



March 4, 2019

Chargé d'Affaires Jessye Lapenn  
U.S. Embassy Pretoria  
877 Pretorius Street  
Arcadia  
Pretoria

Dear Chargé d'Affaires Lapenn:

We are writing to you regarding our grave concerns with respect to the future of the South African market for American creative industries. Proposed amendments to South African law, which are at a late stage in the legislative process, would profoundly undermine legal certainty of the business environment and core protections for creators, including by significantly limiting basic intellectual property rights, as well as fundamental contractual freedoms. We ask for your support in raising these concerns with the Government of South Africa with a view to making significant improvements to the legislation.

These amendments would have dramatic negative impacts on our ability to operate in South Africa, which is a critical emerging market and regional leader for our industries. In turn, such legislation would undermine our important contributions to South Africa's employment, economic development and foreign direct investment objectives.

Specifically, efforts to amend South Africa's Copyright Act and Performers' Protection Act have advanced into the latest stages of the legislative process, having been passed by the National Assembly in December 2018, and are currently pending before the National Council of the Provinces. South Africa is now poised to adopt these amendments, despite the hard work of South African and worldwide creative industries to find workable solutions to avoid the dire unintended consequences that these bills will have if passed in the present form.

These bills raise numerous concerns including dramatic alterations to the basic rules of contract to the detriment of the creative community as a whole. For example, the amendments significantly restrict the freedom of rights holders to contract, including by setting mandatory, un-waivable rules on various matters typically negotiated in contracts and requiring the South African government to set compulsory contractual terms covering virtually any transfer or use of copyright. The bills would fundamentally change the economics of investment in creative content production and the allocation of enterprise risks between the parties, resulting in less

investment in the creators and creative content that the South African government wants to protect. The bills would also impose onerous licensing and regulatory mechanisms to govern the relationship between creative parties rather than ensuring frameworks for protections of creative works within which private parties can freely negotiate the terms of their relationships to mutual advantage.

The two draft bills are also highly problematic with respect to expansive exceptions to copyright, which is the critical intellectual property right used by creative industries to protect their works against piracy and to ensure fair remuneration for creators. These troubling exceptions include broad “fair use” carveouts to copyright protections that would deprive such rights of any commercial value and would imperil the market for legitimate creative works, including online.

The negative impact of these amendments would be felt not only in South Africa, but globally for our industries in terms of the concerning precedent they would set, as well as the fundamental question they raise regarding their compliance with international copyright rules. Nor would the United States be immune from the resulting effects on our industries’ contributions to U.S. economic growth, job creation and trade competitiveness. U.S. copyright-intensive industries contributed \$1.3 trillion to the U.S. economy, and supplied 5.7 million jobs, in 2017. The compensation paid in the copyright intensive industries far exceeds that of U.S. workers overall – amounting to a compensation premium of 39 percent over the average U.S. annual wage, in 2017.

We are united in requesting your assistance in conveying these concerns to the Government of South Africa and calling for significant improvements to the Copyright Amendment Bill and the Performer’s Protection Amendment Bill to make them compatible with international treaty commitments and to ensure that the legal frameworks enable, rather than restrict, a thriving creative economy. We are hopeful to continue current mutually beneficial partnerships between the U.S. and South African creative communities, and to avert this lose-lose outcome. We are grateful for your consideration and look forward to working with you on this top priority for American creative industries in South Africa.

Sincerely,

Association of American Publishers  
CreativeFuture  
Entertainment Small Business Alliance  
Independent Film and Television Alliance  
International Intellectual Property Alliance  
Motion Picture Association of America  
National Music Publishers Association  
News Media Alliance  
Recording Industry Association of America  
Songwriters Guild of America