

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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VIA REGULATIONS.GOV (Docket No. USTR–2014–0018)

Constance Hamilton
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Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act in 2015, 79 Fed. Reg. 59342 (October 1, 2014)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) submits these comments in response to the October 1, 2014 request for public comments circulated by the African Growth and Opportunity Act (AGOA) Implementation Subcommittee of the Trade Policy Staff Committee, chaired by 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

The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by piracy and other market access barriers. IIPA's six member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer and video games for video game consoles, personal computers, and the Internet; theatrical films, television programs, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software in all formats.¹

The U.S. copyright-based industries are one of the fastest-growing and most dynamic sectors of the U.S. economy. Inexpensive and accessible reproduction technologies, however,

¹ Visit www.iipa.com. Members of the IIPA include [Association of American Publishers](#), [Entertainment Software Association](#), [Independent Film & Television Alliance](#), [Motion Picture Association of America](#), [National Music Publishers' Association](#), and [Recording Industry Association of America](#).

make it easy for copyrighted materials to be pirated in other countries, including in the online environment. IIPA strives for the establishment of modern copyright law and enforcement regimes in foreign countries that deter piracy, because such regimes create a framework for trade in creative products, foster technological and cultural development, and encourage investment and employment in the creative industries.

B. AGOA and the Protection and Enforcement of Intellectual Property Rights

The protection and enforcement of intellectual property rights are important prerequisites to AGOA benefits. And apart from trade relations with the United States, creators in AGOA beneficiary countries recognize that copyright protection provides needed incentives for investment in the production of cultural works, allowing local artists to sustain their livelihoods. Creators from across the continent also understand the importance of stronger enforcement against high levels of piracy for the viability of their trades.

For example, creative industries in **South Africa** are growing thanks to incentive programs, but face the challenge of illegal competition. The South African Coalition Against Copyright Theft recently reported on the high level of Internet piracy in the country, and estimated that for local film distribution, “the revenue damage from illegal downloads comes to R300 million [or about US\$27 million] a year.”² One group of South African artists lamented that they “came together as youths to try and make a living out of music, but these street vendors are killing our business by illegally selling pirated CDs and DVDs that we would have released.”³

Nigeria’s film industry is currently the second largest in the world, spurring the government to seek to better capitalize on its potential by improving IP-awareness among its filmmakers. As a result, “[a]ccess to such formal training is fostering a more business-oriented approach among filmmakers, and enhancing the quality of scripts, acting and other technical aspects of Nigerian film, making it an increasingly attractive investment proposition.”⁴ Still, proponents of local artists know that without the incentives that a stronger copyright regime provides, many would-be filmmakers are not willing to take the risk: “They have known that

² Chelsea Geach, “SA pirates a million movies a month,” *iol news* (Oct 14, 2014), available at http://www.portalangop.co.ao/angola/en_us/noticias/lazer-e-cultural/2014/9/42/Writer-advises-creators-join-copyright-society,bda10b8e-b2ab-4e7c-a977-0902c594552d.html.

³ Savious Kwinika, “South Africa: Piracy Frustrates Budding Artists,” *allafrica.com* (June 9, 2014), available at <http://allafrica.com/stories/201406100742.html>.

⁴ Sandra Oyewole, “A Peek Inside Nigeria’s Film Industry,” *WIPO Magazine* (April 2014), available at http://www.portalangop.co.ao/angola/en_us/noticias/lazer-e-cultural/2014/9/42/Writer-advises-creators-join-copyright-society,bda10b8e-b2ab-4e7c-a977-0902c594552d.html.

whatever they produce will be immediately pirated – stolen – and they will not be provided the means to develop their talent.”⁵

It is no coincidence that the **Republic of Seychelles** adopted a new Copyright Act in 2014 (with the goal of bringing the country in line with its expected WTO obligations),⁶ just as major film producers are launching new initiatives there,⁷ and the local music industry is experiencing new growth.⁸ Creators in other African markets are looking for their own countries to follow suit. For example, **Angola** is home to successful writers and musicians, but these same artists see a need for greater copyright protection,⁹ and for greater business investment if the local creative sector is to thrive.¹⁰

As these and other sub-Saharan economies develop, governments should look to intellectual property law and enforcement mechanisms that can incentivize their own creative industries and foster economic growth and stability. The U.S. Government’s AGOA review is one of only a few regularly occurring opportunities to examine intellectual property protection and enforcement in AGOA-eligible countries and to provide guidance to make those mechanisms more effective.

As economies expand into new platforms, so must the scope of the rule of law. For many regions of the developing world, including Africa, laws and enforcement measures are needed to address illegal activities that take place over broadband Internet access and, increasingly, mobile devices. Mobile devices have brought incredible economic opportunity for individuals and legitimate businesses in sub-Saharan Africa, reaching an estimated 629 million subscriptions on the continent in 2014 (more than 69 subscriptions per 100 inhabitants), according to the UN’s

⁵ Yomi Olugbodi and Steve Anu’ Adesemoye, “Digital Media, Intellectual Property Rights And The Nigerian Film Industry,” *Shoots*, available at <http://shoots.com.ng/index.php/educational-resources/47-digital-media-intellectual-property-rights-and-the-nigerian-film-industry-yomi-olugbodi-and-steve-anu-adesemoye>.

⁶ Hajira Amla, “Seychelles’ WTO accession by end of 2014 is a ‘target we can meet’, says Finance Ministry,” *Seychelles News Agency* (July 8, 2014), available at: <http://www.seychellesnewsagency.com/articles/929/Seychelles+WTO+accession+by+end+of++is+a+target+we+can+meet,+says+Finance+Ministry#sthash.ruPTOmbc.dpuf>.

