

THE CONCEPT OF PUBLIC DOMAIN IN INTELLECTUAL PROPERTY LAW IN NIGERIA

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Abstract

This paper critically examines the concept of the public domain in intellectual property (IP) law, with a focus on its essential role as a repository of knowledge and cultural heritage that is freely accessible to the public. Unlike intellectual property rights, which provide creators with exclusive control over their works, the public domain ensures that certain creations are available without restrictions, promoting creativity, innovation, and cultural enrichment. The aim of this paper is to analyse how the public domain functions within the broader framework of IP law and to assess its impact on societal progress aimed at ensuring public access to knowledge and culture, while also examining the legal, social, and economic implications of the public domain. The paper will adopt a doctrinal research methodology, utilising primary sources such as statutes, case law, and international treaties, alongside secondary sources like academic literature, articles, and online resources. The findings suggest that while the public domain is crucial for innovation and societal advancement, current legal frameworks may limit

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its growth. The paper will recommend legislative reforms to enhance the accessibility of the public domain, ensuring a more equitable balance between IP protection and public interest. The conclusion underscores the need for continuous review of IP laws to safeguard the public domain as a vital resource for future generations.

Keyword: Intellectual Property, The Public Domain, Exclusive Rights, Innovation, Repository of Works

1.0 Introduction

The public domain in intellectual property (IP) law refers to works or information not protected by copyright, patent or trademark laws, it plays a fundamental role in intellectual property (IP) law, serving as a critical space where knowledge, culture, and creative works are freely accessible to the public. It contrasts with protected IP, where creators and owners are granted exclusive rights for a limited period to control the use and dissemination of their work.¹

Intellectual Property Rights (are not natural rights) and therefore, do not endure in perpetuity. They have different terms or periods for subsisting and this includes all the forms of intellectual property rights secured or granted under the law. It is 50 to 70 years in the case of copyrights, and 20 years renewable upon the payment of prescribed fees in the case of inventions - patents and designs.² Once these rights expire, or if the work is not eligible for protection, it enters the public domain, becoming available for unrestricted use by anyone. This accessibility is essential for

¹ Section 2(1)(a) Copyright expires 70 years after the author's death;

² See Angya, 'A Basic introduction to Intellectual Property Rights' BHULJ Vol. 1 No. 1 August 2023, P. 70

fostering innovation, promoting cultural development, and ensuring that society as a whole benefit from intellectual advancements.

The public domain is a cornerstone of intellectual property law, and its importance has been underscored in numerous legal decisions and academic analyses. In *Feist Publications, Inc. v Rural Telephone Service Co.*,³ the U.S. Supreme Court held that facts and raw data are part of the public domain and cannot be copyrighted, emphasizing the distinction between protected works and freely available knowledge. Similarly, in the case of *Nigerian Copyright Commission v Hotel Presidential*⁴, the Nigerian Supreme Court held that ‘Copyright protection does not extend to ideas but only to expressions. Once copyright expires, works enter the public domain’. and thus, become available for public use without legal restrictions. The case of *Donaldson v Beckett*⁵ is also relevant. Additionally, both the Berne Convention for the Protection of Literary and Artistic Works of 1886⁶, and the World Intellectual Property Organization (WIPO) Copyright Treaty 1996⁷, establish copyright duration under Article 7, and Article 4 respectively, whilst the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) 1994⁸, sets minimum copyright protection standards in Article 12.

³ 499 U.S. 340 (1991)

⁴ (2006) 12 NWLR (Pt. 993) 133 at 143, para. B-C

⁵(1774) 2 Brown's Parl. Cas. 129 the House of Lords concluded that copyright is not perpetual but has a fixed term and once that term expires, the work falls into the public domain

⁶ [https://www.wipo.int/treaties/en/Berne Convention for the Protection of Literary and Artistic Works of 1886](https://www.wipo.int/treaties/en/Berne_Convention_for_the_Protection_of_Literary_and_Artistic_Works_of_1886) accessed 27 October, 2024

