

**BEFORE THE  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
Washington, D.C. 20006**

In the Matter of	)	
	)	
<b><u>South Africa Country Practice Review</u></b>	)	Docket No. 2019-0020
Generalized System of Preferences (GSP)	)	
Request for Public Comment	)	

**COMMENTS ON BEHALF OF INTELLECTUAL PROPERTY LAW SCHOLARS**

The undersigned intellectual property law scholars respectfully submit these comments in response to the U.S. Trade Representative (USTR) Generalized System of Preferences (GSP) request for public comment in the matter of “South Africa Country Practice Review.”

We write to express our concerns that proposed amendments to the Government of South Africa’s copyright laws do not provide adequate and effective protection for U.S. copyrighted works and, if enacted, would further weaken the intellectual property rights of creators and copyright owners. In addition to harming U.S. industries and legitimate global markets, the proposed revisions to an already problematic legal regime will deter direct foreign investment in South Africa, stifle the growth of local creative sectors, and result in noncompliance with international agreements. For these reasons, we believe that South Africa is not meeting the GSP criterion required of a GSP beneficiary country, and that if requisite improvements are not made by South Africa to remedy the deficiencies outlined below, GSP benefits should be suspended or withdrawn.

We thank the U.S. Trade Representative for the opportunity to submit these comments.

**1. The Transplant of Intellectual Property Laws to Foreign Jurisdictions Must be Carefully Considered**

The increasing connectivity of global markets and creative ecosystems has for years been accompanied by efforts to synchronize diverse intellectual property regimes. Attempts to harmonize complex international norms are rooted in interests of predictability, efficiency, and modernization, and they often involve the transplant of standards from established IP-exporting countries into developing jurisdictions.<sup>1</sup> Major multinational trade agreements—such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the World Intellectual Property Organization (WIPO) Internet Treaties, and, more recently, the Trans-Pacific Partnership Agreement and the United States Mexico Canada Agreement (USMCA)—routinely include provisions that import established IP standards to countries eager to attract

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<sup>1</sup> Peter K. Yu, *The International Enclosure Movement*. 82 IND. L.J. 827, 855–72 (2007); Available at SSRN: <https://ssrn.com/abstract=896134>.

foreign investment and realize the benefits of becoming a preferred trading partner. But while the import of recognized IP standards to developing countries often includes an array of benefits to diverse stakeholders<sup>2</sup>, policymakers must first carefully consider the effectiveness of transplants upon existing legal frameworks and local conditions.

The intellectual property laws of major IP-exporting countries are complex and interrelated standards that have been developed over time to serve the particular needs of the jurisdictions. Specifically, the intellectual property regimes of IP-exporting common law countries are based upon standards that have been developed over hundreds of years of case law. Analyses of specific and unique fact patterns shape the law and inform not only future determinations, but also cultural norms surrounding the use of creative works and innovative products. While the standards are in a continual state of evolution, they find their footing in recognizable and reliable principles that are the product of years of judicial adaptation, legislative activity, and societal change. Thus, such IP regimes consist of statutes as interpreted and embedded within rich case law; simply transplanting “principles” in statutory language without the case law context can lead to unintended consequences.

The standards and norms developed by influential common law countries can be extremely valuable guides to developing jurisdictions, and they can be adopted without modification in certain circumstances. But implementing standards that result from years of distinctive legal developments carries risks, especially when transplanted to countries with unique legal and cultural backgrounds. Scholars recognize that, in instances where standards are transplanted hastily and without appropriate consideration, they can be ineffective, insensitive to local traditions, and ultimately stifle development.<sup>3</sup> Moreover, imposing foreign standards can make the law unresponsive to local variations, eliminate inter-jurisdictional competition, and decrease the possibility of legal experimentation.<sup>4</sup> In order to avoid these and other potential detriments surrounding legal transplants, policymakers must identify the objectives of importing specific foreign standards, involve all stakeholders in discussions and negotiations, and consider whether adaptation or adjustment of the standards are necessary to serve the local community, market, and economy.

Unfortunately, legislation recently approved by South Africa’s Parliament includes provisions that would transplant foreign copyright standards into the country without a thorough review of the potentially harmful effects to creators, copyright owners, and creative industries both locally and globally. In addition to a number of revisions to existing copyright law that would devalue intellectual property and disrupt legitimate markets for creative works, the proposals include the import of U.S.-style fair use standards that would complicate a system of limitations and exceptions that is already at risk of violating international agreements. In order to avoid the formation of an unpredictable and inequitable copyright regime that would harm U.S. industries and local creative sectors, the copyright provisions must be redrafted with careful consideration of their practicality, legality, and compliance with international treaties.

