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Research Article

Economic Globalization and Legal Sovereignty: Who Owns Copyright in Indonesia?

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Abstract: Economic globalization has increasingly shaped the field of intellectual property rights (IPR), transforming copyright protection from a domestic matter into a strategic tool of global trade. Through international instruments such as the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPs) and the Berne Convention of 1886, universal copyright standards are enforced across jurisdictions. Yet this harmonization generates tension between international obligations and national legal sovereignty. This article employs a juridical-normative method with doctrinal, case study, and comparative approaches to examine these dynamics. The case of *Auld Lang Syne* illustrates how public domain works evolve into shared cultural heritage, while the dispute of *Ahmad Dhani v. Once Mekel* reveals persistent enforcement challenges in Indonesia. Comparative analysis of the United States, United Kingdom, Japan, and Indonesia demonstrates divergences in copyright duration, derivative work protection, and exceptions such as parody. The article argues that Indonesia must ground its response to globalization of IPR in Pancasila and the 1945 Constitution, thereby ensuring that national copyright law is not merely a passive *rule taker* within the global system but an active framework that safeguards cultural identity and national interests.

Keywords: Copyright; Economic Globalization; Indonesia; Legal Sovereignty; Public Domain

1. Introduction

Cases of copyright infringement in music often trigger complex debates, especially when they involve works that have entered the public domain or are the subject of derivative adaptations. A well-known example is the song *"Auld Lang Syne"*, originally a Scottish folk tune later popularized with lyrics by Robert Burns (1788). Because the original copyright has long expired, the song is globally considered part of the public domain, meaning it can be freely copied, arranged, translated, or performed without permission. However, legal issues arise when adaptations or arrangements introduce new creative contributions that may themselves be protected as derivative works. This creates a legal tension: where does the public domain end, and where does new copyright begin?

Existing scholarship and practice have examined these issues from the perspective of international copyright law, particularly under the Berne Convention and the TRIPs Agreement. Comparative studies highlight different approaches: the United States recognizes "fair use," the United Kingdom applies "fair dealing," and Japan provides specific citation exceptions. In contrast, Indonesia relies on Law No. 28 of 2014 on Copyright, but faces persistent enforcement challenges, as illustrated in high-profile disputes such as *Ahmad Dhani v. Once Mekel*.

Despite a growing body of literature, limited research directly connects the broader forces of economic globalization—which drive harmonization of copyright regimes through TRIPs and WIPO—with Indonesia's national framework and constitutional values . This

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study seeks to fill that gap by analyzing how globalization affects copyright protection in Indonesia, particularly in cases involving public domain works and derivative adaptations.

The novelty of this article lies in framing copyright not merely as a technical legal issue, but as part of Indonesia's response to global economic pressures. It argues that while globalization can expand opportunities for creative industries, it must be filtered through Pancasila and the 1945 Constitution to safeguard national sovereignty and cultural identity. Thus, this research aims to provide both doctrinal analysis and policy recommendations for strengthening Indonesia's copyright regime in the era of economic globalization.

2. Literature Review

2.1. Globalization of Economy and Intellectual Property Rights in Literature

Scholarly works widely examine the relationship between economic globalization and Intellectual Property Rights (IPR) from both normative and economic perspectives . From a normative perspective, IPR has been justified as a *natural right* that recognizes the efforts and creativity of authors, granting exclusive rights as a form of justice and certainty . WIPO emphasizes that copyright and related rights constitute legal instruments to safeguard intellectual creations, thereby strengthening the normative basis for international harmonization . Furthermore, Ginsburg underlines that derivative works in U.S. law illustrate the complexity of distinguishing between public domain and newly protected works.

From the economic perspective, IPR protection is often regarded as a central driver of innovation and economic growth . Stronger IPR protection creates incentives for Research and Development (R&D) while ensuring returns on investment . In the globalized economy, IPR functions as a strategic *intangible asset* within the knowledge-based economy. Nevertheless, scholars recognize a trade-off: excessive protection can restrict public access to knowledge, medicines, and cultural works. Thus, the economic literature advocates for a balanced IPR regime that both stimulates innovation and ensures diffusion of knowledge.

The international legal framework reinforces these trends. The TRIPs Agreement under the WTO establishes minimum standards of protection and integrates IPR into the global trading system, linking enforcement to trade sanctions. Complementarily, WIPO plays a central role in facilitating cooperation through treaties such as the Berne Convention, the Paris Convention, and the WIPO Copyright Treaty (WCT) . Together, WTO and WIPO constitute a dual governance model: WTO ensures compliance via trade enforcement, while WIPO fosters harmonization and technical assistance . Despite this, critics argue that TRIPs often serve the interests of developed countries by limiting technology transfer and reinforcing global asymmetries . While numerous studies focus on the harmonization of IPR and its economic impacts, limited research explicitly examines how globalization of IPR challenges the sovereignty of national law, particularly in Indonesia . This gap becomes the entry point for this study.

2.2 National Responses and Challenges to Legal Sovereignty

Indonesia, as a member of the WTO, ratified the TRIPs Agreement through Law No. 7 of 1994, leading to significant reforms in its national IPR framework. Subsequently, Indonesia acceded to multiple WIPO-administered treaties in 1997, including the Berne and Paris Conventions, PCT, and WCT, signaling its commitment to international harmonization. These commitments triggered sweeping reforms such as the enactment of new laws on plant variety protection, trade secrets, industrial designs, and integrated circuit layout designs. The most recent Copyright Law (Law No. 28 of 2014) further adapts Indonesian legislation to address digital issues and global challenges.

Despite formal compliance, Indonesian scholars highlight persisting enforcement challenges. Rukmana notes that copyright dispute resolution remains weak and often ineffective , while Dharma and Mahadewi observes persistent gaps in protecting domestic creative industries despite alignment with international standards . The case of *Ahmad Dhani v. Once Mekel* illustrates practical challenges in copyright enforcement in the Indonesian music industry, where conflicts between creators and performers highlight limitations in law enforcement.

While previous literature has examined globalization and Indonesia's adaptation to TRIPs, few have contextualized this within the framework of legal sovereignty . This article argues that Indonesia must not only comply with global IPR regimes but also filter them through Pancasila and the 1945 Constitution, ensuring that globalization does not undermine cultural identity and national legal autonomy.

