

Before the
Office of the United States Trade Representative
Washington, D.C.

In re

Generalized System of Preferences (GSP):
Notice Regarding a Hearing for Country
Practice Review of South Africa

Docket No. USTR-2019-0020

South Africa Country Practice Review: Intellectual Property Rights

Post-Hearing Brief of Computer & Communications Industry Association (CCIA)

Pursuant to the notice issued by the U.S. Trade Representative (USTR) and published in the Federal Register at 84 Fed. Reg. 63,955 (Nov. 19, 2019), this submission supplements the oral testimony by CCIA¹ at the GSP Subcommittee hearing for country practice review of South Africa on January 31, 2020.² CCIA’s comments also respond to arguments made in the petition filed by the International Intellectual Property Alliance (IIPA) that the Republic of South Africa does not provide adequate and effective intellectual property protection by virtue of including a fair use provision in the Copyright Amendment Bill (CAB).

It is both appropriate and in the economic interest of the United States for other countries to adopt a fair use exception modeled on the provision in Section 107 of the U.S. Copyright Act. This submission will first provide background on U.S. governmental support for fair use. Second, it will demonstrate that content creators, technology companies, and many other U.S. industry sectors routinely rely on fair use. Finally, these comments will respond to IIPA’s specific objections to fair use in the CAB.

I. U.S. Government Recognition of the Importance of Fair Use

The U.S. government has long acknowledged the economic and social importance of fair use. Below is a non-exhaustive list of statements by U.S. officials regarding the benefits of fair use.

¹ The Computer & Communications Industry Association (CCIA) represents over twenty companies of all sizes providing high technology products and services, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services—companies that collectively generate more than \$540 billion in annual revenues. A list of CCIA members is available at <https://www.cciainet.org/members>.

² Transcript, Office of the U.S. Trade Rep., Public Country Practice Hearing, U.S. Generalized System of Preferences (Jan. 31, 2020) (hereinafter “GSP Hearing Transcript”), *available at* <https://www.regulations.gov/document?D=USTR-2019-0020-0049>.

- USTR has observed that in the United States, “consumers and businesses rely on a range of exceptions and limitations, such as fair use, in their businesses and daily lives.”³
- The U.S. Intellectual Property Enforcement Coordinator (IPEC) stated that “fair use is a core principle of American copyright law.”⁴ The IPEC added that “the Supreme Court has repeatedly underscored fair use provisions in the Copyright Act as a key means of protecting free speech,”⁵ and that “enforcement approaches should not discourage authors from building appropriately upon the works of others.”⁶ In the most recent Joint Strategic Plan, the IPEC discussed how fair use enabled “new and innovative uses of media (e.g., remixes and mashups involving music, video and the visual arts).”⁷ The IPEC concluded that “it is the combination of strong copyright rights with a balance between the protection of rights and exceptions and limitations that encourages creativity, promotes innovation, and ensures our freedom of speech and creative expression are respected.”⁸
- The U.S. Copyright Office notes that “fair use is a longstanding and vital aspect of American copyright law.”⁹ In a study on software-enabled consumer products, the Copyright Office found that “courts repeatedly have used the fair use doctrine to permit copying necessary to enable the creation of interoperable software and products.”¹⁰
- The Solicitor General of the United States filed a brief in the U.S. Supreme Court in September 2019 asserting that fair use “permits courts to consider whether ‘rigid application of the copyright statute’ in a particular case ‘would stifle the very creativity which that law is designed to foster.’”¹¹
- Members of Congress have also shared these views. As Senator Ron Wyden and Congressman Jerry McNerney told USTR on January 28 in the context of this review: “In the United States, our fair use policy has spurred the creation of transformative works and technological innovations that create new markets and drive economic activity.” They concluded by explaining how South Africa adopting fair use would benefit both the U.S.

³ USTR, *USTR Introduces New Copyright Exceptions and Limitations Provision at San Diego TPP Talks* (July 2012), <https://ustr.gov/about-us/policy-offices/press-office/blog/2012/july/ustr-introduces-new-copyright-exceptions-limitations-provision/>.