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<sup>2</sup> *Joining the International Copyright System: What’s at Stake?*, World Intellectual Property Organization (2017); Available at: [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_flyer\\_crssystem.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_flyer_crssystem.pdf).

<sup>3</sup> Peter K. Yu., *Digital Copyright Reform and Legal Transplants in Hong Kong*. 48 U. LOUISVILLE L. REV. 693,770 (2010); Available at SSRN: <https://ssrn.com/abstract=1538638>

<sup>4</sup> John F. Duffy, *Harmony and Diversity in Global Patent Law*, 17 BERKELEY TECH. L.J. 685 (2002).

## **2. Combining U.S.-Style Fair Use with Expansive Fair Dealing Provisions Creates a Complicated and Unpredictable System that Does Not Adequately and Effectively Protect Intellectual Property**

South Africa is currently considering major amendments to its copyright law that, if enacted, would further weaken the protection and enforcement of copyrighted works in sub-Saharan Africa's most vibrant creative market. Of chief concern is the implementation of the U.S. fair use doctrine on top of new and existing fair dealing exceptions that fall short of adequate and effective copyright protection. If the provisions become law, the result would be an impractical mashup of fair use and fair dealing standards that would deter foreign investment and ultimately harm local creators and creative industries.

South Africa's existing limitations and exceptions to the exclusive rights granted to creators and copyright owners are similar to yet broader than the standards found in many fair dealing jurisdictions. Unlike U.S.-style fair use—which provides a statutory framework for determining what is permissible based on the combination of a non-exclusive list of uses and a flexible four-factor test—most fair dealing rubrics are made up an exclusive list of permissible uses without any additional codified factors to be taken into consideration.<sup>5</sup> In these fair dealing jurisdictions, permission will not be granted for any unauthorized act that falls outside of the enumerated uses.

South Africa's fair dealing statute currently includes indeterminate language not found in jurisdictions employing similar fair dealing standards. Specifically, Chapter 1, Section 12(1)(a) of South Africa's Copyright Act states:

*(1) Copyright shall not be infringed by any fair dealing with a literary or musical work—*

*(a) for the purposes of research or private study by, or the personal or private use of, the person using the work;*

While at first glance this language appears similar to that of jurisdictions applying traditional fair dealing standards, Section 12(1)(a) is unique in that it includes a “personal” use provision. The addition of this broad and undefined exception greatly expands the types of uses that may be found to be non-infringing and, in doing so, raises serious questions over whether the statute adequately and effectively protects the rights of authors and copyright owners.

The proposed amendments to this already questionable rubric involve codifying the U.S.-style four-factor fair use test on top of the fair dealing provisions. Additionally, proposed revisions to the existing 12(1)(a) language would add a broad exception for “education.” This significantly vague expansion to the list of permissible uses, combined with the requirement of an unfamiliar four-factor fair use analysis, would create an unprecedented mashup of laws that would serious

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<sup>5</sup> Jonathan Band and Jonathan Gerafi, *Fair Use/Fair Dealing Handbook* (May 7, 2013). Available at SSRN: <https://ssrn.com/abstract=2333863> or <http://dx.doi.org/10.2139/ssrn.2333863>

complicate determinations of fair use/dealing.<sup>6</sup> The uncertainty with which this irregular mixture would be applied by courts would not only result in hesitancy on the part of foreign copyright owners to enter South African markets, but would also ultimately lead to confusion among local creators, copyright owners, and users.

While South African courts apply a common law approach to fair dealing determinations, they are not well situated to effectively implement a fair use doctrine shaped by nearly two centuries of foreign case law. Fair use determinations in the United States are considered on a case-by-case basis, yet the doctrine can be applied with a certain amount of predictability that stems from years of interpretation and refining. The evolution of fair use in the United States has resulted in a detailed elaboration of the four factors to be considered, how they are to be balanced and weighed in particular cases, and what presumptions should be applied.<sup>7</sup> Without this well-developed body of case law, South Africa's incorporation of the U.S. fair use doctrine will result in uncertainty for copyright owners and users alike. The confusion and hesitancy stemming from the mashup of laws and the expansive new exceptions cannot support a robust market or local creative economy, and a redrafting of the proposed amendments is necessary to ensure that South African creative ecosystems flourish and U.S. interests are preserved.

