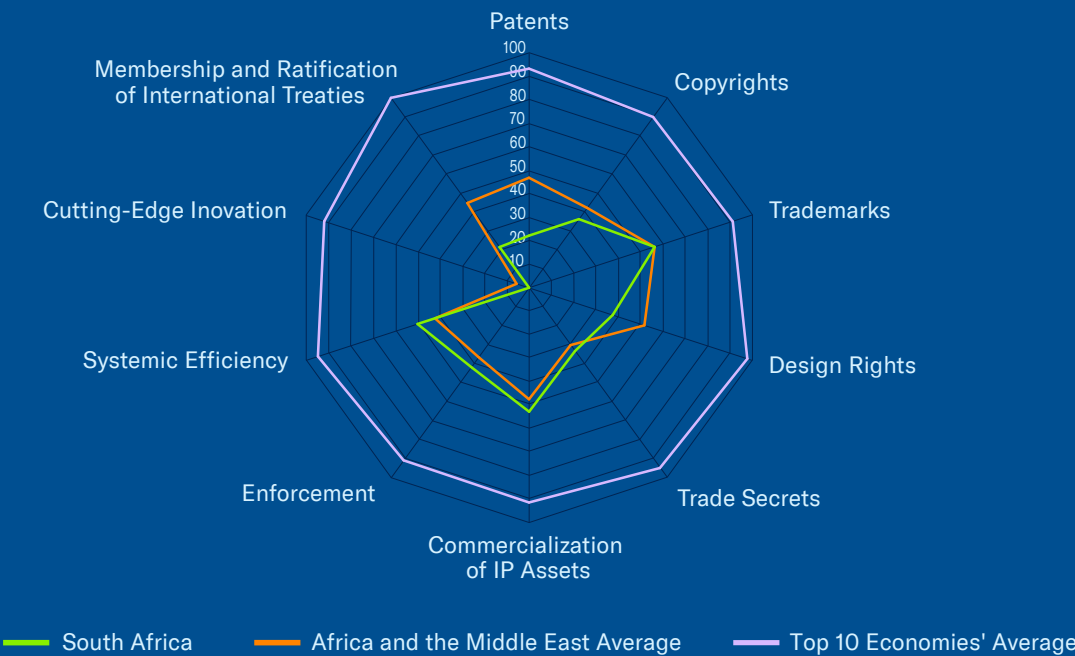


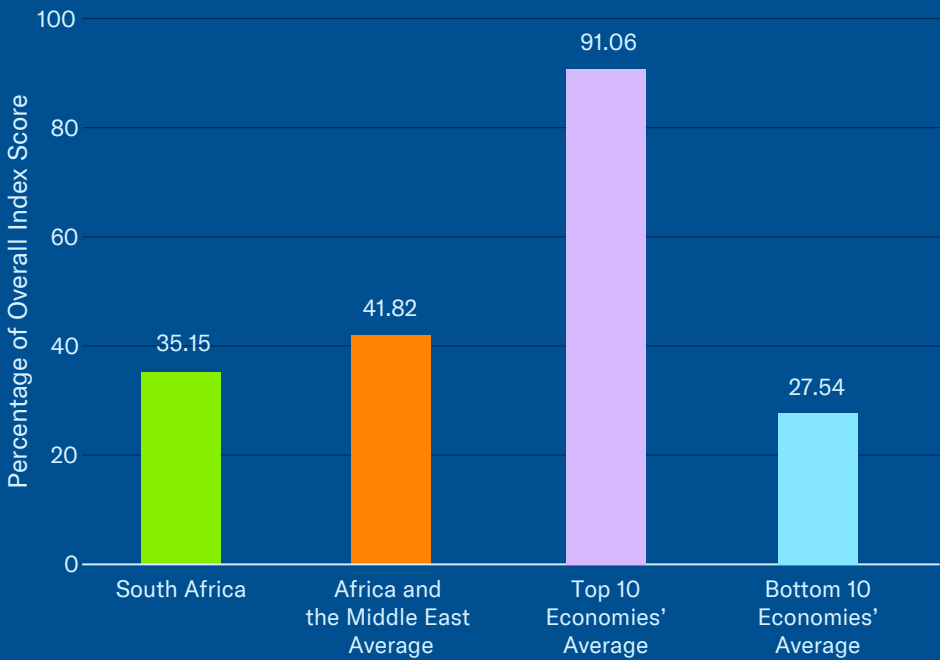
# South Africa

Rank  
46/55

## Category Scores



## Overall Score in Comparison





# South Africa

Rank  
**46/55**

## Key Areas of Strength

- The 2021 Cyber Crime Act strengthens potential criminal sanctions for the misappropriation and illicit accessing of trade secrets and confidential information
- Basic IP framework in place
- Relatively low level of software piracy—32%—compared to other African economies

## Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- Growing emphasis on localization and local content requirements in economic and industrial policy
- *IP Policy Phase I* does not fundamentally address South Africa's gaps in IP protection; the focus is not on innovation and development of new IP in South Africa but on the use of existing developed IP through CLs, parallel imports, and restricting patentability of pharmaceuticals
- Proposed copyright amendments create uncertainty for rightsholders through expansive "fair use" definitions
- Major gaps exist in laws and enforcement across all categories of the Index

Indicator	Score	Indicator	Score
<b>Category 1: Patents Rights and Limitations</b>		<b>Category 7: Enforcement</b>	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.25
2. Patentability requirements	0.00	30. IP as an economic asset	0.50
3. Patentability of CILs	0.00	31. Tax incentives for the creation of IP assets	0.67
4. Plant variety protection	1.00	<b>Category 8: Systemic Efficiency</b>	
5. Pharmaceutical-related enforcement	0.00	32. Physical counterfeiting rates	0.50
6. Legislative criteria and use of compulsory licensing	0.00	33. Software piracy rates	0.68
7. Pharmaceutical patent term restoration	0.00	34. Civil and precedural remedies	0.50
8. Membership of a Patent Prosecution Highway	0.00	35. Pre-established damages	0.25
9. Patent opposition	0.00	36. Criminal standards	0.50
<b>Category 2: Copyrights and Limitations</b>		37. Effective border measures	0.50
10. Term of protection	0.53	38. Transparency and public reporting by customs	0.00