⁴ U.S. Intellectual Property Enforcement Coordinator, *2013 Joint Strategic Plan on Intellectual Property Enforcement* (June 2013), <https://obamawhitehouse.archives.gov/sites/default/files/omb/IPEC/2013-us-ipeec-joint-strategic-plan.pdf>, at 18.

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Intellectual Property Enforcement Coordinator, *U.S. Joint Strategic Plan on Intellectual Property Enforcement FY 2017-2019* (Dec. 2016), <https://obamawhitehouse.archives.gov/sites/default/files/omb/IPEC/2016jointstrategicplan.pdf>, at 10.

⁸ *Id.*

⁹ U.S. Copyright Office, *U.S. Copyright Office Fair Use Index*, <https://www.copyright.gov/fair-use/>.

¹⁰ U.S. Copyright Office, *Software-Enabled Consumer Products* (Dec. 2016), <https://www.copyright.gov/policy/software/software-full-report.pdf>, at 54.

¹¹ Brief for the United States at 17, *Google LLC v. Oracle America, Inc.*, No. 18-956 (S. Ct. Sept. 27, 2019), https://www.supremecourt.gov/DocketPDF/18/18-956/117359/20190927165110897_18-956%20Google.pdf (citations omitted).

and South Africa: “The balanced copyright system adopted by the United States has helped make us a leader in innovation and the creative economy, and we should commend—rather than penalize—trading partners that adopt balanced copyright regimes that both protect U.S. interests and boost developing economies.”¹²

In short, various experts in the U.S. government have repeatedly affirmed the centrality of fair use to the U.S. copyright system, and its importance in promoting creativity and innovation.

II. U.S. Content Creators, Technology Companies, and Other Industry Sectors Routinely Rely on Fair Use

Balanced copyright rules such as fair use and related limitations and exceptions have been critical to the growth of the U.S. technology and Internet economy. A 2017 study illustrated how U.S. firms operating abroad in regimes with balanced copyright law reported higher incomes and increased total sales, encouraging foreign investment.¹³ A CCIA study demonstrated that fair use industries account for 16% of the U.S. economy, employ 1 in 8 workers, and contribute \$2.8 trillion to GDP.¹⁴ Driven by increases in service-sector exports, U.S. exports of goods and services related to fair use increased by 21% over four years to \$368 billion. These U.S. economic benefits are threatened when a foreign country fails to include U.S.-style fair use protections in their own copyright laws, impeding market access for U.S. companies looking to export to that market.

At the January 31 hearing, the GSP Subcommittee inquired about CCIA members’ investment in South Africa, and the expected financial impact of this legislative proposal on industry.¹⁵ Data available to CCIA on foreign direct investment (FDI) indicates that U.S. technology companies, including CCIA members, have invested substantially in South Africa; software and information technology (IT) services was the top sector with more than a third of FDI projects as of 2018.¹⁶ U.S. government data from the Bureau of Economic Analysis (BEA) also demonstrates the significant level of U.S. trade in information and communications

¹² Letter from Ron Wyden, U.S. Senator, and Jerry McNerney, U.S. Congressman, to Ambassador Robert Lighthizer, U.S. Trade Rep. (Jan. 28, 2020).

¹³ Sean Flynn & Mike Palmedo, *The User Rights Database: Measuring the Impact of Copyright Balance*, Program on Information Justice and Intellectual Property (Oct. 30, 2017), <http://infojustice.org/archives/38981>.

¹⁴ CCIA, *Fair Use in the U.S. Economy: Economic Contribution of Industries Relying on Fair Use* (2017), <http://www.ccianet.org/wp-content/uploads/2017/06/Fair-Use-in-the-U.S.-Economy-2017.pdf>, at 4.

¹⁵ GSP Hearing Transcript at 135.

¹⁶ The data is drawn from the fDi Markets database, a service provided by the Financial Times. *See generally* <https://www.fdimarkets.com/>.

technology (ICT) and potentially ICT-enabled services in South Africa, with 2018 exports valued at \$285 million and \$1.658 billion, respectively.¹⁷ In light of the fact that a considerable level of U.S. FDI in the South African market is ICT-based, the U.S. government has an interest in ensuring that the regulatory regimes, including copyright laws, of these two countries are harmonized.