⁷ “Bollywood backs the Seychelles as a new location for filming African stories,” *ScreenAfrica* (July 9, 2014), available at <http://www.screenafrica.com/page/news/africa/1643961-Bollywood-backs-the-Seychelles-as-a-new-location-for-filming-African-stories#.VEAikvnF98E>.

⁸ “Tax incentives aimed at stimulating growth in the Seychelles local music industry – Hotels & Restaurants contracting local artists benefit of 125% deduction in Business Tax,” *Omarjee Holidays* (June 24, 2014), available at <http://omarjeeholidays.mu/blog/?p=684>.

⁹ “Writer advises creators to join copyright society,” *ANGOP Agencia Angola Press* (Oct. 14, 2014), available at http://www.portalangop.co.ao/angola/en_us/noticias/lazer-e-cultural/2014/9/42/Writer-advises-creators-join-copyright-society,bda10b8e-b2ab-4e7c-a977-0902c594552d.html.

¹⁰ “State of Angolan music considered positive,” *ANGOP Agencia Angola Press* (Oct. 14, 2014), available at http://www.portalangop.co.ao/angola/en_us/noticias/lazer-e-cultural/2014/9/42/State-Angolan-music-considered-positive-says-Proletario,4307f4e2-81bc-40f1-96a3-f41a54e8e43d.html.

International Telecommunication Union (ITU).¹¹ In 2013, the ITU reports that there were more than 108 mobile phone subscriptions per 100 inhabitants in Ghana, over 70 subscriptions per 100 inhabitants in Kenya, over 73 subscriptions per 100 inhabitants in Nigeria, over 92 subscriptions per 100 inhabitants in Senegal, and 147 subscriptions per 100 inhabitants in South Africa. This impressive technological growth, unfortunately, is accompanied by illegitimate activities that will hamper legitimate economic growth if left unchecked.

For these reasons, it is crucial that countries demonstrate some measure of progress toward adequate and effective protection of intellectual property, as a key element to AGOA eligibility. We urge the Administration to continue to examine copyright laws and enforcement practices under the intellectual property rights (IPR) eligibility criteria of AGOA with a view toward positive growth in the economic futures of AGOA-eligible countries. As IIPA has explained in previous AGOA-related filings,¹² just what amounts to “adequate and effective” protection of intellectual property rights is a flexible measure that changes over time. The requirements of the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS Agreement), including regarding copyright protection and enforcement, are key considerations in this determination. Today, in the face of challenges such as optical media piracy and piracy that occurs over the Internet and mobile networks, the two “Internet” treaties of the World Intellectual Property Organization (WIPO) – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) – contemplate many of the needed legal changes. These treaties provide essential legal frameworks for the continued growth of e-commerce in coming years by ensuring that valuable content is protected from piracy on the Internet.

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

The IIPA requests that the Administration continue to assess the progress of AGOA-eligible governments in legislative measures and in the enforcement of copyright, 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 intellectual property rights (IPR). Such an exercise would further benefit both AGOA-eligible nationals and U.S. companies seeking to do business in those nations by creating better conditions for creators, thereby encouraging economic development, cultural diversity and the rule of law.

IIPA has reported on cable piracy in AGOA-eligible countries in previous years, and the problem is an ongoing concern in 2014. For example, in **Uganda**, representatives of the local film producers association, the Federation of Movie Industry, and the MPAA have consulted on steps to address rampant piracy in the local television and hard goods markets. Based on the Federation’s investigations, they report that most TV stations and satellite operators show only pirated content, in particular of non-Ugandan works. These content sources reportedly reach the

¹¹ See World Telecommunication/ICT Indicators Database 2014, <http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx>.

¹² See, for example, IIPA’s 2009 Public Comments in the Annual Review of AGOA Country Eligibility, available at <http://www.iipa.com/agoa.html>.

country through unauthorized download of pirated works via the Internet. Distributors offering pirated content consist of a mix of television channels and satellite operators and include entities called NBS television, Channel 44, Urban TV, Bukedde TV, Top TV, GO tv, Zuku TV, and Star Times. While Uganda is a party to the TRIPS Agreement and joined WIPO in 1973, Uganda has not acceded to the Berne Convention, Rome Convention or the WIPO Internet Treaties. IIPA encourages the U.S. Government to request that the Government of Uganda accede to the major international copyright, and bring its legislation up to TRIPS standards. IIPA also suggests that the U.S. Government offer to provide technical assistance and capacity building measures with a view to increasing copyright protection for local and foreign rights holders.

Widespread 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 invest in these smaller 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 stakeholders and the U.S. Government, while considering the requirement to provide adequate and effective protection of IPR under AGOA.

Several countries have either enacted legislation or are considering the implementation of the WIPO treaties. So far, nine countries in sub-Saharan Africa have deposited their instruments to join the WCT and the WPPT: **Benin, Botswana, Burkina Faso, Gabon, Ghana, Guinea, Mali, Senegal and Togo.** While **Kenya, Namibia, Nigeria, and South Africa** signed the WCT and WPPT between 1996 and 1997, these four important AGOA-eligible countries have yet to ratify or implement either of the treaties.

Again this year, we suggest that USTR incorporate as part of the annual review process a request that the eligible AGOA countries provide a brief 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 most useful at this stage of the review, before the final report is issued.

CONCLUSION

IIPA appreciates this opportunity to provide the TPSC and the AGOA Subcommittee with its views on the AGOA. It is essential that the annual AGOA review remain an opportunity to evaluate the progress of its beneficiaries toward meeting their intellectual property rights criteria, and to identify opportunities to enhance IPR protection and to 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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