Atlantic Council
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Africa's creative output can create opportunity and wealth

How to better protect intellectual property rights in African music, film, and fashion

By Eric V. Guichard

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The mission of the Atlantic Council's **Africa Center** is to prepare policymakers and investors for the onset of the African Century by supporting dynamic geopolitical partnerships with African states and multilateral institutions.

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PREFACE

Soft power is the new hard power. The creative sector could create twenty million jobs and generate $20 billion in revenue per year in Africa, according to the United Nations Educational, Scientific, and Cultural Organization (UNESCO). The continent requires the creation of eighteen million jobs per year to address the ever-increasing job gap that is following booming demographics. With the culture and creative industries becoming a rising economic market, they offer a unique and valuable opportunity. African heritage has long been omnipresent across mediums, influencing the blues, salsa, rap, reggae, and even disco. The same goes for Picasso’s painting, the pyramids of Egypt, and the sculptures of ancient Greece.

What is new, though, is growing public recognition, with new opportunities emerging from booming platforms driven by the mobile revolution and prevalence of growing digital infrastructure.

Take Nigeria, which became the largest African economy after the inclusion of Nollywood in measuring its gross domestic product in 2016. Business is booming: “Nigeria’s entertainment and media market is projected to reach an estimated $14.82 billion revenue in 2025, up from $4 billion revenue recorded in 2013,”according to Premium Times, making the nation the fastest growing entertainment and media market in the world. Annually, 150 million viewers watch more than 2,500 films produced in Nigeria, far outpacing Hollywood. And it’s not just Nollywood: the number of production companies in Kenya, South Africa, Morocco, or Côte d’Ivoire has never been greater. Women play an important role in the democratization of cultural and creative industries, especially in crafts: in Côte d’Ivoire, women own 80 percent of textile companies.

With fashion, film, visual arts, cultural sites, media, design, video games, music, books, and even sports, the African creative industries are a narrative changer.

Africans are showcasing their own identities, describing the reality of their lives, such as the successful Senegalese Maîtresse d’un homme marié, and where they are going with the joyful Iwaju. This sector also serves to bring the world to Africa. Morocco, for example, hosts numerous Hollywood film studios in Casablanca and Ouarzazate. Western platforms have greatly enhanced their portfolios with African creations: Beyonce’s Disney-produced musical Black is king is a celebration of an empowered Africa, while Netflix and Amazon develop both licensing and original content from local production companies with ambitions of global distribution. Africa’s own streaming services (yes, there are some) are also booming: sixty million users of Nigeria-based Boomplay. When it comes to luxury, Africa is again at the head of the pack, with designs inspiring houses such as Dior and Louis Vuitton. Ready-to-wear fashion brands like H&M and Zara are active as well. African Fashion Weeks, from Johannesburg to Lagos, are visited by international celebrities. In the music industry, the Grammy winner Burna Boy was the first African artist to sell out a US stadium, following the release of his 2022 record, and the first Nigerian artist to headline Madison Square Garden. He was named to Time100, Time magazine’s list of the most influential people of 2024. We can also see how powerful the African creative sector is through the dialogue with diaspora communities: Fela! triumphed on Broadway in 2009, co-created by Tony Award-winning choreographer Bill T. Jones, producer Stephen Hendel, and writer Jim Lewis based on music and lyrics by the late Nigerian singer Fela Kuti, and backed by luminary producers such as Jay-Z, Will Smith, and Jada Pinkett Smith.

However, African artists don’t live well off their creations—apart from the most highly rated African artists such as Irma Stern, Marlene Dumas, Mahmoud Said, William Kentridge, and trendy cryptoartists like the French-Senegalese Delphine Diallo and Nigerian Osinachi, who sells his NFTs (nonfungible tokens) for more than $200,000 at Christie’s.

A quick look at the prices of works in Africa signals how financially fractured the sector is. African artists get meaningfully less compensation from their creations than their western counterparts. For example, on Spotify, while the average payout per 1,000 streams in the United States is between $5 and $10, it is less than $0.5 in African countries. Despite a few flagship events such as the Pan-African Film and Television Festival of Ouagadougou, known as FESPACO, and the Biennale of Dakar, culture and creative industry are not greatly supported by governments in Africa: the industry comprises only 1 percent of the continental GDP and less than 2.9 percent of global creative goods exports, which are valued at $2.2 trillion. Most of them have not ratified the Charter for African Cultural Renaissance, which was adopted in 2006 and went into effect in 2020, with the aim of preserving and promoting African cultural heritage. The few grants that exist are foreign: French institutes, Goethe Institutes, or the ACP-EU program, a joint initiative of the European Union (EU) and the Organization of African, Caribbean and Pacific States (OACPS). China's state banks are increasingly involved, for example in the Algiers Opera House and the Yaoundé Convention Center. Recently, the US State Department announced "elevating" support for cultural platforms, based on President Joe Biden's 2022 executive order to strengthen the industry. On the African continent, the Pan-African Export-Import Bank (Afreximbank) took a leading role with a $500 million package to support the creative and cultural industries in December 2020.

The needs are huge, given the lack of infrastructure (e.g., production spaces, movie theaters, and concert venues), paucity of publishing houses, and insufficient training capacity (administrators, managers, technicians, digital experts, etc.). Even if more investments can address these issues, there is no financial commitment that can fix the major challenge of the African creative industry: the lack of awareness of intellectual property rights for local artists, IPR protection and enforcement with consequences in contract negotiations, and business management, production, market distribution, and access to international advertising markets.

This gap impacts profitability and financing, while at the same time reducing incentives to continue creating. Many financial institutions and investors are unfamiliar with and not heavily invested in the creative sector, and they do not understand how to assess and price risk, making capital difficult and expensive to access despite the outsized opportunity for investors. In addition to that, piracy, smuggling practices, and illicit trafficking make the African market difficult to read.

Authored by Africa Center contributor Eric V. Guichard, this unique report identifies solutions for Africa's creative entrepreneurs to better "own the narrative" while contributing to their respective economies. It addresses the challenges obstructing the sector's monetization and advances innovative mechanisms for intellectual property protection. Policymakers will find in this exceptional work a roadmap to better support artists and improve the regulatory framework.

This work follows the 2023 publication of The Cultural and Creative Industries in Africa and Latin America by Nezha Alaoui M'hammdi and Larabi Jaïdi, part of a partnership with the Policy Center for the New South under the framework of the Atlantic Council's Africa creative industries program, a flagship initiative among think tanks launched in October 2021 at the National Museum of African Art in Washington. Events since then include a business forum, a creative spotlight series, research work, and a financial engineering task force.

The far-reaching influence of Africa's creative output has signaled a cultural revolution that is reframing the social and economic landscape of the international system. By documenting the sector and producing cutting-edge policy recommendations, the Africa Center is contributing to its global impact.

Amb. Rama Yade
Senior Director
Africa Center

EXECUTIVE SUMMARY

Collectively, Africa's share of the creative economy remains relatively low. According to UNDP estimates, Africa's 2.9 percent share of global creative goods exports represents $58.4 billion or less than 1 percent of Africa's GDP[1]. However, the continental industry is severely impeded by a fragmented **intellectual property rights** (IPR) framework, which undercuts IPR valuation, monetization, and protections against piracy. The impact of these regulatory weaknesses is a lack of enforcement and, ultimately, lost opportunities—for wealth creation, solving youth unemployment, receipt of foreign exchange reserves, and development of local capital markets.

In addition to national IPR offices, several regional regulatory initiatives have been launched to assist and secure rights. They include the Africa Regional Intellectual Property Organization (ARIPO), African Intellectual Property Organization (OAPI), and more recently the Africa Continental Free Trade Area (AfCFTA) Protocol, which is meant to harmonize at the continental level, offering a single IPR registration window. As of this publishing, these have been incomplete in their implementation and chronically lack the enforcement element that protects the value of IPR for creative professionals.

In this report, three African creative industries are studied to better illustrate the wide scope of the IPR problem: the music industry, the film industry, and the fashion industry. In each case, the problem of securing IPR rights—which leads to capital access for growth, production, and distribution assistance—is persistent.

