



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 Reviews of South Africa

Docket No. 2019-24947
84 FR 63955

**COMMENTS OF
INTERNET ASSOCIATION**

Internet Association (IA) welcomes the opportunity to engage in USTR’s Generalized System of Preferences (GSP) country practice review of South Africa, and specifically the question of whether South Africa is meeting the GSP eligibility criterion requiring adequate and effective protection of intellectual property rights. It is important that the United States government support other countries adopting similar systems to the U.S. copyright framework and avoid sending the signal that the adoption of U.S.-style copyright measures should result in loss of GSP status.

IA represents over 40 of the world’s leading internet companies.¹ IA is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA supports policies that promote and enable internet innovation, ensuring that information flows freely and safely across national borders, uninhibited by restrictions that are fundamentally inconsistent with the open and decentralized nature of the internet. Moreover, the internet sector is now the fourth largest sector in the U.S. economy.²

The U.S. has a strong and innovation-oriented copyright framework that protects creators’ legitimate rights, enables new innovation, and generates massive consumer benefits – including through safe harbors like those in the Digital Millennium Copyright Act (DMCA) and limitations and exceptions like fair use. This framework has been critical to the U.S. digital economy domestically and needs to be projected globally. Fair use laws underpin one in eight U.S. jobs, drive 16 percent of the economy, and generate \$368 billion in exports annually.³ They hold the key to future U.S. innovation, including in areas like artificial intelligence that depend upon copyright exceptions to enable machine analysis of data.

Fair use enables digital trade by providing the legal framework that allows nearly all internet services to function effectively. Web search, artificial intelligence and machine learning, computational analysis, text and data mining, and cloud-based technologies all, to some degree, involve making copies of copyrighted content. These types of innovative activities – areas where U.S. businesses lead the world – are possible under copyright law because of fair use.

Fair use also allows for machine-based copying, processing, and storage of data for purposes such as data mining and pattern matching, which are instrumental to the development of AI and machine learning systems. The presence of a fair use law in another country thus enhances the export strength of U.S. industries that rely on AI, while the absence of a fair use law limits U.S. export strength and investment. For instance, Singapore amended its copyright law to include fair use in 2006 and now tops

¹ <https://internetassociation.org/our-members/>

² https://internetassociation.org/wp-content/uploads/2019/09/IA_Measuring-The-US-Internet-Sector-2019.pdf

³ <http://www.cciagnet.org/wp-content/uploads/2017/06/Fair-Use-in-the-U.S.-Economy-2017.pdf>



the list of countries from around the world in terms of attractiveness for artificial intelligence and robotics investors.⁴

In recent years, several countries have adopted fair use-style measures, including Singapore, Korea, Malaysia, Hong Kong, Israel, and now South Africa. In these countries, the presence of a fair use system has been positive both for the creative sector and the tech sector. For example, one economic study found that “adoption of fair use clauses modeled on U.S. law is associated with positive outcomes . . . both [for firms] that may be more dependent on copyright exceptions, and those that may be more dependent on copyright protection.”⁵

With the passage of the Copyright Amendment Bill (B13-2017), South Africa is joining the list of countries adopting fair use style copyright laws. While the South African Copyright Amendments Bill still awaits final signature by President Cyril Ramaphosa, it is an important step towards a fair and modern copyright system. Throughout the process, South Africa ran an inclusive proceeding to reform its copyright law over multiple years.⁶ The bill has been redrafted multiple times since 2015 to take into account feedback from a wide range of stakeholders including academics, NGOs, and the business community. This process was run by the South African parliamentary portfolio committee on trade & industry.⁷

Unfortunately, many foreign trading partners lack fair use-style rules, which limits export opportunities for U.S. industries in those markets. In countries that lack fair use measures that are equivalent to the U.S. legal framework, U.S. innovators are at a significant risk of loss of market access. For example, other governments such as France are increasingly misusing copyright law to limit market entry and to discriminate against U.S. providers.⁸

As a result, it is critical for the U.S. to support the adoption of fair use measures in other countries, and to avoid at all costs sending a message that the adoption of a fair use measure is grounds for the removal of trade benefits.

We strongly urge USTR to reject the elements of the IIPA petition that complain about South Africa’s consideration of a U.S.-style fair use measure. South Africa’s fair use measure is modeled on U.S. law (17 U.S.C. § 107) and includes a standard four-factor test that strikes an appropriate balance between the interests of authors, creators, and users. If the U.S. does not stand up for the U.S. copyright framework abroad, then U.S. innovators and exporters will suffer, and other countries will increasingly misuse copyright to limit market entry.

IA respectfully encourages USTR and other U.S. government agencies to support South Africa's inclusive processes and to highlight the importance of balanced copyright rules. Additionally, IA strongly encourages the U.S. government to work closely with counterparts in South Africa to ensure effective implementation of this fair use measure, including through education and capacity building efforts.

⁴ <https://www.fdiintelligence.com/Rankings/Singapore-leads-AI-destinations-ranking>

⁵ American University Program on Information Justice and Intellectual Property, “Firm Performance In Countries With & Without Open Copyright Exceptions, 2015 <http://infojustice.org/archives/34386>

⁶ <https://pmg.org.za/bill/705/>

⁷ <https://www.businesslive.co.za/bd/opinion/2017-08-04-fears-of-fair-use-law-being-used-to-rip-off-rights-holders-are-unfounded>

⁸ Art. L. 136-4,

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032854341&fastPos=1&fastReqId=643428459&categorieLien=id&oldAction=rechTexte>. Loi 2013-46 du 10 décembre 2013 Project de Loi Dispositions relatives aux objectifs de la politique de défense et à la programmation financière, rapport du Sénat, <http://www.senat.fr/petite-loi-ameli/2015-2016/695.html>.