International Intellectual Property Alliance®

1000 F Street, NW, Floor 2
Washington, DC 20004
Tel (202) 968-4472
www.iipa.org · Email: info@iipa.org

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VIA REGULATIONS.GOV (Docket No. USTR–2026-–0298)

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

Re: "2027 AGOA Eligibility Review"—South Africa, Kenya, and Nigeria—IIPA's Written Comments on the Annual Review of Country Eligibility for Benefits under the African Growth and Opportunity Act, 91 Fed. Reg. 39653 (June 30, 2026)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) appreciates the opportunity to submit these comments in response to the June 30, 2026, 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), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).

Collectively, IIPA's four member associations represent over 3,100 U.S. companies producing and distributing copyrightable content. The materials produced and 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] However, reproduction technologies have continuously grown more inexpensive and accessible, making it easy for copyrighted materials to be pirated worldwide, especially in the online environment. Thus, 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, in turn strengthening our domestic economy.

B. AGOA and the Protection and Enforcement of Copyright

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] 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. The U.S. Government's AGOA review is one of a few regularly occurring opportunities to examine intellectual property (IP) protection and enforcement in AGOA-eligible countries and provide guidance to make these mechanisms more effective. IIPA appreciates the opportunity to participate in the process.

Internet use in Africa continues to expand at a rapid pace. According to the World Bank, in 2025, 36% of Africans used the Internet, doubling the 16% usage rate from 2015.[3] Statista calculated that in October of 2025, Internet users in Nigeria amounted to 109 million, 51.7 million

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[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 Economists. (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.

[3] See *Individuals using the Internet – Sub-Saharan Africa*, World Bank, available at https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=ZG. .

in South Africa, and 23.4 million in Kenya.[4] Further, 400 million Africans (40% of the continent's population) actively engage on social media.[5] Africa is experiencing an explosion in cultural creativity and digital innovation with young creators across the continent leveraging digital platforms. Africa's creative economy currently exports $58-59 billion USD, just under 3% of the global creative economy, and these exports are expected to reach $140-150 billion by the end of the decade.[6] To effectively harness the potential of the online marketplace and ensure its sustainability, AGOA-eligible countries should assess whether their legal regimes are capable of responding to today's challenges, especially rampant online piracy. For the copyright industries to flourish in AGOA-eligible countries, open markets for important U.S. exports dependent on copyright protection should be ensured. This is achieved through (i) copyright laws with high standards of protection; (ii) efficient, effective, and expeditious copyright enforcement, and sound legal structures to enable healthy licensing of works and recordings; and (iii) elimination of market access barriers and unfair competitive practices. 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 emphasized 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: 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."[7]

Unfortunately, in AGOA-eligible markets, rights holders and copyright-dependent services generally, both U.S. and domestic, often encounter lower standards of copyright protection through deficient local laws, inefficient and ineffective enforcement, and market access barriers (or other discriminatory or unfair competitive practices). These shortcomings enable piracy, some of it on a commercial scale, run by those who use it as a high-profit, low-risk enterprise, unencumbered by

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[4] See Statista, Number of Internet Users in Africa as of October 2025, by Country, available at https://www.statista.com/statistics/505883/number-of-internet-users-in-african-countries/.

[5] See Lisa Invers et al., *Africa's Next Growth Frontier: Empowering Women in the Creative Industries*, BCG, March 2, 2026, available at https://www.bcg.com/publications/2026/africas-next-growth-frontier-empowering-women-in-the-creative-industries.

[6] See id.

[7] 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.

the considerable costs associated with either producing and licensing works or protecting them against theft.

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."[8] 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 continuously 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. 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.[9] 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.[10]

As key to AGOA eligibility, it is crucial that AGOA beneficiaries demonstrate 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 AGOA.[11] As IIPA has explained in previous AGOA-related filings, what amounts to "adequate and effective" protection of IP rights is a flexible measure that rightly shifts over time.[12] 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 and the

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[8] 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))).

[9] 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.).

[10] 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).