IPR are investible assets by third-party investors such as venture capitalists and private equity investors. They offer portfolio risk diversification, ownership of an asset with income streams, and, prospectively, significant capital appreciation when developed properly. As such, the ability to secure their unique applicability in a highly competitive global marketplace is crucial. Without these protections, IPR are worth nothing and the economic and financial ramifications are significant.

Faced with limitations on the protection of property rights on a national, regional, and continental basis, creatives have to explore markets offering the best protections for their creations. In addition to protections, those markets offer access to support and the ability to scale to address a global market. Furthermore, registering their creations in big markets such as the United States, while waiting for Africa's continental IPR frameworks to coalesce, takes advantage of deep case law and legal precedent that secures the value of their IPR. This report's three case studies illustrate how IPR registered in big markets benefit creatives, with examples of African creatives using a global approach to securing, monetizing, and scaling their creative rights.

The report showcases the United States Patent and Trade Office (USPTO) as the preferred jurisdiction for easy and cost-efficient registration of IPR. With a market capitalization of US$50 trillion—by far the largest in the world—the United States presents unique opportunities for African IPR valuation, leveraging, funding, and scaling globally. This is evidenced by creatives from China, Russia, and other countries registering, securing rights, funding, and scaling their ventures on US public markets. Even as a transitional solution, why not African creatives, too?

Piracy remains a key challenge in Africa for most creatives. Encouragingly, local solutions have begun to emerge. The report profiles Mdundo.com, Udux.com, and PopRev.dev as locally developed technology-based solutions that provide small creatives alternative means to monetize their creations while meeting local market demand—specifically in the growing African music industry. Technology solutions such as tokenization can easily be applied to the African film and fashion industries, opening up property protection, funding, and scaling opportunities for small African creatives.

Finally, the report encourages local, regional, and continental IPR regulators to develop strong integrative connections with the USPTO in order to create a global protection registration window that is easy to use for small, promising African creatives and that leverages all the positive attributes of the USPTO.

INTRODUCTION

It is estimated that African creative industries comprise a US$1.5 trillion market addressing a total population of two billion people of African descent.[2] However, many challenges face this industry, not least of which is securing intellectual property rights (IPR) for creative works. Missing out on the monetization, scaling, and wealth creation prospects of these rights creates immeasurable lost opportunities for citizens, communities, and the African continent as a whole.

This report does not purport to repeat the findings of other reports. Instead, it studies the specific problem of intellectual property rights for African creatives, specifically in the music, film, and fashion sectors of the creative industry and to propose immediately implementable solutions while advocating, in parallel, for long-term solutions—many of which have been described in separate reports.

The decision to focus exclusively on African music, film, and fashion was in part driven by the aggregate gross domestic product (GDP) value of these sectors, the current advancement achieved in terms of commercialization, the struggles to achieve large-scale monetization, and most importantly, how these industries collectively influence, shape, and project the African identity on a global stage.

The emphasis on commercial aspects of the creative industries uses a venture capital lens that clarifies elements that drive capital investment and ultimately scaling decisions. I believe that this lens provides a direct link between what investors are looking for and what creative businesses seeking equity capital need to focus on to increase the likelihood of capital injection.

The report does not focus on traditional sectors of the creative industry, such as traditional and cultural fabrics that face similar IPR challenges, but tends to focus on eliminating cultural appropriation and misuse of traditional symbols of identity. The report focuses exclusively on methods of scaling, how IPR secures monetization, and how creatives should position for scale (regionally, continentally, and globally).

From this lens, the report further makes recommendations on structural deficiencies such as the lack of data for evidence-driven policymaking. Here the report seeks to make the link between data availability and the repositioning of the creative sector as a pillar for economic growth and development alongside agriculture, manufacturing, and energy. The hope is that this will help shift perceptions among policymakers that creatives are a policy afterthought, more in line with charitable contributions than budget appropriation priority.

The findings and recommendations in this report are neither exhaustive nor are they mutually exclusive. They are meant to be thought-provoking and easily implementable by both the private sector and public policymakers.

RESEARCH METHODOLOGY

The research supporting the assertions, analyses, and recommendations in this report was primarily obtained through published reports, articles, and interviews with market participants, stakeholders, and policymakers. The recommendations here are neither exhaustive nor mutually exclusive. The research is meant to provide a basis for discussion among private-sector players and policymakers and form the basis of better policies and business strategies that will facilitate the funding and scaling of creatives' innovations, resulting in policymaking that prioritizes this industry on an equal basis as other pillars of economic development in terms of the impact on youth employment, wealth creation, growth of foreign-exchange reserves, and public resource allocation.

Table 1. African creative sector by the numbers

AFRICAN MUSIC

- **Size of African digital music sector:** US$533 million (2024 estimate)[3]
- **Size of African streaming music sector:** US$410 million (2024 estimate)[4]
- **South Africa share of Africa music revenues:** 77%[5]
- **Active global listeners on TikTok for South Africa, Nigeria, and Kenya (2024):** 55.5 million[6]
- **Active global listeners on TikTok for rest of Sub-Saharan Africa:** 18.35 million[7]
- **Size of Nigerian entertainment and music industry:** $10.8 billion (estimate)[8]
- **Size of Kenyan entertainment and media:** $3.2 billion (estimate)[9]
- **Size of South African entertainment and media industry:** $9 billion (2020 estimate)[10]
- **Revenue loss due to music/digital piracy in Nigeria:** $3 billion (estimate)[11]
- **Revenue loss due to music piracy in South Africa:** $28 million (estimate)[12]
- **Revenue loss due to music piracy in Kenya:** $18 million (estimate)[13]

AFRICAN FILM

- **Size:** 5 million jobs[14]
- **Global revenues:** US$ 5 billion[15]
- **Number of screens per population (2019)**: 1,653 total; 1 per 787,402 people[16]
- **Total number of films made per annum:** 5,549[17]
- **Average mobile phone SIM connection penetration:** 86% of population (2022)[18]
- **Average mobile internet penetration rate:** 25% (2022) [19]
- **Sub-Saharan countries with national or regional IP frameworks:** 26 (2002)[20]
- **Impact of Piracy:** exact figures unknown. Estimates are 50% to over 75% of the film and audiovisual industries' revenue. [21]

AFRICAN FASHION

- **Size:** 6.2% of all African employment[22]
- **Sector:** 90% composed of SMEs[23]
- **Exports:** US$15.1 billion (2019)[24]
- **Imports:** US$23.1 billion (2019)[25]
- **Fashion Week hosts:** 32 countries[26]
- **African fashion professionals reporting lack of public and private investment as cause of sector underdevelopment:** 59%[27]
- **Countries with intellectual property protections:** 95.8%.[28]

AFRICAN IPR LANDSCAPE

The African IPR protection landscape is highly fragmented. About 95 percent of the countries have some form of IPR protection laws in place. However, they lack the resources for enforcement of these rights leaving artists in all three segments vulnerable to piracy and missed revenues and income.

Several regional and continental initiatives have been launched including ARIPO, OAPI, and the AfCFTA. However, they lack the resources to enforce IPR in their member zones. In the case of the AfCFTA protocol, both agreement and harmonization between ARIPO and OAPI are still pending.

More importantly, because of this weak IPR enforcement and the lack of significant case law in these fragmented jurisdictions, banks are reluctant to place any collateral value in these IPR. This leads to further erosion of value.

Regulatory fragmentation and cost

The fragmentation of these IPR also affect their valuation in the eyes of equity investors, who are more interested in scaling the value proposition these IPR represent. The more fragmented the applicability of IPR, the lower the valuation and the less likely creatives can monetize their creations. A unified market or IPR application jurisdiction can lead to larger valuations and therefore broader opportunities for monetization. The more harmonious and larger the applicability of IPR protections, the more confident equity investors are in the security of their investment in intangible assets such as IPR.

Regulatory IPR protection agencies and their limitations

The problems facing Africa's creative industry, particularly in music, film, and fashion, present a daunting challenge for policymakers and particularly for artists who rely on their creations to make a living, which affects not only their families but society in terms of wealth creation and employment.

