyright law in addition to domestic and international precedents, they have adjudicated upon matters brought before them that pertain to image rights. However, if Uganda is to have an adequate and practical legal framework for the protection of image rights, it must enact a sui generis law on the same. This research shall emphasise the need for specific legislative action by discussing the limitations of the current legal framework for the protection of image rights, as relied on by courts.

3.3 COMMON LAW PROTECTION

In Winnie Asege v Opportunity Bank[86], Adonyo J largely relied on common law jurisprudence due to little jurisprudence from Uganda both statutory and by way of precedent. By applying the common law on image rights, he effectively introduced a comprehensible legal approach to the

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[81] 'Intellectual Property & Technology Opportunities in East Africa.'
[82] 'Legal Protections for Image Rights in Kenya. - Centre For Intellectual Property And Information Technology Law' Https://Cipit.Strathmore.Edu/Legal-Protections-For-Image-Rights-In-Kenya/#Sdfootnote2sym
[83] Musoke (n 35)
[84] National Intellectual Property Policy, May 2019
[85] ibid
[86] n 3

concept in Ugandan courts. This showcased the adaptability of the common law to changing circumstances and the creation of new rights by courts.[87]

In spite of this, common law cannot act as a substitute for statutory law which is needed for the effective protection of image rights in Uganda. The lack of codification of the legal principles of image rights creates inconsistency and lack of clarity as to what exactly the law is. Compare the two cases of Asege v Opportunity Bank and Proline Soccer Academy v MTN.

In the former case, the elements necessary to prove infringement of image rights were as follows: The plaintiff must be identifiable, the defendant's action must have been intentional, and the defendant must have acted for the purpose of commercial gain. However in the latter case, these were the elements identified: Ownership of an enforceable right in the identity of a human being, use by another, without permission, of some aspect of the plaintiff's identity in such a way that it is identifiable from the unauthorised use, and the likelihood that the defendant's use will cause economic injury to the value of that identity.

While it may be argued that the difference is trivial and that the end justified the means, the inconsistencies in judgments make it difficult for a person claiming image rights to know the particular elements necessary to prove their case. Therefore, while common law has done a commendable job in protecting image rights thus far, it cannot remain the primary source of law in this regard but must be supplemented by statutory law.

3.4 Protection Under The Right to Privacy

It has been widely accepted within Ugandan jurisprudence that image rights possess a dual nature which encompasses both the right to publicity and right to privacy. It has been highlighted that although Uganda's laws do not expressly provide for image rights, they are recognised under the right to privacy.[88] In the case of Nalubega Shadia v Stabex, the court held that by using the plaintiff's photographs to advertise their products when the customer was no longer an employee, the defendant had committed a breach of privacy that also doubled as a breach of personality rights.[89]

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[87] Armstrong (n 27)
[88] n 79
[89] 'Nalubega Shadia vs Stabex International Ltd (Civil Suit No. 665 of 2021)'

Further still, the case of Proline v MTN held that image rights consist of two types of rights: the right to privacy and the right to publicity. The right to privacy protects an individual's personal information and autonomy from scrutiny or interference without legal justification. In spite of this, the protection under the right to privacy is not sufficient to protect image rights.

This is because an Intellectual Property right cannot be efficiently protected by a non- intellectual property framework. Bainbridge clearly states that Intellectual Property rights are concerned with the protection of creative effort or commercial reputation and goodwill from unauthorised exploitation.[90] Intellectual property rights, including image rights, are commercial and proprietary whereas the right to privacy is inherent and personal. A privacy rationale is also inconsistent with the idea that an individual's right of publicity can be assigned like any other form of property.[91]Therefore, a sui generis law that focuses solely on the commercial protection of one's image and likeness is necessary.

3.5 TOWARDS A SUI GENERIS LAW: KEY CONSIDERATIONS

As discussed above, Uganda's current legal framework is beset by limitations that need to be addressed for the effective protection of image rights. There is a consensus that new conditions in society justify developments in the law[92], and the preceding chapters point to a need for reform in Uganda's legal framework in order to effectively address the unique challenges that arise from the intersection of image rights, social media and Generative AI.[93]

Legal protection of the proprietary nature associated with one's name, image or likeness is state-based which means that every state can determine the parameters of image rights based on common or statutory law.[94] Having illustrated that in Uganda's case, sui generis law is the best way forward, the following section shall address some foundational aspects to be taken into account when drafting this law.