The GSP Subcommittee also inquired about copyright holders benefiting from fair use.¹⁸ As a general matter, most creators utilizing fair use rights are likely to be engaged in authorship themselves, and thus most fair use beneficiaries are copyright holders.¹⁹ CCIA members are also copyright holders, and benefit from copyright protection, in addition to limitations and exceptions like fair use.

Industries traditionally identified as “copyright holders”, like U.S. media companies, regularly rely on fair use when faced by copyright claims against their own creations. For example, in recently-settled litigation brought by the Michael Jackson estate concerning the inclusion of excerpts of Jackson’s works in a documentary broadcast by ABC News, Disney asserted that it would not be intimidated by “overzealous copyright holders” such as the estate. It observed that:

This case is about the right of free speech under the First Amendment, the doctrine of fair use under the Copyright Act, and the ability of news organizations to use limited excerpts of copyrighted works . . . for the purpose of reporting on, commenting on, teaching about, and criticizing well-known public figures of interest in biographical documentaries. . . .²⁰

¹⁷ BEA, Table 3.3: U.S. Trade in ICT and Potentially ICT-Enabled Services, by Country or Affiliation (Oct. 15, 2019), available at <https://apps.bea.gov/iTable/iTable.cfm?ReqID=62&step=1#reqid=62&step=9&isuri=1&6210=4>.

¹⁸ GSP Hearing Transcript at 132-33.

¹⁹ For example, the seminal U.S. case on copyright fair use involves defendants themselves engaged in creative authorship. *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994).

²⁰ See Jonathan Band, *Disney Fights Overzealous Copyright Holders With Fair Use*, Disruptive Competition Project (Aug. 15, 2018), <http://www.project-disco.org/intellectual-property/081518-disney-fights-overzealous-copyright-holders-with-fair-use/>. For other statements of copyright industry support for fair use, see, e.g., Jonathan Band, *Oracle v. Google? Again? Part II: Amici Recognize the Essential Nature of Fair Use*, Disruptive Competition Project (Mar. 2, 2017), <http://www.project-disco.org/intellectual-property/030217-oracle-v-google-again-part-ii-amici-recognize-essential-nature-fair-use/>. For additional cases where creators have employed fair use as a defense to infringement claims, see, e.g., Jonathan Band, *Fair and Balanced Result in New Jersey Media Group v. Fox News Network*, ARL Policy Notes (Feb. 23, 2015), <http://policynotes.arl.org/?p=896>; Ali Sternburg, *MPAA Opposes Fair Use, Even As Its Members Rely On It*, Disruptive Competition Project (Apr. 17, 2015), <https://www.project-disco.org/intellectual-property/041715-mpaa-opposes-fair-use-even-as-its-members-rely-on-it/>; Matt Schruers, *2013 Brought Major Fair Use Wins: Update - Bouchat v. Ravens & NFL*, Disruptive Competition Project (Dec. 18, 2013), <https://www.project-disco.org/intellectual-property/121813-2013-brought-major-fair-use-wins-update/>; Matt Schruers, *2013 Brought Major Fair Use Wins For Tech, Entertainment*, Disruptive Competition Project (Dec. 4,

Likewise, the Copyright Alliance has stated that it

is a staunch supporter of fair use principles, which allow for copyright to achieve its purpose without undermining the incentive to create. Its members regularly rely on these principles to create new, expressive, and transformative works, consistent with the Copyright Act's inherent purpose.²¹

For reasons like this, a number of creative sector industry codes are included in CCIA's study, making the data inclusive of rightsholders benefiting from fair use as well.

III. IIPA's Objections to Fair Use in the South African Copyright Bill Have No Merit

The IIPA indicates that a fair use provision would be incompatible with "a healthy, sustainable and fair digital marketplace for creators, both domestic and foreign." Further, IIPA argues that it would "stagnate South Africa's cultural community."

Fair use has not had this effect in the United States, nor in the other countries that have adopted fair use.²² As the former U.S. Register of Copyrights has stated:

Fair use is an essential pillar of copyright law. It allows individuals and businesses in certain circumstances to build off of the creativity of others by using existing copyrighted material to create their own original works. Without the fair use limitation, copyright would not serve its core purpose of promoting authorship.²³

Instead of creating unpredictability, the increased prevalence of U.S.-style fair use laws in other countries is likely to serve as a means of *preventing* unprincipled decision-making by

2013), <https://www.project-disco.org/intellectual-property/120413-2013-bring-major-fair-use-wins-for-tech-entertainment-industries/>.