In addition to the thirty-five national intellectual property organizations (IPO) that provide national protections (out of fifty-four countries in Africa), there are three regional bodies set up to provide regional and continental protections. It should be noted that both Nigeria and South Africa operate their own IPO and are not party to either African regional IPR organization.

The leading regional IPR protection agencies are set up with significant differences in their mandates and membership. Only the AfCFTA IP Office purports to include all fifty-four ratifying countries and to harmonize registration, oversight, and enforcement. The agencies are chronically underfunded and lack the necessary strength of enforcement due to structural impediments such as legal enforcement backed by strong linkages to local and regional police forces. Most enforcement, if any, is conducted at the national level.

Speedy resolution of IPR disputes requires a certain depth of case law, which is absent here. The depth of legal expertise in the matter also is low, as is the ability for creatives to pay for enforcement, given the lack of resources and alternative sources of financing for legal undertakings. Foreign piracy of IPR can therefore go unpunished, leaving creatives uncompensated for their work and innovations.

The regional organizations are:

ARIPO: Provides a regional framework for IPR registration and protections and regulatory harmonization to promote creativity and economic development for member states. ARIPO, whose members have their own intellectual property offices, is composed of fifteen states: Botswana, Eswatini, Gambia, Ghana, Lesotho, Liberia, Mozambique, Somalia, Sao Tome and Principe, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe. ARIPO has no enforcement capability given its mandate.

OAPI: Unlike ARIPO, OAPI is a hub for IPR registration, protection, and enforcement. It acts as the sole intellectual property governing body for its member states. Its main function is to issue titles for the protection of IPR. These titles are valid throughout OAPI member states, following a common procedure. The central nature of IPR registration and a high level of coordination among member states (which have similar legal codes and rulings), provide OAPI with a stronger hand in enforcement of legal judgements it benefits from. However, it, too, suffers from limited resources and ability to sustain an enforcement environment for small creatives, whose innovations could be transformative. OAPI further assists technical development and gathers and disseminates data. OAPI has seventeen member states: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Côte d'Ivoire, Mali, Mauritania, Niger, Senegal, and Togo. All members states are individual members of the Paris Convention, the World Intellectual Property Organization (WIPO) Convention, and the Patent Cooperation Treaty.

AfCFTA: With the passage and ratification of the AfCFTA by the majority of African Union members, the free trade area has (under its Intellectual Property Protocol of 2023) undertaken to create a continental IPR registration, oversight, and enforcement window. However, the implementation of this initiative has been challenging. Existing regional IPR bodies, ARIPO and OAPI, have yet to determine how to harmonize their existing policies and practices with AfCFTA's IPO much less determine which would have precedent over the other, particularly on enforcement matters. In the meantime, creatives are left in the lurch with an additional bureaucratic apparatus but no further protections.

Nonregulatory support efforts for the creative community

This list, which is not exhaustive, features the most active actors:

AFX/CANEX: African Export-Import Bank's Creatives Africa Nexus is a program that facilitates the development and growth of creatives and cultural industries in Africa and in diaspora communities. It provides a range of financing and nonfinancing instruments and interventions aimed at supporting trade and investment in Africa's creative sector.

EFI: The Ethical Fashion Initiative creates and strengthens social enterprises in emerging economies to connect discerning international brands in fashion, interiors, and fine foods with talented local designers, artisans, and microproducers.

FEDA: Afreximbank's Fund for Export Development in Africa was set up to drive intra-African trade, industrialization, and value-added export development.

HEVA Fund: The fund was set up to support the creative ecosystem by building sustainable enterprises, empowering women and youth, through the ownership of intellectual property that can thrive and grow the ecosystem sustainably.

IFFAC: The Impact Fund for African Creatives is an African-focused investment vehicle sponsored by Annan Capital Partners to address the lack of capital, management skills, and infrastructure support to leverage Africa's latent creative talents.

IFPI: International Federation of the Phonographic Industry is an organization that represents the interests of the recording industry worldwide. It is a nonprofit members' organization.

AudioLock: A music IPR protection specialist, AudioLock provides protection for music industry brands and for artists and their music catalogues.

MCSK: The Music Copyright Society of Kenya is a collective management organization that represents composers, authors, and publishers of music. It licenses the public use of music, collects royalties, and distributes them to its members.

KAMP: Kenya Association of Music Composers is a collective management organization that is driven by membership, for which it collects licensing fees, distributes royalties, and works with large global record labels.

SAMRO: The Southern African Music Rights Organization is a copyrights asset management society which aims to protect the intellectual property of music creators by licensing music users, collecting license fees, and distributing royalties to music creators.

Crew members prepare during the production of "Stolen the Sun" in Omdurman January 28, 2011. REUTERS/Mohamed Nureldin Abdallah.

CAPASSO: The Composers, Authors and Publishers Association is a digital rights licensing agency based in South Africa. CAPASSO collects and distributes royalties to its members, who are music publishers and music composers.

In summary, creatives in Africa face IPR challenges that for the most part have been addressed through legislative initiatives and policy prescription nationally or continentally—all of which are difficult to implement or are essentially insufficient and ineffective when it comes to harmonization and enforcement due to limited resources and a fear of institutional failures in terms of national IPR protections.

The upshot: Weak IPR protections lead to weak valuations of IPR and an inability to use created assets as collateral for funding. This in turn produces weak income-generation potential and, ultimately, results in failure and frustration.

AFRICAN MUSIC INDUSTRY: IPR ISSUES

The following are impediments affecting the African music industry:

Domestic licensing and fee collection: The music industry suffers from chronic ineffectiveness of enforcement of rights. Collection is weak and uneven throughout Africa and lacks transparency. The American Society of Composers, Authors, and Publishers (ASCAP), for instance, is charged with protecting the rights of creators, collecting royalties from outlets (digital or otherwise) that play music without paying for it. In Africa, the industry does have several associations (SAMRO, CAPASSO), especially in the southern region, but is weak elsewhere. However, few engage in protecting rights of creatives in a way deemed financially beneficial to African creatives. Furthermore, domestic licensing arrangements lack the teeth of strong enforcement, making the act of securing IPR nationally or even regionally challenging at the moment for African artists.

Music streaming: Generally, music streaming revenues have been depressed and are nonexistent for smaller new artists whose streams fall under a monthly threshold set by the large streaming platforms, such as Spotify. Although new, homegrown solutions have been launched since 2019, the size and growth of streaming revenues have been limited, despite a significant increase in smartphone penetration in sub-Saharan Africa. The Global System for Mobile Association (GSMA) reports that by 2025 smartphone penetration in sub-Saharan Africa is projected to be 61 percent vs. 41 percent in 2021.

Artificial intelligence: The use of large databases of existing music to create new "similar" music has been an industry challenge. Although presenting new production efficiencies, AI presents a threat to small artists who are not able to identify content as theirs or able to mobilize resources needed to protect their IPR.

Capital for events and shows: Because artists are unable to freely monetize their IPR at scale, they fall short on the capital needed to fund exposure to larger audiences that would give them the ability to grow monetization and future revenues.

AI: IPR challenges for African creatives and their implications

The recent explosion of AI applications, which is affecting many industries, represents a clear and present danger for African creatives. Whether it is infringements on copyrights, patents, or trademarks, no industry with intellectual property is safe. An African scriptwriter can see her copyrighted plot replicated and incorporated into an AI-driven script that is ready for production and distribution in a flash. An AfroBeats musician can see his special hook or even his voice being illegally incorporated by AI into a new song that has gone viral. An African fashion designer can see others using AI to copy her designs—from patented prints and patterns to her entire clothing line—and produce and distribute them faster and globally. The number of cases of AI infringements has ballooned and is posing a challenge to the legal industry in the largest global markets.[29] Luckily, case law is being generated that is establishing new protective precedents for creatives. However, this case law is mainly happening in large jurisdictions such as the United States and the European Union. As a result, African creatives have to think long and hard about where to register their copyrights, patents, and trademarks to take advantage of growing protective precedents. By extension, the AFX and AfCTA need to take heed of the advantages these larger jurisdictions present for African creatives and how to leverage them for their benefit while working on stronger regional and continental laws that would make it more advantageous to register via AfCTA's PTO rather than through the USPTO alone.