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[90] n 1
[91] Stacey L Dogan and Mark A Lemley, 'What the Right of Publicity Can Learn from Trademark Law', vol 58 (2006).
[92] Armstrong (n 27)
[93] 'Re-Considering the Right of Publicity in the World of Generative AI | Baker Donelson' https://www.bakerdonelson.com/re-considering-the-right-of-publicity-in-the-world-of-generative-ai
[94] 'Social Media and the Right of Publicity: What Advertisers Need to Know - WTR' https://www.worldtrademarkreview.com/article/social-media-and-the-right-of-publicity-what-advertisers-need-know

Terminology and Definition. As previously stated, the terminology for image rights varies depending on the jurisdiction. This research recommends that future legislation should clearly provide for the definition and scope of image rights law. While Uganda terms these rights as 'image rights,' consideration should be given to the term 'right to publicity.' The rationale for this is that it will enable Uganda to contribute to global uniformity to these rights, as the suggested term is more common among jurisdictions with codified law. For a comprehensive definition that avoids ambiguity, the image right legislation by the Bailiwick of Guernsey[95] can be referred to.

Moral and Economic rights. Image rights, based on the theoretical frameworks of my study mentioned in chapter one, exhibit a dual character. On one hand, there is the right to one's image that cannot be assigned, which is related to, but not synonymous with the right to privacy. On the other hand, one's likeness is a commodity that can be assigned and transferred to another, for example where players sign their image rights over to their football clubs. In the event that legislation is drafted, this study recommends that this distinction be categorised into moral and economic rights, borrowing from Sections 8 and 9 of Uganda's Copyright and Neighboring Rights Act.

Limitations and Exceptions. Limitations like whether infringement of image rights is a single or continuous act[96] and whether image rights terminate upon death should be considered for comprehensive legislation. Furthermore, exceptions to this right must be included.

3.6 CONCLUSION

This chapter has highlighted the limitations of Uganda's current legal framework and how the challenges caused by the absence of specific image rights legislation lie in the misalignment between the existing legal doctrines and the contextual realities of image rights. Such reliance often results in inconsistent application and insufficient protection of these rights. To address these gaps, it is imperative that Uganda develops its own sui generis legislation, tailored to its social and technological landscape. Doing so would ensure more effective, relevant, and enforceable legal protections in the digital era.

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[95] 'What Are Image Rights - Intellectual Property Office' https://ipo.guernseyregistry.com/article/103037/What-are-Image-Rights

[96] n 93

CHAPTER FOUR: SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

4.1 INTRODUCTION

This chapter provides a summary of findings to assess whether the objectives of this dissertation have been fulfilled, as well as recommendations based on these findings and the general study before moving on to the conclusion.

4.2 SUMMARY OF FINDINGS

This dissertation set out to justify the need for sui generis protection of image rights in Uganda amidst the rise of social media and AI through three main objectives:

1) To assess the implications of social media and Generative AI on image rights in Uganda.
2) To explore the limitations of Uganda's current legal frameworks for the protection of image rights.
3) To identify key considerations for the creation of sui generis protection of image rights in Uganda.

With regard to the first objective, findings established that social media has widened the scope of image rights by promoting influencer culture and elevating the commercial value associated with the ordinary man in Uganda. It was also observed that the exploitation of image rights through social media was exacerbated with the coming generative of Generative AI, thus making it imperative to create robust laws for the protection of image rights.

In relation to the second objective, this study found that the current legal framework is not comprehensive enough to address the challenges highlighted by the first objective. With its reliance on common law and related laws like privacy, the Ugandan legal framework was found to be lacking in terms of image rights protections.

Finally, the key considerations that were discovered in line with the third objective were three. They were; terminology and definition, moral and economic rights and limitations and exceptions.

4.3 RECOMMENDATIONS

This research proposes the following recommendations to the following stakeholders:

Lawmakers should consider enacting sui generis legislation that is practical and effective when it comes to protecting the image rights of Ugandan citizens. It is imperative that this is done as soon as possible, given the upward trajectory that Uganda's creative industry is on as well as the exponential development of capabilities of Generative AI.

Judges are encouraged to promote consistency and uniformity in the interpretation and application of image rights principles to ensure a harmonised judicial approach which will help minimise conflicting decisions and enhance legal predictability in such matters.

Lastly, users of social media platforms should exercise greater caution and awareness regarding the terms and conditions they accept. Particular attention should be paid to clauses concerning data use, third-party sharing, and consent, as these allow social media platforms to exploit their data for commercial gain without their knowledge.

