

SOUTH AFRICA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2026 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that South Africa be placed on the Priority Watch List in 2025.¹ IIPA further recommends that through the ongoing Generalized System of Preferences (GSP) review, the U.S. government continue to indicate that the Copyright Amendment Bill (CAB) and the Performers' Protection Amendment Bill (PPAB) that were referred to the Constitutional Court are fatally flawed and to work with the South African government to remedy the deficiencies in South Africa's legal and enforcement regimes. This includes by redrafting the bills to address the serious concerns detailed below and in IIPA's previous submissions. If, at the conclusion of the review, South Africa has not made requisite improvements, the U.S. government should suspend or withdraw GSP benefits to South Africa, in whole or in part.

Executive Summary: South Africa's current copyright protection and enforcement framework fails to meet the challenges of the digital age. New technologies provide South Africa's consumers with increased access to legitimate creative content and opportunities for the growth of its copyright industries and all creators. Unfortunately, South Africa's inadequate response to persistent piracy enabled by many of these same technologies, demonstrated by the significant number of notorious piracy sites visited by South Africans, is undercutting this burgeoning market.

IIPA is encouraged that South Africa's government has stated its commitment to protecting intellectual property (IP) and its desire to bring its laws into compliance with international treaties and commitments. As an important emerging market and a dominant economy in Sub-Saharan Africa that other countries in the region may seek to emulate, the stakes for copyright reform are very high. South Africa is uniquely positioned to demonstrate how a modern copyright regime can contribute to the growth of creative industries in an era of rapid digital and mobile expansion throughout the country and the region.

However, IIPA remains seriously concerned about the bills—the CAB and the PPAB—that President Ramaphosa referred to the Constitutional Court. These bills remain inconsistent with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and, if enacted, would violate South Africa's obligations under the WTO TRIPS Agreement and the Berne Convention, potentially violate South Africa's Constitution and Bill of Rights, and move South Africa even further away from international treaty obligations and best practices. As such, considering the importance of modernizing South Africa's copyright legal framework and the degree of concern raised by the creative industries over the years, IIPA recommends that the U.S. government continue to recommend that the bills should be entirely redrafted, in close consultation with rights holders, to allow South Africa to accede to the WIPO Internet Treaties, allow it to meet its international obligations, ensure adherence to best practices, and promote an environment favorable to investment. The bills that were referred to the Constitutional Court fail to meet these standards and would have unintended and harmful consequences, including threatening and hampering the growth of and investment in the country's creative economy and weakening South Africa's market for creative content, both for U.S. exports and the local creative sector.

Additionally, the latest (third) *Draft White Paper on Audio and Audiovisual Media Services and Online Safety* (DWP) is a step back from previous versions and should be revised to include discussion of effective mechanisms and statutory remedies to disable access to services that infringe domestic and foreign content and to ensure a stable

¹ For more details on South Africa's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of South Africa's Special 301 placement, see <https://www.iipa.org/files/uploads/2026/01/Appendix-C-FINAL-2026.pdf>.

regulatory framework that avoids overly prescriptive and cumbersome requirements for online content distribution in South Africa.

PRIORITY ACTIONS REQUESTED IN 2026

Legal Reforms

- Ratify and fully implement the WIPO Internet Treaties.
- Should the Constitutional Court declare the CAB and the PPAB unconstitutional, 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 Socio-Economic Impact Assessment System (SEIAS) guidelines, and in consultation with rights holders.
- Enact amendments to the Electronic Communications and Transactions Act (ECTA) to include 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.
- Increase the term of protection for works and sound recordings from 50 years to at least 70 years, in line with the international standard.

Market Access

- Remove market access restrictions that negatively impact the U.S. creative industries, including broadcast quotas, "must provide" requirements, video-on-demand (VOD) quotas, online value added tax (VAT), the proposed digital services tax (DST), and concerning proposals in the Draft National Music Sector Policy and Strategy.

Enforcement

- Improve enforcement to combat South Africa's growing online piracy problem.