Figure 1. Global growth by region (2023)

Global growth by region 2023:

US & Canada: +7.4%

Latin America: +19.4%

Europe: +8.9%

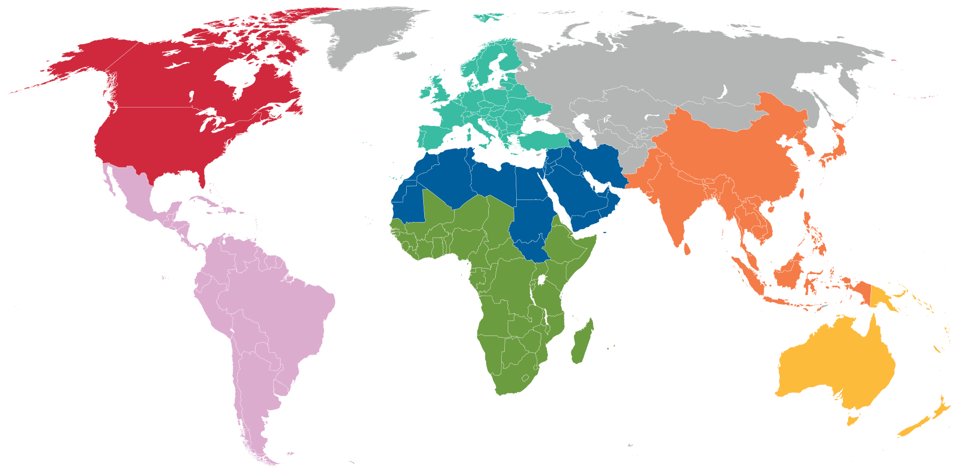
MENA: +14.4%

Sub-Saharan Africa: +24.7%

Asia: +14.9%

Australasia: +10.8%

Global growth: +10.2%



$28.6bn the total value of the recording industry in 2023

+11.2% growth in subscription streaming revenues in 2023

67.3% of global industry revenue comes from streaming

$7.1bn is invesgted in A&R and marketing by record labels annually

Source: International Federation of the Phonographic Industry, IFPI.org.

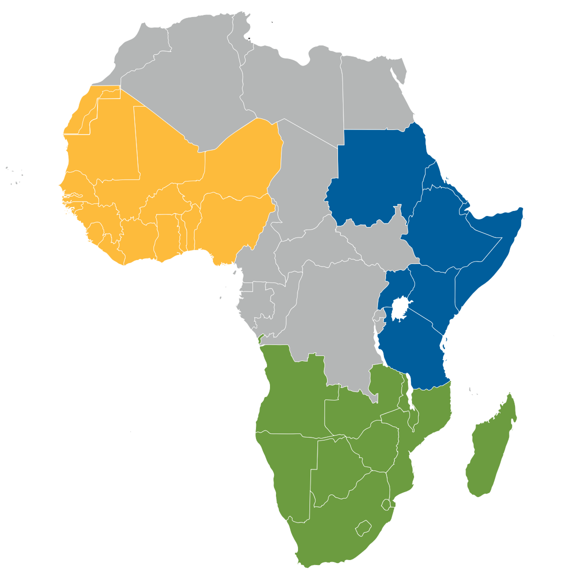
AFRICAN FILM INDUSTRY: IPR ISSUES

Several impediments affect the African film industry including the following.

Relative paucity of screens: The African film industry has few cinemas and screens across the continent. (For regional differences, see figure 3). At a ratio of one screen per 787,000 people, Africa ranks last in terms of cinema coverage globally; India, which has seen exponential growth in film investments, has one screen per 216,000; and the US market boasts one screen per 7,500 people. (See figure 4, with 2019 data for Africa and India, and 2020 US data.) It should be noted that these disparities have been further exacerbated by the Covid pandemic.

Expensive internet access: Online streaming costs are still very high across the continent, making online streaming of films an expensive proposition for most of the African population.[30]

Figure 2. Regional differences in cinema access



Territory	Number of cinema screen	Population (million)	Screen per population
East Africa	249	494	1:983,935
West Africa	292	501	1:715,753
South Africa	803	228	1:283,935

Source: UNESCO African Film Industry Report, 2021.

Low bargaining power: The industry is fragmented and has relatively small distribution strength and reach. This standing results in diminished negotiating power against larger global interests when it comes to licensing, pricing, and securing lucrative arrangements for African creatives.

Low production value: Creatives lack access to capital, which makes it hard to raise production values. Several funds have been launched to help incubate creatives. However, the need exceeds available capital.

Figure 3. Africa lags behind other regions

Zone	Number of screens	Population coverage
United States (2020)	44,111	1 screen per 7,503 people
China (2020)	75,581	1 screen per 19,043 people
India (2019)	6,327	1 screen per 215,900 people
France (2019)	6,114	1 screen per 10,958 people
Africa (2019)	1,653	1 screen per 787,402 people

Source: UNESCO, *The African film Industry: trends, challenges and opportunities for growth*, 2021, 24, https://doi.org/10.58337/DEJM2927.

The data gap in the creative industry: a policymaking hurdle

African policymakers have long considered the creatives sector a policy “elective.” As such, little consideration has been given to the important impact it could have on youth employment, household wealth creation, and the growth in foreign exchange reserves. Extended interviews and surveys conducted under the aegis of the AFX provide a window onto the two main reasons for this policy attitude: a lack of reliable data upon which policymaking can rely, and a lack of awareness of the comparative transformative power the creative sector has as compared to other traditional pillars of development such as agriculture, manufacturing, and energy, to cite a few. It is imperative that reliable data be produced, published, and utilized for data-driven policymaking that includes the creative sector. Here, agencies such as AFX, CANEX, and AfCTA should set up a data collection agency that will publish credible data on a regular basis for both policymakers and investors.

AFRICAN FASHION INDUSTRY: IPR ISSUES

The following are impediments affecting the African fashion industry:

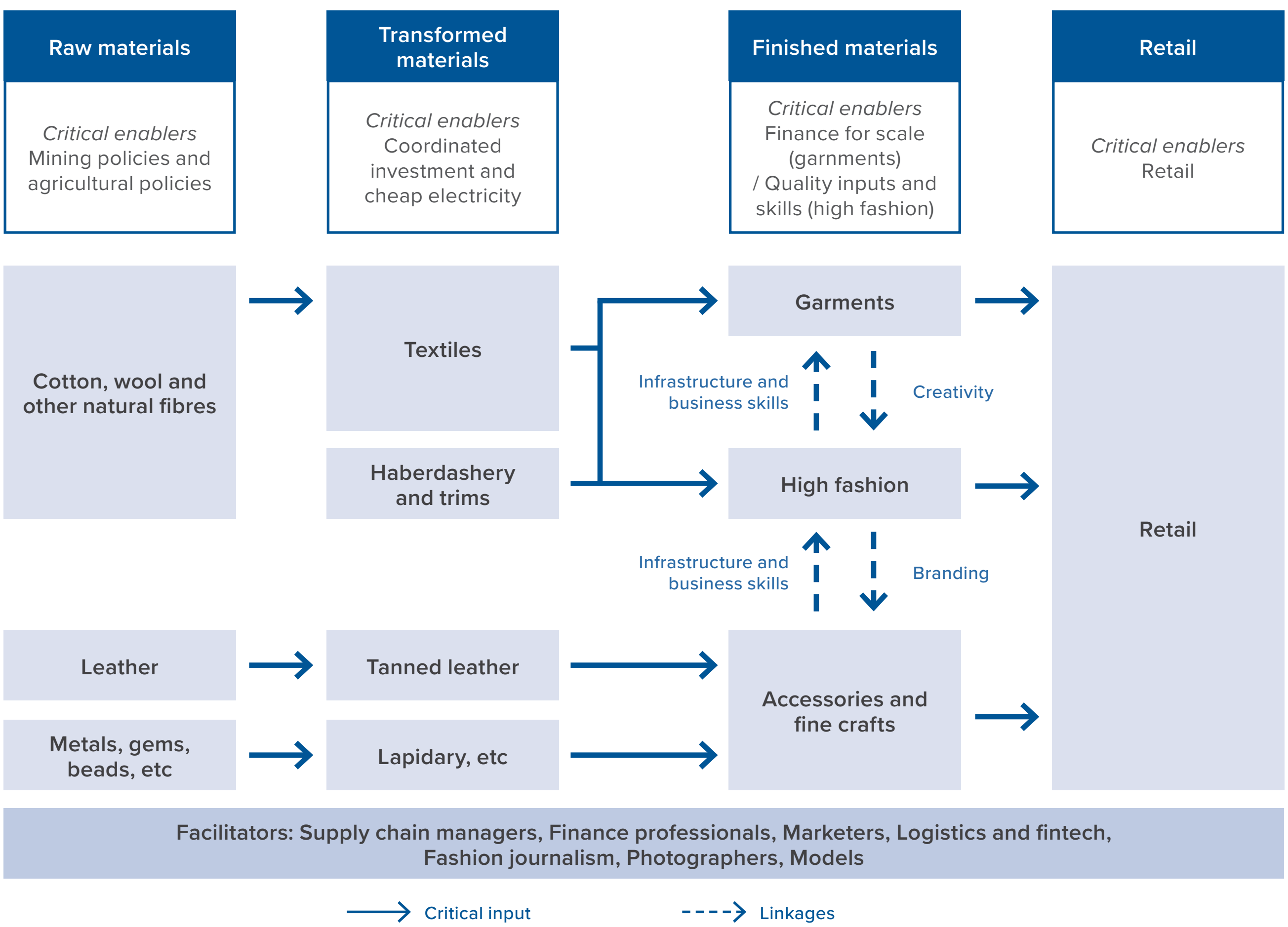
High design theft: A lack of IPR protections enabling the monetization of unique patterns, materials, and designs leave fashion creatives at the mercy of theft from low-cost producers in Asia and Eastern Europe. This hampers their ability to develop their brands and secure capital, production support, and distribution assistance.

