

June 27, 2025

VIA REGULATIONS.GOV (Docket No. USTR–2025–0012)

Edward Marcus
Chair of the Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

**Re: “2026 AGOA Eligibility Review”—Kenya, Nigeria, and South Africa—IIPA’s
Written Comments on the Annual Review of Country Eligibility for Benefits under
the African Growth and Opportunity Act, 90 Fed. Reg. 23103 (May 29, 2025)**

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) appreciates the opportunity to submit these comments in response to the May 29, 2025, request for public comments by the African Growth and Opportunity Act (AGOA) Implementation Subcommittee of the Trade Policy Staff Committee, chaired by the Office of the U.S. Trade Representative, in connection with the review of the eligibility of sub-Saharan African countries to receive AGOA benefits.

A. Description of the IIPA and its Members

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include: Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).

Collectively, IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and/or distributed by IIPA-member companies include: video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

The U.S. copyright-based industries are one of the fastest-growing and most dynamic sectors of the U.S. economy, responsible for millions of well-paying U.S. jobs.¹ Inexpensive and accessible reproduction technologies, however, make it easy for copyrighted materials to be pirated in other countries, including in the online environment. IIPA encourages foreign governments to adopt copyright laws and enforcement regimes that foster the creation and dissemination of copyright materials and deter piracy. Strengthening of copyright protections abroad protects the significant U.S. exports of the creative industries, which in turn strengthens our domestic economy.

B. AGOA and the Protection and Enforcement of Copyright

As sub-Saharan African economies develop, governments should look to copyright law and enforcement mechanisms that can incentivize their creative industries and foster economic growth and stability. Unfortunately, as the U.S. International Trade Commission (USITC) noted in a 2020 report, piracy is a “widespread issue for rights holders operating in [the sub-Saharan African] market” and “poor administration of copyright regimes is a common issue in the key markets.”² The U.S. Government’s AGOA review is one of only a few regularly occurring opportunities to examine intellectual property (IP) protection and enforcement in AGOA-eligible countries and to provide guidance to make these mechanisms more effective. IIPA appreciates the opportunity to participate in the process.

Internet use in Africa continues to expand. According to the International Telecommunications Union (ITU), in 2024, 38% of Africans used the Internet, an increase from

¹ In February 2025, IIPA released the latest update of its comprehensive economic report, *Copyright Industries in the U.S. Economy: The 2024 Report*, prepared by Secretariat (2024 Report). According to the 2024 Report, the “core” copyright industries in the United States generated over \$2.09 trillion of economic output in 2023, accounting for 7.66% of the entire economy, and employed approximately 11.6 million workers in 2023, accounting for 5.43% of the entire U.S. workforce and 6.1% of total private employment in the U.S. The jobs created by these industries are well-paying jobs; for example, copyright industry workers earn on average 50% higher wages than other U.S. workers. The 2024 Report measured the copyright industries’ significant contributions to the U.S. digital economy, as that concept was defined by the federal government. In 2023, the core copyright industries accounted for 51.39% of the U.S. digital economy and 49.1% of U.S. digital economy employment, even though the government’s digital economy definition does not encompass the full range of the copyright industries’ digital activities. In addition, according to the 2024 Report, the core copyright industries outpaced the U.S. economy, growing at an aggregate annual rate of 9.23% between 2020 and 2023, while the U.S. economy grew by 3.41%. When factoring in other industries that contribute to the copyright economy (which together comprise what the 2024 Report calls the “total” copyright industries), the numbers are even more compelling. Additionally, the 2024 Report highlights the positive contribution of selected copyright sectors to the U.S. overall trade balance. Given the importance of digital delivery to the copyright-based industries, this sector has the potential to multiply its export revenues if our trading partners provide strong copyright-protective environments. In 2023, these sectors contributed \$272.6 billion in foreign sales and exports, exceeding that of many other industry sectors, including chemicals, pharmaceutical and medicines, agricultural products, aerospace products and parts, and food and kindred products. The full economic report is available at <https://iipa.org/reports/copyright-industries-us-economy/>.

² U.S. International Trade Commission, *U.S. Trade and Investment with Sub-Saharan Africa: Recent Trends and New Developments*, Investigation No. 332-571, March 2020 [hereinafter USITC Africa Report], 172, available at <https://www.usitc.gov/publications/332/pub5043.pdf>.

25% in 2019.³ Statista calculated that in February of 2025, Internet penetration in Nigeria was 45.4%, in South Africa it was 78.9%, and in Kenya it was 48%.⁴ To effectively harness the potential of the online marketplace and ensure that it is safe, healthy, and sustainable, AGOA-eligible countries should assess whether their legal regimes are capable of responding to today's challenges, including rampant online piracy.

For the copyright industries to flourish in AGOA-eligible markets, these countries need to: (i) have copyright laws with high standards of protection; (ii) provide efficient copyright enforcement and sound legal structures to enable healthy licensing of works and recordings; and (iii) eliminate market access barriers and unfair competitive practices. These practices will ensure open markets for important U.S. exports dependent on copyright protection. The ongoing implementation of the African Continental Free Trade Agreement provides an important opportunity to reinforce these principles and ensure the continent provides adequate and effective protection of IP rights.

These principles are echoed by two World Intellectual Property Organization (WIPO) studies conducted in 2013 and 2014 concerning the creative industries in Kenya, Burkina Faso, and Senegal. Among the recommendations from the two studies were the following: greater respect for contracts, as “contracts are in many cases non-existent [in Kenya], which as such is a hurdle for the audiovisual industry to become more professional;” ratification and implementation of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties), which should be “urgently considered as Internet legal and illegal distribution is rapidly changing the market;” and “a concerted effort against audiovisual piracy in both East-Africa and West-Africa,” which “would have a positive effect on the market.”⁵

Unfortunately, in AGOA-eligible markets, both U.S. and domestic rights holders and copyright-dependent services generally confront inadequate and ineffective copyright protection, deficient local laws, weak enforcement, and market access barriers (or other discriminatory or unfair competitive practices). These shortcomings enable parties to engage in piracy, some on a commercial scale, because it is a high-profit, low-risk enterprise, unencumbered by the considerable costs associated with either producing and licensing works, or protecting them against theft.