11. Exclusive rights	0.50	<b>Category 9: Cutting-Edge Innovation</b>	
12. Expeditious legal remedies disabling access to infringing content online	0.00	39. Coordination of IP rights enforcement	0.25
13. Cooperative action against online piracy	0.50	40. Consultation with stakeholders during IP policy formation	0.75
14. Limitations and exceptions	0.25	41. Educational campaigns and awareness raising	0.75
15. TPM and DRM	0.50	42. Targeted incentives for the creation and use of IP assets for SMEs	0.25
16. Government use of licensed software	0.25	43. IP-intensive industries, national economic impact analysis	0.50
<b>Category 3: Trademarks Rights and Limitations</b>		<b>Category 10: Membership and Ratification of International Treaties</b>	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	0.00
18. Protection of well-known marks	0.50	45. IP incentives for orphan medicinal product development, term of protection	0.00
19. Exclusive rights, trademarks	0.50	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
20. Frameworks against online sale of counterfeit goods	0.25	<b>Category 5: Trade Secrets and the Protection of Confidential Information</b>	
<b>Category 4: Design Rights and Limitations</b>		23. Protection of trade secrets (civil remedies)	0.50
21. Industrial design term of protection	0.50	24. Protection of trade secrets (criminal sanctions)	0.50
22. Exclusive rights, industrial design rights	0.25	25. Regulatory data protection term	0.00
<b>Category 6: Commercialization of IP Assets</b>		<b>Category 10: Membership and Ratification of International Treaties</b>	
26. Barriers to market access	0.50	47. WIPO Internet Treaties	0.50
27. Barriers to technology transfer	0.50	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.00
28. Registration and disclosure requirements of licensing deals	0.75	49. Patent Law Treaty and Patent Cooperation Treaty	0.50
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
		51. Membership of the Convention on Cybercrime, 2001	0.50
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
		53. Post-TRIPS FTA	0.00