[11] For AGOA intellectual property eligibility criteria, see AGOA Sections cited *supra* note 7. See IIPA's 2026 Public Comments in the Modernization of the African Growth and Opportunity Act, available at https://www.iipa.org/files/uploads/2026/05/IIPA-Comments-on-AGOA-Modernization-USTR-2026-0166.pdf. (IIPA recently filed comments emphasizing the importance of the intellectual property eligibility criteria to ensure beneficiaries provide adequate and effective copyright protection.

[12] 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.

standards provided under the WIPO Internet Treaties, which contemplate many of the legal norms for a sustainable and healthy online marketplace, are central to this determination. 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 serious concerns with copyright law reform efforts in **South Africa**, **Kenya**, and **Nigeria**, while noting some encouraging progress in protection and enforcement in **Kenya** and **Nigeria.**

South Africa

South Africa's current legal regime fails to provide adequate and effective protection of copyrighted materials. 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.[13] As IIPA previously reported, in 2019, the South African Parliament adopted the first major revision of the country's copyright and related laws in decades.[14] 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 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, contrary to the 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—that is, the proposed reforms' likely impact on stakeholders within the creative industries. This failure to evaluate 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. Parliament adopted the revised legislation in February 2024

[13] South Africa's Cabinet has approved the country's accession to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the "WIPO Internet Treaties"), and the Beijing Treaty.
[14] See IIPA's 2020 Special 301 Report on South Africa, https://www.iipa.org/files/uploads/2020/02/2020SPEC301SOUTHAFRICA.pdf at 76.

but failed to address major concerns with the bills. 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 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 was made only with respect to the "impugned provisions" of the CAB (and by implication the PPAB) — sections 6A, 7A, 8A, 12A to 12D, 19B, and 19C.[15] The scope of the referral included most of the new copyright exceptions and limitations, including an expanded fair use provision, and also encompassed concerns regarding the retrospectivity of new statutory royalty and remuneration entitlements for authors and performers (including audiovisual works) (despite Parliament removing Section 8A(5) of the CAB on the retrospective application of the provision).

On June 26, 2026, the Constitutional Court issued its decision. Notably, the Court found CAB Section 12(D)(1) – (5) — educational and academic exceptions — unconstitutional as interfering with the copyright owner's market, allowing the state to escape its obligation to fund the acquisition of educational materials. Additionally, the Court found these provisions do not comply with Berne Article 10(2) because under Berne "the limitation must be narrowly directed at a clearly defined segment of beneficiaries, and there must be a justifiable basis for imposing the limitation in order to advance that right."

The Court confirmed that it had jurisdiction to assess only the provisions expressly covered by the President's referral and which were competently placed before the Court. The Court further determined that the President's reservations regarding the potential retrospective application of the new statutory royalty entitlement provisions under Sections 6A – 8A were not competently placed before the Court because the Court found these issues were already assessed and addressed by Parliament in its revisions following the President's 2020 referral. Thus, this portion of the referral was deemed incompetent, and the Court did not perform an analysis of the sections.

Regarding the remaining exceptions, the Court claimed that it could not assess the impact of the copyright exceptions because there was no factual basis to do so. Nevertheless, the Court held that the exceptions in the CAB Sections 12A - 12C, 12(D)(6) - (9), 19B, and 19C are constitutional. Importantly, the Court came to this conclusion by making an abstract determination of whether these provisions constituted an "arbitrary deprivation" of property rights under Section

[15] 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.

25(1) of the South African Constitution based on the factual context of the President's reservations. However, these provisions could still be challenged in the future based on additional facts.

Furthermore, the Court based its decision on reasoning that is clearly specious. For example, the Court determined that Section 12A's expanded fair use provision was consistent with international obligations almost solely based on a lack of international challenges to "comparable" fair use provisions, such as that of the United States. But as set forth below, the U.S. fair use system contains important safeguards that the South Africa framework does not.

Fundamentally, the Constitutional Court's reasoning is inconsistent. The Constitutional Court determined that there was no factual basis on which to assess the impact of the copyright exceptions, but it also concluded that these provisions are constitutional. If the absence of a factual record prevents the finding of unconstitutionality, it should also preclude a finding of constitutionality.

