



DUALE, OVIA &
ALEX-ADEDIPE

Copyright In Derivative Works

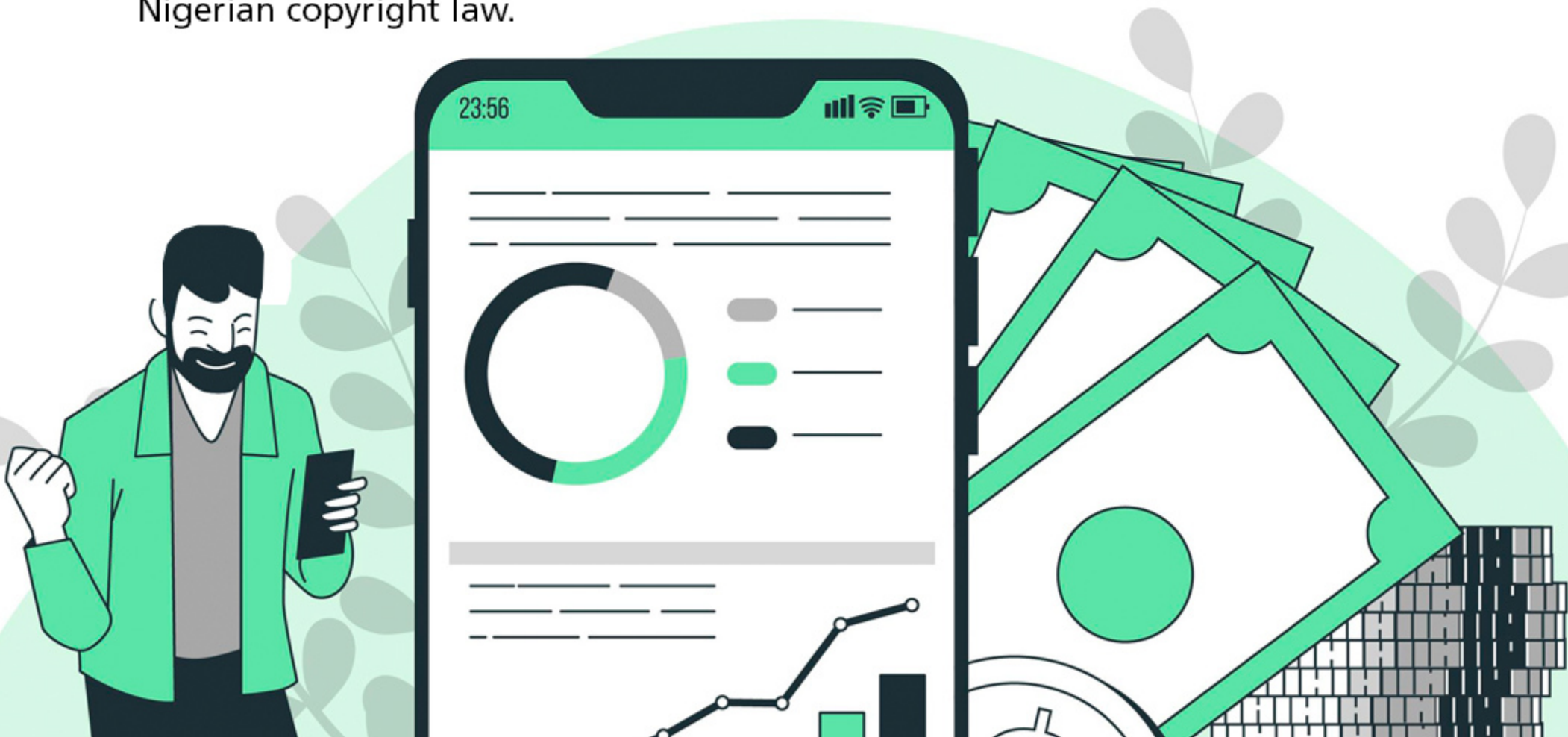


Introduction

As a creative, you are bound to draw creative inspiration from other works such as older films, past novels that you have read or folklore. All these older works are copyrighted works. However, with the right authorization, you may be able to produce a “derivative work” – i.e., a work based on the original work from which you drew inspiration.