3. Research Method

Research Approach

This study applies a juridical-normative method with doctrinal and comparative approaches. The juridical-normative method is appropriate for analyzing legal norms, statutory texts, and international treaties as binding instruments in copyright regulation.

Statute Approach

Primary analysis focuses on the *Berne Convention of 1886* and national copyright laws, particularly Law No. 28 of 2014 on Copyright in Indonesia, alongside statutory regimes in the United States, the United Kingdom, and Japan. These legal documents provide the foundation for examining the normative structure of copyright, the protection of derivative works, and the scope of public domain.

Case Study and Jurisprudential Approach

A case study is conducted on *Ahmad Dhani v. Once Mekel* in Indonesia, which reveals challenges in copyright enforcement and the balance between creators' rights and performers' rights [**Error! Bookmark not defined.**]. Comparative jurisprudence is enriched by reviewing U.S. case law such as *Campbell v. Acuff-Rose Music, Inc.* (1994), which set precedent on parody and fair use in music copyright . These cases provide insight into how courts interpret boundaries of copyright and derivative uses.

Comparative Approach

A comparative analysis of copyright regimes in the United States, the United Kingdom, and Japan is applied to highlight differences in protection duration, treatment of public domain works, derivative rights, and exceptions such as *fair use* (U.S.), *fair dealing* (U.K.), and Japan's citation provisions. Such comparison identifies transnational patterns and underscores the tension between global harmonization and national sovereignty.

Data Collection

Primary data includes statutory provisions, treaties, and judicial decisions—such as the Berne Convention, the TRIPs Agreement, and Law No. 28/2014. Case law and jurisprudence, including Indonesian court rulings and the U.S. Supreme Court's *Campbell* decision, provide direct legal sources.

Secondary data consists of scholarly commentary, reports, and research by international institutions. For instance, WIPO's studies on the economic value of the public domain enrich understanding of copyright's global economic impact. Indonesian scholarship (e.g., Rukmana, Dharma and Mahadewi) provides critical perspectives on enforcement challenges. These data

sources were systematically collected through academic databases (HeinOnline, Wiley, and national journals), ensuring comprehensive coverage of doctrinal and policy debates.

Analysis Data

The analysis employs a qualitative content analysis. First, statutory texts and treaty provisions are examined to identify normative principles governing copyright duration, derivative works, and exceptions. Second, through comparative analysis, similarities and divergences between jurisdictions are highlighted, showing how global standards influence national law. For example, U.S. law emphasizes flexible *fair use*, while U.K. and Japanese law adopt narrower exceptions.

In the case study of *Ahmad Dhani v. Once Mekel*, facts are linked to relevant provisions in Law No. 28/2014, illustrating how Indonesian copyright law is applied in practice]. This descriptive-analytical approach allows contextualization of enforcement challenges in Indonesia's creative industry.

Finally, a synthetic analysis connects findings with copyright theory and globalization discourse, particularly how international standards (TRIPs, Berne) interact with Indonesia's constitutional framework. This integrated method enables normative evaluation and policy-oriented recommendations for aligning copyright law with both global obligations and national sovereignty.

4. Results and Discussion

Result

The History and Legal Status of "Auld Lang Syne" as Public Domain

Auld Lang Syne is a traditional song whose lyrics derive from a Scots-language poem written by Robert Burns in 1788. Burns himself admitted that he adapted the lyrics from an earlier Scottish folk song. The melody is also an ancient pentatonic tune of unknown authorship. The song is widely recognized as a farewell or New Year's anthem in various countries, even though the original lyrics make no reference to the New Year [**Error! Bookmark not defined.**]. Over time, *Auld Lang Syne* became ceremonial, traditionally sung during year-end transitions, farewells, or the closing of public events.

Copyright Status. Both the original poem by Burns and the traditional melody of *Auld Lang Syne* are no longer protected by copyright. Burns died in 1796, and more than 70 years have passed since his death, which places the lyrics firmly in the public domain worldwide . Similarly, the eighteenth-century melody has long exceeded the duration of copyright protection. In the United States, for instance, all works published prior to 1927 are considered public domain, including *Auld Lang Syne* (both lyrics and melody) . Consequently, no individual or entity can claim exclusive copyright over its use. The public is therefore free to: Copy and distribute the original lyrics and musical notation, Produce new recordings of the song, Create derivative works such as translations, new arrangements, or lyrical parodies, Use the song in any medium (film, advertising, performances) without authorization or payment of royalties, since no copyright holder exists .

Nevertheless, while the original work is public domain, specific adaptations or recordings may still be copyright-protected. For instance, a sufficiently original new arrangement or a modern recording by an artist will attract its own copyright. Anyone may perform *Auld Lang Syne* independently, but duplicating another artist's arrangement without consent constitutes infringement. For example, if a musician creates a unique jazz version of the song, another party who copies that arrangement exactly risks copyright liability. In such circumstances, licensing such as a mechanical license for recording would be required from the arranger or copyright owner of that adaptation .

In sum, the original *Auld Lang Syne* resides in the public domain, freely usable without authorization. However, creative adaptations (e.g., new arrangements, new lyrics) may acquire new copyright protection for the additional creative elements. This creates a legal grey area: users must ensure that they are drawing solely upon public domain material, or otherwise respect the copyrights attached to specific adaptations.

Adaptations and Parodies of "Auld Lang Syne" in Various Contexts

Auld Lang Syne has been widely adapted into different languages and cultural contexts, often with new lyrics. A well-known example is the Japanese song *Hotaru no Hikari* ("Light of the Fireflies"), which employs the *Auld Lang Syne* melody with Japanese lyrics. The lyrics narrate the perseverance of students studying by firefly light, and the song became a traditional graduation hymn during the Meiji era (late 19th century). Today, it is often sung at school ceremonies and played in public places (e.g., shops or stations) before closing . The Japanese lyrics, now over a century old, have also fallen into the public domain. Similar cross-cultural adaptations exist in other countries, including Indonesian or local-language versions, though none have achieved the prominence of the Japanese adaptation.