The bills contain many other concerning proposals that are not addressed in the President's referral or the Constitutional Court's decision, 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. The bills also 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.

Notwithstanding the Constitutional Court's decision, 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.[16] Based primarily on concerns regarding the drafting of these bills, in 2019 USTR opened an

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[16] 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.

investigation, including holding a public hearing in January 2020, to review South Africa's compliance with the GSP eligibility criteria on IP.[17]

Since a portion of the bill (CAB Section 12D (1) – (5)) has been deemed unconstitutional by the Constitutional Court, the Minister of Trade, Industry and Competition (DTIC) should seek cabinet approval to withdraw the bills from Parliament to enable the substantive re-drafting of the fundamentally flawed bills. The redrafted bills should ensure compliance with South Africa's Bill of Rights and Constitution and with international treaty obligations and best practices, informed by an independent economic impact assessment study as required by the government's SEIAS guidelines, and in consultation with rights holders. While it does not appear that Parliament commissioned an 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.[18] 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.[19]

The bills in their current form 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, include the following. A detailed discussion of IIPA's concerns with the bills can be found in IIPA's 2025 Special 301 South Africa Country Report.[20]

- The bills would severely restrict the contractual freedom of authors, performers, and other rights holders, 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.

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[17] See USTR Announces GSP Enforcement Actions and Successes for Seven Countries, USTR (October 25, 2019), available at https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/october/ustr-announces-gsp-enforcement.

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

[19] 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.

[20] See IIPA's 2025 Special 301 Report on South Africa, https://www.iipa.org/files/uploads/2025/01/SOUTH-AFRICA-2025-Copyedited-010625.pdf, 84-95.

- 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 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, including mechanisms that ensure Internet service providers (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. The lack of such a remedy thwarts 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.[21] Without a

[21] 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"

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 far-reaching pieces of legislation. 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 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 increasingly rampant online piracy in South Africa. Growth in bandwidth speeds, coupled with lax controls over corporate and university bandwidth abuse, drives this piracy. Industry representatives participated in the South African Cultural Observatory (SACO) International Conference on Creative Economy Futures in October 2025 at which it was revealed that the top 25 audiovisual piracy sites alone are responsible for 50 million monthly piracy visits in South Africa. South Africa's enforcement framework is not up to the challenge of its piracy problems.[22] 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. 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.

Also at the October 2025 SACO Conference, the South African Department of Communications and Digital Technology (DCDT) agreed to focus on online safety, expressed

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.

[22] Border enforcement is inadequate because of a lack of manpower and lack of *ex officio* authority, which places a burden on the rights holder to file a complaint and institute costly proceedings to ensure that goods are seized and ultimately destroyed. Civil enforcement is not a practical option, because a High Court application or action currently takes two to three years to be heard, costs are high, and damages are low because South Africa lacks statutory damages or punitive damages, and proving actual damages and the amount of economic harm is notoriously difficult in copyright cases. Criminal enforcement suffers from a lack of specialized prosecutors and judges equipped to handle IP cases.

willingness to consider additional remedies, and agreed to consult with industry to find a meaningful path forward. One such path is amending the Electronic Communications and Transactions Act (ECTA) to provide a remedy that includes mechanisms that ensure Internet service providers (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.[23] At present, infringing services in South Africa are impossible to locate, draining consumers of resources and exposing them to malware. Rights holders welcomed the DCDT's recognition in the Draft White Paper (DWP) of the need for such a remedy with the explicit recommendation for "the inclusion of the provisions for a streamlined and fast-track process for removal and site blocking by ISPs upon notification by verified rights holders" that includes "search engine operators in the scope of site blocking."[24] While IIPA is disappointed that the Third DWP removed this recommendation, IIPA appreciates DCDT's focus on "online safety" in the DWP and understands DCDT in its call for implementation in Stage One is open to introducing a remedy including mechanisms that ensure ISPs can impose effective relief to address 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.[25]

Finally, at present, works and sound recordings only receive 50 years of protection following author death or publication, in the case of sound recordings. This is inconsistent with the international standard of 70 years.