⁷ Ibid

⁸ https://en.wikipedia.org/wiki/TRIPS_Agreement Accessed 27 October, 2024

The concept of the public domain is crucial in balancing the rights of creators with the public's interest. Legal scholars such as James Boyle have argued that the public domain is a critical "common" that encourages innovation by providing a pool of resources from which new creations can emerge.⁹ This balance is particularly significant in the context of evolving digital environments, where the boundaries of the public domain and protected works are constantly shifting. As noted by Lessig, the public domain ensures that the building blocks of culture and knowledge are not locked away, preventing new creativity from being stifled.¹⁰

The objective of this paper is to critically examine the concept of the public domain in IP law from the Nigerian perspective. It will explore how works enter the public domain, the significance of this space for societal advancement, and the legal frameworks that govern it. By analysing key case law, including decisions from Nigeria, and similar jurisdictions, the paper seeks to highlight the importance of the public domain as a repository of shared knowledge. It will also address how IP laws, in their effort to protect creators, must also ensure that the public domain remains robust and accessible, as limitations on access can hinder progress.

2.0 Definitions:

Some terms, terminologies and concepts are key to the understanding of this subject and will be defined in this paragraph:

- i. Intellectual Property

⁹ Boyle, *The Public Domain: Enclosing the Commons of the Mind*, (2008). Yale University Press

¹⁰ Lawrence Lessig, *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity* (2004) Penguin Press Chapter 4, "Creators"

As stated in ‘A Basic introduction to Intellectual Property Rights’, Intellectual property is found in almost all creative thought, process and creations of the human being. When this is reduced into material form, it possesses potential for economic exploitation and therefore the need for some form of legal protection. It plays a pivotal role not only in the arts, sciences and modern technology, but also, impacts economic development and globalisation¹¹

A simplified definition of IPR is offered by Poonam Nahar¹² in the following words:

You wake up from your ‘Sleepwell’ mattress, brush your teeth using ‘Sensodyne’ toothpaste, you bath under ‘Jaquar’ shower with a ‘Lux’ soap and ‘Lakme’ face wash then wear ‘Zara’ clothes, eat ‘Red Banana’ fruit in breakfast while reading ‘The Hindu’ newspaper and finally drive a ‘Kia’ car to your office.---this sounds crazy right but this is IP, where there’s not even a single moment you are not using anything or any brand products. The products that you use have Intellectual Property in them. From the mattress you sleep on to the car you drive everything has Intellectual Property in it. Now, you might be wondering what IP is.

IPR is therefore, the sum of the rights that the state grants to human creations, either artistic or industrial, as well as the recognition of the holder’s authorship and of his exclusive right to obtain economic benefit

¹¹ Ibid (n.2)

¹² Ibid P.72

from those rights¹³ It is the exclusive rights granted by the State over creations of the human mind, in particular, inventions, literary and artistic works, distinctive signs and designs used in commerce. The laws regulating intellectual property ensure the rights,¹⁴ and enables the owners or authorised persons to appropriate to themselves the economic value, and proprietary rights of the asset and at the same time, the freedom to alienate the same. It ensures recognition and credit as the creator of such things as an invention; literary and artistic works; designs and software.

From the above definitions, with particular regard to the law in Nigeria, we can observe that Intellectual Property is the genre term from which two (2) classes of intellectual property right merge, namely: copyright and industrial property.¹⁵ These rights grant creators exclusive control over the use and dissemination of their works for a limited time. See *Sony Corp. of America v Universal City Studios, Inc.*,¹⁶ where the U.S. Supreme Court highlighted the balance between protecting creators' exclusive rights and ensuring that IP law does not overly stifle innovation by locking away too much content from the public. Under Nigeria's Copyright Act, IP rights are given to creators for a certain period, after which the work may enter the public domain¹⁷.

ii. The Public Domain

¹³ Juan Carlos Ortiz Rico - Intellectual Property: Differences between Industrial Property and Copyright <<http://LawyerME/article/view/29/10/2019>> accessed 08 May 2023

¹⁴ <https://blueoceanglobaltech.com/> accessed on the 03 March 2025

¹⁵ Ibid (N.5)

¹⁶ 464 U.S. 417 (1984)

¹⁷ The Copyright Act No. 8 Of 2022. See particularly Sections 18 and 19 thereof.