LEGAL REFORMS

- **Ratify and fully implement the WIPO Internet Treaties.**

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.² 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.³ 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 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, including producers, performers, and other rights holders. 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

² 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.

³ See IIPA's 2020 Special 301 Report on South Africa, <https://www.iipa.org/files/uploads/2020/02/2020SPEC301SOUTHAFRICA.pdf> at 76.

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.

- **Should the Constitutional Court declare the CAB and the PPAB unconstitutional, the Minister of 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.**

In June 2020, the President referred the CAB and the PPAB back to the National Assembly given reservations regarding the bills' compliance with South Africa's Constitution and its international commitments. Parliament adopted the revised legislation in February 2024, but the revised legislation failed to address the 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 did 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 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 is 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.⁴ 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) (despite Parliament removing Section 8A(5) of the CAB on the retrospective application of the provision). The Constitutional Court's hearing on the President's referral of the bills took place on May 21 and 22, 2025.

The bills contain many other concerning proposals that are not addressed in the President's referral, 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 Technological Protection Measures (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 modernize 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 weakens 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, such as the obligations of the WTO TRIPS Agreement, the WIPO Internet Treaties, and the Berne Convention, as well

⁴ 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.

as the eligibility criteria of both the GSP and the African Growth and Opportunity Act (AGOA) regarding IP.⁵ Should the Constitutional Court declare that the CAB and the PPAB are unconstitutional based on one or more of the President's reservations, the Court can send the bills to Parliament, which can amend those provisions deemed unconstitutional and send the amended bills back to the President. The Minister of DTIC can then 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 (SAIPL), concluded that the bills require significant amendments to pass constitutional muster and meet the requirements of international treaties.⁶ 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 has potential for substantial growth under the proper conditions.⁷

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, 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.⁸

- 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.
- The bills would create an overbroad amalgamation of copyright exceptions that includes an expansive "fair use" rubric (bearing no relationship to 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.

⁵ 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>; and IIPA's comments on the 2026 African Growth and Opportunity Act (AGOA) Eligibility Review, available at <https://www.iipa.org/files/uploads/2025/12/AGOA-2026-Final-062725.pdf>.

⁶ See Myburgh et al, *Copyright Reform or Reframe?*, available at https://iuta.co.za/uploads/Copyright_Reform_or_Reframe/.

⁷ 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://tind.wipo.int/record/28292?ln=en&v=pdf>.

⁸ 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 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 individual failings, the two bills suffer from fundamental systemic failings that are not amenable to discrete fixes, nor correction through implementing regulations.⁹ Without a fundamental course correction of its copyright reform process, South Africa will take 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 own artists and creators.

It is important to note that the CAB and PPAB are extremely broad-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 be already enumerated in the Copyright Act, as amended by the CAB. 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.

- **Enact amendments to the Electronic Communications and Transactions Act (ECTA) to include 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.**

Infringing services in South Africa are impossible to locate and are usually hosted outside of the country, draining South African consumers (in the case of "VIP" subscription piracy) of their resources and exposing them to risks of malware. Rights holders desperately need the South African government to implement a remedy, for example, in the Electronic Communications and Transactions Act (ECTA), that includes mechanisms that ensure ISPs can impose effective relief to address infringement, including, where applicable, to disrupt or disable access to structurally

⁹ 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.

infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.¹⁰ Rights holders welcomed the Department of Communications and Digital Technologies' (DCDT) recognition in the 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.”¹¹ 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.¹²

- **Increase the term of protection for works and sound recordings from 50 years to at least 70 years, in line with the international standard.**

At present, sound recordings receive a term of protection of only 50 years from the year in which the recording was first published, and for literary, musical, and artistic works, the term of protection is 50 years from the author's death or 50 years from publication if first published after the author's death. The CAB should be revised to extend the term of protection for copyrighted works and sound recordings to at least 70 years, in line with the international standard. This will provide greater incentives for the production of copyrighted works and sound recordings, and provide producers with a stronger incentive to invest in the local recording industry, spurring economic growth, as well as tax revenues, and enabling producers to continue offering works and recordings to local consumers in updated and restored formats as those formats are developed.