[23] Government agencies and courts in over 50 countries—including Australia, Belgium, Brazil, Denmark, France, India, Ireland, Italy, Peru, Portugal, Singapore, South Korea, Spain, Sweden, the United Kingdom, and the United States—employ or have made legally available injunctive relief or administrative orders to compel ISPs to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities. The European Union (EU) has addressed this problem through Article 8.3 of the EU Copyright Directive, which is the basis for injunctive relief against intermediaries to disable access to infringing content or websites. The Electronic Communications and Transactions Act (ECTA), read with the Copyright Act, is the law that rights holders rely upon for title, site, and link takedowns. It is the natural home for a remedy to disable access to infringing sites and services, as so many other countries have implemented over time.

[24] See Draft White Paper on Audio and Audiovisual Media Services and Online Content Safety: A New Vision for South Africa, 23 (July 2023) available at https://www.dcdt.gov.za/documents/legislations/policies/file/261-government-gazette-no-1934-of-2023-draft-white-paper-on-audio-and-audiovisualmediaservices-and-online-content-safety-a-new-vision-for-south-africa-2023.html?start=20.

[25] The DCDT announced that it intends to publish the Final DWP for adoption by Parliament before the end of this Parliamentary term (i.e., March 31, 2026). DCDT proposes a multi-stage approach to research and implement policy changes stemming from the DWP that would follow Parliament's adoption of the final DWP. Industry had the opportunity to engage with DCDT at the recent annual South African Cultural Observatory Conference (2025) at which the issues of online piracy and its link to online consumer safety were discussed. A recent study commissioned by the Alliance for Creativity and Entertainment (ACE) concluded that consumers in Southeast Asia who access piracy sites are 65 times more likely to encounter malware than those using legitimate platforms. This poses a real threat to families, small businesses, and digital infrastructure. Piracy platforms, whether streaming services, peer-to-peer sites, or illegal IPTV operations, carry a cyber threat risk more than 22 times higher than mainstream legal sites. See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5371543.

Kenya

In 2019, Kenya's Attorney General Kihara Kariuki highlighted the creative industries' contribution to Kenya's economy, stating, "The protection of the copyrights will essentially put money into the pockets of authors, producers, and all creators." [26] That contribution persists today with copyright-based industries' contributions to the Kenyan GDP estimated at 5.3%.[27] However, it is estimated that losses due to piracy in Kenya alone amount to USD$700 million per year with the top 25 piracy sites in the country accounting for 155 million visits.[28]

On a positive note, at the March 2026 Kenya National Multi-Stakeholder Forum on Digital Piracy, a National Steering Committee on Digital Piracy was established to combat piracy. The group is made up of national governmental entities — Ministry of Information, Communications and the Digital Economy, the Kenya Copyright Board (KECOBO), the Communications Authority of Kenya (CA), the Technology Service Providers Association of Kenya (TESPOK) — as well as content owners, broadcasters, international rights holder organizations, and industry groups. A key target of this effort is *goojara*, the highest-traffic audiovisual piracy site in Kenya.

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 soon as possible. 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. A 2025 draft Copyright and Related Rights Bill does not yet fully address some other deficiencies in Kenya's copyright framework to comply with international obligations. To ensure adequate and effective protection and enforcement of IP rights, Kenya's government should address the following shortcomings in their copyright and enforcement framework, many of which have not been properly addressed in the 2025 draft Bill, including by:

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

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[26]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.
[27]Naila Aroni, *Why Does Kenya's Music Industry Struggle? – and How to Fix It,* THE AFRICA CENTER (2025), https://theafricacenter.org/post/Why-Does-Kenyas-Music-Industry-Struggle-and-How-to-Fix-It
[28] Phidel Kizito, *Kenya Should Reclaim Sh92bn Annually by Tackling Digital Piracy*, CAPITAL FM AFRICA (2026), https://capitalfm.africa/kenya-could-reclaim-sh92bn-annually-by-tackling-digital-piracy/ (Estimates made by industry group, Partners Against Piracy (PAP) at the Kenya National Multi-Stakeholder Forum on Digital Piracy in March 2026).