²¹ See Jonathan Band, *Finding Fair Use in Unexpected Places*, ARL Policy Notes (Jan. 19, 2017), <http://policynotes.arl.org/?p=1464>. The Copyright Alliance has stated, "fair use is a core part of copyright law. It is a doctrine all artists and creators depend on daily. . . ." Sandra Aistars, *Happy Fair Use Day* (May 4, 2012), <http://www.copyrightalliance.org/2012/05/happy-fair-use-day>. The Motion Picture Association of America likewise said that "our members rely on the fair use doctrine every day when producing their movies and television shows. . . ." Ben Sheffner, *MPAA and Fair Use: A Quick History* (Oct. 22, 2013), <http://www.mpa.org/mpaa-and-fair-use-a-quick-history/>. For other examples of fair use enabling creative activity, see, e.g., Jonathan Band, *Fifty Shades of Fair Use*, Disruptive Competition Project (Feb. 10, 2015), <https://www.project-disco.org/intellectual-property/021015-fifty-shades-fair-use/>; Jonathan Band, *How Copying Promotes Creativity*, Disruptive Competition Project (June 12, 2015), <http://www.project-disco.org/intellectual-property/061215-how-copying-promotes-creativity/>; and Jonathan Band, *Fair Use: The Foundation of Jon Stewart's Success*, Disruptive Competition Project (Feb. 13, 2015), <http://www.project-disco.org/intellectual-property/021315-fair-use-foundation-jon-stewarts-success/>.

²² According to CCIA's 2017 study *Fair Use in the U.S. Economy*, in 2014 fair use industries accounted for 16 percent of the U.S. economy, employed 1 in 8 workers, and contributed \$2.8 trillion to the GDP. Exports of goods and services related to fair use industries increased 21%, from \$304 billion in 2010 to \$368 billion in 2014. CCIA, *Fair Use in the U.S. Economy* (2017), available at <http://www.ccianet.org/wp-content/uploads/2017/06/Fair-Use-in-the-U.S.-Economy-2017.pdf>.

²³ Jonathan Band, *Oracle v. Google? Again? Part II: Amici Recognize the Essential Nature of Fair Use*, Disruptive Competition Project (Mar. 2, 2017), <http://www.project-disco.org/intellectual-property/030217-oracle-v-google-again-part-ii-amici-recognize-essential-nature-fair-use/>.

foreign courts.²⁴ By treating linking as a communication to the public in *Svensson v. Retriever Sverige*,²⁵ the Court of Justice of the European Union (CJEU) had backed itself into a corner in *GS Media v. Sanoma Media*,²⁶ which involved a link to infringing content. To find a way to balance copyright with free expression, the CJEU came up with a proportionality test. Copyright scholars have indicated that courts are going to find safety valves, and fair use is a better safety valve than the likely alternatives.

Further, IIPA makes several objections to the fair use provision in Section 12A, including: South Africa lacks decades of legal precedent upon which to base application of fair use; the CAB establishes a hybrid model which “creates an unprecedented mash-up” of fair dealing, fair use, and specific exceptions; South Africa lacks statutory and punitive damages; and the fair use provision is broader in the CAB than in U.S. law.²⁷ These are discussed in more detail below.

A. Lack of Precedent

Under IIPA’s reasoning, no country would ever be able to adopt fair use because it would never have the body of precedent necessary to apply it. Fortunately, South Africa does have a ready source of fair use precedent: all the fair use opinions in all the countries that have adopted a U.S.-style fair use provision, including the United States and Israel. These countries’ decisions are available online, and South African courts can rely upon them as guidance until they develop their own body of case law.

This is precisely what happened in Israel. After Israel adopted fair use in 2007, its courts (and litigants) looked to U.S. decisions for guidance until they had their own case law. Notably, Israeli courts created a fifth fair use factor: whether the user gave attribution to the author. Thus, Israeli courts apply fair use more stringently than U.S. courts. Significantly, attribution is

²⁴ Jonathan Band, *Fair Use As A Tool For Reining In Foreign Judges?*, Disruptive Competition Project (Oct. 20, 2016), <http://www.project-disco.org/intellectual-property/102016-fair-use-tool-reining-foreign-judges/>.