MARKET ACCESS

- **Remove market access restrictions that negatively impact the U.S. creative industries, including broadcast quotas, “must provide” requirements, video-on-demand (VOD) quotas, online value added tax (VAT), the proposed digital services tax (DST), and concerning proposals in the Draft National Music Sector Policy and Strategy.**

Broadcast Quota: In 2014, the Independent Communications Authority of South Africa (ICASA) began the “Review of Regulation on South African Local Content: Television and Radio” and published local program quotas for licensed broadcasters of television content in March 2016. In May 2020, ICASA published a new regulation, fully exempting “television broadcasting service licensees” from compliance with the local television content quotas during the National State of Disaster (NSD) and allowing a three-month grace period from the end of the NSD. Non-domestic media service providers licensing content to local broadcasters are exempt from the program quotas and, in 2018, ICASA clarified that this exemption also applies to non-domestic, over-the-top (OTT) services. In 2021, ICASA

¹⁰ 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.

¹¹ 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-audiovisual-mediaservices-and-online-content-safety-a-new-vision-for-south-africa-2023.html?start=20>.

¹² 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.

reinstated local content quotas for television. IIPA recommends removing these quotas to ensure that businesses have the freedom to determine content programming according to their business models and relevant consumer demands.

“Must Provide” Requirements: In April 2019, ICASA published its draft findings on the “Inquiry into Subscription Television Broadcasting Services” and proposed a new licensing regime that would severely impact the contractual freedoms of rights holders to license their content in South Africa, thereby undermining their exclusive rights. Unfortunately, the report’s methodology, and therefore its conclusions, are flawed because ICASA failed to consider the impact of OTT media services on the market, nor did it consult with rights holders on who the proposed measures would affect. As of January 2026, there have been no updates since ICASA published its draft findings. IIPA encourages the U.S. government to engage with the South African government to ensure that any regulatory interventions into the pay-TV market are informed by international best practices and current market realities and preserve the contractual freedoms of all parties concerned, while developing a legislative and regulatory framework that promotes investment and growth.

Video-on-Demand (VOD) Quotas: For several years, DCDT has considered how to adapt South Africa’s content regulatory framework to the online marketplace. In July 2025, the DCDT issued the Third DWP. The Third DWP omits contentious provisions included in previous versions, including a 2% digital tax and local content quotas, but unfortunately DCDT may still be seriously considering local content quotas and a network fees framework. The DCDT also envisions expanding the regulatory powers of ICASA to regulate On-Demand Content Services (OCS) and OTT services within the same regulatory framework as traditional broadcasters, to level the playing field. This creates the threat of competing regulatory oversight between the Films and Publication Board, which was also recently tasked to regulate OCS and ICASA. IIPA encourages continued engagement with DCDT to avoid the introduction of overly prescriptive requirements subjecting OCS to unnecessary regulatory burdens.

Online Value-Added Tax (VAT): South Africa currently levies a 15% VAT on the online selling of content, including films and television programming. As of April 2019, income on B2B services provided to South African businesses by foreign providers is also subject to VAT.

Digital Services Tax (DST): The Third DWP removes mention of the 2% turnover tax first introduced in the 2023 iteration. However, the newest iteration introduces a proposal for a new registration regime applicable to online content services to address the perceived fiscal gap in tax contributions by non-resident players.

Draft National Music Sector Policy and Strategy: The Department of Sport, Arts and Culture’s Draft National Music Sector Policy and Strategy for South Africa, which is intended to promote the continued growth and development of South Africa’s music sector, helpfully recognizes the concerns with the CAB and PPAB. However, the Draft includes some concerning proposals such as regulatory mechanisms for the music sector: (i) requiring international record companies to sign a percentage of non-mainstream artists, which would be counter-productive and will only serve to drive investment away from South Africa; and (ii) requiring the use of local content, which should be rejected as such intervention is not needed in the streaming market, particularly where the local market/local repertoire in South Africa is developing in a very positive way.