³ See International Internet Telecommunications Union, Facts and Figures 2024, available at <https://www.itu.int/itu-d/reports/statistics/facts-figures-2024/index/>.

⁴ See Statista, Share of Internet Users in Africa as of February 2025, by Country, available at <https://www.statista.com/statistics/1124283/internet-penetration-in-africa-by-country/>.

⁵ See Tarja Koskinen-Olsson, World Intellectual Property Organization (WIPO) Committee on Development and Intellectual Property, *Study on Collective Negotiation of Rights and Collective Management of Rights in the Audiovisual Sector*, August 12, 2014, available at https://www.wipo.int/edocs/mdocs/mdocs/en/cdip_14/cdip_14_inf_2.pdf; and Bertrand Moullier and Benoit Muller, WIPO Committee on Development and Intellectual Property, *Scoping Study on Strengthening and Development of the Audiovisual Sector in Burkina Faso and Certain African Countries*, September 25, 2013, available at https://www.wipo.int/edocs/mdocs/mdocs/en/cdip_12/cdip_12_inf_3.pdf.

Countries are eligible for AGOA benefits if they meet certain prerequisites, including establishing, or making continual progress toward establishing, “the elimination of barriers to United States trade and investment, including by . . . the protection of intellectual property rights.”⁶ The adequate and effective protection and enforcement of copyright is the foundation on which both U.S. and local creators and investors base their production and distribution activities in AGOA-eligible markets. Creators from AGOA beneficiary countries recognize the importance of adequate and effective copyright protection and enforcement to incentivize investment in the production of cultural works and allow local artists to sustain their livelihoods. There is no shortage of news reports that highlight local artists struggling to make a living in the face of widespread piracy in sub-Saharan Africa.⁷ Creative industries in Africa and abroad lose out on deserved revenue, and illicit activities such as identity theft and money laundering are furthered through engagement with pirate platforms.⁸ In addition to economic and cultural benefits, adequate and effective protection of IP rights importantly supports good governance principles, including the rule of law, judicial independence, control of corruption, and political stability.⁹

As a key element to AGOA eligibility, it is crucial that AGOA beneficiaries demonstrate some progress toward the adequate and effective protection of IP. We urge the Administration to continue to consider copyright laws and enforcement practices under the IP eligibility criteria of

⁶ See AGOA Section 104(a)(1)(C)(ii) (19 U.S.C. § 3703(1)(C)(ii)) and AGOA Section 111 (adding Section 506A to the Trade Act of 1974 authorizing the President to designate AGOA eligible countries if he determines they meet the criteria of AGOA Section 104 and the Generalized System of Preferences (GSP) country eligibility criteria of Section 502 of the Trade Act of 1974, including Section 502(c)(5) (19 U.S.C. § 2462(c)(5))).

⁷ See, e.g., Diana Pereira, Inventa, *Tackling Kenya’s ‘rampant’ film piracy problem*, Jan. 24, 2024, available at <https://inventa.com/en/news/article/948/tackling-kenyas-rampant-film-piracy-proble> (“Partners Against Piracy (PAP), a multi-sectoral association formed to combat digital piracy, estimates that Kenya’s creative industry is losing Sh92 billion (\$585.1 million) annually due to online piracy.”); The Nation Ng, *Copyright Commission Warns DJs*, June 13, 2025, available at <https://www.msn.com/en-xl/africa/nigeria/copyright-commission-warns-djs/ar-AA1GCnJh?apiversion=v2&noservercache=1&domshim=1&renderwebcomponents=1&wcseo=1&batchservetelemetry=1&noservetelemetry=1> (Reporting a recent advisory statement from the NCC warning DJs to properly license tracks through CMOs.); Bizcommunity.com, *Why MultiChoice is fighting the war on content piracy*, June 10, 2025, available at <https://www.msn.com/en-za/news/other/why-multichoice-is-fighting-the-war-on-content-piracy/ar-AA1Goxf6> (“In just five African countries, 17.4 million visits were made to the top 10 piracy sites. Kenya led with 7 million visits, South Africa followed with 5 million. . . Nigeria: 2.3 million.” MultiChoice is leading an effort to protect African stories and “ensure that the creativity born in Africa is elevated through innovation, investment, and protection.”).

⁸ See, e.g., Lere Baale, Premium Times, *Cultural, Creative Industries in Africa: Opportunities, Challenges and Solutions*, June 11, 2025, available at <https://www.premiumtimesng.com/business/trade-insights/800073-cultural-creative-industries-in-africa-opportunities-challenges-solutions.html> (“Nollywood loses millions annually to illegal streaming and DVD piracy. African musicians often see their songs used without proper royalties or compensation.”); Hanno Labuschagne, MyBroadband, *Warning to South Africans using pirate streaming apps*, May 28, 2025, available at <https://mybroadband.co.za/news/broadcasting/596339-warning-to-south-africans-using-pirate-streaming-apps.html> (“In crackdowns overseas, law enforcement has found several illegal IPTV operations connected to other criminal organisations and crimes, including money laundering and cybercrime.” These illicit services, “[rob] an actors or filmmaker of deserved income,” and fund violent crimes.).

⁹ See USITC Africa Report at 169 (noting that evaluating the “overall IP environment” in sub-Saharan Africa requires, among other things, looking at factors including “rule of law, judicial independence, control of corruption, and political stability,” and further observing that “legal and political factors can play an important role in the IP environment” in sub-Saharan Africa).

AGOA.¹⁰ As IIPA has explained in previous AGOA-related filings, just what amounts to “adequate and effective” protection of IP rights is a flexible measure that rightly changes over time.¹¹ The obligations of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”), which provide global minimum standards of copyright protection and enforcement, are central to this determination. Also central to the determination are the standards provided under the WIPO Internet Treaties, which contemplate many of the legal norms for a sustainable and healthy online marketplace. These treaties establish a foundation for essential legal frameworks that foster the continued growth of legitimate digital trade by providing copyright holders with a full panoply of exclusive rights in the digital networked environment to protect their valuable content.

C. Copyright Protection and Enforcement in Select AGOA Countries

IIPA highlights below serious concerns with copyright law reform efforts in **Kenya**, **Nigeria**, and **South Africa**, as well as some positive indications of improvements in copyright protection and enforcement in **Kenya** and **Nigeria**.

