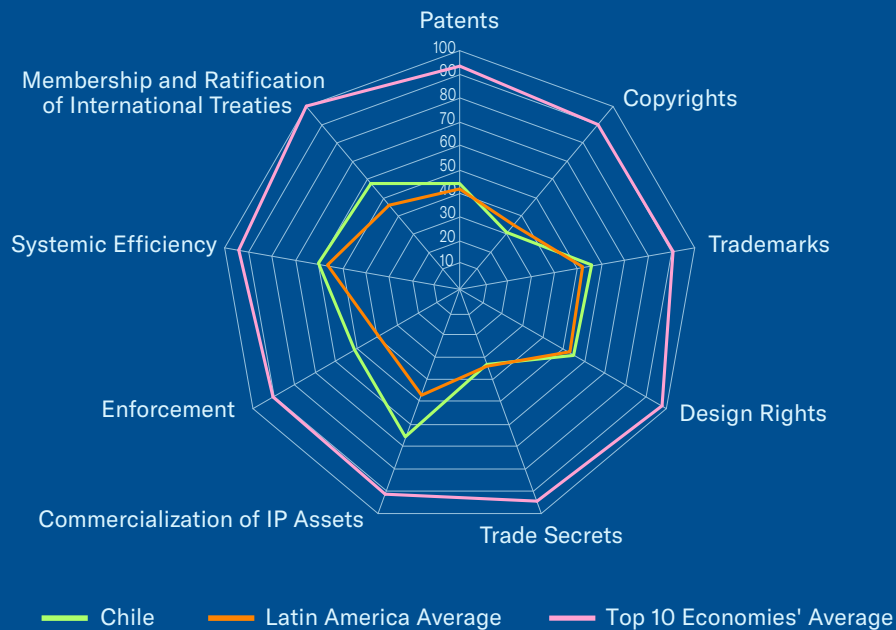
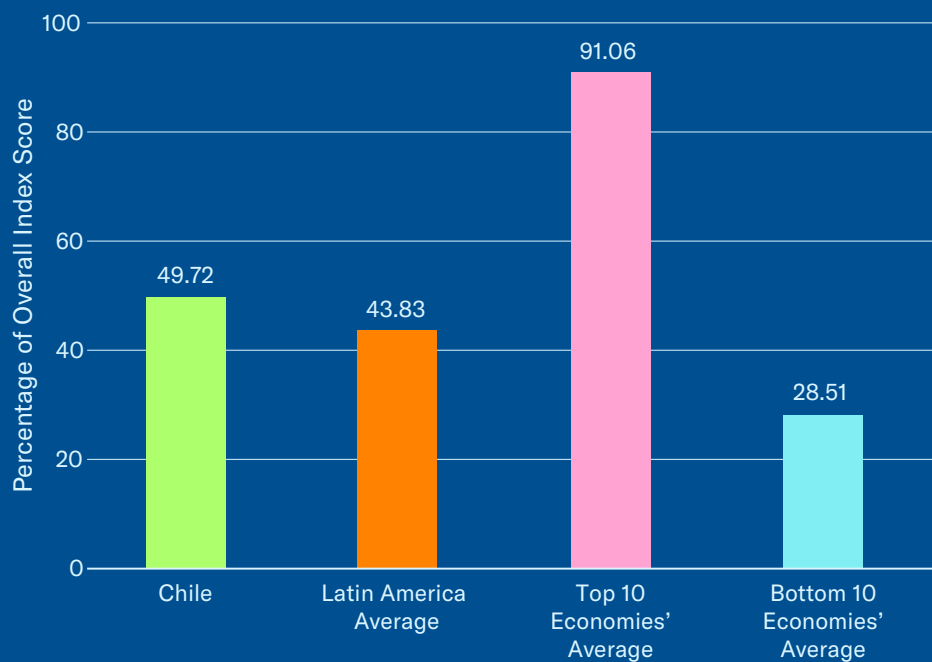
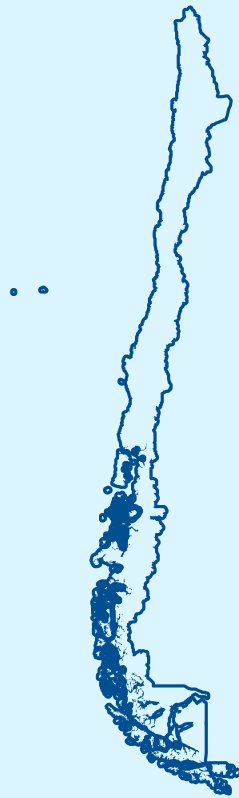


Category Scores



Overall Score in Comparison





Key Areas of Strength

- Joined the Madrid Protocol in 2022
- IP law amendment (Law 19,309) passed in 2021 extends term of protection for design rights and improves enforcement environment
- Joined Global Patent Prosecution Highway (GPPH) in 2020
- Stronger efforts to increase transparency and public reporting of customs' enforcement activities
- Commitment to improve the IP environment through international trade agreements
- Efforts to streamline IP registration
- Promotion of IP commercialization