- ensuring that exclusive rights apply to all sound recordings, including "born digital" recordings;
- ensuring that key definitions such as "broadcast" are defined in line with international treaties, including the Rome Convention and the WPPT, as a technical term referring specifically to wireless, over the air, and one-to-many transmissions;
- 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 2025 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 in keeping with the international standard, including by: (i) ensuring there is a clear legal basis under which 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 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 a clear legal basis for website blocking injunctions targeting all illegal websites, which are available in the current 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) (that they are non-profit and owned or controlled by their member rights holders) and that CMO operations are in keeping with the principles of transparency, accountability, and 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 all 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. Put simply, upon import, rights holders must record with the ACA in addition to IP registration. 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.[29] Kenya should amend its mandatory recordation system to be voluntary and ensure that copyright is not in scope.

The Computer Misuse and Cybercrimes Act, 2018, Kenya Gazette Supplement No. 60 (Acts No. 5), as amended in 2025 by The Computer Misuse and Cybercrimes (Amendment) Act, 2025 (in force November 4, 2025) provides an additional framework to the Copyright Act for disabling access to websites engaged in copyright infringement. While this framework covers a broader category of activities than just IP theft, and therefore has raised some concerns among opponents, the government has clarified that website takedowns under the amended Act must be subject to judicial review.[30] IIPA supports this remedy to disable access to primarily infringing sites as proposed under the Copyright Act amendments, and is heartened that the government is paying due deference to constitutional principles and due process in other areas in the law.

In recent years, there has been a notable increase in government interference in the collective management sector:

- The Copyright Office failed to renew the operating licenses of the three music CMOs, despite reasonable efforts by some, especially the Kenya Association of Music Producers (KAMP), to meet the Office's demands.
- In June 2024, KECOBO improperly awarded a license to the Performing and Audio-Visual Rights Society of Kenya (PAVRISK) to collectively manage performance and broadcast

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[29] See Berne Convention Article 5(2).

[30] See *Government Clarifies Website Takedowns Under Cybercrime Act Subject to Judicial Review*, CAPITAL News (October 23, 2025), https://www.capitalfm.co.ke/news/2025/10/govt-cybercrime-act-website-takedowns-judicial-review/.

rights as a single window licensor in the country. With the support of the International Federation of the Phonographic Industry (IFPI) and the National Group (Recording Industry of Kenya (RIKE)), KAMP successfully challenged KECOBO's action at the Copyright Tribunal to require that KECOBO awards a provisional operating license to all the mechanical licensing collectives (MLCs) and ensure that the accreditation process is transparent, objective, and in line with the law.

- KECOBO unsuccessfully sought a stay at the High Court to overturn the Copyright Tribunal's directive and consequently, in May 2025, KECOBO awarded KAMP a provisional operating license for six months. In the most recent development, KECOBO awarded KAMP a full-year operating license in September 2025 following the MLC meeting the Regulator's conditions. KAMP is, however, challenging KECOBO's decision to restrict the MLC's operating license to producer-only share of rights in the sound recordings while passing on performers' rights to PAVRISK without regard to the producer's exclusive ownership of sound recordings in the country's Copyright Act.
- RIKE, working with KAMP and IFPI, successfully pushed back against the government's attempts in August 2025 to take over collective management operations.

While there has been some positive progress, IIPA underscores that the Government of Kenya's interference or over-involvement in the collective management space could undermine the industry's potential and market stability. Further, copyright management should be left to rights holders, including deciding on the systems for rights administration. KECOBO should instead focus on working with rights holders to align the laws and regulations with international standards and best practices.

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

<u>Nigeria</u>

Nigeria's vibrant film and music industries are critical to its economy, the largest in Sub-Saharan Africa.[31] 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

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[31] See Samuel Anyanwu, Federal Ministry of Information & National Orientation of the Federal Public 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.").

economically significant industries and a thriving economic force capable of sustaining individuals and the nation."[32] This sector has only grown with the substantial increase in access to high-speed Internet and mobile devices in the country, creating opportunities for the creative industries.