Kenya

In 2019, Kenya’s Attorney General Kihara Kariuki highlighted the creative industries’ contribution to Kenya’s economy, citing a study estimating the contribution to be 5.3% of GDP and stating, “The protection of the copyrights will essentially put money into the pockets of authors, producers and all creators.”¹² While the Government of Kenya has indicated its intention to ratify the WIPO Internet Treaties, it has yet to do so or to set a timeframe for accession. Kenya should ratify and implement the WIPO Internet Treaties as part of its ongoing Copyright Act amendment process. Kenya’s 2019 amendment to the Copyright Act was intended to address some of the challenges of the digital age, but Kenya’s copyright framework remains deficient in several significant respects. Since then, there have been several new proposals to amend the existing Copyright Act, including the Intellectual Property Bill (2020). The Kenya Kwanza Government that took over in August 2022 does not appear to prioritize this Bill and instead introduced a new draft Copyright and Related Rights Bill (2023), published by the Kenya Copyright Board (KECOBO) to replace the existing Copyright Act. However, the 2023 Bill does not address many of the deficiencies in Kenya’s copyright framework and has additional provisions that fall short of Kenya’s international obligations and best practices. To ensure adequate and effective protection and enforcement of IP rights, Kenya’s government should address the following shortcomings in Kenya’s copyright and enforcement framework, many of which have not been properly addressed in the 2023 Bill, including by:

- rejecting any proposals requiring copyright registration and compulsory recordation of assignments, and removing the requirement in the Copyright Act that authentication

¹⁰ For AGOA intellectual property eligibility criteria, see AGOA Sections cited *supra* note 7.

¹¹ See, e.g., IIPA’s 2009 Public Comments in the Annual Review of AGOA Country Eligibility, available at <https://iipa.org/files/uploads/2018/01/IIPAAGOAFilingtoUSTR101909-1.pdf>.

¹² See Anyango Otieno, *The Standard*, *AG: Kenya to ratify copyright protection, information laws*, June 11, 2019, available at <https://www.standardmedia.co.ke/article/2001329381/how-copyright-creative-works-can-boost-gdp>.

devices be affixed to sound recordings, all of which are incompatible with Kenya's international obligations, including under the Berne Convention and the WTO TRIPS Agreement, and with the requirements of the WPPT;

- ensuring that the exclusive rights of communication to the public, broadcasting, and making available are clearly defined and maintained as exclusive rights in keeping with the WPPT;
- ensuring that exclusive rights apply to all sound recordings, including “born digital” recordings;
- providing adequate and effective protections for technological protection measures (TPMs) and rights management information (RMI), in line with international standards, including introducing definitions for TPMs and RMI in the 2023 Bill that are in keeping with the international standard;
- providing a term of protection consistent with international norms (life of the author plus 70 years, or at least 70 years from fixation or publication for sound recordings or works not measured by the life of a natural person);
- ensuring that the scope of exceptions and limitations to copyright protection is properly confined to the three-step test, including by expressly incorporating the three-step test into the law;
- improving Kenya's online liability regime to ensure that it supports sustainable growth of the digital content markets and does not shield copyright infringing services, including by: (i) ensuring there is a clear legal basis under which Internet service providers (ISPs) may be held liable for IP infringements carried out by third parties using their services or networks; (ii) clarifying that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities; (iii) clarifying the responsibilities of ISPs eligible for safe harbors, including an obligation to remove infringing content expeditiously upon obtaining knowledge or awareness of the infringing activity, to take measures demonstrated effective in preventing or restraining infringement, and to implement effective repeat infringer policies; and (iv) requiring marketplaces and encouraging all relevant intermediaries to implement know-your-business-customer (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers;
- maintaining website blocking injunctions, which are available on a preliminary basis in the Copyright Act, and clarifying the availability of mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities;
- ensuring that the collective management framework and system reflects the essential characteristics of a collective management organization (CMO); CMOs should be non-profit and owned or controlled by their member rights holders and subject to a robust supervisory system established by law or regulation; in addition, CMO operations should

be transparent with accountability to users and right holders, subject to good governance consistent with international standards and best practices;

- rejecting any proposal to introduce a statutory licensing scheme for ring back tunes, as artists and rights holders should be allowed to freely negotiate fair commercial terms for the use of their recordings on the back of strong exclusive rights and effective measures to enforce their rights;
- introducing a rate-setting standard applicable to the licensing of collectively managed rights requiring that rates reflect the economic value of the use of the rights in trade (i.e., willing buyer/willing seller standard);
- providing deterrent civil and criminal penalties to combat piracy, including applying increased penalties for second and subsequent offenses and fines and imprisonment terms for criminal offenses, including for circumvention of TPMs, distribution of devices designed to circumvent TPMs, and removal/alteration of RMI; and
- clarifying the role of the proposed Copyright Tribunal, which should include hearing and determining matters referred to the Tribunal expeditiously and fairly, and clarification that rights holders may elect to bring claims to either the Tribunal or to the Courts.

In addition, a mandatory IP recordation system, established under the Anti-Counterfeit Authority (ACA), went into effect in January 2023. Under this system, it is an offense subject to criminal sanctions to import products protected by IP rights into Kenya if such rights have not been recorded with the ACA. The mandatory IP recordation system raises several concerns, including regarding Kenya's compliance with the Berne Convention, which prohibits formalities regarding the enjoyment and exercise of copyright rights.¹³ Kenya should amend its mandatory recordation system to be voluntary and ensure that copyright is not in scope.

The Government of Kenya also published for consultation the Computer Misuse and Cybercrimes (Critical Information Infrastructure and Cybercrime Management) Regulations, 2023. Notably, the regulations fall short in the critical area of addressing piracy and other intellectual property infringements, which are key concerns regarding computer misuse and cybercrime activity. In particular, the regulations should address the unlawful streaming and downloading of content, including via cyberlockers and stream-ripping sites, which often host malware that infects the computers of users and poses cybersecurity risks.