Due to its popularity, *Auld Lang Syne* frequently appears in parodies, advertisements, and films. As a public domain work, it can be parodied without raising copyright concerns over the original; no *fair use* defense is required since no exclusive rights exist. For example, comedians or television shows may repurpose the melody with humorous lyrics for skits, without seeking permission. This remains lawful so long as they do not copy another party's copyrighted arrangement. In the United States, for example, some Christmas parodies of the song circulate freely online. Likewise, advertisers may use the melody in New Year campaigns without royalty obligations.

However, if a parody draws upon a copyrighted adaptation (e.g., a rock arrangement by a contemporary band), permission is necessary to avoid infringement. Conversely, parodies based solely on the public domain melody/lyrics or involving original transformative use are generally non-infringing. In many jurisdictions, parody is also recognized as a form of free expression. For instance, the U.S. Supreme Court in *Campbell v. Acuff-Rose Music, Inc.* (1994) affirmed that song parodies may constitute *fair use* even when commercial [**Error! Bookmark not defined.**]. While such reasoning is unnecessary for *Auld Lang Syne's* public domain material, the principle remains relevant for protected adaptations.

Numerous musicians have produced their own versions of *Auld Lang Syne*—instrumental or vocal—across genres (pop, jazz, orchestral, etc.). Each recording is automatically protected by related rights (producers' rights, performers' rights), and original arrangements attract copyright as new musical works. Musicians require no permission to employ the original melody/lyrics, but their recordings cannot be copied without authorization. For example, a Marine Corps Band recording from 1910 is now public domain, whereas a 2020 commercial recording will remain protected for several decades (typically 70 years post-publication, depending on jurisdiction).

Overall, *Auld Lang Syne* exemplifies the value of the public domain as a foundation for cultural creativity. It enables free cross-cultural adaptations and parodies, while simultaneously creating new layers of copyright for subsequent adaptations. This duality requires careful navigation: public domain materials are free, but derivative adaptations enjoy their own legal protection.

Indonesian Copyright Law

Indonesia regulates copyright under Law No. 28 of 2014 on Copyright, which replaced Law No. 19 of 2002. The 2014 Law was drafted with reference to the Berne Convention and the TRIPS Agreement, thereby aligning many of its provisions with international standards.

Article 40 of Law No. 28/2014 (formerly Article 12 of Law No. 19/2002) enumerates the types of works protected. This includes songs and/or music, with or without lyrics, as well as translations, interpretations, adaptations, compilations, arrangements, modifications, and other transformed works. In other words, Indonesia explicitly protects derivative works such as adaptations and arrangements as original works in their own right, provided that they exhibit originality. Importantly, however, protection of an adaptation does not diminish the rights in the original work. If the original remains under copyright, creating an adaptation without the author's consent still constitutes infringement (Article 9(1)(c) and (f) of Law No. 28/2014) .

Article 9(1) grants authors or copyright holders exclusive economic rights over their works, including publication, reproduction, translation, arrangement, adaptation, distribution, performance, communication, and rental . Thus, activities such as translating song lyrics or arranging a composition without permission constitute infringement if the original work is still under protection. Article 9(2) clarifies that any party seeking to exploit these economic rights must obtain authorization from the copyright owner. Accordingly, in Indonesia, adaptation rights and performance rights are held exclusively by the author. For example, a popular song still under copyright cannot be commercially covered or performed without a license or authorization from its creator.

The 2014 Law extends the copyright term to the author's lifetime plus 70 years post-mortem. For works owned by legal entities, the duration is 50 years from first publication. Once this period expires, the work enters the public domain. Although Law No. 28/2014 does not explicitly use the term "public domain," the implication is clear: once economic rights lapse, the work is freely usable by the public. In practice, works that have entered the public domain may be used without permission in Indonesia. (The Law also introduces *related rights* for performers and phonogram producers, though these are distinct from the original author's rights in the musical composition.)

Article 5 stipulates the author's moral rights, which are perpetual and non-transferable, including the right to be credited and the right to prevent distortion of the work. While the integrity right is limited to the duration of copyright protection, the right to attribution may endure indefinitely . Although *Auld Lang Syne* has long entered the public domain, Robert Burns is often still credited as a matter of moral recognition, even though Indonesian law no longer requires it.

Law No. 28/2014 underscores licensing mechanisms and the role of Collective Management Organizations (Lembaga Manajemen Kolektif/LMK). Article 87 provides that the commercial use of music in public venues does not constitute infringement, provided that the user has fulfilled the obligation to pay royalties through an LMK . This provision is particularly relevant to the case under discussion.

The Case of Ahmad Dhani v. Once Mekel

This dispute arose around 2023 and remained relevant into 2024. Ahmad Dhani is the songwriter of the Indonesian band *Dewa 19*, while Once Mekel is its former lead vocalist. The conflict emerged because Once continued to perform *Dewa 19* songs commercially (e.g., at concerts and off-air events) after leaving the band, without direct authorization from Dhani as the songwriter . Dhani claimed that his copyrights were infringed, as he neither received royalties nor was asked for permission. He even issued a legal warning (*somasi*) prohibiting Once from singing his compositions on stage.

Dari sisi Once Mekel, argumentasi pembelaannya adalah bahwa ia menyanyikan lagu-lagu itu di acara di mana penyelenggara sudah membayar royalti melalui LMK (Lembaga Manajemen Kolektif Nasional) . Indonesia memiliki LMK, misalnya LMKN (Lembaga Manajemen Kolektif Nasional) yang mengelola royalti lagu secara kolektif. Apabila event organizer

membayar sejumlah royalti ke LMK untuk lagu-lagu yang dibawakan, maka para pencipta lagu akan mendapatkan bagiannya melalui LMK. Pasal 87 ayat (4) UU 28/2014 memberikan semacam *pembelaan hukum* bagi pengguna karya: penggunaan komersial karya *tidak dianggap pelanggaran* sepanjang pengguna telah memenuhi kewajiban sesuai perjanjian dengan LMK (misal membayar royalti) .

From Once's perspective, his defense was that he performed the songs at events where organizers had already paid royalties through the national collective management organization (*Lembaga Manajemen Kolektif Nasional*/LMKN) . Indonesia operates a system of collective management organizations (CMOs), such as LMKN, which manage music royalties on behalf of authors. Under this system, event organizers who pay royalties to LMK secure authorization to use musical works, and authors subsequently receive their share via LMK. Article 87(4) of Law No. 28/2014 provides a form of legal defense: commercial use of a work is not deemed infringement if the user has fulfilled obligations under an agreement with an LMK, such as royalty payments .