### **3. South Africa's Proposed Fair Dealing Provisions are Part of Greater Problematic Copyright Amendments that do not Adequately and Effectively Protect Intellectual Property**

The proposed revisions to South Africa's fair dealing system are but one part of the amendments that stand to devalue intellectual property rights and threaten legitimate markets in the region. While the two bills being considered—the Copyright Amendment Bill (CAB) and Performers' Protection Amendment Bill (PPAB)—may be born of an effort to modernize South Africa's copyright laws, the current drafts of the two bills undermine the rights of creators and copyright owners by creating an ambiguous and inequitable framework. In addition to the fair dealing/use proposals, the bills feature provisions that would result in overregulation of free markets, misguided compulsory licensing mechanisms, inadequate penalties for infringement, and flawed exceptions to prohibitions against the circumvention of technical protection measures. If enacted, the laws would not only fail to provide adequate and effective intellectual property protection, but they would also violate international treaties and best practices.

One proposal of particular concern is a rule that would allow the government to set the terms of transfers of rights and licensing agreements involving creators and performers. Sections in both the CAB and PPAB bills would cut assignments of rights terms down from 50 to 25 years and also allow a government Minister to set standard and compulsory contractual terms for contracts covering any transfer or use of rights. This type of intrusion into copyright owners' and creators' freedom to negotiate and contract represents serious overregulation of free markets that would

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<sup>6</sup> See "The expected impact of the 'fair use' provisions and exceptions for education in the Copyright Amendment Bill on the South African publishing industry," available at <http://www.publishsa.co.za/file/1501662149slp-pwcreportonthecopyrightbill2017.pdf>.

<sup>7</sup> International Intellectual Property Alliance (IIPA) 2019 Special 301 Report on South Africa, p. 71 (Feb. 7, 2019); Available at: <https://iipa.org/files/uploads/2019/02/2019SPEC301SOUTHAFRICA.pdf>.

devalue intellectual property and ultimately result in an unwillingness among investors to enter South African markets. In addition to deterring foreign direct investment, this severe interference with concerned parties' contractual freedom would disregard the rights and interests of local creators by forcing them to accept the terms of a government ministry that may lack sufficient knowledge to proscribe key components of a contract.

The current proposals also do not provide appropriate remedies in cases of infringement. With online streaming piracy a persistent and growing threat to creative industries worldwide, it's imperative that sufficient remedies be in place to both allow copyright owners to recover lost costs and to deter future infringement. As criminal fines are not awarded to copyright owners, civil remedies are the only opportunity for copyright owners to recoup the massive losses associated with the billions of instances of online infringement occurring every year. Yet no additional civil remedies are provided in the proposed amendments, leaving copyright owners without an effective mechanism for combating infringement and recovering costs.

Another problematic amendment pertains to technical protection measures (TPMs), which are essential digital tools that allow copyright owners to control creative works and protect them from infringement. Under South Africa's current PPAB amendment, exceptions to prohibitions against the circumvention of technical protection measures include broad definitions that do not provide adequate legal protections against the circumvention of TPMs. While it's understood that some exemptions to the circumvention of TPMs will allow persons engaged in specific non-infringing uses of certain classes of creative works to override access controls, it is critical that these provisions be drafted with detail and clarity to ensure that TPMs are permitted to be bypassed only in limited circumstances that do not interfere with TPMs facilitation of legitimate licensing and markets for creative works. The inadequately defined provisions of the current TPM section of the PPAB would create exceptions that are substantially susceptible to abuse by those providing circumvention technologies for unlawful purposes.

Considered together, the current drafts of the PPAB and CAB raise serious questions about government overregulation, legal certainty, practicality, and treaty compliance. Without careful reconsideration—including input from all stakeholders—and redrafting, the amendments to South Africa's copyright system would disrupt proven business models and fail to provide adequate and effective protection of the rights of copyright owners and creators in the United States and South Africa.