In recent years, there has been a notable increase in government interference in the collective management sector, including the Copyright Office's failure to renew the operating licenses of the three music CMOs, despite reasonable efforts by the CMOs to meet the Office's demands. In August 2024, KECOBO awarded a license to the Performing and Audio-Visual Rights Society of Kenya (PAVRISK) to collectively manage performance and broadcast rights as a single window licensor in the country. KECOBO's lack of objective engagement with rights holders and users, and its failure to honor the Copyright Tribunal's directives to award provisional licenses to the three CMOs and align its licensing procedures with the law, coupled with PAVRISK's

¹³ See Berne Convention Article 5(2).

reputation for poor internal governance and lack of representation, continue to raise profound and pervasive rule of law concerns. A well-functioning CMO subject to effective supervisory oversight to ensure best practices of licensing for the benefit of rights holders and users is essential to continue the growth and success of the Kenyan market for copyrighted materials. The Berne Convention, of which Kenya is a member, requires that creators enjoy the exclusive right of authorizing the public performance and broadcasting of the works. Accordingly, CMOs must represent rights holders and engage with users via proper mandates and adhere to transparency and good governance practices to negotiate and license the use of protected works. IIPA urges KECOBO to revoke the license granted to PAVRISK and engage with rights holders in constructive dialogue prior to establishing a CMO to ensure that the entity is fit for purpose and the creative economy continues to thrive. Furthermore, IIPA urges the United States to work alongside KECOBO and relevant officials in the Kenyan government to resolve this troubling decision. While this is an IP-specific issue, it is a clear example of the need for urgent continuation of longstanding U.S. engagement on systemic priorities with respect to good governance, accountability of public officials, and anticorruption.

Regarding music piracy, support from authorities is needed to scale up enforcement actions against foreign-based stream ripping services that dominate the piracy landscape, and authorities should receive further training and guidance to handle digital piracy cases.

Finally, while the proposed Finance Bill of 2024, which included discriminatory taxes on digital content and foreign Digital Service Providers (DSPs), was withdrawn by the President, any return to similar proposals should be strongly rejected.

Nigeria

Nigeria's vibrant film and music industries are critical to its economy.¹⁴ Nigeria's Lagos State Commissioner for Tourism, Arts and Culture, Mrs. Toke Benson-Awoyinka, described the creative sector as "one of Nigeria's most resilient and economically significant industries and a thriving economic force capable of sustaining individuals and the nation."¹⁵

¹⁴ See Samuel Anyanwu, Federal Ministry of Information & National Orientation of the Federal Republic of Nigeria, *Warner Music Group Seeks Collaboration with Nigerian Government for Global Music Expansion*, May 19, 2024, available at <https://fmino.gov.ng/warner-music-group-seeks-collaboration-with-nigerian-government-for-global-music-expansion/> ("Warner Music Group... has expressed interest in partnering with the Federal Government of Nigeria to invest in the country's thriving music industry."); and Padili Mikomangwa, The Exchange, *Inside Africa's Multi-Billion Dollar Creative Economy*, May 8, 2024, available at <https://theexchange.africa/industry-and-trade/africas-creative-economy/> ("The nation's film industry, dubbed 'Nollywood' currently ranks as the world's second most prolific film industry, producing thousands of movies annually and contributing significantly to Nigeria's GDP.").

¹⁵ See Lagos State Government, *LASG Reaffirms Commitment to Creative Industry at Coson Week-Long Celebration*, June 11, 2025, available at <https://lagosstate.gov.ng/news/all/view/683ef1265e4c9d6ceca775ee>.

Unfortunately, pervasive piracy remains a significant obstacle for Nigerian authors and artists, who, as a result, struggle to receive any compensation for their works.¹⁶ In 2019, the Nigerian Copyright Commission (NCC) disclosed that the country loses approximately \$3 billion yearly to digital piracy.¹⁷ According to the World Bank, nine out of every ten films sold in Nigeria are pirated copies.¹⁸ Nigeria is a hub for music copyright piracy (and other forms of cybercrime), with its international reach undermining legitimate music markets across Africa, Latin America, and even in Europe. Illustrating the problem, a Nigerian actor commenting on the decline of that country's film industry pointed to piracy, stating that "the punishment in the copyright law for piracy is still not strong enough as far as I am concerned."¹⁹ In its report on Africa, the USITC found that piracy "remains the largest threat" to the film industry in Nigeria, citing to a 2014 NCC report that estimated that Nigeria lost over \$1 billion annually to film piracy.²⁰ Particularly as Nigeria looks to recover from economic damage caused by the pandemic, stronger copyright protection and enforcement are needed to support the country's burgeoning creative sector.²¹

Nigeria ratified the WIPO Internet Treaties in 2017 but has not fully implemented the treaties. As a result, Nigeria's legal regime has fallen short of international copyright norms in several key respects. To address its online piracy problem, Nigeria enacted a new Copyright Act, 2022 (Act No. 8 of 2022) in March 2023 that includes several positive aspects, including a clearer making available right, an administrative website blocking procedure with the Nigerian Copyright Commission (NCC), and improvements to Nigeria's enforcement framework. However, these are undercut by certain problematic provisions. These include a vague extended collective licensing regime that does not yet have sufficient safeguards to ensure that it does not prejudice rights holders, an unclear open-ended fair dealing exception, and an overbroad compulsory licensing regime. These provisions should be urgently revised not only to foster investment in Nigeria, but also to bring Nigeria's legal framework in line with international copyright norms and best practices. Nigeria's authorities should maximize the new enforcement provisions in the Copyright Act and take more actions. In addition, the government should increase public awareness about the harms caused by piracy. Finally, the Government of Nigeria should reform the collective management framework in Nigeria to ensure a clear, fair, market-

¹⁶ See, e.g., Ibadan Yinka Adeniran, *The Nation*, *Nigerian Publishers Raise Alarm Over Piracy, Urge Strict Enforcement of Copyright Law*, Apr. 24, 2025, available at https://thenationonline.net/nigerian-publishers-raise-alarm-over-piracy-urge-strict-enforcement-of-copyright-law/#google_vignette (Nigerian Publishers Association President Dauda "stressed that every inch of effort must be deployed to discouraging [sic] any unauthorized printing or use in whatever form."; and Godwin Tsa, *The Sun*, *NCC vows to tackle online infringement, block illegal music websites*, Apr. 27, 2025, available at <https://thesun.ng/nigeria-ncc-block-illegal-music-sites/>.

¹⁷ This Day, *NCC: Nigeria Loses \$3bn Annually to Piracy*, available at <https://www.thisdaylive.com/index.php/2019/04/26/ncc-nigeria-loses-3bn-annually-to-piracy/>.