The public domain is a very abstract idea shaped in a very concrete territorial metaphor. The “domain” evokes a particular place, clearly bordered, almost tangible. In most of the writings on the public domain, the metaphor is almost taken literally. the public domain is that territory where no intellectual property rights apply, a domain where anybody is free to enter and to help herself. More than a no-rights land, it is a wasteland, a fallow land.¹⁸ The resources for which legal rights to access and use for free (or for nominal sums) are held broadly.¹⁹ The public domain refers to creative works and knowledge that are not protected by intellectual property laws and are therefore freely accessible for public use without restrictions. These works may include expired patents, unprotected ideas, or works not eligible for copyright. In the case of *Feist Publications, Inc. v. Rural Telephone Service Co.*,²⁰ the U.S. Supreme Court ruled that information in the public domain cannot be copyrighted, affirming that facts themselves, as part of the public domain, are freely accessible. Also, in *Nigerian Copyright Commission v Hotel Presidential*²¹, the Supreme Court held that ‘Once copyright expires, works enter the public domain’. and thus, become available for public use without legal restrictions.

iii. Exclusive Rights:

Exclusive rights refer to the control that IP law grants to the creators or owners of intellectual property, allowing them to dictate how their work is

¹⁸ Séverine Dusollier, ‘The public domain in intellectual property: Beyond the metaphor of a domain’ in PL Jayanthi Reddy (ed.), *Intellectual Property and Public Domain*, Icfai University Press, Hyderabad, 2009, p. 31-69

¹⁹ Ibid

²⁰ Ibid (n.3)

²¹ Ibid (n. 4) Particularly at 143, para. B-C

used, distributed, and monetised. In *Eldred v. Ashcroft*,²² the U.S. Supreme Court upheld the Copyright Term Extension Act, which extended the duration of exclusive rights. However, the case also raised concerns about the prolonged restriction of works from entering the public domain. Also, in *Eko Hotels Limited v Boniface*,²³ the Nigerian Court of Appeal confirmed that IP holders possess the exclusive right to exploit their intellectual creations but that these rights are subject to limitations, particularly after the rights expire and the work enters the public domain.

iv. Innovation:

Innovation refers to the creation of new ideas, products, or methods, often encouraged by the legal protection of intellectual property. However, access to the public domain plays a key role in fostering further innovation, as individuals can build upon existing knowledge. In *Association for Molecular Pathology v Myriad Genetics, Inc.*²⁴, the U.S. Supreme Court ruled that naturally occurring DNA sequences are part of the public domain, underscoring the role of open-access information in scientific innovation. In Nigeria, the role of the public domain in fostering innovation is reflected in the Nigeria Intellectual Property Office Guidelines, which emphasize balancing protection for creators with the promotion of public access to knowledge for societal advancement.

3.0 Legal Framework

The legal framework governing the public domain is multi-layered, combining international treaties, national statutes, case law, and scholarly works. Nigeria's IP laws align with global standards like the Berne

²² 537 U.S. 186 (2003)

²³ Ibid

²⁴ 569 U.S. 576 (2013)

Convention and TRIPS Agreement while maintaining its unique legal structure through the Copyright Act of 2022, Patents and Designs Act, and Trademarks Act. These frameworks ensure that once intellectual property rights expire, works enter the public domain, fostering cultural and economic growth through free public access. Below is an itemized breakdown of the key legislations, statutes, and laws governing the public domain:

3.1 International Treaties:

1. Berne Convention for the Protection of Literary and Artistic Works (1886, as revised)²⁵, sets international standards for copyright protection and ensures that works originating in one of the contracting states are protected in all others. Key Provisions include:
 - a. Article 7 on Duration of Copyright. Copyright protection must last for at least 50 years after the author's death.
 - b. Article 2(6) allows member states to exclude certain works from protection or place them in the public domain
 - c. Article 18 specifically addresses retroactive application and when older works enter the public domain.
2. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1995) Provides minimum standards for IP regulation globally, including the protection and enforcement of copyrights, trademarks, patents, and other forms of IP referencing the Berne Convention and extending copyright duration to 70 years post-mortem in some jurisdictions. TRIPS also emphasize the balance between protection and public access, crucial for maintaining a robust public domain. Key Provisions include:

²⁵ Ibid (n.5-7)

- a. Article 9 which requires adherence to the Berne Convention's standards for copyright (except for moral rights).
 - b. Article 10 discusses the protection of computer programs and databases, and
 - c. Article 31 makes compulsory licensing for patents in certain conditions, which can also affect the scope of public domain access.
3. WIPO Copyright Treaty (1996) (WCT), This treaty reinforces copyright protections in the digital age, see articles 1, 4, 10, while still recognizing the importance of works entering the public domain after copyright expiration.