In the Dhani v. Once case, Dhani maintained that his exclusive rights were violated because Once did not request his personal authorization or pay royalties directly to him. Dhani also asserted that he had withdrawn his songs from LMK's catalog, thereby preventing LMK from authorizing their use . In essence, Dhani sought to personally prohibit Once from performing his songs. Conversely, Once's legal counsel argued that payment of royalties by event organizers to LMKN was sufficient authorization. Thus, Once claimed no need to seek Dhani's direct consent for each performance, as the LMK system already covered such licensing. This position aligned with statements from Indonesia's Directorate General of Intellectual Property (DGIP), which declared in the media that once royalties are paid to LMK by the venue or organizer, the songwriter cannot further prohibit performances.

Legally, Ahmad Dhani is the copyright holder, possessing exclusive rights to the public performance of his works (Article 9(1)(e)) and to prohibit unauthorized arrangements (Article 9(1)(f)). By performing Dhani's songs commercially, Once was indeed exploiting economic rights attached to Dhani. However, Indonesia's collective licensing framework complicates this: under Article 87(1)–(4) of Law No. 28/2014, authors may collect royalties via LMK, and commercial users are shielded from infringement liability if they comply with LMK royalty obligations [**Error! Bookmark not defined.**]. Once's position rested on this system: he performed at events organized by promoters who were expected to obtain a blanket license from LMK (e.g., WAMI or LMKN). If organizers had paid LMK, Once was a licensed performer. In such cases, Dhani could not individually revoke authorization, unless he had officially withdrawn his songs from LMK's catalog prior to the performance. This "grey area" underscores the tension between an author's individual rights and the state's collective licensing policy. Notably, IP law firm Rouse observed that DGIP's position tended to favor performers like Once, treating LMK payments as sufficient legal defense.

For Indonesia, the *Dhani v. Once* dispute set an important precedent in public discourse: while authors enjoy strong exclusive rights, once a national licensing mechanism is in place, authors cannot arbitrarily prohibit performances if royalties have been duly paid. This framework protects performers and users who comply with LMK requirements. On the other hand, the case highlights the need for greater awareness of royalty obligations and improved transparency within LMK operations. Even senior musicians like Once were accused of failing to pay royalties, though he insisted that responsibility lay with event organizers. Moving forward, clearer communication between authors, performers, and LMK is essential to prevent similar disputes.

Although the *Dhani v. Once* case does not concern public domain works (as *Dewa 19*'s songs remain under copyright), it is instructive in demonstrating how Indonesian law views adaptations of public domain material. Law No. 28/2014 does not prohibit adaptation of

public domain works. For example, if an old Indonesian folk song has no identifiable author, or its author has been deceased for more than 70 years, it enters the public domain. Anyone may arrange or create a new version, which will then be protected for its new creative elements. However, such protection does not extend to prohibiting others from independently arranging the same folk melody, since the base melody belongs to the public.

Indonesia thus maintains a modern copyright framework that firmly protects musical works and their adaptations. The *Ahmad Dhani v. Once Mekel* dispute illustrates the challenges of copyright enforcement in the music industry, especially regarding performance licensing. Although not a public domain case, it offers valuable lessons: the balance between authors' rights and users' access must be carefully maintained, with collective licensing serving as a state-mediated compromise. The next section will examine broader legal challenges in enforcing copyright over adaptations of public domain works, particularly in the context of digital technology.

Principles of International Copyright Law (The Berne Convention)

The Berne Convention of 1886. Modern copyright law in most jurisdictions is rooted in international standards established under the Berne Convention for the Protection of Literary and Artistic Works (1886). Indonesia, along with the United States, the United Kingdom, Japan, and many other states, is a contracting party to the Berne Convention; hence, its national copyright framework is shaped by Berne principles [**Error! Bookmark not defined.**]. The three foundational principles of the Berne Convention are: (1) the principle of national treatment, (2) automatic protection without formalities, and (3) minimum protection standards.

a. National Treatment

   Each member state must grant copyright protection to works of authors from other member states on the same basis as works of its own nationals (the principle of non-discrimination). Thus, a work first published in State A automatically enjoys protection in State B according to State B's laws, with equivalent scope and duration.

b. Automatic Protection (Without Formalities)

   The Berne Convention stipulates that copyright protection arises automatically at the moment of creation and fixation, without any need for registration or formalities (Article 5(2)). In other words, songwriters are not required to register their works for them to be protected. This principle is significant, since works like *Auld Lang Syne* originally spread informally without registration, and in the modern era new songs are protected as soon as they are fixed in a tangible form. (Note: some jurisdictions allow voluntary registration as evidence in court, but it is not a precondition for protection.)

c. Minimum Protection (Duration and Scope of Rights)

The Berne Convention sets minimum standards of protection regarding both duration and scope. The minimum duration is the author's lifetime plus fifty years post-mortem (Article 7(1)) . States may extend this term but may not reduce it. Many jurisdictions, such as the EU and the U.S., have since extended the term to life plus seventy years. As Robert Burns died in 1796, his works entered the public domain at the latest fifty years thereafter under Berne standards; practically, they have long been public domain worldwide.

In terms of scope, Berne grants authors certain exclusive rights, including the right to authorize translations (Article 8) and adaptations (Article 12). Article 12 explicitly provides: *"Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works."* . Accordingly, under international law, the making of adaptations or arrangements of a protected work is the exclusive prerogative of the original author. If the work is still under protection, others cannot lawfully alter, adapt, or derive from it without permission. This principle underpins claims of infringement in cases of unauthorized adaptations.

Although the Berne Convention does not explicitly use the term *public domain*, it provides that once the protection period expires, works become freely available for use. It also allows the application of the *rule of the shorter term* (Article 7(8)) : a member state may limit protection of a foreign work to the duration granted in its country of origin, to avoid anomalies in protection terms. For *Auld Lang Syne*, since protection expired long ago in the United Kingdom (its country of origin), all Berne member states treat it as public domain.