Unfortunately, piracy remains a pervasive obstacle for U.S. and Nigerian creators alike, who, as a result, struggle to receive any compensation for their works due to inadequate enforcement.[33] Websites that make movies and music available illegally continue to ravage the country's creative sector, undermining revenues from legitimate channels, including streaming platforms and movie theaters, for disseminating licensed content. In 2022, the Nigerian Copyright Commission (NCC) disclosed that the country loses approximately ₦150 billion yearly to digital piracy, affecting nearly 80% of films produced.[34] 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."[35] Thus, stronger copyright protection and enforcement are needed to support the country's burgeoning creative sector.[36]

Nigeria must provide more effective enforcement against the numerous unlicensed online music and audiovisual services that operate in Nigeria, harming markets inside and outside of the country. As the Copyright Act has entered into force, 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, including disrupting or disabling access to structurally infringing websites on a no-fault basis, with a view to building cooperative efforts between ISPs, enforcement entities, and rights holders. Moreover, more resources are needed for the NCC online

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[32] 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.

[33] 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://thenationonlineng.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/.

[34] Tutu Akanni, The Guardian, *Piracy is Eating Nollywood Alive, and Nigeria Can No Longer Pretend* (23 December 2025), available at https://guardian.ng/life/film/piracy-is-eating-nollywood-alive-and-nigeria-can-no-longer-pretend/.

[35] 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.

[36] 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.

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.[37]

Though Nigeria ratified the WIPO Internet Treaties in 2017, the government has yet to fully implement the treaties; thus, Nigeria's legal regime falls 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—including 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—which 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. In addition, Nigeria's enforcement authorities, particularly NCC, should maximize the new enforcement provisions in the Copyright Act and take more actions, including to disable access to primarily infringing websites and the Nigerian government should increase public awareness about the harms caused by piracy.

While these reforms were a positive step forward, there are several significant deficiencies 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.

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[37] IIPA's 2026 Special 301 submission included a country report on Nigeria that provided a comprehensive summary of concerns as they stood in January 2026. The 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 2026 Nigeria country report from IIPA's Special 301 submission is available at https://www.iipa.org/files/uploads/2026/01/NIGERIA-2026-COPYEDITED-1.20.26-1.pdf.

- 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.[38] 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

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[38] See, e.g., Article 13 of the WTO TRIPS Agreement.

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 distribution 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.

Additionally, the NCC has failed to meaningfully engage recording industry stakeholders on the accreditation of a related rights CMO following a 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 a 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 above, CMOs would be able to license effectively in Nigeria.

The Government of Nigeria should reform the collective management framework in Nigeria to ensure a clear, fair, market-based, and transparent system, including by engaging with sound recording producers to allow for the existence of a CMO that represents local and foreign producers effectively and meets international best practices. 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.

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

IIPA requests that the Administration continue to assess the progress of AGOA-eligible countries in legislative measures and enforcement of copyright protections, as well as identify those countries that could benefit from U.S. assistance to meet the requirement for "adequate and effective" protection of IP rights. This would ensure the continuing growth of economies in AGOA-eligible countries.

Widespread online copyright piracy remains a very serious problem across the continent. Thus, copyright-based sectors and companies may remain reluctant to export to these markets, where piracy is rampant. 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, eleven AGOA-eligible countries have deposited their instruments to join the WCT and the WPPT: **Benin, Botswana, Cabo Verde, Comoros, Gabon, Ghana, Madagascar, Nigeria, Sao Tome and Principe, Senegal, and Togo**. 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 and future plans, if any, to amend their copyright laws and accede to relevant international instruments. Such information would be useful in the 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 governments to ensure the resulting copyright legal frameworks meet AGOA's eligibility criteria.

CONCLUSION

IIPA appreciates this opportunity to share our perspective with the Trade Policy Staff Committee and the AGOA Subcommittee on AGOA and the IP rights protection standards required for AGOA eligibility. 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 further 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 the sub-Saharan Africa region.

Respectfully submitted,

/Aidan O'Connor/

Aidan O'Connor
International Copyright Policy Counsel
International Intellectual Property Alliance