3.2 National Statutes in Nigeria

1. Copyright Act, 2022 is the primary legislation governing copyright protection in Nigeria. It repeals and replaces the Copyright Act, Cap C28, Laws of the Federation of Nigeria 2004. Key Provisions include:
 - a. Section 2 which establishes works eligible for copyright to include literary, artistic, musical, and cinematic works, as well as sound recordings and broadcasts.
 - b. Section 19 (1) a - e on Duration of Copyright provides that copyright lasts for the lifetime of the author and 70 years after their death for literary, musical, and artistic works, and for 50 years in respect to other categories of work and ownership.
 - c. Section 20 (1) & (2): Lists the exceptions and limitations to copyright in relation to protected works
2. Patents and Designs Act, Cap P2, Laws of the Federation of Nigeria 2004 governs the registration, protection, and enforcement of patents and industrial designs in Nigeria. Key Provisions:

- a. Section 1(1) defines and provides for patentability of inventions, emphasizing that an invention must be new and result from inventive activity.
 - b. Section 1 (4) (a) excludes certain categories of inventions such as plants or animal varieties or essentially, biological processes for the production of plants or animals (other than microbiological processes and their products) and section (1) (4) (b) excludes from patent protection inventions that would otherwise be contrary to public order or morality.
 - c. Section 7 provides for Duration and Lapse of Patent – Patents are protected for 20 years from the date of filing. It will lapse if the prescribed annual fees are not paid and that the expiration or lapse of a patent must be registered and notified. (this last bit is important for purposes of the public domain).
 - d. Section 11 on Compulsory licenses and official use, can also affect when a patented product enters the public domain.
3. The Trademarks Act, Cap T13, Laws of the Federation of Nigeria 2004 Regulates the registration, protection, and use of trademarks in Nigeria. Key Provisions include:
- a. Sections 9 - 16 provide for registrability and validity for registration, including grounds for refusal, such as lack of distinctiveness, and Section 14 provides that Trademarks are registered for an initial period of seven years and can be renewed indefinitely. (Upon failure to renew, the mark can fall into the public domain), and
 - b. Section 67 which is the interpretation section defines a trademark.
 - c. Section 31 (2) (b) addresses the removal of trademarks from the register if not used for a continuous period of five years, (at which point they can be considered as entering the public domain).

4.0 Rationalising the Public domain

As shown in paragraph 1.0, the concept of the public domain in intellectual property (IP) law is fundamental to balancing the interests of creators and the broader society. It represents a repository of works and knowledge that are free for public use, without restrictions imposed by IP rights. This section critically examines the public domain from both global and Nigerian perspectives, exploring how works enter the public domain, their significance for societal advancement, and the essential role of IP laws in maintaining a robust and accessible public domain.

4.1 How Works Enter the Public Domain

The process through which works enter the public domain vary across different forms of intellectual property Law:

i. Copyright Law

Under copyright law, a work enters the public domain when the statutory period of protection expires. However, a US court established the principle in the case of *Feist Publications, Inc. v Rural Telephone Service Co.*²⁶ that facts and ideas cannot be copyrighted, thus ensuring they remain in the public domain. The ruling emphasised that creativity stems from the public domain, where raw materials such as facts and data are freely available for building new knowledge. According to the Berne Convention for the Protection of Literary and Artistic Works, to which Nigeria is a signatory, the minimum term of protection is 50 years after the death of the author, see Article 7.²⁷ Many countries, including Nigeria, have extended this period. In Nigeria Copyright Provides for a duration of

²⁶ Ibid (n.3)