ENFORCEMENT

- **Improve enforcement to combat South Africa’s growing online piracy problem.**

U.S. creative sectors offering services in South Africa face significant and existential challenges from rampant piracy. Improved infrastructure and accessibility to broadband Internet has changed the landscape of copyright piracy

in South Africa over the last decade, now significantly dwarfing any remnants of physical piracy remaining (e.g., pirate CDs and DVDs).¹³

Although South African consumers have increasing options available to stream legitimate creative content, online piracy has exploded in recent years in South Africa, along with growth in bandwidth speeds. Top piracy sites in South Africa, including *goojara*, *hianime*, *hdtoday*, *yts*, *9anime*, *lookmovie*, *123movies*, *aniwatch*, *vidsrc*, *sflix*, *myflixerz*, and *kisskh*, are among the overall top websites accessed in South Africa and worldwide. These sites alone amount to 40 million monthly piracy visits by just South African web traffic in a country of 64 million, almost one visit per capita, demonstrating that not enough has been done to curb piracy in the country.

Key music piracy threats include the direct download sites *Tubidy.cool*, *afrohouseking.com*, and *hiphopkit.com*, as well as stream-ripping sites such as *savefrom.net* and *ssyoutube.com*. According to *SimilarWeb* data, from November 2024 to October 2025 *Tubidy.cool* received the highest level of traffic from South Africa with over 11 million visits. *Tubidy.cool* even identifies the most popular downloaded songs from the site in the year. *Afrohouseking.com* received over 93% of its traffic from South Africa with over 15 million visits in the same time period. The highest level of traffic to *hiphopkit.com* was also from South Africa, with over ten million visits during this time.

According to IFPI's 2023 Music Consumer Study (MCS), 23% of users stated they had downloaded pirated music from BitTorrent sites in the prior month from sites such as *1337x* (2.3 million visits from South Africa in Q2 2024 based on *SimilarWeb* data) and *TorrentGalaxy.to* (2.9 million visits from South Africa in Q2 2024 based on *SimilarWeb* data), and 22% had downloaded from cyberlockers using sites such as *Mega*. 'Blog' style sites that make available music for download without authorization are used in South Africa as well as in the region more broadly.

South Africa's enforcement framework is not up to the challenge of its piracy problems.¹⁴ To combat such easy access to film, television, streaming content, and music piracy, including before local releases, as discussed above South Africa sorely needs a remedy that includes 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, especially since current interdiction laws cannot reach foreign defendants.¹⁵ In addition to such a remedy, the Government of South Africa should increase consumer education and awareness programs.

South Africa has a specialized unit tasked with financial crimes and counterfeiting (known as the "HAWKS" unit), but it does not appear to be adequately resourced or have a suitable remit to take effective action against digital piracy. There is also a need for ongoing training and education for South Africa's police and customs officials to improve the process for detention and seizure of counterfeit and pirated goods. In particular, law enforcement officials should better understand the arduous procedures and timelines in the Counterfeit Goods Act (which prohibits rights holders from getting involved in many of the required actions), including that non-compliance will result in the release of counterfeit and pirated goods back to the suspected infringer. The lack of cybercrime inspectors continues to limit the full potential of this law. 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. Further, the ECTA currently only

¹³ See, e.g., Frikkie Jonker, TheMediaOnline, *Cracking the Piracy Code*, <https://themedionline.co.za/2024/12/cracking-the-piracy-code/>

¹⁴ 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.

