

## SOUTH AFRICA Country Practice Review

### Submission from RECREATE SOUTH AFRICA

Note that this is a PRE-HEARING BRIEF and a NOTICE OF INTENT TO TESTIFY

With reference to the announcement in the Federal Register Vol. 84, No 223, dated November 19, 2019 , RECREATE SOUTH AFRICA submits this written comment and requests to testify at the public hearing on January 30, 2020 regarding the GSP country practice review of South Africa.

Our testimony at the hearing on 30 January would need to be provided via an Audio or Video link, as we are in South Africa, and would need to take place in the morning (Washington DC time), given the time difference of 7 hours to Johannesburg.

Note the following information about our organisation, and the following short written comment for your consideration.

### **Submission from RECREATE SOUTH AFRICA**

RECREATE SOUTH AFRICA is a broad coalition of interest groups in South Africa, including, but not limited to, the following:

- Trade Unions representing school teachers
- Organisations representing librarians and archivists
- Organisations and individuals in the creative industries, including filmmakers, musicians, video game makers
- Freedom of expression and journalism groups
- Disability rights activists

We wish to raise the following points:

1. The economies and peoples of the United States and South Africa benefit from duty free trade, as provided for under the GSP and AGOA. Denying access for South Africa to the benefits of the GSP and/or the provisions of AGOA would likely harm our economies and peoples, leading to loss of jobs and incomes. As much as \$2 billion in bilateral trade is at stake.
2. Economic and trade policy should be free of undue pressure exerted by narrow special or vested interests. It is our view that the complaint by the IIPA amounts to such undue pressure, and hence should be dismissed by the USTR.
3. We refute the central assertion by the IIPA that the proposed copyright legislation in South Africa would amount to an undue weakening of Intellectual Property rights. On the contrary, we assert that the proposed legislation is good for creative industries in the United States and South Africa, and is definitely beneficial for the expansion of educational opportunities in South Africa.

4. Furthermore we refute the assertion that any provisions of the proposed legislation are in contravention of international treaties and conventions.
5. In brief, the Copyright Amendment Bill seeks to modernise South African copyright law, in line with international trends. It also seeks to implement certain international treaties, such as the Marrakesh Treaty of 2013, ratified by the USA on 8 February 2019. It also seeks to reinforce the balanced approach to copyright which is already in place in South Africa, and which approach is also followed in the United States.
6. More specifically, the criticism in the IIPA complaint of what is described as South Africa's "ill-considered importation of the U.S. fair use rubric" is absurd. Why would the IIPA seek to criticise South Africa for bringing its copyright law into greater conformity with the law in place in the USA? Surely provisions that are acceptable in the US cannot be seen as contraventions when adopted by developing countries like South Africa?
7. In fact the strengthening of the fair use provisions in South African law are essential to (i) promote innovation and growth in our creative and digital industries (ii) increase access to educational materials in our schools and colleges (iii) ensure compliance with the provisions of the Marrakesh Treaty on access to books for people with visual impairments (iv) protect freedom of expression and independent journalism.
8. Most legislative changes come with economic adjustments in specific sectors. For example, introduction of renewable energy has provided increased competition to fossil fuel industries. That does not mean that governments should neglect to examine the benefits of renewables, and where appropriate, provide support to these sectors. We would advise the members or associates of the IIPA who lodged the complaint against South Africa to examine their own business models, and to look for opportunities within the new dispensation being introduced in South Africa. This would be a better approach than seeking to make spurious claims about South Africa's lack of respect for intellectual property.
9. Attempts to exert undue pressure on our government and/or legislators to refrain from introducing much needed legislative reforms are not new. We recall in the mid 1990s when the Medicines Control Act was proposed in South Africa, taking advantage of some of the provisions of international trade treaties to strengthen access to healthcare. Millions of people in South Africa were living with HIV at the time, and few had access to costly Anti-Retroviral medicines. Our government was seeking to ensure broad access to life saving medicines, by implementing some of the provisions in the Doha Declaration on the TRIPS Agreement. Pharmaceutical industry bodies and companies in the US launched a complaint against South Africa in an attempt to exert pressure to prevent our government from proceeding, despite the millions of lives that were at stake. Fortunately the complaint was eventually withdrawn after large public protests in the USA and South Africa and a number of legal proceedings. As a result, South Africa now

has the largest public HIV treatment programme in the world, and has saved at least 5 million lives. We would advise that the IIPA and USTR examine that history before proceeding with a complaint and a review of our copyright legislation. Refer to the following Wall Street Journal Article <https://www.wsj.com/articles/SB983487988418159849> entitled: "AIDS Epidemic Puts Drug Firms In a Vise: Treatment vs. Profits".

10. It is interesting to note that to the best of our knowledge no pharmaceutical companies went out of business as a result of the failure of their complaint against Nelson Mandela's government in the 1990s. Similarly no publishers or Hollywood studios are likely to go out of business should the present IIPA complaint fail, as it must indeed fail. Instead, the proposed balanced approach to copyright will assist with the growth of the publishing and creative industries in South Africa, in a fashion which broadens access to learning materials and creative works. And US companies will continue to trade with South Africa in a mutually-beneficial manner. Just as in the 1990s we were working to ensure access to treatment for our people, so now we will not relent in ensuring access to knowledge. #TextbooksAreTheNewMedicines.
11. We would like to refer the USTR to the statement by US Ambassador to South Africa Lana Marks on 14 November 2019, who was asked about the IIPA complaint and the possibility of the USTR review leading to South Africa being denied the benefits of the GSP/AGOA. Ambassador Marks said "*I just don't see that happening with the current robust relationship, working so closely together. All our agencies working together in such a positive way. I just don't see that being a problem at all.*" We recommend that the USTR take cognisance of her positive and constructive attitude, and approach this matter in a similar manner. . See <https://za.usembassy.gov/its-all-about-trade-and-investment-trumps-ambassador-to-south-africa-lana-marks/>
12. On top of everything else, there is severe poverty and unemployment in South Africa. Surely it is not the USTR's intention through GSP agreements to punish or sanction South African people, just because their Government has chosen to improve their quality of life by reforming an outdated copyright law that will improve access to information for education, research, disabled communities and for creators, authors and other stakeholders?

ReCreate SA requests that plans to review trade agreements with South Africa be withdrawn.