²⁷ See para 3.1 above

70 years after the author's death for literary, musical, and artistic works.²⁸ After this period, the work becomes part of the public domain, where it can be used without permission. In the case of *Eldred v Ashcroft*²⁹ the U.S. Supreme Court challenged the extension of copyright terms in the U.S. with regard to the Copyright Term Extension Act (CTEA), arguing that such extensions limited the public domain. The court upheld the CTEA but acknowledged that the public domain is essential for fostering creativity and innovation. The case highlighted the tension between extending IP protections and ensuring that a healthy body of public domain works is available for societal advancement. In Nigeria, the case of *Obi v Macaulay*³⁰ highlighted the expiration of copyright protection for unpublished works, stressing that failure to secure statutory protection could result in works entering the public domain, thus allowing unrestricted public use.

ii. Patents and Design Law

Under Patent Law in Nigeria, an invention typically enters the public domain once the patent expires. Under the Patents and Designs Act,³¹ the term of protection for a patent is 20 years from the date of filing.³² Once a patent expires, Section 9 of the Act clarifies that the rights conferred by the patent lapse, meaning that the patented invention becomes part of the public domain. This implies that anyone may use, produce, or modify the invention without obtaining the consent of the original patent holder. The rationale is that society benefits from further technological advancement

²⁸ See generally para 3.2 above and specifically, section 19 of the Copyrights Act 2022

²⁹ (2003) 537 U.S. 186

³⁰ (2009) 8 NWLR (Pt. 1142) 38

³¹ See para 3.2 (ii) above

³² See Patents and Designs Act, Cap P2 LFN (2004) Section 7

once exclusive rights are no longer in effect, thereby promoting innovation and development. According to Durojaye,³³ “The fundamental purpose of patent protection is to stimulate innovation by offering exclusive rights for a limited period. At the end of this term, the invention enters the public domain, where it becomes accessible to all and can serve as a basis for new technological developments.” This view aligns with the global understanding of patents under international treaties such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which Nigeria is a signatory to. Article 33 of TRIPS provides for a minimum 20-year term for patents, after which the invention must be free for public use. In *Obeya Memorial Hospital v. Attorney-General of the Federation*³⁴, the Supreme Court recognized the exclusive rights conferred by a patent but also underscored the fact that these rights are not perpetual. The Court noted that after the patent term expires, the invention can be utilized by the public without any restrictions from the former patent holder. Similarly, the Court of Appeal emphasized that patent protection is time-bound, after which the monopoly granted to the patent holder is lifted, and the invention enters the public domain.³⁵ This decision underscores the principle that the public gains free access to formerly patented inventions to promote innovation and competition. The global intellectual property regime, particularly under the Paris Convention and TRIPS, provides a structure whereby patented inventions are protected for a specified period and are then released into the public domain. As seen in Obeya’s case, Nigerian courts have repeatedly interpreted the Patents and Designs Act in line with these international

³³ Durojaye, A O. The Fundamental Purpose of Patent Protection: A Critical Analysis (2015) Nigerian Law Quarterly (NLQ). Vol. 25 Iss. 1. Pp. 1–20.

³⁴ (1987) 3 NWLR (Pt. 60) 325

³⁵ See *Unilever Plc v Jever International Ltd* [(2007) LPELR-3397

norms, reinforcing the idea that public domain entry upon patent expiration is a key tenet of the system.³⁶

iii. Trademarks Law

Under the Trademarks Law, Trademarks may enter the public domain if they are not renewed or if they lose distinctiveness. According to the Trademarks Act,³⁷ trademarks must be renewed every seven years.³⁸ Failure to renew, or if a mark is not used for a continuous period of five years, can result in the mark becoming available to the public.³⁹ In Nigeria, the case of *Akalonu v Omokaro*⁴⁰ is instructive as it touched on the principles of trademark distinctiveness and loss of protection. It illustrates that when a trademark loses distinctiveness or is not renewed, it may enter the public domain, where the public can freely use it. Failure to renew a trademark may also lead to their potential entry into the public domain.⁴¹ The case of *Ferodo Ltd v Ibeto Industries Ltd*⁴² is also instructive.

4.2 Other Ways by Which Works Can Enter the Public Domain:

i. Works Published Before January 1, 1923

In the U.S., works published before January 1, 1923, have already entered the public domain, as per the Sonny Bono Copyright Term Extension Act of 1998. Similarly, the works of William Shakespeare, Homer, Ernest Hemingway, and George Bernard Shaw have entered the public domain

³⁶ See para 3.1 (I), (ii) & (iii) above

³⁷ Cap T13, LFN 2004; See also para 3.2 (iii) above

³⁸ *Ibid* s 14.