¹⁵ While South Africa's current law allows for an "interdict" (or injunction) under certain circumstances, in practice, this remedy is limited and extremely difficult to obtain. Lower courts have jurisdiction to grant an interdict, but only if the "value of the relief sought in the matter" does not exceed a limit of ZAR400,000 (~US\$30,000) or if the actual economic harm that the injunction is sought to prevent or restrain can be projected under that limit. It is also often difficult in IP cases to establish the required showings of "urgency" and "irreparable harm resulting if the order is not granted." Compounding this problem, judges in South Africa have little to no experience in IP infringement cases, further diminishing the utility of this remedy. As a result, in practice, the interdict remedy is not effective for rights holders in South Africa. Moreover, the proposed copyright reform legislation will further diminish the utility of this remedy because the ambiguous and overbroad exceptions could make it more difficult to establish a *prima facie* case of infringement on which to base an interdict order.

provides a general statutory duty to implement takedown policies and procedures for service providers that are part of an industry body that has been recognized by the Minister. At present, only ISPs are included. There should be a general statutory duty for intermediaries (such as online marketplaces) to implement takedown policies and procedures without needing to be part of a recognized industry body.

The enactment of the Films and Publications Amendment Act, No. 11 of 2019, which extends application of the Films and Publications Act to online distributors of publications, films, and video games, could be a positive step for enforcement, because it establishes an Enforcement Committee for investigating and adjudicating cases of non-compliance with any provision of the Act. South Africa's government should fully implement and operationalize the Act to improve enforcement against online piracy, and the Enforcement Committee may be a proper authority to determine eligibility to disable access to infringing sites and services.

Piracy Devices (PDs) and Apps: Set-top boxes offering unauthorized access to creative works and memory sticks pre-loaded with infringing content or apps continue to grow in popularity in South Africa. Consumers use these devices to bypass subscription services or to consume unauthorized copyrighted content such as music, movies, TV series, or sporting events. These devices are most commonly sold to South African consumers online. Some companies develop devices pre-loaded with infringing music content for use in various stores, pubs, and taverns. It is critical for South Africa to gain more understanding of these approaches and to work proactively with experts from the applicable creative industry sectors to localize and implement similar programs.

Infringing mobile apps are also a concern. Stream-ripping and MP3 download apps are prevalent on the mainstream app stores, and MP3 download apps receive a particularly significant number of downloads from South Africa. Unlicensed mobile apps used for music piracy increased in 2025, with the unlicensed app *Tubidy Music Mp3 Downloader* being the most popular, used by 82% of those in South Africa. Other popular unlicensed mobile apps for music piracy include *Music Downloader MP3 Download* and *RaMus: offline music player*.

Parallel Imports: The Copyright Law does not protect against parallel imports. As a result, the motion picture industry has sought protection under the Film and Publications Act. The lack of protection against parallel imports raises concerns and interferes with rights holders' ability to license and protect their IP rights.

Capacity Building: The industry engages with government agencies and the private sector throughout the year to raise awareness of the severity of copyright piracy and to build capacity within the country. The motion picture industry has participated alongside government, stakeholders, and international organizations to discuss and raise awareness about piracy, the nexus between piracy services and risk to consumers of malware and other threats to online safety.¹⁶ As a result of these engagements, government departments like DCDT are coming to realize that they need efficient tools to protect consumers from online harms associated with copyright piracy.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In November 2019, USTR opened an investigation, including holding a public hearing in January 2020, to review country practices in South Africa regarding IP rights and market access issues, and to determine whether South Africa still qualifies for beneficiary status under the GSP. Under the statute, the President of the United States must consider, in making GSP beneficiary determinations, "the extent to which such country is providing adequate and effective protection of intellectual property rights," and "the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets . . . of such country." IIPA requests that through the ongoing GSP review, the U.S. government continue to send a clear message that the CAB and PPAB that were referred to the Constitutional Court are fatally flawed, and work with the South African government to remedy the deficiencies in South Africa's legal and enforcement regimes, including by redrafting the bills to address the serious concerns detailed above and in IIPA's previous submissions. If, at the conclusion of the review, the Government of South Africa

¹⁶ See, e.g., supra fn. 24.

has not made the requisite improvements, IIPA requests that the U.S. government suspend or withdraw GSP benefits to South Africa, in whole or in part.