Low research and development: Without securing IPR for their creations, fashion artists have resource limitations when it comes to funding research and experimentation that can lead to the creation of unique materials and patterns, which would further distinguish their creations.

No production value chain: The lack of access to an end-to-end production value chain to make their creations easily accessible to a global marketplace hampers designers' ability to generate the revenues needed to grow their brands.

On the whole, the vicious cycle caused by weak IPR protections keeps artists unknown and unable to make a living and accumulate wealth. More importantly it slows economic growth, weakens the prospect of deep and durable youth employment, exponential growth in foreign exchange reserves, and foreign direct investments, and keeps local capital markets shallow.

Figure 4. The African fashion value chain



Source: UNESCO, *The African fashion sector: Trends, challenges & opportunities for growth*, 2023, 9, https://doi.org/10.58337/PHDP8559.

THE VENTURE LENS—AND WHY IT MATTERS

Clearly, intellectual property rights are an investible asset. Local lenders who seek collateral from African creatives to help finance their vision consider secured IPR as valuable assets against which they can provide financing. However, due to the impediments raised above, African registered IPR are comparatively weak and therefore lack value. Creatives must therefore turn to alternative means to secure financing to securely implement their innovations.

Some African creatives, in large part those in African diaspora communities around the world, have turned to big international IPR markets to bridge the gap and seek relief, IPR protection, and exposure to capital assistance for global market access—and with some success.

What do big IPR markets offer?

International IPR markets offer a unified, globally coordinated, deep landscape of protections, strong creative policy support, access to public and private capital to develop and scale creations as well as a deep pool of talent. Most importantly, big IPR markets offer the ability to enforce creations and to attract private capital seeking a return on investment (ROI) on future streams of cashflows (e.g., royalties, partnerships, income) and capital gains from exit opportunities (trade sale, merger and acquisitions, or initial public offerings onto local, regional, and international capital markets.)

Intellectual property investing: A framework for strong IPR protections and value creation

Prospective investors in IPR seek a market-distribution-driven lens. Here, African creatives have a significant advantage. Whether in music, film, or fashion, creatives have the ability to target a market that is very large. The global population of people of African descent exceeds two billion people with a consumption power estimated at $1.5 trillion. This market, otherwise known as the **total addressable market** (TAM) by venture capitalists and private equity investors, presents an attractive business and investment proposition for global private investors.

Creatives then need to prove that their IPR have been properly crafted, registered, and are inherently valuable as a result. That evidence then results in capital investment, which in turn leads to scale and ultimately to wealth creation.

Because IPR are an asset, their valuation at any point in time depends significantly on the enforceability of their owners' rights in the jurisdictions where they are registered. The value of IPR also depend on how well crafted the applications are. Copyright, patent, and trademark lawyers who are expert in crafting secure IPR registrations are a critical element in securing value in IPR. A faulty IPR registration will leave gaps for exploitation by competitors or pirates and will result in no real value to investors seeking a competitive advantage in the industry. Appreciation in the value of properly secured intellectual property rights presents an attractive, differentiated ROI for investors and their investment portfolios.

The amount of global capital seeking investments in secured intellectual property has grown exponentially over the past few decades. Both venture capitalists and private equity investors seek to identify secured intellectual property with the promise of disrupting industries, transforming segments, and the capacity to grow more valuable over time, as the artists grow in recognition or increase market penetration.

The largest market for IPR is the United States. The US Patent and Trade office counts over 250,000 IPR registrations per annum, the largest in the world. Although China is rapidly closing the gap with the United States in terms of the number of IPR registrations, questions still remain about the quality and enforceability of Chinese IPR, particularly when the majority of African piracy claims point to Chinese operators. In addition to the depth of the US market for IPR, it has the largest market for IPR investments—backed by strong case law, third-party litigation finance, and global-reach protections—all of which can be easily subsidized by African stakeholders who wish to support African creatives.

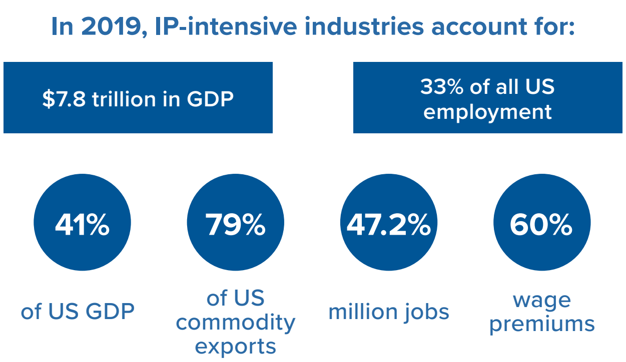
Introducing the US Patent and Trade Office

It's worth getting to know more about the US Patent and Trade Office, given its purview. The USPTO online registration window is deemed easy to use by creatives, and it is supported by local staff and an ecosystem of small law firms to assist with completing the registration process.

As stated on the USPTO website:

> The USPTO is the federal agency for granting U.S. patents and registering trademarks. In doing this, the USPTO fulfills the mandate of Article I, Section 8, Clause 8, of the Constitution that the legislative branch "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."
>
> The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners.

Figure 5. USPTO by the numbers



Source: US State Department infographic, May 2, 2019, https://www.state.gov/intellectual-property-enforcement/infographic_800_1/.

How to secure IPR in a big market via the USPTO?

To secure investments from IPR investors, one needs to establish an organization that will register IPR in the chosen jurisdiction (USPTO.) The US-registered IPR holding company can then approach prospective IPR investors, addressing issues such as size of market (total addressable African market), security of the IPR and how the IPR will grow over time, and how investors can earn revenues and ultimately exit their investments with an attractive ROI (e.g., initial public offering, trade sale, mergers and acquisition, or sale to owners.)

The total addressable African market the IPR is applicable to, notwithstanding difficulties that may arise in reaching that market, is critical to IPR valuations. Those difficulties are usually addressed in the business plan for which capital is being sought. For instance, a US-based production company that develops US-copyrighted content for African consumers can credibly claim that Africans and its global diaspora communities constitute the TAM. How it achieves the distribution of the secured content is part of its business operating plan. If the project can evidence success on global streaming platforms such as YouTube, together with a growing subscriber base, it is likely to attract capital on favorable terms. It should be noted that not all streaming platforms enforce IPR protections as part of their terms and conditions for using the platform, although most do; therefore, that issue needs to be addressed.