¹⁸ Africa Renewal, *Nigeria's film industry: A potential gold mine?*, available at <https://www.un.org/africarenewal/magazine/may-2013/nigeria%E2%80%99s-film-industry-potential-gold-mine>.

¹⁹ See, Brooks Eti-Inyene, *Pulse*, *Piracy in Nollywood: Jide Kosoko calls for 20-year jail term for offenders*, March 24, 2025, available at <https://www.pulse.ng/articles/entertainment/movies/piracy-in-nollywood-jide-kosoko-calls-for-20-year-jail-term-for-offenders-2025032415392723816>.

²⁰ See USITC Africa Report at 186.

²¹ See Samuel Andrews, *The Conversation*, *Netflix Naija: creative freedom in Nigeria's emerging digital space?*, March 19, 2020, available at <https://theconversation.com/netflix-naija-creative-freedom-in-nigerias-emerging-digital-space-133252>. See also Joseph Onyekwere, *The Guardian*, *Nigeria: Outdated Laws, Bane of Nigeria's Creative Industry, Says Idigbe*, May 15, 2018, available at <https://allafrica.com/stories/201805150315.html>.

based, and transparent system, subject to effective supervisory oversight, including by engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively, as well as meets international best practices and deals fairly and transparently with users. The lack of a clear framework for collective licensing and the subsequent absence of effective and transparent CMOs have been a serious problem for all rights holders, including sound recording producers.

As noted above, several significant deficiencies remain in the Copyright Act that should be corrected for Nigeria to properly implement the WIPO Internet Treaties and meet its international obligations and evolving global norms, including the following:

- Section 35 of the Copyright Act introduced a compulsory license scheme that is incompatible with Nigeria's international obligations, including under the Berne Convention and the WIPO Internet Treaties. Under this provision, the NCC could bypass the copyright owner and authorize the use of a copyrighted work "by any person for the purpose of rectifying the abuse of a dominant market position or to promote public interest." The provision undermines rights holders' ability to assert their rights in or license their works because any user could request that the NCC bypass the copyright owner and authorize or prohibit certain uses of a work based on the mere allegation that the user "made a reasonable effort to obtain permission from the owner of copyright on reasonable commercial terms and conditions and that the effort was not successful." Hence, Section 35 undermines contractual freedom and legal certainty and is inconsistent with Nigeria's international obligations, including under the Berne Convention and the WIPO Internet Treaties. This section is also outside the scope of the compulsory licenses set out in the Berne Convention and its Appendix, which cannot be applied to the right of making available or beyond the narrow uses set out therein. Moreover, Section 35 reduces the scope of the exclusive right of making available, thereby undermining implementation of the WIPO Internet Treaties by compromising their milestone right.
- The Copyright Act also introduced extended collective licensing (ECL) in Nigeria. An ECL system is appropriate only in well-developed collective rights management systems, where organizations represent a substantial number of rights holders for each segment of the collective marketplace, and only in well-defined areas of use, where obtaining authorization from rights holders on an individual basis is typically onerous and impractical to a degree that makes a license unlikely. As noted above, Nigeria's collective management system is inadequate. In addition, the provision is overly broad. For these reasons, such a system is not appropriate in Nigeria, and the new ECL framework should be withdrawn. At the very least, adequate safeguards should be introduced, e.g. via the CMO Regulation proposals (discussed below), using best practice examples such as Article 12 of the European Union (EU) Digital Single Market (DSM) Directive.
- The Copyright Act appears to provide for a hybrid fair use-fair dealing provision that may be implemented substantially broader than the U.S. fair use doctrine to the detriment of the creative industries for several reasons. First, the provision includes additional broad purposes that are not present in the U.S. statute, including "private use" and "private study." Second, U.S. fair use is determined on a fact-intensive, case-by-case basis. Without the foundation of a well-developed body of case law, Nigeria's untested, broader fair use provision would result in uncertainty for both rights holders and users on the parameters of permissible uses. The

additional broad purposes listed in the text add to the uncertainty and risk that Nigerian judges, none of whom have ever adjudicated a fair use case and would be doing so without any binding precedent to guide them, will find an unacceptably wide range of uses to be non-infringing. Third, the expansive, new “fair use” exception is included as part of a “fair dealing” system that includes several overly broad new exceptions, as discussed below. This hybrid approach further adds to the uncertainty and risk that the fair use provision will deny copyright owners fundamental protections on which they rely to license their works and sound recordings. Therefore, the broad hybrid fair use-fair dealing provision is inconsistent with the three-step test.²² In particular, the provision is not limited to certain special cases, and there is a substantial risk that it would be applied in a manner that conflicts with the normal exploitation of a work or unreasonably prejudices the legitimate interests of the rights holder.

- An exception for archives, libraries, and galleries, is broader than the exception in U.S. law and inconsistent with the three-step test, because it would permit these institutions to make and distribute “copies of works protected under this Act as part of their ordinary activities” without limitation, and it would also permit lending such copies to users.
- The Copyright Act provides for compulsory licenses for translation and reproduction of published works. This provision should be revised to ensure it is calibrated according to the terms of the Berne Convention Appendix, which it currently is not.
- While the Copyright Act includes an exclusive right of distribution, extraneous language has been added that appears to limit the right of distribution “for commercial purposes” and for works that have “not been subject to distribution authorized by the owner.” IIPA is concerned that this language could be interpreted to extend the concept of exhaustion of rights to distributions of digital content.
- While the broadcast right for sound recordings is granted as an exclusive right in Section 12, it is then downgraded to a mere remuneration right in Section 15. Sound recording producers’ broadcast rights should be maintained as an exclusive right without being downgraded to provide the fair market conditions in which rights holders can negotiate commercial terms that reflect the economic value of uses of recorded music to broadcasters.
- The Copyright Act introduces draconian criminal sanctions, including imprisonment, for rights holders who fail to keep proper records of the disposition of their rights. This provision is unprecedented and disproportionate to any intended purpose and should be deleted.
- The overbroad quotation exception should be revised to limit the use of a quotation to purposes of criticism or review.
- Private copying exceptions, and with them, provisions for levies, should apply only to content that is lawfully acquired—the exceptions should not be misused as a means to legalize piracy—and ensure that rights holders receive adequate shares of collections made, deductions are kept to a minimum, and compensation is payable directly to rights holders.
- The term of protection for all works and sound recordings should be extended to 70 years from fixation or publication (and the same for juridical entities), and, for all works, to the life of the author(s) plus 70 years.