Article 6bis introduces authors' moral rights, including the right of attribution and the right to object to derogatory treatment prejudicial to the author's honor or reputation. These moral rights are distinct from economic rights and may endure even after copyright has been transferred or has expired. Some jurisdictions recognize moral rights in perpetuity. However, in the case of *Auld Lang Syne*, the author died over two centuries ago, rendering moral rights practically unenforceable. Moral rights are generally invoked by heirs or cultural institutions within a relatively short period after the author's death, for instance, to preserve the integrity of classical works. No evidence exists of Robert Burns's descendants challenging adaptations of the song. In practice, many adaptations credit *"Traditional/Robert Burns"* voluntarily, as a matter of respect rather than legal compulsion.

The principles of the Berne Convention ensure that works like *Auld Lang Syne* ultimately pass into the public domain after lengthy protection periods (at least fifty years post-mortem) [**Error! Bookmark not defined.**]. Berne also establishes that adaptations require the author's consent during the term of protection. Once protection expires, adaptations may be freely made by anyone, but such adaptations themselves acquire new copyright protection for the creative elements added [**Error! Bookmark not defined.**].

Discussion

Legal Challenges in Enforcing Copyright over Adaptations of Public Domain Works

The phenomenon of adapting public domain (PD) works raises a number of unique legal challenges:

a. Distinguishing New Expression from Old Material

When a public domain work is adapted, only the newly added original elements are protected under copyright. However, separating "new" expression from "old" public domain content can be complex. For example, in the case of a new arrangement of *Auld Lang Syne*, the base melody and Burns's lyrics are public domain (free for all), but a modern musician's arrangement or interpretation is protected. In disputes—such as Musician A accusing Musician B of copying their arrangement of a PD song—the court

must assess whether B merely used the free traditional melody or whether B substantially copied A's distinctive creative expression (e.g., harmonic patterns, unique instrumentation). This reflects the copyright *idea/expression dichotomy*, and often falls into a legal grey area requiring expert testimony in musicology.

b. No Protection over the Public Domain Material Itself

Adaptors cannot prevent others from using the original public domain elements. For example, while Disney may adapt a folk tale into a film, Disney cannot prohibit others from producing their own adaptations of the same folk tale. Similarly, a songwriter who writes new lyrics to the *Auld Lang Syne* melody acquires copyright in the new lyrics, but cannot sue others for writing different lyrics to the same melody. Commercially, this limits the monopolistic value of adaptations, since they must compete with other adaptations. Positively, this fosters creative competition: multiple versions of *Auld Lang Syne* coexist, each arrangement enjoying protection only for its unique creative elements, while the underlying melody remains free for all.

c. Adaptation versus Plagiarism

Challenges arise when musicians claim to be "inspired" by PD works but produce near-identical versions under the guise of originality. Hypothetically, if a pop songwriter takes *Auld Lang Syne*, alters a few notes, adds new lyrics, and markets it as an original love song, the similarities may be obvious. Legally, however, since the melody is public domain, no plagiarism claim can be sustained on that basis. Ethically or in terms of *passing off*, the practice may be controversial. The deeper concern is "re-commodification" of the public domain—where minimal changes are used to assert new copyright monopolies. This has been criticized, particularly in digital contexts such as YouTube's Content-ID system, where record labels re-claim public domain melodies by uploading slightly modified versions [**Error! Bookmark not defined.**] [**Error! Bookmark not defined.**] [**Error! Bookmark not defined.**]. Copyright law currently lacks a mechanism to prevent such practices, unless the adaptation fails to meet even minimal originality thresholds.

d. Cross-Jurisdictional Differences

Public domain status is territorial. A work may be PD in one country but still protected in another due to differing terms of protection. For example, a song composed in 1955 by Author A (d. 1970) would be PD in countries with a *life+50* term (since 2020), but still protected in life+*70* countries (until 2040). In the digital age, this creates problems: uploading the work online may be legal in State A but infringing in State B [**Error! Bookmark not defined.**]. The Berne Convention permits but does not require the *rule of the shorter term* [**Error! Bookmark not defined.**]. The U.S., for instance, often protects foreign works as long as they remain protected in their country of origin, subject to additional conditions. Enforcement of copyright in PD adaptations across borders is therefore inconsistent. While *Auld Lang Syne* is universally PD and uncontroversial, many early-to-mid 20th century works face conflicting statuses. Industry players often adopt cautious strategies: avoiding works with uncertain PD status across target markets, or securing voluntary licenses even where arguably unnecessary.

e. Enforcement of Adaptation Rights

Even where adaptations qualify for copyright, enforcing those rights is difficult, particularly when based on famous PD works. Suppose a composer creates a distinctive orchestral arrangement of *Auld Lang Syne*, and another orchestra performs the melody in a somewhat similar way. The composer may allege infringement, but the defendant can argue they merely used standard PD elements. Proving infringement in court requires showing that the unique elements of the first arrangement were copied with substantial similarity—often a difficult evidentiary burden. Economically, litigation costs may outweigh potential damages, particularly where defendants relied on freely available PD

material. As a result, lawsuits over adaptations of PD works are rare, as the protective scope is narrow.

f. Moral Rights and Public Domain Works

Some jurisdictions (e.g., France) maintain that authors' moral rights never expire. In theory, a derogatory adaptation of a PD work could be challenged as violating the original author's honor or integrity. In practice, however, such claims are rare, as there is no clear authority to represent long-deceased authors. Indonesia does not recognize post-expiration moral rights, meaning there is no legal basis to prohibit, for example, a disrespectful adaptation of *Auld Lang Syne*. The issue becomes one of ethics and public opinion rather than law.

An illustrative controversy concerned the song *"Happy Birthday to You."* Prior to 2015, Warner/Chappell claimed copyright over the modern English lyrics, though the underlying melody (*Good Morning to All*, 1893) was PD. A U.S. court ultimately declared the *Happy Birthday* lyrics PD as well, invalidating Warner/Chappell's claims . This case demonstrated that attempts to "enclose" the public domain can be judicially overturned. No comparable controversy exists for *Auld Lang Syne*, likely because it has long been universally acknowledged as public domain.

The central challenge in copyright enforcement of PD adaptations lies in balancing protection for adaptors' creative investments against preserving the public's freedom to use PD material. Regulatory solutions should ensure: (a) originality thresholds for adaptations remain sufficiently high; (b) public recognition of the original source is encouraged as a matter of ethics, even if not legally mandated; and (c) public education clarifies permissible uses of PD works. Moreover, enforcement authorities must remain vigilant that copyright claims do not improperly extend to PD elements.