There is growing evidence that private equity and venture capital investors are taking heed of the investment potential presented by African creatives. Two African fashion investment funds launched in 2022 to provide, in addition to capital, value-chain support in the form of production and distribution capabilities. According to media reports, BirminianVentures.com and TrailCapital.eu, both venture funds dedicated to African fashion investments and scaling, are teaming up to create a special incubator focused on developing and distributing African fashion brands to the global market.

Global case law strengthening African creatives' IPR under the USPTO jurisdiction

Anyone who copies, distributes, or showcases copyrighted material without permission from the copyright holders has infringed upon the rights of the holders. Under copyright law, the rights of IPR owners are safeguarded by exclusive rights that also define how the creations are used and how they are to be monetized.

Copyright infringement can occur in several ways, including but not limited to:

- **Unauthorized copying or sharing of a copyrighted movie**, which could involve making physical copies, downloading or uploading it online, or sharing via peer-to-peer networks. Publicly displaying or broadcasting a copyrighted movie without the appropriate license or permission, such as in a public space, on a website, or through social media.
- **Creating derivative works based on a copyrighted movie**, like a remake, adaptation, or parody, without obtaining the necessary rights or permissions from the copyright holder. Engaging in movie copyright infringement can result in legal consequences, including monetary damages, fines, and potential criminal charges, depending on the severity and scale of the infringement. To avoid such consequences, it is essential to respect the rights of copyright holders and follow the appropriate legal channels for obtaining permission to use copyrighted materials.

The following are examples of protections enforced as a result of USPTO registration of copyrights, patents, and trademarks.

Music case law: The cost of copyright infringement

The music industry frequently deals with copyright infringement cases, where artists or companies are alleged to be using music without proper permission. A high-profile case[34] involved Robin Thicke and Pharrell Williams' song "Blurred Lines," which was found to have copied elements of Marvin Gaye's "Got to Give It Up." The court awarded Gaye's estate $7.4 million in damages, emphasizing the need for proper licensing and permissions.

The USPTO can facilitate global IPR monetization: Implications for Africa's creative industries

Usain Bolt, the renowned Olympian and world champion sprinter, registered his brand and trademarks at the Jamaica Patent and Trade Office (JPTO) and with the US Patent and Trade Office. Why? Granted, Bolt is an international figure, and JPTO already had a reciprocal international treaty with the United States on intellectual property. Still, Bolt's lawyers felt that registering at the USPTO through a US-based company would give Bolt a better chance of raising venture capital for his many ideas on monetizing his likeness.

The USPTO has the largest number of patent, copyright, and trademark filings in the world, with an estimated market value, according to the US Commerce Department, of US$6 trillion, outstripping any other PTO in the world.[31] US IPR case law dates back to 1879, and the sheer volume of precedents provides safe haven for investors seeking to monetize accepted IPR.[32] Also, the United States represents the largest consumer market for IPR. Further, in the event that financing is needed to pursue claims in US courts, there is a robust litigation finance industry for valuable IPR, with investors paying for legal fees in exchange for a piece of any settlement handed down by the courts against the infringers.

The entire IPR ecosystem provides comfort for inventors, creators, and IPR investors: a marked competitive advantage over other jurisdictions including Africa as a whole, with its evolving but still-fragmented IPR registration market.[33]

Another notable case was the lawsuit filed by the National Music Publishers' Association against Peloton for using thousands of songs without proper licensing. The lawsuit, initially seeking $300 million, was settled in 2021 for an undisclosed amount. This case underscores the importance of proper licensing for businesses using music in their products and services.[35]

In response, the music industry has implemented measures to combat infringement. Streaming services like Spotify and Apple Music ensure proper licensing of music on their respective platforms, while the Recording Industry Association of America (RIAA) combats piracy through legal actions and educational campaigns.[36]

Both individual artists and companies can face severe legal and financial repercussions for copyright infringement. To avoid the costs associated with copyright infringement, artists and companies should secure proper licenses and permissions. Artists should collaborate with legal and industry professionals to ensure originality, and companies should work with licensing agencies to properly license the music they use.

Film copyright infringement case law: "Stolen" film ideas

The Buchwald v. Paramount Pictures Corp. legal case[37] was a breach of contract lawsuit filed by humorist and writer Art Buchwald against Paramount. Buchwald alleged that Paramount had stolen his script idea and turned it into the 1988 movie *Coming to America*, starring comedian Eddie Murphy; Buchwald claimed that his screen treatment, titled *It's a Crude, Crude World* (later renamed *King for a Day*), was the basis for the movie.

The court found in favor of Buchwald, ruling that Paramount had indeed used his idea without proper compensation. The case was significant for highlighting the issue of "Hollywood accounting," where studios claim that a movie has not made a net profit despite substantial revenues. Paramount, which by then had been acquired by Viacom, settled the case by paying Buchwald and his producer, Alain Bernheim, a combined $900,000.[38]

This case underscores the importance of proper compensation and recognition for creative works in the entertainment industry.

Fashion patent, trademark infringement case law: Red soles in a foreign jurisdiction

The Christian Louboutin SAS v. Pawan Kumar & Ors case[39] revolved around trademark infringement. The Paris-based Christian Louboutin shoe brand, known for its distinctive red soles, filed a lawsuit in India against Pawan Kumar and others for selling shoes that allegedly infringed on the brand's trademark.

The Delhi High Court ruled in favor of Christian Louboutin, recognizing the "red sole" as a well-known trademark and granting a permanent injunction against the defendants. This case highlighted the importance of protecting distinctive trademarks and the legal consequences of infringement.

Because of the strength of IPR protections and the cumulative case law based on precedents, small creatives can see their inventions protected in big markets that provide cost efficient universal IPR protections. Combining these global protections with those received domestically or regionally can strengthen the value proposition that small creatives have for fundraising purposes including introduction to a wider range of options when it comes to monetization of their creations (e.g., licenses, collaborations, distributions, live-performance productions, and merchandising.)

AI and the importance of strong IPR jurisdictions

The exponential growth of artificial intelligence applications in the creative space has raised alarm bells and forced creative industries affected by its introduction to come to collective bargaining agreements on limitations of AI use in all aspects of the creative value chain. In the case of music, pending litigation cases in the United States seem to suggest that use licensing agreements will lead to new models and sources of revenues for creatives whose IPRs are rooted in strong jurisdictions.

Having secured IPR and capital, African creatives can still maintain a strategic focus on serving African consumers on the continent while positioning themselves as global players. The initial global focus provides early access to capital—an important ingredient to achieve long-term goals, as expressed by the creators' visions. As intellectual property rights strengthen in Africa, with greater harmonization under AfCFTA, and case law deepens in favor of African creatives, launch activities and capital-access strategies can shift to Africa.

IPR INVESTING APPLIED TO THE AFRICAN CREATIVE SECTOR

Successful cases of investing in African creatives exist. These examples further bolster the case for strong IPRs and accessing private funding—thanks to strong jurisdictions, and the targeting of both large consumer markets and deep capital markets with a tradition for investing in IPR.

African music industry

With the breakout success of Afrobeats, a West African music genre, several artists are scrambling to figure out how to monetize the sudden appeal of their songs, rhythms, and arrangements. In parallel, several renown artists have sold their catalogs for nine-figure sums or even more.[40] Securing masters of songs, arrangements, and rhythm is key to monetizing them. It would then behoove African Afrobeat artists to register their respective production companies in the United States, copyright their creations, and control their masters in the production companies. This would enable them to negotiate lucrative licensing deals, distribution arrangements, and be well positioned to secure their rights in the new context of AI. The registered company holding all copyrights and masters would be positioned to fetch fair valuations by venture capitalists seeking to fund new artists with promise or by private equity investors seeking to purchase proven artists' catalogs. John Legend and others have had successful outcomes selling their music catalogs.[41]

In the event of disputes, case law protecting IPR of artists can be relied on to arrive at settlement and also secure funding for litigation finance. Alternatives to litigation have been created domestically. Mdundo.com, a Kenya-based digital platform, proposes to register artists, provide free downloads of music to registrants, thereby thwarting the need for piracy, and generate income for registered artists through ad revenues and licensing arrangements with big music groups such as Universal Music–Africa.