Derivative works play a crucial role in the creative ecosystem. They serve as transformative adaptations or extensions of existing copyrighted work. From literary sequels and musical remixes to film adaptations and artistic interpretations, derivative works build upon the foundation laid by the original creators, offering fresh perspectives, interpretations, and creative insights to audiences.

In this edition of the IP Watch, we explore the concept of derivative works, the rights of creators, and the legal protections afforded to derivative works under Nigerian copyright law.



What are Derivative Works?

A derivative work is an expressive creation based on or adapted from existing copyrighted material (called the “underlying work”); the derivative work becomes a distinct and independent second work. Translations, cinematic adaptations, and musical arrangements are common types of derivative works.

Generally, derivative works can be any of the following:

- **Adaptations:** this entails converting an original work to a different format or media, such as a motion picture based on a play or novel. For example, the musical ‘West Side Story’ is a derivative work based on Shakespeare’s ‘Romeo and Juliet’; similarly, the ‘Romeo and Juliet’ by Shakespeare is a derivative work, drawing heavily from ‘Pyramus and Thisbe’.
- **Translations:** this entails the translation of an original work from one language to another. This usually pertains to literary works, e.g., the translation of a novel, play or poem written in English into another language.



- **Sequels and Prequels:** these are derivative works that carry on or broaden the plot, setting, cast or characters of an already published work.
- **Artistic Interpretation:** this entails derivative works created by artists by interpreting or reinventing already-existing pieces of art. A classic example is the L.H.O.O.Q. (also known as Mona Lisa With a Moustache), created by Marcel Duchamp as a derivative of the the Mona Lisa by adding, among other things, a moustache, goatee, and the phrase "L.H.O.O.Q."
- **Remixes and Mashups/Musical Re-arrangements:** remixes entail the changing or rearranging of a musical composition or recording existing pieces to produce a new version. Mashups, remixes, and medleys honour artistic collaboration, reinterpretation and originality. An example is the song 'Cold Heart (PNAU Remix)' by Elton John and Dua Lipa, which is a medley of four songs – 'Rocket Man', 'Kiss the Bride', 'Sacrifice', and 'Where's the Shoorah'.



Copyright Protection in Derivative Works

To be copyrightable, a derivative work must incorporate some or all of a preexisting copyrighted work and add new original copyrightable authorship to that work.

It is important to note that protection does not extend to any preexisting material, that is, previously published or previously registered works or works in the public domain or owned by a third party. As a result, it is not possible to extend the length of protection for a copyrighted work by creating a derivative work.

A work that has fallen into the public domain, that is, a work that is no longer protected by copyright, is also an underlying work from which derivative authorship may be added. However, the copyright in the derivative work will not extend to the public domain material, and the use of the public domain material in a derivative work will not prevent anyone else from using the same public domain work for another derivative work.

