

**Summary of Testimony
of the
International Intellectual Property Alliance (IIPA)
given by
Kevin M. Rosenbaum, Counsel
before the
African Growth and Opportunity Act (AGOA) Implementation Subcommittee
of the
Trade Policy Staff Committee
Office of the United States Trade Representative**

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

In our comments, IIPA highlights serious concerns with **South Africa’s** copyright law amendments, as well as some positive indications of improvements in copyright protection and enforcement in **Nigeria, Burundi, Kenya, Rwanda, Tanzania, and Uganda.**

The protection and enforcement of intellectual property rights are important prerequisites for AGOA eligibility. The adequate and effective protection and enforcement of copyright is the foundation on which both U.S. and local creators and investors base their production and distribution activities in AGOA-eligible markets.

As a key element to AGOA eligibility, it is crucial that AGOA-beneficiaries demonstrate some progress toward the adequate and effective protection of intellectual property. We urge the Administration to continue to consider copyright laws and enforcement practices under the intellectual property eligibility criteria of AGOA.

As IIPA has explained in previous AGOA-related filings, just what amounts to “adequate and effective” protection of intellectual property rights is a flexible measure that rightly changes over time. The obligations of the WTO TRIPS Agreement, which provide global minimum standards of copyright protection and enforcement, are central to this determination. Also central to the determination are the standards provided under the World Intellectual Property Organization (WIPO) Internet treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) – which contemplate many of the legal norms for a sustainable and healthy online marketplace.

IIPA appreciates that the Government of **Nigeria** has recognized the importance of its own burgeoning creative industry, and took action to protect it by ratifying the Internet treaties in 2017. Unfortunately, pervasive piracy remains a significant obstacle for Nigerian artists. IIPA encourages the Government of Nigeria to fully implement the Internet treaties without delay, and supports needed capacity building efforts to improve enforcement against digital piracy.

IIPA also encourages Tanzania and the rest of the East African Community to enact the EAC Creative and Cultural Industries Bill of 2015, which would incentivize their creative and cultural industries.

In our comments, IIPA raises significant concerns with South Africa's 2017 Copyright Amendment Bill, which remains riddled with problematic and troublesome provisions that run afoul of international norms and are inconsistent with South Africa's international obligations, including under the WTO TRIPS Agreement and the Berne Convention. Adoption of this bill would place South Africa out of compliance with the AGOA eligibility criteria that require beneficiary countries to provide adequate and effective protection and enforcement of intellectual property.

Many of the proposals in the 2017 Bill suggest a mistaken assumption that there is a fixed market for copyrighted works and that the government's role is to regulate the internal relationships of the creative community rather than to incentivize new investment in creative output. This misguided approach will stagnate South Africa's cultural community. If it does not make important revisions to these proposed provisions, South Africa will take a giant step backward in its effort to strengthen its copyright-based industries. South Africa would be better served by providing clear and unencumbered rights in its law that will allow its creative communities to increase investment to meet the growing demand for creative works of all kinds, in all formats.

IIPA appreciates this opportunity to provide the TPSC and the AGOA Subcommittee with our views on the AGOA. It is essential that the annual AGOA review remain an opportunity to evaluate the progress of its beneficiaries toward meeting their intellectual property rights criteria, and to identify opportunities to enhance IPR protection and to thereby expand economic development. It is also essential to undertake reviews of the conditions in such countries to determine if capacity building assistance can make a difference. We look forward to working with you to foster improved copyright protection in sub-Saharan Africa as a region.