²² See, e.g., Article 13 of the WTO TRIPS Agreement.

Regarding collective management, the NCC has failed to meaningfully engage recording industry stakeholders on the accreditation of a related rights CMO following protracted dispute between the NCC and The Copyright Society of Nigeria (COSON, the CMO that was responsible for managing performance rights in musical works and sound recordings but whose operating license was withdrawn by the NCC). While rights holders and the NCC took steps to improve COSON's transparency and governance, in 2023, the NCC, in consultation with select rights holders, validated an Action Plan for CMO in the Music Industry that included recognition of the Musical Copyright Society of Nigeria (MCSN) as the only accredited music industry CMO. However, several leading domestic stakeholders and international companies in the industry controlling a significant repertoire have expressed concern regarding the ability of MCSN to effectively manage their rights. To resolve this, the Government of Nigeria should reform the collective management framework in Nigeria, in partnership with key stakeholders, including the recording industry body, RELPI, to ensure a clear, fair, market-based, and transparent system. This should include engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively, has the relevant expertise and technical capability to perform collective management functions, is owned or controlled by its member rights holders, and is a non-profit organization. Accordingly, IIPA recommends that, through RELPI, a new CMO should be established with the support of the NCC to ensure there is adequate and effective representation of both local and international rights holders. With these provisions in place, as well as improved enforcement as noted below, CMOs would be able to license effectively in Nigeria.

Nigeria needs to more effectively enforce against the numerous unlicensed online music and audiovisual services that operate in the country, which are harming many markets inside and outside of Nigeria. Now that the Copyright Act has entered into force (as discussed above), NCC staff should be sufficiently resourced and trained to fully use the new criminal provisions in the Copyright Law as the basis for improved enforcement actions against piracy services. Moreover, more resources are needed for the NCC online enforcement unit to adequately engage in sustained efforts to combat piracy in the country, including to ensure authorities have critical resources such as electricity and Internet access.²³

South Africa

South Africa's current legal regime fails to provide adequate and effective protection of copyrighted materials. Significant reforms are needed to South Africa's Copyright Act and Performers' Protection Act to bring the country's laws into compliance with international agreements, including the TRIPS Agreement and the WIPO Internet Treaties.²⁴ For example, South Africa lacks basic protections required to enable trade in copyrighted materials in the digital environment. These basic protections should include the right of copyright owners to control the distribution of copies of their works and sound recordings, and to control the manner in which

²³ IIPA's 2025 Special 301 submission is available to the public via www.regulations.gov, as well as our website, at <https://www.iipa.org/reports/special-301-reports/>. The 2025 Nigeria country report from IIPA's Special 301 submission is available at <https://www.iipa.org/files/uploads/2025/01/NIGERIA-2025-Copyedited-011725.pdf>.

²⁴ South Africa's Cabinet has approved the country's accession to the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the "WIPO Internet Treaties"), and the Beijing Treaty.

their works and sound recordings are communicated to the public. South Africa also lacks adequate protections for TPMs, which foster many of the innovative products and services available online by allowing creators to control and manage access to copyrighted works (for example, via streaming services), and to diversify products and services. At the same time, TPMs enable consumers to enjoy desired content on a variety of platforms, in many different formats, and at a time of their choosing. In addition, South Africa's legal regime does not provide adequate civil remedies or criminal penalties to allow rights holders to recover their losses from infringement or to deter piracy. Without adequate means to remedy infringement or deter piracy, the path for legitimate services to operate is difficult.

Significant reforms are needed to South Africa's Copyright Act and Performers' Protection Act to bring the country's laws into compliance with international agreements, including the WTO TRIPS Agreement and the WIPO Internet Treaties. In 2019, the South African Parliament adopted the first major revision of the country's copyright and related laws in decades.²⁵ While the intent of South Africa's copyright reform process was to bring the country's laws into compliance with international agreements, the bills that ultimately passed, the Copyright Amendment Bill (CAB) and Performers' Protection Amendment Bill (PPAB), fell far short of international norms for the protection of copyrighted works in the digital era. Moreover, the copyright reform process failed to consider whether the proposed changes would be compliant with South Africa's Constitution and international obligations. Further, as part of its required Socio-Economic Impact Assessment System (SEIAS) process, the government did not publish an updated SEIAS report to adequately measure the economic impact of the bills on South Africa's creative sector. The absence of an updated SEIAS report leaves a critical gap in assessing the full economic impact of the bills on South Africa's creative sector. The lack of an updated assessment means that the government has not adequately evaluated how the proposed reforms would affect stakeholders within the creative industries, including producers, performers, and other rights holders. This failure to properly assess the economic implications raises concerns about the overall effectiveness and sustainability of the reforms, particularly in addressing the unique challenges posed by the digital era. As such, a comprehensive and updated SEIAS report is crucial to ensure that the legislative changes are aligned with the interests of South Africa's creative economy and its international commitments.

In June 2020, South Africa's President referred the CAB and the PPAB back to the National Assembly based on reservations regarding the bills' compliance with South Africa's Constitution and its international commitments. After making minor revisions to the bills without addressing the major concerns, Parliament adopted the revised legislation in February 2024. In October 2024 President Ramaphosa referred the bills to the Constitutional Court to determine their constitutionality, stating that the legislation does not fully accommodate his previous reservations regarding CAB Sections 6A, 7A, 8A, 12A to 12D, 19B and 19C and related provisions in the PPAB to the extent that they incorporate these CAB provisions. Subsequently, the President also filed an affidavit supporting the grounds for his referral, stating that his reservations concerning arbitrary deprivation of property and alignment with South Africa's international law treaty obligations are legitimate and justified reasons for his decision to refer the bills to the

²⁵ For additional details, see IIPA's 2020 Special 301 Report on South Africa, <https://www.iipa.org/files/uploads/2020/02/2020SPEC301SOUTHAFRICA.pdf> at 76.