**Percentage of Overall Score: 35.15%**

**Total Score: 18.63**

# Spotlight on the National IP Environment

## Past Editions versus Current Score

South Africa's overall Index score has decreased from 18.64 out of 50 indicators in the twelfth edition to 18.63 out of 53 indicators. This reflects a score decrease for indicator 32.

## Area of Note

As noted under Category 2: Copyrights and Limitations, South Africa has been in the process of reforming its copyright laws for over a decade. In 2024, in testimony before Parliament, the Department of Trade, Industry and Competition outlined plans for expanding these reform efforts to other areas of South Africa's national IP environment, including in relation to patents and design rights. Specifically, the department proposes to translate key ideas contained in the 2018 document, *Intellectual Property Policy of The Republic of South Africa Phase I*, into new legislation and/or official policies. As noted in the Index at the time of its publication, this document—and the thinking it represents—is fundamentally flawed. It focuses almost exclusively on ways in which South Africa could better access existing and developed forms of IP rather than on the manner in which IP can be created and commercialized and become an industrial asset in South Africa. For all economies—emerging and developed alike—what drives innovation, technological advances, and, ultimately, economic development and growth is the creation of new forms of intangible assets and IP. Yet the IP policy is silent on this. Instead, it proposed to introduce new more restrictive standards of patentability, change the existing framework for the issuing and use of compulsory licenses, introduce the use of parallel importation for medicines, and introduce a new pre- and postgrant patent opposition mechanism.

Although no draft bill had been published at the time of research, the department's legislative plans presented to Parliament fully embrace these ideas, especially with respect to compulsory licensing and parallel imports, which are listed as the second of three key priority areas.

Since 2015, the Index has included a *Statistical Annex* that investigates a series of correlations of the relationship between the strength of national IP environments, as measured by the Index scores, and different types of economic activity, including rates of R&D spending, innovation, technology creation, and creativity. As the economic data and analysis of the *Statistical Annex* and the experiences of other economies strongly suggest, IP rights and incentives are the fundamental building blocks for innovation and advanced economic development to take place. Covering 53 indicators across 10 separate categories, the Index has for a decade provided a clear model for the type and strength of IP rights that international innovators, creators, and rightsholders need to be able to fully develop and commercialize their ideas and products. As the Department of Trade, Industry and Competition and the South African Government pursue a program of national IP rights reforms, we would encourage them to use the Index findings and accompanying *Statistical Annex* as a guide in 2025 and beyond.

## Copyrights and Limitations

*11. Legal measures, which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including web hosting, streaming, and linking); 14. Scope of limitations and exceptions to copyrights and related rights; and 15. Technological protection measures (TPM) and digital rights management (DRM) legislation:*

As discussed in previous editions of the Index, South Africa has over the past decade been engaged in reforming its copyright laws with draft amendments considered for both the Copyright Act and Performers' Protection Act. In 2019, a final bill was approved by both the National Assembly and the National Council of Provinces and sent to President Ramaphosa for his assent. However, the president refused to sign the draft law, citing its potential unconstitutionality, and sent it back to the National Assembly for further review. In 2021, this draft bill was formally rescinded by the National Assembly, and the legislative process started anew. A fresh set of stakeholder consultations were held in 2021 and 2022 by the Department of Trade, Industry and Competition, and a new draft law was passed by the National Assembly in 2022. In 2023, continued public consultations and hearings were held at both the provincial level and in the National Assembly. In early 2024, the department presented an update on the status of the bill to Parliament, including legislative input from the National Council of Provinces. At the time of research, the bill had been referred by the President to the Constitutional Court for further evaluation.