Implications of Technological and Digital Media Developments for Copyright Issues in Music

The digital and internet era has reshaped the landscape of copyright in music, including in the context of public domain works and adaptations, in the following ways:

a. Global Distribution and Cross-Border Infringement

Digital platforms (YouTube, Spotify, TikTok, etc.) allow copyrighted and public domain works alike to spread instantly across the globe. This amplifies the risk of infringement and complicates enforcement. For example, an adaptation of a PD song protected under Indonesian law may be uploaded from another country without authorization [**Error! Bookmark not defined.**]. The adaptation rightsholder in Indonesia may face significant obstacles in pursuing claims against the uploader abroad. Mechanisms such as *notice-and-takedown* (e.g., under the U.S. DMCA) become crucial, but digital platforms often misinterpret the status of adaptations where the underlying work is PD. International cooperation is needed both to safeguard copyright in the digital space and to ensure that public domain works are not wrongly blocked.

b. Content ID and Automated Claims

Services like YouTube's Content ID use digital fingerprints to detect songs in uploaded videos. Ironically, such systems sometimes misidentify PD works as belonging to private claimants. For instance, users have complained that classic Christmas songs (PD) were flagged because they matched a record label's version. The algorithm fails to distinguish between the free PD melody and a specific copyrighted recording. As a result, a creator who uploads their own performance of *Auld Lang Syne* may still receive a copyright claim if the system matches it with a registered label recording. Opportunistic misuse occurs when companies register PD melodies in Content ID to assert claims. This raises the challenge of preserving the freedom of the PD in an algorithm-driven environment. Possible solutions include establishing whitelists of PD works in Content

ID databases, or enforcing platform rules prohibiting claims over PD material. Some libraries and advocacy groups have called for a global database of PD works to reduce false claims.

c. AI and Remix Practices

Artificial intelligence enables large-scale adaptation, remix, and mashup of songs. On the positive side, AI can revive PD works with new styles, and developers can train AI models exclusively on PD music to generate outputs free of licensing burdens [**Error! Bookmark not defined.**]. On the negative side, training AI on copyrighted works without permission raises infringement risks. Even with PD inputs, AI outputs that closely resemble copyrighted works may trigger disputes, similar to cases in visual art. Moreover, mass automated adaptations could flood the market, complicating rights management. While legal cases in music AI are still emerging, disputes are anticipated.

d. Streaming Platforms and Royalty Distribution

Streaming services require precise copyright enforcement to distribute royalties fairly. For PD songs uploaded to Spotify, platforms generally pay royalties to recording artists but not to composers. This is appropriate in principle, yet challenges remain: do platforms reliably recognize PD status? Misidentification may cause royalties to be withheld unnecessarily, or worse, misallocated to illegitimate claimants (e.g., someone falsely claiming to be an arranger). Improved metadata infrastructure is needed to prevent such errors.

e. Social Media and Virality

Both PD works and adaptations can go viral on social media—for example, classical melodies repurposed as memes. Viral circulation makes enforcement difficult: once a parody lyric or remix spreads on TikTok, withdrawal is practically impossible. For adaptation rightsholders, viral uses without licensing can mean lost economic potential. At the same time, viral exposure may enhance an adaptation's cultural value and indirectly benefit the creator (e.g., through live performance opportunities). The music industry must adopt new strategies: embracing viral use as promotion while safeguarding rights via flexible licensing schemes, such as permitting non-commercial uses.

f. Tracking and Blockchain

Blockchain technology has been proposed as a tool for copyright registration and tracking. For instance, adaptations could be timestamped on blockchain to prove ownership, while PD works could be tagged to confirm their status. In theory, such a system would help platforms automatically distinguish between protected and unprotected works. However, adoption remains limited, and there is no global standard.

g. Public Awareness

The internet has also fostered greater awareness of PD and copyright. Annual initiatives such as *Public Domain Day* by Project Gutenberg or HathiTrust celebrate works entering the PD each year [**Error! Bookmark not defined.**]. More creators now deliberately use PD material to avoid licensing issues. Yet public misconceptions persist—for example, assuming that "everything online is free." This misunderstanding complicates enforcement and underscores the need for education: PD is a specific legal category, and not all online material qualifies.

Digital technology disrupts the traditional boundaries of copyright in music. It facilitates adaptation and distribution of PD works, thereby enriching culture. However, it also enables misuse (e.g., false claims, opportunistic registrations) and undermines authors' control. Regulators are adapting: the EU's DSM Directive imposes greater responsibility on online platforms for infringing content, though explicit PD protections remain underdeveloped. Scholars and advocates suggest clearer labeling of PD works on platforms, to ensure user certainty and prevent abusive claims.

5. Comparative Study of Copyright Law: United States, United Kingdom, and Japan

United States

The U.S. copyright framework, though influenced by the Berne Convention (the U.S. only acceded in 1989), retains certain distinctive characteristics:

Duration of Copyright

Currently, the copyright term for works authored by individuals is the author's life plus seventy years, pursuant to the Sonny Bono Copyright Terms Extension Act of 1998, which added twenty years to the Berne minimum. For anonymous, pseudonymous, or "works made for hire," protection generally lasts ninety-five years from first publication or 120 years from creation, whichever expires first. Works published before 1928 entered the public domain as of January 1, 2024—a milestone celebrated annually as "Public Domain Day." *Auld Lang Syne*, predating this threshold by centuries, is therefore fully in the public domain in the U.S. [**Error! Bookmark not defined.**].

a. Formalities

Historically, U.S. law required registration and renewal formalities to maintain copyright. Many early twentieth-century works entered the public domain because rightsholders failed to renew. After the U.S. joined the Berne Convention, however, formalities were abolished for new works. For modern works, copyright arises automatically upon creation and fixation (the declaratory principle) [**Error! Bookmark not defined.**].

b. Exclusive Rights

Under Title 17 U.S.C. §106, copyright owners enjoy exclusive rights to reproduce, distribute, perform, display, adapt (prepare derivative works), and rent their works. This aligns with Berne Article 12, confirming that adaptation is an exclusive authorial right.