#### **4. South Africa's Creative Community Opposes Further Devaluation of Intellectual Property Rights**

Underscoring that opposition by U.S. creators and copyright owners is well founded, local South African creative industry associations and individual creators have voiced their opposition to the proposed PPAB and CAB amendments as well. After being largely shut out of the discussions leading to the current drafts, South African creative organizations, trade unions, industry associations, and individual creators have called for reconsideration of proposals that they recognize as harmful to South Africa's burgeoning creative sector. They have spoken out about how the changes in the pending legislation, particularly the broad exceptions and limitations on their rights, would harm the very creators the proposed amendments are meant to protect. Indeed,

there have even been marches by artists, writers, publishers, and other creatives who recognize that the bills threaten their livelihoods.<sup>8</sup>

The Coalition for Effective Copyright in South Africa—which includes numerous stakeholders from the creative sector such as authors, publishers, musicians, visual artists, and filmmakers—has been campaigning against the Copyright Amendment Bill. The Coalition’s website<sup>9</sup> explains that, though it “believes that copyright amendment is necessary,” the bill “stands to destroy creative industries” and “would greatly reduce the incentive for creating original works.” The Coalition complains that the bill “was poorly drafted” and that its authors “have a bias towards certain tech giants who have been listened to ahead of local legal experts and affected industries.” The Coalition implores the President of South Africa, Cyril Ramaphosa, not to sign the bill and to send it back to Parliament for further review.

The Coalition’s chairperson, Collen Dlamini, penned a letter to the editor<sup>10</sup> of the Daily Maverick describing how the Copyright Amendment Bill, which was “originally intended to benefit South African creatives,” will instead “cut off their income streams.” The “losers,” he explains, “will be local artists, writers, and musicians,” and the “winners will be the large, global tech companies who will gain free access to South African content thanks to the bill’s extensive exceptions to copyright.” Dlamini outlined nine reasons why President Ramaphosa should reject the CAB: the bill is unconstitutional, since the extensive exceptions in the fair use provisions expropriate intellectual property without just compensation; the exceptions are not compatible with South Africa’s international treaty obligations; South African authors and author associations oppose the bill; musicians across South Africa have protested the exceptions in the bill; legal experts have questioned the bill’s constitutionality; the South African government has not conducted a proper study of the bill’s socioeconomic impact; global firms recognize that the bill will curb investments in South Africa; the bill will negatively affect South African exports; and there is widespread disagreement in the South African government about the propriety of the bill.

A petition against the adoption of the Copyright Amendment Bill was organized by three South African writers’ groups—PEN Afrikaans, Academic and Nonfiction Authors’ Association of South Africa (ANFASA), and PEN South Africa—and presented to the South African Minister of Trade and Industry in late 2018.<sup>11</sup> The petition was signed by over 3,000 individuals and 125 organizations representing key players in the South African book industry, including authors, booksellers, publishers, readers, literary agents, academics, and copyright scholars. One of the

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<sup>8</sup> See, e.g., Lizell Persens, *Union Vows to Continue Fight Over Copyright Amendment Bill for Musicians*, EWN Eyewitness News (Apr. 9, 2019), <https://ewn.co.za/2019/04/09/union-vows-to-continue-fight-over-copyright-amendment-bill-for-musicians>; SABC Digital News, *Artists, Writers and Publishers March Over Copyright Amendment Bill*, YouTube (Apr. 9, 2019), <https://youtu.be/s6aJcwcJbFE>; Collen Dlamini, *Artists Urge President to Reject Copyright Amendment Bill*, Politicsweb (Aug. 28, 2019), <https://www.politicsweb.co.za/politics/artists-urge-president-to-reject-copyright-amendme>.

<sup>9</sup> See *About Us*, Coalition for Effective Copyright in South Africa, <https://copyrightcoalition.wordpress.com/about-us/>.

<sup>10</sup> See Collen Dlamini, *The Copyright Bill is Fundamentally Flawed and Strips Creatives of Their Rights*, Daily Maverick (Sept. 30, 2019), <https://www.dailymaverick.co.za/article/2019-09-30-the-copyright-bill-is-fundamentally-flawed-and-strips-creatives-of-their-rights/>.

<sup>11</sup> See PEN Afrikaans, *Press Release: Authors Unite Against Copyright Amendment Bill*, LitNet (Dec. 3, 2018), <https://www.litnet.co.za/press-release-authors-unite-against-copyright-amendment-bill/>.

signatories to the petition was J.M. Coetzee, the South African novelist who won the Nobel Prize in Literature in 2003. Coetzee endorsed the text of the petition, which provided, “[t]he Copyright Amendment Bill does not strike a fair balance between the interests of the authors and the interests of the ‘users’ of copyright works. It is not in line with international copyright treaties. I strongly object to its adoption.”