Constitutional Court. The President was restricted in his final assessment to provisions that he raised concerns about in 2020 when he rejected the bills and sent them back to Parliament to be reconsidered. The President's referral is made only in respect to the "impugned provisions" of the CAB (and by implication the PPAB) – Sections 6A, 7A, 8A, 12A to 12D, 19B, and 19C of the CAB.²⁶ The scope of the referral includes most of the new copyright exceptions and limitations, including an expanded fair use provision, and also encompasses concerns regarding the retrospectivity of new statutory royalty and remuneration entitlements for authors and performers (including audiovisual works). The Constitutional Court's hearing on the President's referral of the bills took place at the end of May 2025.

The bills contain many other concerning proposals that are not addressed in the President's referral, and which are not backed up by any updated economic impact assessments, nor supported by independent legal opinions regarding compliance with relevant treaties and South Africa's Bill of Rights. As discussed below, this includes problematic provisions that would unduly restrict contractual freedoms (such as a contract override clause that indiscriminately applies to all copyright contracts and prevents waivers of any rights granted in the Act or afforded under exceptions), the 25-year limitation on all assignments of literary and musical works (which would render it practically impossible for producers to consolidate all rights in music and film productions), and inadequate legal protections for TPMs. Moreover, the bills do not include any provisions that would enable or support rights holders' actions against infringing services operated by non-domestic entities (such as content infringing website operators that locate their servers and assets in other jurisdictions while targeting South African audiences and consumers), and they contain numerous provisions that are inconsistent with the WIPO Internet Treaties and the Berne Convention. In sum, the bills do not serve to evolve South Africa's copyright law to address the challenges posed by the digital age; instead, the legislation does the opposite, focusing on an approach towards copyright that would further weaken rights holders' ability to protect and effectively commercialize their works in the online environment.

Enactment of the bills in their current form would place South Africa out of compliance with international norms, the obligations of the WTO TRIPS Agreement, the WIPO Internet Treaties, and the Berne Convention, as well as the eligibility criteria of both the generalized system of preferences (GSP) and the AGOA regarding IP.²⁷ It is critical that, should the Constitutional Court declare the bills unconstitutional, South Africa's Parliament withdraw the bills and completely redraft them, in close consultation with rights holders and supported by an updated economic impact study, to ensure compliance with international treaties and to promote an environment favorable to investment. While it does not appear that Parliament commissioned an

²⁶ The impugned provisions include: CAB Section 6A: *Equitable remuneration or share in royalties regarding literary or musical works*; Section 7A: *Equitable remuneration or share in royalties regarding visual artistic works*; Section 8A: *Equitable remuneration or share in royalties regarding audiovisual works*; Sections 12A to 12D: *General exceptions from copyright protection*; Section 19B: *General exceptions regarding protection of computer programs*; Section 19C: *General exceptions regarding protection of copyright work for libraries, archives, museums and galleries*; and related provisions in the PPAB to the extent that they incorporate these CAB provisions.

²⁷ See IIPA's comments and post-hearing brief on South Africa's Generalized System of Preferences (GSP) eligibility in the 2019 annual GSP review, available at <http://www.iipa.org/files/uploads/2020/01/2020-01-17-IIPA-South-Africa-GSP-Review-Written-Comments-and-Notice-of-Intent-to-Testify.pdf> and <https://www.iipa.org/files/uploads/2020/03/SOUTH-AFRICA-IIPA-GSP-Post-Hearing-Brief.pdf>.

independent legal opinion on the bills in their current form, the most comprehensive legal analysis of the bills to date, co-authored by practicing copyright lawyers who are members of the Copyright Committee of the South African Institute of Intellectual Property Law (SAIIPL), concluded that the bills require significant amendments before they would pass constitutional muster and meet the requirements of international treaties.²⁸ At a time when South Africa's economy is struggling with unprecedented levels of unemployment, the stakes are extremely high for the Parliament to redraft these bills to avoid destabilizing the creative industries and to support a thriving copyright sector, which contributes significantly to economic and job growth in the country, and which has potential for substantial growth under the proper conditions.²⁹

The bills that were referred to the Constitutional Court contain many provisions that lack clarity, risk major negative disruption of the creative industries, and pose significant harm to the creators they purport to protect. Major issues of immediate and primary concern to the copyright industries, which are maintained in the current versions of the bills, despite numerous submissions from local stakeholders, are the following:

- The bills would severely restrict the contractual freedom of authors, performers, and other rights holders, which is a key factor for the healthy growth of the entire creative sector. These restrictions would fundamentally impair the value of copyrighted materials by depriving rights holders of the ability to freely license and otherwise derive value from their copyrighted works, performances, and sound recordings. For example, both the CAB and the PPAB limit certain assignments of rights to a maximum of 25 years, and both bills provide ministerial powers to set standard contractual terms for contracts covering seemingly any transfer or use of rights.
- The bills would create an overbroad amalgamation of copyright exceptions that includes an expansive “fair use” rubric (not in line with the U.S. doctrine) appended to a large number of extremely open-ended new exceptions and limitations to copyright protection (on top of the existing “fair dealing” provision), resulting in an unclear thicket of exceptions and limitations.
- The bills would unjustly interfere with and over-regulate the relationship between creative parties, including by introducing statutory royalty and remuneration entitlements and onerous reporting obligations coupled with disproportionate penalties for non-compliance, all of which would undermine producers' ability to finance content, undermine the digital marketplace, and introduce legal risks for the legitimate use of audiovisual works and sound recordings by rights holders and their licensees. Instead, the bills should provide a flexible and robust legal framework for the protection of creative content and investment

²⁸ See Myburgh et al., *Copyright Reform or Reframe?*, available at https://juta.co.za/uploads/Copyright_Reform_or_Reframe/.

²⁹ According to a study commissioned by the Department of Trade and Industry (the DTI) in 2010 using data from 2008, the South African copyright-based industries contributed 4.11% to gross domestic product (GDP) and 4.08% to employment. See WIPO, *Economic Contributions of Copyright Based Industries in South Africa*, available at https://www.wipo.int/export/sites/www/copyright/en/performance/pdf/econ_contribution_cr_za.pdf.

in production, enabling private parties to freely negotiate the terms of their relationships and the exploitation of copyrighted works and sound recordings.