c. Parody and Fair Use

The U.S. is particularly known for its flexible *fair use* doctrine (17 U.S.C. §107), which permits unauthorized uses of copyrighted works for criticism, commentary, education, research, parody, and other purposes. In *Campbell v. Acuff-Rose Music, Inc.* (1994), the Supreme Court held that a parody of Roy Orbison's *Pretty Woman* by 2 Live Crew could constitute fair use, even when commercial [**Error! Bookmark not defined.**] [**Error! Bookmark not defined.**]. The Court emphasized a case-by-case balancing of the four statutory factors, and parodies are frequently deemed transformative, thus satisfying fair use. Accordingly, in the U.S., musical parody of copyrighted works is generally lawful if fair use criteria are met. For *Auld Lang Syne*, which is in the public domain, fair use analysis is unnecessary, but the principle remains relevant for other songs still under copyright [**Error! Bookmark not defined.**].

d. Moral Rights

Moral rights in the U.S. are limited. The Visual Artists Rights Act 1990 applies only to certain works of visual art. Music lacks comparable federal moral rights protection. Consequently, once musical works enter the public domain, no moral right prevents distortion, unless covered by other doctrines such as trademark law or contractual provisions**.**

e. Enforcement and Case Law

Numerous U.S. copyright disputes concern alleged plagiarism of copyrighted songs—for instance, *Blurred Lines* (Robin Thicke/Pharrell) versus Marvin Gaye's *Got to Give It Up* . With respect to public domain works, the most notable case is *Happy Birthday to You*. Warner/Chappell long claimed copyright in its modern English lyrics, but in 2015, a federal court held the lyrics to be public domain, freeing the song for universal

use. This precedent illustrates the judiciary's role in preventing unlawful enclosure of the public domain .

Inggris

The United Kingdom regulates copyright primarily through the Copyright, Designs and Patents Act 1988 (CDPA), which has been amended several times, including to implement EU Directives, its main features are as follows:

Duration of Copyright

The UK follows the European standard of *life of the author plus seventy years* for individual works. Previously, the UK applied the Berne minimum of life+50, but since 1995 it aligned with the European Union by extending the term to seventy years post mortem auctoris. For anonymous or pseudonymous works, protection lasts seventy years from the date of first lawful publication (see. UK Public General Acts 1998 c. 48 Part I Chapter I Duration of copyright Section 12). With respect to *Auld Lang Syne*, Robert Burns's poems and the traditional melody have long surpassed these terms, making the work firmly within the public domain in the UK.

Exclusive Rights and Adaptations

Section 16 of the CDPA 1988 grants copyright owners exclusive rights similar to those in other jurisdictions: reproduction, distribution, performance, communication, and adaptation . Musical adaptations—such as arrangements or lyric translations—fall within these exclusive rights. Unauthorized adaptations of works still under copyright may therefore constitute infringement unless a statutory exception applies.

Fair Dealing and Parody Exceptions

Unlike the U.S. doctrine of *fair use*, the UK applies a narrower system of exceptions known as *fair dealing*. Until 2014, parody was not explicitly recognized as an exception. However, as of 1 October 2014, a new exception was introduced, permitting fair dealing for purposes of parody, caricature, and pastiche (CDPA 1988, Section 30A, as amended) [**Error! Bookmark not defined.**]. Under this provision, use of copyrighted material without permission for parody is lawful provided that such use is "fair," meaning it does not cause unreasonable prejudice to the rightsholder . For example, a comedian may now lawfully use a few lines of a famous song in a parody sketch, so long as the use is proportionate and fair [**Error! Bookmark not defined.**]. Conversely, wholesale reproduction of an entire song or uses that substantially affect the original market will not qualify [**Error! Bookmark not defined.**]. In practice, the scope of parody under UK law is narrower than U.S. *fair use*, since it must satisfy a test of fairness and avoid undue harm to the copyright holder's economic interests. For public domain works such as *Auld Lang Syne*, parody is not a legal issue; however, the parody exception may be relevant to modern adaptations of the song that remain under copyright [**Error! Bookmark not defined.**].

Moral Rights

The UK recognizes moral rights under the CDPA, including the right of attribution and the right of integrity. These rights last as long as copyright subsists and cannot be transferred, though they may be waived. Once a work enters the public domain, moral rights are practically unenforceable. For instance, Shakespeare's plays are freely adapted without legal restriction, even though some adaptations may be perceived as disrespectful from a cultural standpoint.

Penegakan & Kasus

In the UK, copyright disputes over music are generally handled through civil courts. Parody cases remain relatively rare since the introduction of the exception. A significant European case that has influenced UK practice is *Deckmyn v. Vandersteen* (2014), decided by the Court of Justice of the European Union . While not a UK decision, it defined parody as an autonomous legal concept under EU law, requiring that the parody (a) evoke an existing work, (b) be noticeably different, and (c) constitute humor or mockery, while ensuring a fair balance between the interests of rightsholders and freedom of expression.

Japan

Japan regulates copyright under the Copyright Act of Japan, which aligns with Berne principles but has distinctive features:

Duration of Copyright

Japan extended its copyright term from *life+50* to *life+70* effective 30 December 2018. This amendment implemented Japan's commitments under the CPTPP trade agreement. According to the Ministry of Culture, as of 2018 the extended term also applied retroactively to foreign works, provided their protection had not yet expired . Consequently, no works entered the public domain in Japan between 1998 and 2018, as the extension "froze" expirations. For *Auld Lang Syne*, however, this extension is irrelevant: Robert Burns died in 1796, well before any such term—thus the song has long been in the public domain in Japan.

Exclusive Rights and Adaptations

Japanese law grants exclusive rights similar to other Berne members, including the rights of translation and adaptation. Article 27 of the Copyright Act explicitly provides that rightsholders have the exclusive right to translate, arrange, or otherwise adapt their works (mirroring Berne Article 12) . Article 28 further clarifies that copyright protection extends to derivative works themselves, without prejudice to the original work's copyright.