PEN Afrikaans issued a statement outlining its specific objections to the Copyright Amendment Bill,<sup>12</sup> explaining how the proposed changes “will have a direct and detrimental impact on all South African authors.” In particular, the organization condemned the procedure by which the bill was “railroaded through Parliament” without “any meaningful engagement with authors about their concerns, every one of which has been ignored.” As to the introduction of fair use in the bill, PEN Afrikaans said there is “no need to adopt this doctrine into South African law,” since it will “result in significant legal uncertainty and places the onus on the copyright owner to institute court proceedings to challenge unauthorised use of their work.” Finally, the organization lambasted the “introduction of wide-ranging exceptions and limitations,” particularly in the education market, since they “could discourage authors from writing books and publishers from taking the financial risk to publish those books.” and “would create a climate within which freely copying copyright works for a wide range of purposes is permitted.” This erosion of authors’ rights, PEN Afrikaans argues, “drastically curtails their ability to make a living.”

Academics have expressed concerns about the Copyright Amendment Bill as well. The “general consensus,” reports Professor Keyan Tomaselli of the University of Johannesburg on a recent symposium dedicated to the impact of the Copyright Amendment Bill, “is that the proposed bill will hammer one more nail into the coffin of South Africa’s ailing university system.”<sup>13</sup> He summarizes the consequences of the bill:

*Big tech companies will be legally able to appropriate authors’ intellectual work, monetise it and sell their labour to advertisers. Academics will not own their intellectual labour. Researchers and textbook writers will be enriching these companies because they won’t have to buy permission for reproducing educational texts from publishers. South Africa’s educational publishing industry will decline.*

As to the counterargument that “all will be well because information freedom will be attained,” Professor Tomaselli responds that it “confuses access with content” that “needs to be created, published and circulated” in the first place. “The proposed bill,” he concluded, “will not only be harmful to authors but to the sustenance of scholarly innovation and cultural development.”

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<sup>12</sup> See PEN Afrikaans, *South African Authors Protest Against Copyright Amendment Bill*, LitNet (Nov. 29, 2018), <https://www.litnet.co.za/south-african-authors-protest-against-copyright-amendment-bill/>; see also Porter Anderson, *PEN Afrikaans, Authors Forum, Outline Objections to South Africa’s Copyright Bill*, Publishing Perspectives (Nov. 26, 2018), <https://publishingperspectives.com/2018/11/pen-afrikaans-authors-forum-object-to-south-africa-copyright-amendment-bill/>.

<sup>13</sup> Keyan Tomaselli, *Free to Reproduce, Free to Exploit: South Africa’s Copyright Amendment Bill*, The Conversation (Mar. 124, 2019), <https://theconversation.com/free-to-reproduce-free-to-exploit-south-africas-copyright-amendment-bill-113212>.

## 5. The Proposed Amendments Are a Threat to U.S. Industries and the Global Creative Ecosystem

The broad exceptions and limitations and other problematic provisions envisaged by the proposed Copyright Amendment Bill and Performers Protection Amendment Bill in South Africa will not provide adequate and effective copyright protection to U.S. copyrighted works. This threatens the global creative economy, as it will lead to a decrease in foreign investments in the South African creative sector, thereby weakening the South African internal market and dampening its export of creative works. It is no surprise that international trade organizations that represent publishers, software companies, motion picture companies, music companies, and others have called on the USTR to review whether South Africa meets the qualifications for GSP eligibility by providing adequate and effective protection for intellectual property rights.<sup>14</sup>

The United States serves as a prime example of how a robust copyright system that provides adequate and effective copyright protection and that comports with international treaties on copyright law can benefit a national economy. The copyright industries in the U.S. are among the most significant contributors to the U.S. economy, due in no small part to the existence of a legal regime that promotes significant investment and trade in copyrighted works. According to a recent study that was conducted by economist Stephen Siwek of Economists Incorporated,<sup>15</sup> “the core copyright industries of the United States—those industries whose primary purpose is to create, produce, distribute, or exhibit copyright materials—provide significant value added to U.S. gross domestic product.” This growth “outpaces the rest of the economy,” providing “an increasing number of high-paying jobs” and “substantial foreign sales and exports” that surpass many other industrial sectors.