African film industry

The success of **Issa Rae** (an American with Senegalese roots), who appeared in the Hollywood blockbuster Barbie as Barbie President, highlights how original content with secured copyrights can lead to opportunities in large markets. The creator of Insecure, her HBO series that grew out of her YouTube channel, "The Misadventures of Awkward Black Girl," provided unique, niche content about a young black woman making her way in America. Similarly, **Chimney Love** built a strong following on YouTube with her own channel, where she showcases original Nigerian content and stories. In both cases, the creators secured their original content copyrights in the United States and also indirectly by using YouTube streaming services, which has strong copyright enforcement rules.[42] They both subsequently developed protected content for their respective niche audiences, developing an addressable market with growing subscriptions and advertisement revenue potential. On this basis, both have attracted venture capital investments for their production companies from investors willing to take a bet that the value of their pipeline of copyrighted scripts and related productions will grow. Rae secured a lucrative nine-figure contract with Netflix and has several cinema development projects in the offing.[43]

African fashion industry

One cannot escape the compelling fashion-industry story of **Ozwald Boateng OBE**. Originally from Ghana, Boateng blazed an early trail in fashion with distinctive design and colors that made his work stand out. Following a successful stint as creative director at major European fashion houses LVMH and Givenchy, he would settle on Savile Row in London with his eponymous fashion house, where he designs unique pieces such as the point-cut collars promoted by actors (and influencers) Jamie Foxx and Idris Elba, whose mother was born in Ghana.

More recently, a new generation of designers have attracted the interest of venture investors seeking to leverage the purchasing power of the growing African middle class and the global African diaspora communities. Birimian Ventures and Trail Capital have joined forces to create and promote African fashion designers by strengthening the infrastructure around them as well as their business acumen.[44]

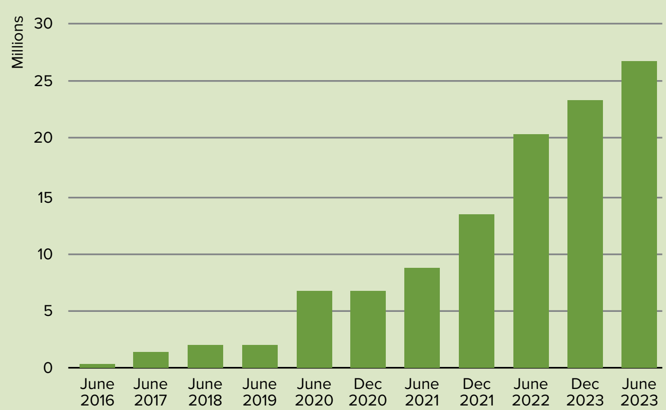
African homegrown technology solutions: Addressing the challenges of piracy, licensing, investment capital, revenue generation, and live-event global steaming

Mdundo.com and Udux.com offer homegrown technology solutions for local piracy and global IPR infringement in the African music industry, in conjunction with major global players such as Universal Music Group–Africa (UMG). UMG, which is headed by a member of the Nigerian diaspora community, is providing licensing arrangements to African musicians through technology platforms that stream their music, offer free downloads, and share advertisement revenues with artists. Based in Kenya and launched in 2020, **Mdundo.com** is listed on a Danish stock exchange and the US Nasdaq market's Nasdaq Nordic subsidiary. It offers more than thirty million African subscribers an alternative to piracy by offering free downloads of their favorite artists, advertisement revenue sharing with artists, and arranges licenses with the likes of UMG, Warner Music Group, Believe Digital, and Tunecore. Mdundo has over 150,000 African artists showcased on its platform. These examples of homegrown technology solutions are increasing the possibility of rapid monetization for young African artists while protecting their rights on trusted platforms.

Udux.com launched in Nigeria in 2019 by Groove.ng to offer music streaming (audio and video) to its growing subscribers with the ability to digitally attend their favorite musician's worldwide concerts and live events. In a groundbreaking partnership with MTN, the African telecom giant with over 60 million subscribers in Nigeria, and 295 million in Africa as a whole, UduX set out to break down barriers and create new revenue streams for African artists and exponentially grow their fanbase. The growth has been staggering as a result of these strategic partnerships. UduX went from 238,000 subscribers of its Wizkid United Kingdom concert livestream in 2021 to offering audio and video streaming to over 60 million Nigerians thanks to MTN. Similar partnerships have extended to other popular Nigerian artists such as Davido and Temi among others. As of the last livestream attendance accessible reporting, UduX subscriber base stands at over 5,000,000.[45] It has secured streaming licenses with all three majors: Warner Music Group, Universal Music Group and Sony Music.

PopRev.dev is an offshoot of UduX.com, also by Groove.ng, in partnership with PiggyVest, a Nigerian savings and tech investment platform. Poprev is an investment platform that is still in development. It aims to tokenize music offerings giving fans the ability to "own" a piece of the music they love. The tokenization process works like fractional investments where rights to content are divided up into "micro shares" into which fans can invest and subsequently earn future revenue streams. This is particularly helpful to up-and-coming artists whose ability to secure financial support early on is made difficult by their anonymity. Tokenization has the ability to not only secure funding for artists, it has the ability to democratize intellectual property. This can lead to a dramatic drop in piracy, a drop in the need for enforcement as the ecosystem of small owners coalesces around the value of ownership and individual wealth creation.

Fig. 6. Monthly user growth in one African music-streaming service



Source: Mdundo.com, 2023 Annual Report.

The VC and private equity lens on leveraging IPR

Monetization of IPR rests solely on investors’ perceptions of the potential for lucrative appreciation in values and in equally attractive exit opportunities. Capital tends to flow to markets where these entries and exists are regular occurrences. The key determinant, however, is evidence of potential appreciation or growth in the application of the IPR. Hence, the concept of total addressable market (TAM) is key.

Conversely, fragmented markets where ease of growth is hampered by divergences in IPR protections, processes, and enforcement tend to repel capital and efficient monetization of IPR. Such is the case currently in Africa. With fifty-four countries requiring more than one way to register, protect, and enforce IPR for creatives, the prospect of mobilizing large sources of capital is limited. IPR investors such as venture capitalists and private equity limited partners seek AfCTA protections—and AFX can remedy this problem by setting up a single registration platform that provides a uniform process for registration of IPR and directly provide protections in all member countries of AfCTA.

With TAM addressed, enforcement of IPR on a continental basis, through an AfCTA PTO platform, would need to mature over time as case law and precedents grow to form a competitive protective continental jurisdiction. The outlook, however, is promising for an African market that enables IPR investors to enter, grow their portfolios, and exit via trade-related sales.

Meanwhile, social-support grantmaking presents a necessary shift in the ecosystem—one that needs to be done in parallel with AfCTA efforts to create a continental TAM.

WHAT THEN OF ARIPO, OAPI, AND AFCFTA?

African creatives cannot wait for African IPR bodies to strengthen their mandates and begin to better enforce protections. Therefore, it is recommended that African creatives seek stronger IPR protections in big markets while maintaining their registrations in markets where they seek to operate. This redundant protection will provide IPR investors with greater confidence as these actions reinforce the value of African IPR.

For stronger global protection, African creatives can register with ARIPO, OAPI, and AfCFTA (once it becomes effective), providing, in conjunction with USPTO registration, strong African and global IPR protections and recognition. In parallel, ARIPO, OAPI, and AfCFTA need to urgently resolve harmonization issues such that African IPR registration can effectively and efficiently be done through a single window.

Another idea would be for AfCFTA to secure cross-registration and enforcement arrangements with USPTO directly, as was done in a similar fashion by the Jamaican Patent and Trade Office, providing a single registration window for local and global protections. Here, AFX could use its US$100 million **Creative Industry Support Fund** to help finance registration costs for all African creatives seeking global recognition of their inventions and better valuation of their unique assets.