Exceptions and Parody

Japan's statute does not expressly recognize parody as a copyright exception. The limited list of exceptions includes quotation, education, news reporting, accessibility for the visually impaired, and other specific purposes. Legal scholars in Japan occasionally argue that parody may fall under "quotation" if strict requirements are met . Quotation, however, is narrowly defined: the borrowed portion must be secondary to the new work, necessary for the new purpose, and properly attributed. In practice, applying quotation rules to musical parody is difficult, since parody typically relies on using the most recognizable parts of a song, which often exceeds "fair quotation." Thus, under formal Japanese law, parody without authorization risks infringement, except perhaps for very short critical uses. Nonetheless, Japanese creative culture tolerates certain informal practices—e.g., *doujinshi* (parody or transformative fan works) are often tolerated if non-commercial. For *Auld Lang Syne*, which is public domain, parody or adaptation is legally unrestricted in Japan, rendering the parody exception irrelevant.

Moral Rights

Japan strongly protects authors' moral rights (Articles 18–20), including the rights of attribution and integrity. These rights are inalienable and last for the duration of copyright protection. After copyright expires, moral rights lapse; unlike in France, there is no recognition of perpetual moral rights. Accordingly, Burns's moral rights are not formally recognized in Japan today.

Case Example

In Japan, *Hotaru no Hikari* famously adapted the melody of *Auld Lang Syne* without legal issue, since the melody is PD [**Error! Bookmark not defined.**]. Its Japanese lyrics, written by Chikai Inagaki in 1881, have also entered the public domain. Modern adaptations, such as J-Pop arrangements, would receive protection as new derivative works. To date, no significant legal disputes over *Auld Lang Syne* have been reported in Japan, as its use is universally accepted as free. Japanese copyright debates tend to focus more heavily on issues in anime and manga than on traditional music.

Table 1. Comparative Overview of Copyright Protection for Music in the United States, United Kingdom, Japan, and Indonesia.

Aspect	United States	United Kingdom	Japan	Indonesia
Duration of Copyright	Life + 70 years (individual authors); 95 years from publication (corporate works)	Life + 70 years	Life + 70 years (since 2018; previously 50 years)	Life + 70 years (individual authors); 50 years from publication (corporate works)
Public Domain Works	All works published before 1928 (as of 2025)	70 years after author's death	70 years after author's death	70 years after author's death (Law No. 28/2014, Article 58)
Adaptation as Exclusive Right	Regulated under 17 U.S.C. §106 (derivative works)	Regulated under 17 U.S.C. §106 (derivative works)	Regulated under 17 U.S.C. §106 (derivative works)	Regulated under 17 U.S.C. §106 (derivative works)
Parody Protection	Broadly recognized under *fair use*, including commercial parodies	Broadly recognized under *fair use*, including commercial parodies	Broadly recognized under *fair use*, including commercial parodies	Broadly recognized under *fair use*, including commercial parodies
Moral Rights	Limited (Visual Artists Rights Act 1990); not broadly applicable to music	Limited (Visual Artists Rights Act 1990); not broadly applicable to music	Limited (Visual Artists Rights Act 1990); not broadly applicable to music	Limited (Visual Artists Rights Act 1990); not broadly applicable to music
Registration/ Formalities	Not required (post-1989 Berne accession); formerly required renewal	Not required (post-1989 Berne accession); formerly required renewal	Not required (post-1989 Berne accession); formerly required renewal	Not required (post-1989 Berne accession); formerly required renewal
Collective Licensing System	Voluntary licensing via ASCAP, BMI, SESAC	PPL, PRS for Music manage collective licensing	JASRAC manages music rights collectively	LMKN and LMKs manage royalties (Law No. 28/2014, Article 87)

Source: U.S. Copyright Office ("How Long Does Copyright Protection Last?", FAQ on Duration; 17 U.S.C. §302, §106); UK Copyright, Designs and Patents Act 1988, Sections 16 & 30A; Japan Copyright Act (Articles 18–20, 27–28); Indonesia, Law No. 28 of 2014 on Copyright.

6. Conclusions

This study highlights the complex balance between exclusive rights of copyright holders and the public's access to cultural works. The analysis of *Auld Lang Syne* demonstrates the dual role of copyright: initially ensuring protection and economic incentives for creators, and subsequently, upon expiration, enriching the public domain as a shared cultural heritage. Once a work enters the public domain, adaptations and parodies thrive without legal restrictions, fulfilling copyright's ultimate purpose of disseminating knowledge and culture. However, new challenges emerge when public domain works are adapted into derivative creations. The recognition of originality in adaptations generates new layers of monopoly that risk encroaching upon the public domain. Comparative analysis of the United States, United Kingdom, and Japan underscores differing approaches to exceptions such as parody, while the Indonesian case *Ahmad Dhani v. Once Mekel* illustrates ongoing enforcement gaps despite clear statutory provisions. These findings support the argument that legal systems must carefully calibrate enforcement to avoid "overclaiming" and ensure balance between protection and access.

The synthesis of these findings reveals that globalization of intellectual property rights exerts strong normative and economic pressures on national regimes. Indonesia, having harmonized its law with international standards (TRIPs, Berne Convention, Law No. 28/2014), must nevertheless safeguard its legal sovereignty through the foundational principles of Pancasila and the 1945 Constitution. In the Indonesian context, copyright is originally vested in the author as the holder of moral and economic rights, but the effective management of economic rights—particularly in music—is institutionally delegated to collective management organizations such as LMKN. This dual structure explains that "control" over copyright in Indonesia is shared between the author (for moral rights) and the collective licensing system (for economic exploitation).

By doing so, Indonesia can position itself not merely as a passive "rule taker" in the global system, but as an active participant that shapes copyright law in line with national identity and cultural priorities. The implications of this research extend to policymakers, practitioners, and creative industries. Policymakers should develop clearer guidelines for public domain utilization, strengthen the governance of collective management organizations, and prevent fraudulent claims over public heritage. For the creative industry, the study emphasizes the importance of awareness regarding copyright duration and domain status, as well as the opportunity to embrace public domain works as a catalyst for innovation. This article contributes to the discourse on copyright globalization by situating Indonesia within the tension between global harmonization and legal sovereignty. The limitations of this study lie in its doctrinal and case-based approach, which could be complemented in the future by empirical research on the economic impacts of copyright enforcement in Indonesia's digital ecosystem. Future studies may also explore the role of emerging technologies such as artificial intelligence in reshaping the boundaries of copyright and public domain.

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