The Siwek study demonstrates how a country with a modern copyright foundation that incentivizes investment in the creation and dissemination of copyrighted works expands that nation’s economic, technological, and cultural development. The study shows that the core copyright industries in the U.S. added \$1.3283 trillion to the GDP in 2017, accounting for 6.85% of the U.S. economy. When expanding beyond the core copyright industries to include those interdependent upon it, that figure rises to \$2.2474 trillion, accounting for 11.59% of the U.S. economy. The core copyright industries grew at an annual rate of 5.23% over the 2014-2017 period, compared to an annual growth rate of 2.21% of the remainder of the U.S. economy during the same period. The broader copyright industries grew at an annual rate of 4.26% during that same period, far exceeding that of the remainder of the U.S. economy.

Not only do the copyright industries contribute significantly to the U.S. gross domestic product and grow at rates exceeding the rest of the U.S. economy, but they also employ millions of workers who make more money per year than the average worker. In 2017, the core copyright

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<sup>14</sup> See, e.g., Phillip de Wet, *The US Just Announced a Review of SA’s Place in Its Biggest Preferential Trade Scheme – Because Its Movie and Music Companies Don’t Like the Controversial Copyright Bill*, Business Insider South Africa (Oct. 26, 2019), <https://www.businessinsider.co.za/us-trade-representative-to-review-sa-on-generalized-system-of-preferences-over-copyright-2019-10/>; International Intellectual Property Alliance, *IIPA 2019 Special 301 Report on Copyright Protection and Enforcement* (Feb. 7, 2019), <https://iipa.org/files/uploads/2019/02/2019SPEC301REPORT.pdf>.

<sup>15</sup> See Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2018 Report*, Economists Incorporated (Dec. 2018), <https://iipa.org/files/uploads/2018/12/2018CpyrtRptFull.pdf>.

industries employed 5.7 workers, which was nearly 3.85% of the U.S. workforce. The average annual compensation paid to these core copyright workers was \$98,336—39% more than the average compensation paid to all U.S. workers of \$70,498. The broader copyright industries likewise exceeded national norms, employing 11.6 million workers in 2017 and paying them nearly 22% more than the U.S. average annual wage at \$86,308 per year. The copyright industries contribute significantly to foreign sales and exports, performing better than many major industry sectors in the U.S. Overseas, sales of U.S. copyright products equaled \$191.2 billion in 2017. These sales were greater than those of other U.S. industries, including electronics, appliances, agricultural products, chemicals, aerospace products, and pharmaceuticals.

The success of the U.S. copyright industries is remarkable, and there is every reason for U.S. copyright owners to be worried about the proposed amendments to the copyright laws in South Africa. A recent study by PricewaterhouseCoopers analyzed the effect of the proposed education exceptions on the publishing industry in South Africa.<sup>16</sup> The study found that these overbroad exceptions “mean the absence of adequate copyright protection, which in turn results in a ‘free rider’ problem, leading to a production level of educational works below the socially desirable level.” It concluded that “this will exert a negative impact on the economy via lower output levels in the strategically important domain of human capital formation and the development of a knowledge-economy.” Specifically, the study found that the publishing industry in South Africa would experience a 33% decrease in sales and a 30% decline in employment.

Adequate and effective copyright protection is the bedrock upon which the U.S. copyright industries are able to thrive and prosper. It incentivizes the creation and dissemination of cultural works, which boosts the economy and promotes human flourishing. South Africa’s copyright regime already fails to protect U.S. copyrighted works adequately, and the proposed changes to the copyright laws in South Africa would only exacerbate the problem, undermining the purpose of the copyright system and threatening the global copyright ecosystem.

## **6. Conclusion**

As global markets and creative ecosystems become more interconnected, requiring uniform legal standards across diverse jurisdictions can result in more efficient, predictable, and modern intellectual property regimes. While major IP-exporting countries have much to offer and should be looked to for guidance in developing functional and reliable intellectual property systems, the wholesale transplant of laws from one country to another must be carefully contemplated. The South African copyright bills currently being considered represent a hasty attempt to adopt U.S. standards and incorporate them into system that already does not provide adequate protection to creators and copyright owners. The mashup of legal standards that would result from mixing U.S.-style fair use with overbroad fair dealing exceptions, along with numerous other vague and inequitable amendments, would lead to an impractical and unpredictable copyright system that would harm U.S. industries, global ecosystems, and local South African creative sectors.

In order to avoid these harms, the copyright provisions must be redrafted with input from all stakeholders and with careful consideration of their practicality, legality, and compliance with

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<sup>16</sup> *See id.* at 6.

international treaties. If the bills are not significantly revised and improved, South Africa will plainly fail to meet the criterion required of a GSP beneficiary country, and GSP benefits should be suspended or withdrawn.

Respectfully submitted,

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