As the Index has detailed, since the first draft amendments were published, the proposed legislation has always suffered from several serious deficiencies. On the one hand, South African policymakers correctly identified the need for modernizing the existing copyright laws; this remains as true today as in 2015 when the efforts began.

Just as for the rest of the world, the ICT and internet revolutions are fundamentally changing how South Africans interact socially and economically. In virtually all sectors and industries and businesses, economic interaction is today shaped by digital and mobile technologies. Platforms and business models that did not exist a generation ago have been enabled by the advent of digital technologies. These technologies have transformed traditional retailing and brick-and-mortar stores through the ability to use ICT and internet-based platforms and technologies to better understand markets, consumers, and the world in which they operate. Having an effective, modern copyright regime that encourages innovation and creativity is critical to making the most of the socioeconomic opportunities that these deep structural changes offer.

In 2010, the South African Government together with WIPO examined the contribution of the copyright-based industries to the South African economy. The report found that these industries contributed 4.11% to the GDP and 4.08% to national employment. Although substantial, these contributions are smaller compared to those in other economies with more modernized copyright frameworks, such as the United States and Korea, where the contribution was estimated by WIPO to be over 10%. Given the size and breadth of the creative sector in South Africa, with the right IP-based incentives in place, the copyright industries could become an even more powerful source of economic growth and development. Unfortunately, the draft amendments do not fundamentally address the current shortcomings in South Africa's copyright regime. Instead, they add more uncertainty and potential difficulties for rightsholders. Most notably, the draft amendments have been consistent in their aim to introduce a new, more expansive system of exceptions and limitations to copyright.

For many years, there has been a lack of clarity in South Africa on what constitutes copyright infringement and what is fair reproduction and use, with no relevant full definition in the current Copyright Act and only limited case law. All the draft copyright amendments have expanded the current exceptions regime. The latest drafts have introduced a new general doctrine of “fair use” exceptions to all copyrighted work and several remarkably broad statutory exceptions and limitations, particularly for educational use. Exceptions and limitations to copyright should be considered against the three-step test embodied in the Berne Convention and the WTO TRIPS Agreement. Yet, as noted by the Index throughout the review of the draft law, it was always unclear how the new exceptions and proposed system of fair use would work in practice without negating the exclusive rights of copyright owners and imperiling the legitimate markets for creative works. Similarly, although the proposed amendments would introduce protection for DRM and TPMs into the Copyright Act (currently legal provisions only exist in the Electronic Communications and Transactions Act), these provisions are undermined by the broad limitations and exceptions regime. Overall, it remains the case today that the proposed amendments do little in the way of fundamentally strengthening rightsholders’ ability to more effectively enforce their rights or address the growing issue of online piracy. Of note is that the draft legislation still does not include additional enforcement measures such as the disabling of access through an injunctive-style relief program.

The past decade has seen a sharp increase in the number of economies that use judicial or administrative mechanisms to effectively disable access to infringing content. Today, EU Member States, India, Singapore, Malaysia, Brazil, and a host of other economies have introduced measures that allow rightsholders to seek and gain effective relief against copyright infringement online. Many of these economies have also introduced dynamic injunctions.

Such an injunction addresses the issue of mirror sites and disables infringing content that re-enters the public domain by simply being moved to a different access point online. They have proven to be effective in reducing the availability of copyright-infringing content within these jurisdictions. The Index will continue to monitor these developments in 2025.

## Incentives for Cutting-Edge Innovation

*44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:*

Interest in rare diseases has grown in South Africa. Since 2019, the Rare Diseases Access Initiative has worked to highlight the needs of patients with rare diseases, including improving access to medical treatment and medicines. No specific legislative framework is in place in South Africa with special IP-based market exclusivity incentives for orphan medicinal product development.