4.4 CONCLUSION

As demonstrated by the summary of findings, the objectives that this dissertation set out to achieve, both specific and general, were achieved. Through a comparative analysis of Ugandan jurisprudence, international case law, and academic perspectives, it has become evident that Uganda's current legal framework lacks a coherent and codified system for protecting image rights. Scholarly writings and the evolving digital outcomes of social media and Generative AI demonstrate the urgent need for legislative reform, hence the proposal that Uganda adopt a structured approach similar to jurisdictions where these rights are clearly defined and enforced. The integration of image rights into a formal statutory framework would not only strengthen legal protection for public figures and private individuals but also align the country's IP regime with global best practices.

While this study faced a constraint of limited scholarly references as well as precedents from the Ugandan jurisprudence, this conclusion still emphasises an optimistic approach to image rights protection in Uganda. Through tireless legal scholarship, advocacy and international collaboration,

Uganda can develop a comprehensive and robust framework for the protection of image rights of Ugandans, celebrity and non-celebrity alike.

BIBLIOGRAPHY

BOOKS

Bainbridge D (2012), *Intellectual Property*, 9th ed, Pearson

Musiol M (2024), *Generative AI*, John Wiley & Sons, New Jersey

World Intellectual Property Organization (WIPO) (2008). *WIPO Intellectual Property Handbook*

JOURNAL ARTICLES

Armstrong GM, *'The Reification of Celebrity: Persona as Property'* (1991) 51 Louisiana Law Review.

B. St. Michael Hylton and Peter Goldson, *'The New Tort of Appropriation of Personality: Protecting Bob Marley's Face'* (1996) The Cambridge Law Journal

Cockfield A and Pridmore J, *'A Synthetic Theory of Law and Technology'* (2008) 8 Minnesota Journal of Law, Science & Technology

Dogan SL and Lemley MA, *'What the Right of Publicity Can Learn from Trademark Law'* (2006) 58 Stanford Law Review.

Ismaila Adebowale H and others, *'Intellectual Property Law and Artificial Intelligence in Uganda: Trending Issues and Future Prospects'* (2024) 6 Kampala International University Law Journal 224

Jennings JS, *'Right of Publicity Law Meets Social Media'* (2012) American Bar Association, Section of Intellectual Property Law.

Kress Weisbord R, '*A Copyright Right of Publicity'* (2016) 84 Fordham Law Review

McCarthy JT and Anderson PM, *'Protection of the Athlete's Identity: The Right of Publicity, Endorsements and Domain Names' (2001)* 11 Marquette Sports Law Review

Nimmer MB, Brandeis L and Warren S, *'The Right of Publicity'* (1954) Duke University School of Law

Raman Mittal, *'Licensing One's Persona: Analysing the Practice of Personality Merchandising'* (2010), Journal of the Indian Law Institute

Roscoe, *'Interests of Personality'* (1915) 28 Harvard Law Review.

Splagounias T, *'Rethinking the Right of Publicity in the Era of Generative AI'* (2024) 65 Crowell Insight.

Synodinou T, *'Image Right and Copyright Law in Europe: Divergences and Convergences'* (2014) 3 Laws 181.

CONFERENCE PAPERS

Bakibinga J., *Intellectual Property Rights in Uganda: Reform and Institutional Management Policy Formulation*, Paper delivered at International Seminar on Intellectual property and Innovation: Value Creation in the Knowledge Economy held in Islamabad, Pakistan, 12-14 December 2006

Bakibinga J., *Recent Developments in Intellectual Property Law in Uganda*, Paper delivered at the 4th Global Congress on Intellectual Property and Public Interest, New Delhi, India, December 2015

POLICY PAPERS

Ministry of Justice and Constitutional Affairs, (2019), *National Intellectual Property Policy*

Phumzile V., Finlay K. Aidu C., (2024) *Generative AI and its Influence on South Africa's 2024 Elections*, Freidrich Naumann Foundation for Freedom

RESEARCH PAPERS

Christopher M, *'Intellectual Property Law in Uganda: The Need to Codify Image Rights Law Protection'* (2019).

Nakitende A, *'A Critical Analysis of Intellectual Property Rights in the Entertainment Industry in Uganda'* (2024)

Viraj T, *'Redefining Personality Rights in the Digital Age'* (2025)

Wafula N, *Social Media and Its Effects on Personality Rights: The Case for a Defined Legal Framework on Personality Rights in Kenya* (2018)

CASES

Asege Winnie v Opportunity Bank (U) Ltd & Anor (High Court Civil Suit No 756 of 2013) [2016] UGCommC 39 (2 May 2016).