³⁹ *Ibid* (n.28) s 31 (2) (b)

⁴⁰ (2012)5 NWLR (Pt. 1294) 557

⁴¹ See *Ferodo Ltd v Ibeto Industries Ltd* (2004) 5 NWLR (Pt. 866) 317

⁴² (2004) 5 NWLR (Pt. 866) 317

due to the expiration of copyright. For example, Shakespeare's plays are no longer under copyright, allowing them to be freely adapted and reproduced. Famous songs such as "Joy to the World" by Isaac Watts (published in 1719) and "Silent Night" by Joseph Mohr (composed in 1818) are also public domain works as their copyright terms have long expired. According to David Lange and H. Jefferson Powell⁴³ "The public domain serves as the repository for expired intellectual property rights...which allows for cultural heritage to be reused, modified, and reshaped over time." This applies to works that have exceeded their copyright duration. The case of *Registered Trustees of the Methodist Church v Adeniyi* is relevant in this regard. This case involved copyright and moral rights, with discussions on when a work ceases to enjoy copyright protection and enters the public domain, particularly if it was published before certain formalities were completed.⁴⁴

ii. Deliberate Dedication of Works to the Public Domain:

Authors or creators can deliberately dedicate their works to the public domain by relinquishing their copyright. This can be done through instruments like Creative Commons licenses or outright declarations. This voluntary dedication is common when creators wish for their work to be freely accessible by the public. Creative Commons Zero (CC0) License allows creators to waive all copyright and related rights to a work, placing it into the public domain.⁴⁵

⁴³ Lange, D. and Powell, H. J., *No Law: Intellectual Property in the Image of an Absolute First Amendment*, (2009) Stanford University Press,

⁴⁴ (2017)10 NWLR (Pt. 1574) 379.

⁴⁵ <https://creativecommons.org/share-your-work/public-domain/cc0/>, explains how authors can voluntarily dedicate their work to the public domain. Accessed 27 October 24

iii. Government Works

In the U.S., government works are automatically placed in the public domain. Under 17 U.S.C. § 105, works produced by the U.S. government are not protected by copyright. This includes works funded by public money, as the policy is that the public should have access to works created by its government. Paul Goldstein explains that, "Works created by U.S. government employees as part of their official duties are automatically in the public domain."⁴⁶ In contrast, copyright subsists in government works in Nigeria under section 7 of the Copyrights Act which provides that, 'Copyright shall be conferred by this section on a work that is eligible and is made by or under the direction or control of a government, an agency of government or a prescribed international body'. However, this author believes that the position in the US is more accommodating of the objectives of the public domain in intellectual property law.

iv. Anonymous Works

Works with unknown or anonymous authorship may enter the public domain if the author cannot be identified after a specified period. For instance, the epic poem *Beowulf* falls into this category. Since the author of *Beowulf* is unknown and the work dates back to the 8th century, it is considered part of the public domain. Nimmer on Copyright states that, "Anonymous works where the author cannot be identified within a reasonable period may enter the public domain after a time, particularly when they predate copyright laws."⁴⁷ For Nigeria, Section 1(2) of the Copyrights Act provides that, 'Copyright in anonymous or

⁴⁶ Goldstein, Paul, *Goldstein on Copyright* (Aspen Law & Business, 2019) Vol. 1, Section 2.5.2

⁴⁷ David Nimmer, *Copyright* (Matthew Bender & Co., (2020) Vol. 3, Section 6.05.

pseudonymous literary, musical or artistic works shall subsist until 70 years after the year in which the work was first made available to the public with the consent of the author or 70 years after the work was created, if not made available to the public within that time, provided that when the author becomes known, the duration of copyright shall be in accordance with the provisions of subsection (1)

v. Judicial Veto Power and Public Domain

Judicial rulings can sometimes force a work into the public domain. A good example is the David Slater “Monkey Selfie” case in which the U.S. courts ruled that a monkey which had taken a selfie using a photographer's camera could not own the copyright to the photo, and thus, the work fell into the public domain,⁴⁸ and a certain percentage of the proceeds from the photograph would be used for the benefit of wildlife catering.