- The bills would not provide adequate legal remedies for rights holders to take effective action to enforce their rights against infringers and to combat piracy, especially in the online environment, thus thwarting the development of legitimate markets for copyrighted works and sound recordings.
- The bills' provisions on TPMs are inadequate, falling short of the requirements of the WIPO Internet Treaties, and the overly broad exceptions to prohibitions on the circumvention of such measures would further impinge on the ability of legitimate markets for copyrighted materials to further develop.

These provisions are inconsistent with South Africa's international obligations, for example, by far exceeding the scope of exceptions and limitations permitted under the WTO TRIPS Agreement (Article 13) and the Berne Convention (Article 9). Moreover, aspects of both bills are incompatible with the WIPO Internet Treaties. The provisions are also inconsistent with other established international legal norms and commercial practices, posing a significant risk to investments in South Africa.

Beyond their failings, the two bills suffer from fundamental systemic failings that are not amenable to discrete fixes, nor correction through implementing regulations.³⁰ Without a fundamental course correction of its copyright reform process, South Africa will be taking a step backward in its effort to strengthen copyright incentives and align its laws with international standards and practices. South Africa would be better served by providing clear and unencumbered rights (subject only to targeted and clearly delineated exceptions and limitations that are justified by a clear evidentiary basis and comply with the three-step test), without unreasonable restrictions on contractual freedoms, to allow the creative communities to increase investment in the South African economy to meet the growing demand for creative works of all kinds, in all formats, at all price points. This is particularly important in light of the President's clear objective to improve levels of domestic and foreign direct investment, as well as the imperative to improve the lives and legacies of South Africa's artists and creators.

It is important to note that the CAB and PPAB are extremely broad-reaching pieces of legislation. IIPA's comments in this filing are not exhaustive but instead highlight some of the major concerns for the U.S. copyright industries. It should also be noted that the bills, when read together, are incoherent. For example, Clause 3 of the PPAB purports to introduce a new Section

³⁰ Regulations cannot cure fundamental problems with the bills because a basic legal principle adhered to in South Africa is that regulations must be confined to the limits of the law itself and cannot fundamentally alter primary legislation. See *Executive Council, Western Cape Legislature and Others v President of the Republic of South Africa and Others* 1995 (4) SA 877 (CC) (holding by the South Africa Constitutional Court that while "detailed provisions" are necessary to implement laws, "[t]here is, however, a difference between delegating authority to make subordinate legislation within the framework of a statute under which the delegation is made, and assigning plenary legislative power to another body. . ."). Furthermore, the number of provisions in the bills that require future regulation are very limited and do not relate to the vast majority of the problematic issues raised by IIPA in this and previous submissions.

3B into the Performers' Protection Act that would set out the nature of copyright in sound recordings, which would already be enumerated in the Copyright Act, as amended by the CAB. Also, Clause 9 of the CAB would introduce new rights and entitlements for performers under a new Section 8A in the Copyright Act, which should exclusively be dealt with under the Performers' Protection Act. Thus, in addition to the very significant flaws in the bills described below, from a technical perspective, the bills are inadequate and risk introducing widespread uncertainty into South African law.

Furthermore, this legislative process is occurring against a backdrop of increasing online piracy in South Africa. Growth in bandwidth speeds, coupled with lax controls over corporate and university bandwidth abuse, drives this piracy. In addition, piracy devices (i.e., set-top boxes equipped with apps for accessing pirated content) and sticks pre-loaded with infringing content or apps continue to grow in popularity in South Africa. Enforcement in South Africa is not, at present, adequate or effective. To facilitate a healthy online ecosystem, South Africa should appoint cybercrime inspectors and develop a cybercrime security hub, recognizing copyright as one of its priorities.

D. Request for Review of Conditions in Sub-Saharan Africa

IIPA requests that the Administration continue to assess the progress of AGOA-eligible governments in legislative measures and enforcement of copyright protections, and to identify those countries that could benefit from U.S. assistance in capacity building to meet the requirement to provide “adequate and effective” protection of IP rights. This examination and potential assistance would ensure the continuing growth of economies in AGOA-eligible countries.

Widespread online copyright piracy remains a very serious problem among all African countries. As a result, many copyright-based sectors and companies may still be reluctant to export to these markets, where piracy is, in effect, out of control. As AGOA-eligible countries consider reforms to their copyright systems, they should be encouraged to work with both domestic and foreign stakeholders and the U.S. Government, guided by the AGOA eligibility requirement to provide adequate and effective protection of IP rights.

Several AGOA-eligible countries have either enacted legislation intended to implement the WIPO Internet Treaties or are considering such legislation. So far, fourteen AGOA-eligible countries have deposited their instruments to join the WCT and the WPPT: **Benin, Botswana, Burkina Faso, Cabo Verde, Comoros, Gabon, Ghana, Guinea, Madagascar, Nigeria, Sao Tome and Principe, Senegal, Togo, and Uganda.** While **Kenya, Namibia, and South Africa** signed the WCT and WPPT between 1996 and 1997, these three important AGOA-eligible countries have yet to ratify or implement either of the treaties.

IIPA recommends that USTR require, as part of the annual review process, that the eligible AGOA countries provide an update on the status of their current copyright legislation as well as their plans, if any, to amend their copyright legislation and to accede to relevant international instruments. Such information would be useful in making a determination of AGOA eligibility.

As noted above, South Africa's CAB and the PPAB contain numerous problematic provisions that run afoul of international norms and would, if enacted, result in international treaty violations, stifle opportunities to invest in South Africa's creative economy, and, importantly, move South Africa further out of compliance with AGOA's eligibility criteria. In addition, USTR should monitor legislative reform efforts in Kenya and Nigeria and engage with these governments to ensure the resulting copyright legal frameworks meet AGOA's eligibility criteria.

CONCLUSION

IIPA appreciates this opportunity to provide the Trade Policy Staff Committee and the AGOA Subcommittee with our views on AGOA and its eligibility criteria regarding the adequate and effective protection of IP rights. It is essential that the annual AGOA review remain an opportunity to evaluate the progress of its beneficiaries toward meeting these IP rights criteria, and to identify opportunities to enhance IP protection and thereby expand economic development. It is also essential to undertake reviews of the conditions in such countries to determine if capacity building assistance can make a difference. We look forward to working with you to foster improved copyright protection in sub-Saharan Africa as a region.

Respectfully submitted,

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