AL Hajj Nasser Ntege Sebagala v MTN Uganda Ltd and SMS Media Ltd (High Court Civil Suit No. 283 of 2012)

Angel Fraley, et al. v. Facebook, Inc. and Does 1-100, No. 11-CV-01726 (N.D. Cal., filed Apr. 4, 2011)

Kiggundu aka Bruno K v Black Market Records Entertainment - SMC Ltd & 3 Others (Civil Suit 1025 of 2022) [2025] UGCommC 42 (1 April 2025).

Midler v Ford Motor Co., 849 F.2d 460 (9th Cir. 1988)

Nalubega Shadia v Stabex (Civil Suit No. 665 of 2021)

Proline Soccer Academy Ltd v MTN Uganda Ltd, M/s CQ Saathi & Saathi & FUFA (U) Ltd (Civil Suit 317 of 2011) [2024] UGCommC 13 (2 February 2024).

Uhlaender v Henricksen, 316 F. Supp. 1277 (D. Minn. 1970)

Onang Christopher & Ors v Roofings Ltd & Anor (High Court Civil Suit No. 139 of 2018)

REPORTS

Bracket Foundation and UNICRI Centre for AI and Robotics (2024), '*Generative AI: A New Threat for Online Child Sexual Exploitation and Abuse.'*

JEPA Africa (2025), '*An Analysis of Uganda's Entertainment Economy Across its Nightlife, Festivals and Weddings'.*

KTA Advocates (2018), *'Intellectual Property & Technology Opportunities in East Africa.'*

ONLINE SOURCES

12 Best Celebrity Endorsements of 2024 | GRIN' https://grin.co/blog/best-celebrity-endorsements/

Are Social Media Influencers the New Celebrities in Uganda? - Charmar' https://charmarnews.com/are-social-media-influencers-the-new-celebrities-in-uganda/

Artificial Intelligence (AI) and Sui Generis Protection for Image Rights https://www.alliottglobal.com/insights/artificial-intelligence-ai-and-sui-generis-protection-for-image-rights/

Billion-Dollar Athlete Endorsements: 10 Highest-Paid Sports Deals Ever | Brand Vision https://www.brandvm.com/post/biggest-athlete-endorsement-deals

Data Transformation: Clean, Enrich, and Transform | Decube https://www.decube.io/post/data-transformation-process

"Gifting" Feature on TikTok — Manipulation of Well-Intended Features Enables Abuse | by Cornell Social Media Lab | Social Media Stories | Medium' https://medium.com/social-media-stories/gifting-feature-on-tiktok-manipulation-of-well-intended-features-enables-abuse-ec9ebbc594f3

Historic Breakthrough: Uganda Cubs Qualify for First-Ever FIFA World Cup – FUFA https://www.fufa.co.ug/historic-breakthrough-uganda-cubs-qualify-for-first-ever-fifa-world-cup/

Identifying and Eliminating CSAM in Generative ML Training Data and Models | Stanford Digital Repository https://purl.stanford.edu/kh752sm9123

Image Rights Must Be Respected by Those That Take Commercial Benefit of Other People's Brands | Monitor https://www.monitor.co.ug/uganda/oped/commentary/image-rights-must-be-respected-by-those-that-take-commercial-benefit-of-other-people-s-brands-4517408

Image Rights and their Importance in Uganda's Legal Framework - KTA Advocates https://www.ktaadvocates.com/image-rights-their-importance-in-ugandas-legal-framework/

Impact of Sponsorship and Endorsements in Sport Management - Lindenwood University Online' https://online.lindenwood.edu/blog/impact-of-sponsorship-and-endorsements-in-sport-management/

Is Uganda's Gen(Z) Safe on Social Media? – Economic Policy Research Centre' https://eprcug.org/blog/is-ugandas-genz-safe-on-social-media/

Legal Protections for Image Rights in Kenya - CIPIT https://cipit.strathmore.edu/legal-protections-for-image-rights-in-kenya/#sdfootnote2sym

Makanika Uncle Mo Is Shy Off-Camera - The Observer' https://observer.ug/lifestyle-entertainment/makanika-uncle-mo-is-shy-off-camera/

Measuring the Child-Porn Trade - WSJ https://www.wsj.com/articles/SB114485422875624000

Re-Considering the Right of Publicity in the World of Generative AI | Baker Donelson' https://www.bakerdonelson.com/re-considering-the-right-of-publicity-in-the-world-of-generative-ai

Social Media and the Right of Publicity: What Advertisers Need to Know – WTR https://www.worldtrademarkreview.com/article/social-media-and-the-right-of-publicity-what-advertisers-need-know

What Are Image Rights - Intellectual Property Office https://ipo.guernseyregistry.com/article/103037/What-are-Image-Rights