African creatives should not be held back from their ability to transform African economies due to policy implementation inefficiencies at the national, regional, and continental level.

African Union Commission Headquarters in Addis Ababa, Ethiopia, May 25, 2023. REUTERS/Tiksa Negeri.

EVIDENCE-BASED CREATIVE INDUSTRY POLICYMAKING: CLOSING THE DATA GAP

Policymakers make decisions based on evidence and data. The lack of data on the creative industry in many markets has led to lesser treatment of this sector, compared with others, from a policy standpoint. The lack of hard data on what concrete impact budget allocations to the creative industry will have on the overall economy in terms of jobs, youth employment in particular, wealth creation, foreign exchange reserves, currency valuations, and other macroeconomic considerations is at the heart of the issue.

The creative sector needs "development pillar" status among African policymakers

In its 2024 report titled "Advancing the Measurement of the Creative Economy," UNCTAD has offered a technical framework for relevant data collection to drive decision-making and resource allocation. Upon review, the proposed frameworks lack adaptability to the African context and render subjective the application of classifications that are not germanely African.

Alternatively, AFX could create a Creatives Data Collection Agency tasked with developing a data-collection framework that can easily be integrated alongside data collection for industries such as manufacturing, agriculture, and energy. Such data might include, but not be limited to:

- Number of jobs created by the industry.
- Income levels for different types of employment in the creatives value chain.
- Wealth creation per public resource allocation.
- Value of intellectual property created.
- Foreign direct investments in dollar volumes on a year-to-year basis.
- Other relevant, measurable economic-impact data.

RECOMMENDATIONS: THE WAY FORWARD AND STAKEHOLDERS' ROLES

The IPR venture framework relies significantly on the availability of data to assess market potential and unlock capital needed to take advantage of the IPR secured by creatives seeking to monetize and scale their creations. This is a universal concept. As such, *it is recommended that the USPTO be used as an interim step*—while the AFX/CANEX, AfCFTA, ARIPO, and OAPI work out integration issues and innovative solutions that will lead to stronger IPR protections within the continent. That outcome would both reflect the significant potential the continent represents for IPR venture investments and, most importantly, facilitate wealth and financial sustainability for African creatives.

To create that enhanced African IPR capability, the following roles and initiatives are recommended.

Short-term actions and roles:

- **Universal registration window:** AFX and CANEX should initiate this window with USPTO to immediately strengthen African creatives' IPR and make monetization easier. Most importantly, this action would help stem piracy and IP infringements that go uncompensated, thereby enabling African creatives to start earning revenues and deter infringements.
- **VC transitional support:** HEVA and other supportive funds should focus on VC investments while making the transition to using the new globally secured IPR as valuable collateral.

Medium-term actions and roles:

- **Streaming platforms:** AFX, CANEX, and FEDA should invest in homegrown streaming platforms such as Udox.com, PopRev.dev, and Mdundo.com to facilitate the scaling of their solutions both regionally and continentally.
- **Enforcement:** AFX and AfCFTA should invest in regional enforcement of IPR and then extend continentally because redundancy of infringement sanctions and case law is a disincentive to infringement and a good substitute when there are few case laws. The extension of jurisdictions to include a big market like USPTO can only strengthen enforcement and deterrence on a global basis—increasing revenue opportunities for African creatives.

Stakeholder actions:

It is important for each stakeholder to address (within the scope of their respective mandate) how they can advance IPR strength generally and in the creative sector specifically. As such, I believe that the following stakeholders hold the key to advancement on these issues:

- **Harmonization goal:** AfCFTA, ARIPO, and ACIP must leverage the regional enforcement strength they have or can seek through continental forces, driven through the African Union.
- **AfCFTA-USPTO partnership:** AfCFTA can take advantage of the depth, reach, and enforcement capabilities of the ecosystem surrounding USPTO. Further, this partnership can be concretized by launching a single registration window that automatically provides African creatives simultaneous protections under AfCFTA and USPTO.
- **African policymakers:** Universally, the creatives industry adds $2 trillion in global annual revenue in addition to creating millions of jobs[46]. As Africa faces the perennial youth unemployment crisis, taking the creative sector seriously and strengthening the enforcement of IPR laws will by extension help address youth unemployment, the wealth-creation gap, growth of foreign exchange reserves, and by extension, strengthen local currencies and deepen local capital markets.
- **USPTO actions under the aegis of AFX/CANEX:** Working in collaboration with AFX/CANEX, USPTO can facilitate and extend its IPR registration process (beyond English, to French, Spanish, and Portuguese) ensuring greater access to the registration process to ensure enforcement is extended to African

IPR owners who speak languages other than English. The registration will simultaneously offer global protections on the same basis as US and international IPR owners, in addition to providing exposure to the US/global IPR ecosystem. Mdundo.com has over 500,000 local, traditional music catalogs, catering to a large local audience. Because the creations are not registered, they are subject to unauthorized sampling and piracy by local and western artists. If registered on a global platform and benefiting from a protective global ecosystem, these traditional artists would have a claim; given the strong enforcement environment, they may well lay claim to millions in royalties and fees, changing their lives and the local, regional, and continental economy.

- Scale and monetization: Afreximbank should provide support in:

  Music: Transform platforms such as Mdundo.com, PopRev.dev, and Udux.com by providing additional capital and capacity-building support for both listed artists and a stronger ecosystem. Invest in a single continental CMO with national branches to secure collection of licensing fees from local users to support the economic and financial ecosystem, further incentivizing creatives to continue to create.

  Film: Assist creatives to reach a global audience through self-directed channels such as YouTube, where they can individually grow the value of their IPR with protected creation and efficient access to a niche audience. Capital will focus on growth of and greater production value support to attract larger audiences. This can lead to lucrative arrangements with larger distribution platforms such as Netflix and FilmOne.

  Fashion: Seek global markets, secure R&D capital, licensing arrangements and go-to-market support. Invest in Birimian Ventures and Trail Capital funds that are dedicated to Africa to accelerate the building of infrastructure and growth of IPR value.

CONCLUSION

African creatives suffer from fragmented IPR jurisdictions that impact the value of their IPR, which also limits the markets where they can safely distribute their innovations without authorship and piracy challenges. The inability to enforce the protections they have further exacerbates their ability to secure monetization opportunities.

Three creative industries hold promise of better prospects—if stakeholders invest time and efforts: the music, film, and fashion industries. All three present similar challenges related to IPR. However, successful entrepreneurs who have received investment funding have relied on large markets to register their innovations where IPR case law is deep and where legal precedents abound, and where robust enforceability of IPR is easily accessible directly or indirectly through platforms respecting rights of authorship or through litigation finance available to valuable IPR holders. From these market perches, creatives are able to monetize their IPR, raise capital from third-party investors, and roll out their creations on a global stage, including domestically in the country or region they are from.

On this basis, I recommend that creatives use the strong protections of intellectual property offices in large markets to secure their creations, raise capital, and credibly launch in the global marketplace. This recommendation does not preclude parallel registration in their home countries with local intellectual property offices and with the burgeoning AfCFTA continental intellectual property office—pending harmonization among existing agencies such as ARIPO, OAPI, and local national offices.

To be sure, local technology-based IPR protection and monetization solutions have begun to emerge in Africa, specifically in the music industry. These solutions could be expanded to other creative areas such as fashion and film, and the latter is specifically suitable for tokenization as proposed by Udux.com and PopRev.dev.

However, it is imperative that regional bodies accelerate the continental harmonization of IPR regulatory protections and specifically rights enforcement to create an environment where the need to set up internationally to secure and monetize is no longer a necessary condition for success—and where creatives can thrive and contribute meaningfully to economic development and wealth creation.

Lastly, it is essential that macroeconomic data pertaining to the creatives industry be collected, analyzed, and used as a basis for evidence-based policymaking. Having this data will lead to more even-handed treatment of creative industries—on the same basis as manufacturing, agriculture, and energy, to name a few—as reliable sources of economic development, youth employment, wealth creation, and foreign exchange growth.

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