5.0 The Importance of the Public Domain for Societal Advancement

The public domain plays a crucial role in societal development, serving as a foundation for creativity, innovation, and knowledge sharing. Key reasons for its significance include:

i. Fostering Innovation:

The public domain provides raw materials—such as facts, ideas, and expired patents—that innovators can build upon to create new technologies, artistic works, and solutions to societal problems. As was stated in the U.S. Supreme Court case of *Feist Publications*⁴⁹, the public

⁴⁸ See *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018) The court ruled that copyright cannot be granted to animals, leading to the photograph entering the public domain.

⁴⁹ *Ibid* (n.25)

domain is "a wellspring of creativity" because it provides the building blocks for future innovations.

ii. Cultural Preservation:

Works in the public domain, particularly literary and artistic creations, form part of a shared cultural heritage. They allow scholars, educators, and the public to access, preserve, and disseminate knowledge without restrictions. In Nigeria, the protection of cultural expressions and heritage is increasingly recognized, and the public domain helps safeguard traditional knowledge. Public domain works contribute to cultural heritage⁵⁰

iii. Access to Knowledge:

The public domain ensures that information and knowledge are not monopolised indefinitely. This principle is especially important in areas such as science, education, and technology, where access to information is critical for progress. By allowing access to once-protected works, the public domain supports the broader societal interest in knowledge dissemination, and promotes education and research.⁵¹

6.0 The Balance Between IP Protection and the Public Domain

While IP laws exist to protect creators and incentivise innovation, they must also ensure that the public domain remains robust and accessible. An overly restrictive IP regime can stifle creativity and limit access to knowledge, hindering societal progress. However, we need to understand that, the challenge of balancing the private interest of an intellectual property right owner with the public rights of disclosure forms the basis of laws regulating intellectual property protection. The argument against intellectual property right is that innovations are mostly a collective,

⁵⁰ See *Campbell v Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994)

⁵¹ *Eldred v. Ashcroft*, 537 U.S. 186 (2003).

cumulative, path dependent, social creation and therefore, no one person or firm should be able to monopolize them even for a limited period. See the case of *Ashby Donald v France*⁵² where the European Court of Human Rights recognised the conflict between IP rights and freedom of expression, a key aspect of public interest in accessing cultural and informational goods. That to enforce copyright laws and the like is to prevent people from making peaceful use of the information they possess. If you have acquired the information legitimately (say by buying a book), then on what grounds can you be prevented from using it, reproducing it, trading it? The opposing argument is that the benefits of innovation arrive sooner when patents encourage innovators and their investors to increase their commitment. Fisher, William W. has argued that, "The delicate balance between the rights of creators and the public's right to access innovation and knowledge is foundational to intellectual property law. The grant of monopoly should always be seen as a means, not an end."⁵³ The patent system is designed to promote innovation and at the same time offer a mechanism that would ensure that the fruits of such innovation are accessible to society. Some key considerations include:

6.1 Limitations on IP Rights

i. Duration of Protection: IP laws, such as the Copyright Act, and the Patents and Designs Act, impose limited durations on IP protection to ensure that works eventually enter the public domain. These limits strike a balance between providing creators with a financial incentive and ensuring that the public benefits from unrestricted access to knowledge

⁵² *Ashby Donald v France*, App. No. 36769/08, ECHR 2013

⁵³ Fisher, William W. 'Theories of Intellectual Property', (2001) Harvard Law School, p. 76

and innovation. See the case of *Eldred v Ashcroft*⁵⁴ where the U.S. Supreme Court though upheld the extension of copyright terms under the Copyright Term Extension Act of 1998, emphasised that these extensions are still finite and ultimately, works would enter the public domain. The case symbolises the continued tension between extended IP rights and the public domain. However, the author, Goldstein, Paul opined that "The limited duration of copyright protection is intended to ensure that the public domain is periodically enriched. The 'limited time' provision prevents perpetual monopolies, which would hinder the flow of knowledge and culture."⁵⁵