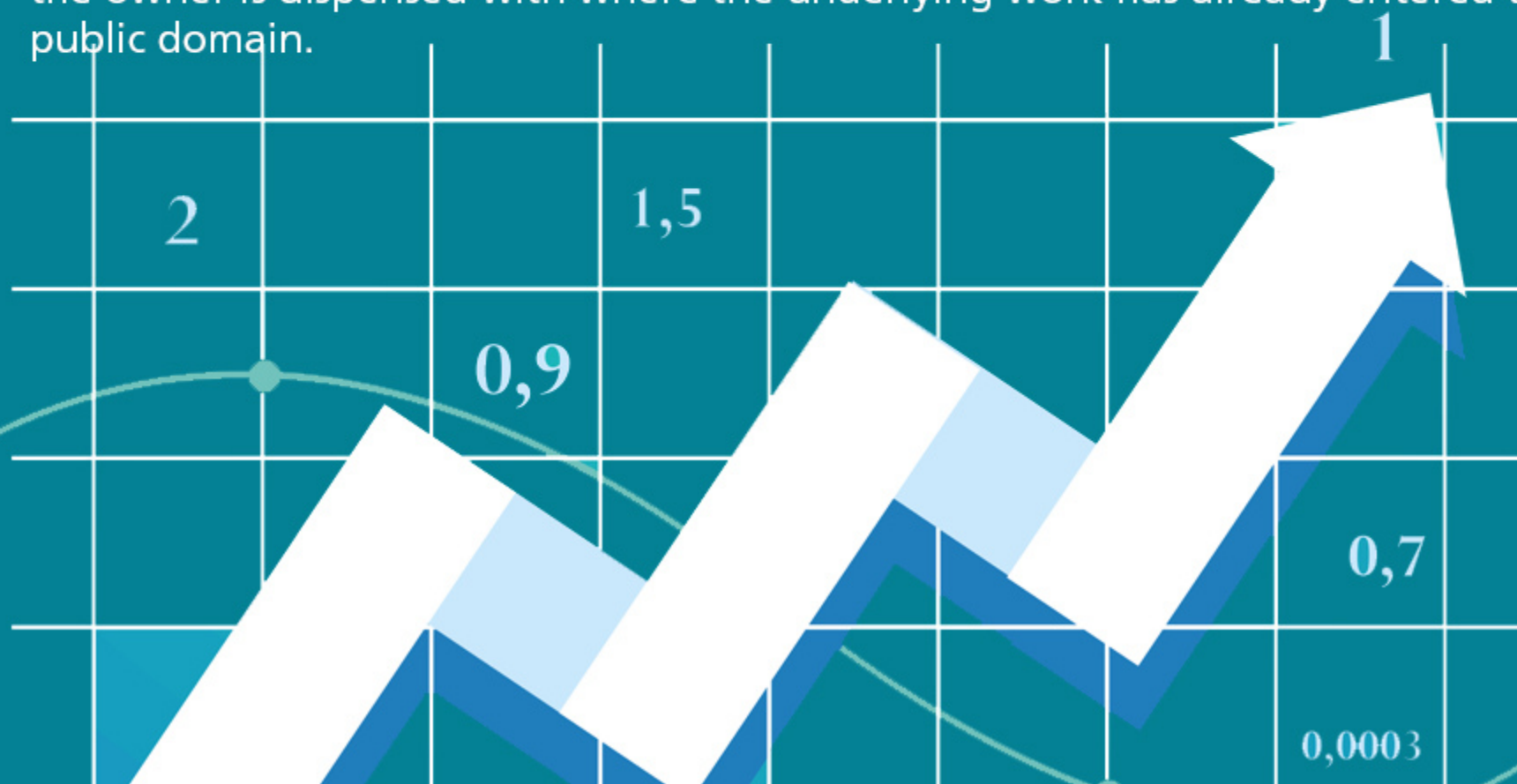
The right accruable to a derivative work is often referred to as the adaptation right.



Right to Create Derivative Works in Nigeria

A derivative work arises where there is some form of reproduction of an original work. According to section 9 of Nigerian Copyright Act 2022, only the owner of the copyright in a work has the right to create or authorize someone else to create an adaptation of that work. This includes the right to reproduce, perform, or publish any translation of the work.

The owner of a copyright is generally the author or someone who has obtained the exclusive rights from the author. Therefore, to create a derivative work, the original copyright owners must provide permission or grant the necessary copyright licenses. In any case, where a copyrighted work is used without the permission of the copyright owner, a derivative work is not created, as the original owner has right to the copyright in the infringing work. To effectively create a derivative work, creatives must enter into an agreement with the owner of the underlying work, by which the owner would grant to the creative the license to prepare a derivative work of the underlying work. The permission of the owner is dispensed with where the underlying work has already entered the public domain.



Exception to Copyright Infringement

If a work is held to be a fair use of the original, it is not infringing even if it is a derivative work. This applies where the copied material falls into the realm of fair use, such as criticism, comment, news reporting, research, etc. For example, parodies and satires make fun of or make a social commentary using parts of the original work. Parodies imitate the original work's characters or ideas to achieve a comical or satirical effect. Owing to their nature, satires and parodies are free speech-protected works that allow social and cultural commentary.

The examples of fair usage are as follows:

1. Fair dealing for research, private use, criticism, or reporting of current events.
2. Parodies or caricatures of the book
3. An inclusion of not more than two excerpts of the book, in a collection for educational purposes
4. Educational broadcast of the book
5. Use by the government in the public interest, provided no revenue is derived from the book
6. Use in a judicial proceeding or report of such proceeding.



Conclusion

Derivative works bridge tradition and innovation, honoring the past and paving the way for the future. Copyright law safeguards these transformative contributions, ensuring creators' protection. However, creators should obtain the requisite copyright licenses for adapting or sampling existing works, hereby maintaining a balance between innovation, and respecting intellectual property rights.