²⁵ Case C-466/12, *Nils Svensson v. Retriever Sverige AB* (2014), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=147847&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=29226>.

²⁶ Case C-160/15, *GS Media BC v. Sanoma Media Netherlands BV* (2016), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=183124&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=711784>.

²⁷ The fair use section of the IIPA petition also refers to other issues such as parallel imports, the override of contracts, and exceptions for uses by libraries, galleries, museums, and educational institutions. These issues are extraneous to whether the fair use provision in Section 12A is problematic.

already built-in to the South African fair use provision—Section 12A(c). In this respect, the South African fair use provision is more restrictive than 17 U.S.C. § 107.

Additionally, numerous fair use-related resources are available online, in particular the U.S. Copyright Office’s index of fair use cases.²⁸ The goal of the index is “to make the principles and application of fair use more accessible and understandable to the public.”²⁹ The index contains a detailed discussion of the holdings of hundreds of fair use decisions.

Finally, South Africa will be able to engage in important capacity-building efforts with the U.S. government, including the U.S. Copyright Office and the USPTO Office of Policy and International Affairs, which is “actively engaged in providing technical assistance and training on copyright-related matters for both U.S. and foreign government officials.”³⁰ Through these trainings and capacity-building efforts, the U.S. government can ensure that South African fair use law is implemented in a manner consistent with U.S. law and precedent.

B. Hybrid Structure

IIPA criticizes the appending of the fair use rubric to the fair dealing provision, and further seems to object to supplementing the fair use/fair dealing exception, Section 12A, with specific exceptions. The hybrid structure IIPA finds offensive is precisely the structure of exceptions found in the U.S. Copyright Act. Section 12A(a) of the CAB states that copyright is not infringed by “fair use in respect of a work or the performance of that work, for purposes such as” research, criticism, reporting, scholarship, comment, preservation, and public administration. This parallels the first sentence of 17 U.S.C. § 107, which provides that “the fair use of a copyright work, . . . for purposes such as criticism, comment news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright.”

Section 12A(b) of the CAB then provides that “in determining whether an act done in relation to a work constitutes a fair use, all relevant factors shall be taken into account, including but not limited to” the nature of the work, the amount and substantiality of the part used, the purpose of the use, and the effect of the use upon the potential market for the work. Likewise, the second sentence of 17 U.S.C. § 107 states that “in determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include” the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the

²⁸ U.S. Copyright Office, *U.S. Copyright Office Fair Use Index*, <https://www.copyright.gov/fair-use/>.

²⁹ *Id.*

³⁰ U.S. Patent & Trademark Office, *Copyright Policy*, <https://www.uspto.gov/ip-policy/copyright-policy/>.

portion used, and the effect of the use upon the potential market for the work. Once again, the wording of the four factors in Section 12A(b) of the CAB is highly consistent with 17 U.S.C. § 107.

Further, IIPA's objections to providing standards by which a court is to assess whether a particular use is fair appear disingenuous. The absence of standards for assessing fairness is at times cited by critics as one of the deficiencies of the traditional fair dealing test, and one respect in which U.S.-style fair use is superior to traditional fair dealing. It is the absence of standards that has led many former British colonies to append the U.S. four fair use factors (or variants thereof) to their existing fair dealing provision.³¹ The four factors have been adopted by other countries as well.³²

Also inexplicable is IIPA's hostility to the CAB establishing specific exceptions in addition to the general fair use provision. Virtually all countries that have a fair use or fair dealing provision also provide specific exceptions. The United States, for example, has exceptions for libraries and archives (§ 108, § 109(b)(2)(A)), rental car companies (§ 109(b)(1)(B)(i)), museums and galleries (§ 109(c)), videogame arcade operators (§ 109(e)), educational institutions (§ 110(1) and (2)), religious institutions (§ 110(3)), small restaurants (§ 110(5)), agricultural or horticultural organizations (§ 110(6)), record stores (§ 110(7)), organizations that provide services to people with disabilities (§ 110(8), § 110(9), § 121, and § 121A), veterans' and fraternal organizations (§ 110(10)), hotel and apartment house owners (§ 111(a)), broadcasters (§ 112(a)), owners of computer programs (§ 117(a)), and computer maintenance or repair organizations (§ 117(c)). The mere presence of additional exceptions does not vitiate the meaning of the underlying fair use provision.

