



**Computer & Communications
Industry Association**
Tech Advocacy Since 1972

Via Electronic Mail (presramaphosa@presidency.gov.za; presidentrsa@presidency.gov.za)

November 5, 2019

His Excellency President Cyril Ramaphosa
Republic of South Africa
Union Buildings
Private Bag X1000
Pretoria
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Re: Fair Use in South Africa's Copyright Amendment Bill

Dear Mr. President:

I write to you on behalf of the Computer & Communications Industry Association (CCIA) in support of the inclusion in South Africa's Copyright Amendment Bill of a fair use doctrine, consistent with U.S. copyright law.¹

We are aware that a handful of U.S. businesses have convinced the U.S. Trade Representative (USTR) to review South Africa's eligibility for certain trade preferences. These companies' complaints center on the inclusion in the Amendment Bill of a fair use provision based on a similar provision in the U.S. Copyright Act. We regret but will not focus on the inconsistency of U.S. companies opposing another country's adoption of a U.S. legal provision on which they routinely rely. Instead, we draw your attention to the U.S. Government's consistent strong expressions of support for fair use.

In a statement issued 2012, USTR 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." The U.S. Intellectual Property Enforcement Coordinator (IPEC), in its 2013 Joint Strategic Plan, stated that "fair use is a core principle of American copyright law." 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," and explained that fair use promotes creativity: "enforcement approaches should not discourage authors from building appropriately upon the works of others."

The IPEC's 2016 Joint Strategic Plan also underscored the importance of fair use to creativity and innovation. The IPEC celebrated how fair use enables "new and innovative uses of media (e.g., remixes and mashups involving music, video and the visual arts)." The IPEC acknowledged fair use and other exceptions as "not only part of our body of laws, but as an

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.ccianet.org/members>.

important part of our culture,” concluding 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.”

Other government experts have referred to how fair use is critical to business uses such as software development. In September, the Solicitor General of the United States filed a brief in the U.S. Supreme Court reaffirming the long-established principle 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.” In a 2016 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.”

In short, various agencies of 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. This is supported by economic research. A study commissioned by CCIA in 2017 found that fair use industries accounted for 16% of the U.S. economy; generated \$5.6 trillion in annual revenue; increased annual productivity by 3.2%; increased U.S. exports by 21% over four years; and employed an additional 1 million workers over a four-year period. Recognizing the benefits of fair use to creators and users in the United States, numerous other jurisdictions have adopted fair use provisions, including Singapore, Malaysia, Korea, Taiwan, Hong Kong, the Philippines, and Israel. The Canadian Supreme Court has applied its fair dealing provision in a manner consistent with U.S. fair use case law. Fair use already exists on the African continent, in Liberia.

Contrary to the suggestions of the U.S. companies opposing fair use in South Africa, there is nothing inappropriate about the Copyright Amendment Bill’s inclusion of fair use. South African users and creators should be allowed to benefit from fair use, just as American users and creators are able to, along with the millions of citizens of the other jurisdictions that have adopted fair use.

We are happy to answer any questions you or your staff may have.

Respectfully,



Ed Black
President & CEO
Computer & Communications Industry Association

cc: Mr. Ebrahim Patel, Minister of Dept. of Trade and Industry; Mr. Nkosinathi Emmanuel Mthethwa, Minister of Sports, Arts and Culture; Mr. Xavier Carim, DDG: International Trade and Economic Development Division