2. ii. Exceptions and Limitations: IP laws often include exceptions that allow for limited public use of protected works even before they enter the public domain. For example, Section 51 of the Copyright Act, 2022 provides for exceptions related to public interest, such as fair use for research, education, and criticism. This provision finds judicial approval in the UK case of *Hubbard v Vosper*⁵⁶ where the court set out important principles for fair use in relation to criticism and review, thus, balancing the right to use copyrighted works for public benefit while protecting the author's interests. The case of *Gyles v Wilcox*⁵⁷ is also relevant to the concept of "fair use" in English copyright law. In *British Leyland Motor Corp. v Armstrong Patents Co.*⁵⁸ the House of Lords ruled on the extent to which copyright can protect functional elements of a product, in this case, car parts. The decision helped to clarify the boundaries between copyright

⁵⁴ Ibid

⁵⁵ Goldstein, Paul. 'Copyright's Highway: From Gutenberg to the Celestial Jukebox,' (1994) Stanford University Press, p. 45.

⁵⁶ (1972) 2 Q.B. 84

⁵⁷ (1740) 26 ER 489

⁵⁸ (1986) AC 577

protection and the public domain, particularly in the context of industrial products. Gervais, Daniel has argued that, "The doctrine of fair use seeks to maintain a balance between protecting the proprietary rights of the creator and ensuring that their work is not fenced off entirely from societal benefits, especially in education and research."⁵⁹

6.2 Maintaining Accessibility

IP laws must ensure that once works enter the public domain, they remain freely accessible. This includes addressing concerns about "fencing off" the public domain through new technologies or restrictive licensing. For example, digital rights management (DRM) technologies should not prevent public access to works that are legally in the public domain. See the case of *Universal City Studios, Inc. v Reimerdes*⁶⁰ which dealt with DRM protections and access to works. This case highlights how technological measures like DRM can sometimes overreach by locking up works that may otherwise be freely accessible. Lessig, argues that "While technological protection measures are important for preventing infringement, they must not override the public domain. That allowing works to be effectively 're-enclosed' through such means undermines the intent of time-limited IP protection."⁶¹ He argues further, that the public domain is essential for "remix culture," where creators build on existing works to create something new, concluding that "a free culture is not a culture without property; it is not a culture in which artists don't get paid.

⁵⁹ Gervais, Daniel. 'The TRIPS Agreement: Drafting History and Analysis, (2003) Sweet & Maxwell', p. 242.

⁶⁰ 111 F.Supp.2d 294 (S.D.N.Y. 2000).

⁶¹ Lessig, Lawrence. 'Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity', (2004) ,Penguin Press, p. 201.

free culture supports and protects creators and innovators while limiting the ability of the most powerful to control creativity."⁶²

7.0 Findings, Recommendations, and Conclusion

7.1 Findings:

This paper finds that:

- i. The balance between intellectual property protection and maintaining the public domain remains a critical challenge in legal frameworks worldwide.
- ii. That the limitations on IP rights, like the duration of protection and exceptions such as fair use, ensure that the public domain continues to serve societal interests. However, the growing influence of digital rights management and restrictive licenses poses new challenges
- iii. That there's need for a robust public domain to foster creativity and innovation.

7.2 Recommendations

The paper therefore recommends that:

- i. Government must promote awareness to educate creators and the public about the importance of the public domain and how works enter it.
- ii. Government should encourage dedication by facilitating mechanisms for creators to voluntarily dedicate their works to the public domain.
- iii. There's a need to Monitor IP Extensions by scrutinising legislative efforts to extend IP protection terms, ensuring they do not unduly hinder the growth of the public domain.

⁶² Ibid

iv. Responsible authorities should enhance access by developing digital repositories and databases to make public domain works easily accessible to the public.

7.3 Conclusion

The paper concludes that the public domain is a vital component of the intellectual property system, acting as a repository of shared knowledge that fosters creativity, innovation, and cultural preservation. That globally and in Nigeria, IP frameworks recognize the importance of maintaining a balance between protecting creators and ensuring that the public domain remains accessible. While IP laws protect the interests of creators, they must also ensure that their limitations and exceptions promote a healthy public domain. This balance is critical for societal advancement, as it ensures that knowledge and creativity continue to flow freely, benefiting future generations. Through case law and legislation, Nigeria's IP system, in line with international standards, seeks to protect creators while allowing their works to eventually contribute to the public domain—a fundamental resource for progress and innovation.