Additionally, IIPA identifies concerns with specific exceptions contained in the CAB, and CCIA takes no position on these provisions.³³ However, USTR should assess these specific exceptions separately from the fair use provision in Section 12A.

³¹ Antigua and Baruda, Australia, Bahamas, Barbados, Belize, Grenada, Hong Kong, Israel, Jamaica, Malaysia, New Zealand, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Singapore, Sri Lanka, and Uganda. See Jonathan Band & Jonathan Gerafi, *The Fair Use/Fair Dealing Handbook* (Mar. 2015), <http://infojustice.org/archives/29136>.

³² Korea, Liberia, Philippines, and Taiwan. *Id.*

³³ The one exception is Section 12C, which permits the creation of temporary copies. This provision is based on Article 5(1) of the European Union's Information Society Directive. IIPA objects to the CAB's clarification that this exception for transient or incidental copies includes reformatting for the purpose of adapting the work for use on

C. Statutory Damages

IIPA observes that South Africa “lacks statutory and punitive damages, which rights holders in the U.S. rely on to deter and remedy infringement.”

It should be noted that there is no connection between the three-step test and remedies; these issues are treated separately in the Berne Convention and TRIPS. Moreover, neither Berne nor TRIPS require statutory damages. Most countries do not allow them, including most of the countries that already have fair use or fair dealing.

In any case, IIPA is wrong as a factual matter. Both the Copyright Act of 1978 and the Counterfeit Goods Act in South Africa do allow the imposition of significant punitive fines for copyright infringement. And under Section 24(3) of the Copyright Act of 1978, a court may impose additional damages, “as the court may deem fit,” in cases of flagrant infringement.

Moreover, South Africa follows the “English Rule” for the award of attorney’s fees. Under the English Rule, the prevailing party automatically recovers attorney’s fees. The English Rule not only deters unlawful behavior, it also strongly discourages a defendant from pursuing a defense unless it has a high degree of confidence it would prevail. This would ensure that defendants would assert fair use only in the strongest of cases.

By contrast, the U.S. Copyright Act does not automatically shift fees. Rather, it grants courts the discretion to award fees to the prevailing party. 17 U.S.C. § 505. The Supreme Court clarified that in exercising its discretion, courts should give “substantial weight to the objective reasonableness of the losing party’s position.” *Kirtsaeng v. John Wiley & Sons, Inc.*, 136 S. Ct. 1979 (2016). In other words, the objective reasonableness of a losing defendant’s fair use argument would weigh substantially against the shifting of fees. This means that a U.S. court would be far more lenient and forgiving about fee-shifting than a South African court in a case involving the unsuccessful assertion of fair use. Thus, South African defendants are more unlikely to attempt to abuse fair use than U.S. defendants.

D. Breadth

IIPA argues that the language of the CAB’s fair use provision is broader than the U.S. fair use provision. As an example, IIPA mentions that the CAB requires that “all relevant factors shall be taken into account, including but not limited to” the four factors imported from the U.S.

a different device. IIPA ignores that Section 12C, like Article 5(1), applies only “as long as there is no independent economic significance to these acts.” Accordingly, Section 12C would cause no harm to copyright owners.

Copyright Act. IIPA suggests that this is far broader than the parallel language in 17 U.S.C. § 107. In fact, Section 107 provides that “in determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include” the four fair use factors. U.S. courts have made clear that the four factors are not exclusive, and indeed many courts have recognized a fifth factor, the good faith of the user. In short, IIPA is pointing to a distinction without a difference.

IV. Conclusion

Contrary to IIPA’s petition, there is nothing inappropriate about the CAB’s inclusion of a fair use provision. A fair use provision in South Africa, modeled closely on U.S. law, will protect American innovators and creators that are seeking to export to the South African market, while ensuring that South African copyright law does not diverge from the American legal framework.

Respectfully submitted,

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