Key Areas of Weakness

- Uncertainty on accessibility of term restoration with new IP law amendments (Law 19,309)
- Threat of compulsory licensing based on cost considerations for COVID-19 and HCV drugs persists
- Patchy patent protection for biopharmaceuticals, including obstacles to patentability and lack of effective patent enforcement
- High levels of counterfeiting and piracy for an OECD economy—55% estimated software piracy
- Lack of sufficient framework to tackle online piracy, although some success in disabling access to infringing websites

Indicator	Score
Category 1: Patents, Related Rights and Limitations	3.94
1. Term of protection	1.00
2. Patentability requirements	0.25
3. Patentability of CIIIs	0.00
4. Plant variety protection	0.74
5. Pharmaceutical-related enforcement	0.00
6. Legislative criteria and use of compulsory licensing	0.00
7. Pharmaceutical patent term restoration	0.70
8. Membership of a Patent Prosecution Highway	1.00
9. Patent opposition	0.25
Category 2: Copyrights, Related Rights, and Limitations	2.13
10. Term of protection	0.63
11. Exclusive rights	0.25
12. Injunctive-type relief	0.50
13. Cooperative action against online piracy	0.00
14. Limitations and exceptions	0.25
15. TPM and DRM	0.00
16. Government use of licensed software	0.50
Category 3: Trademarks, Related Rights, and Limitations	2.25
17. Term of protection	1.00
18. Protection of well-known marks	0.50
19. Exclusive rights and trademarks	0.50
20. Frameworks against online sale of counterfeit goods	0.25
Category 4: Design Rights, Related Rights, and Limitations	1.10
21. Industrial design term of protection	0.60
22. Exclusive rights and industrial design rights	0.50
Category 5: Trade Secrets and the Protection of Confidential Information	1.00
23. Protection of trade secrets (civil remedies)	0.25
24. Protection of trade secrets (criminal sanctions)	0.25
25. Regulatory data protection term	0.50

Indicator	Score
Category 6: Commercialization of IP Assets	3.92
26. Barriers to market access	0.25
27. Barriers to technology transfer	0.75
28. Registration and disclosure requirements of licensing deals	0.75
29. Direct government intervention in setting licensing terms	0.75
30. IP as an economic asset	0.75
31. Tax incentives for the creation of IP assets	0.67
Category 7: Enforcement	3.52
32. Physical counterfeiting rates	0.57
33. Software piracy rates	0.45
34. Civil and precedural remedies	0.50
35. Preestablished damages	0.50
36. Criminal standards	0.50
37. Effective border measures	0.25
38. Transparency and public reporting by customs	0.75
Category 8: Systemic Efficiency	3.00
39. Coordination of IP rights enforcement	0.75
40. Consultation with stakeholders during IP policy formation	0.50
41. Educational campaigns and awareness raising	0.75
42. Targeted incentives for the creation and use of IP assets for SMEs	0.50
43. IP-intensive industries, national economic impact analysis	0.50
Category 9: Membership and Ratification of International Treaties	4.00
44. WIPO Internet Treaties	1.00
45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.50
46. Patent Law Treaty and Patent Cooperation Treaty	0.50
47. Membership of the International Convention for the Protection of New Varieties of Plants, ct of 1991	0.00
48. Membership of the Convention on Cybercrime, 2001	1.00
49. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
50. Post-TRIPS FTA	1.00

Total: 24.86



Spotlight on the National IP Environment

Past Editions versus Current Score

Chile's overall score has increased from 48.72% (24.36 out of 50) in the tenth edition to 49.72% (24.86 out of 50). This reflects a score increase on indicator 45.

Patents, Related Rights, and Limitations

6. Legislative criteria and use of compulsory licensing of patented products and technologies:

Chile has, over the course of the Index, shifted its policies on the use of compulsory licenses and has embraced the use of these licenses as a potential cost-containment policy. In 2017, the Chilean Chamber of Deputies passed a bill that directed the ministries of Economy and Health to issue compulsory licenses for medicines based on broad grounds that go beyond international standards, including price considerations, and to import less-expensive generic versions of medicines. The government was reportedly at the time considering compulsory licenses for the prostate cancer drug Xtandi and hepatitis C drug Sovaldi. In 2018, these efforts for the issuing of a license based on cost were endorsed by the outgoing government. In 2018, the Chamber of Deputies approved a resolution that requested the use of compulsory licenses for drugs formulated with sofosbuvir. Subsequently, in response to a request presented by some patient groups and parliamentarians, the Minister of Health issued Resolution 399, which discusses the public health justification for a compulsory license. A third resolution issued by the Chamber of Deputies with the same request was approved later the same year, and, in response to that request, the new Minister of Health issued Resolution 1165 rejecting the patentee's challenge to Resolution 399/2018.

In 2019, President Sebastian Pinera urged Congress to approve the Drugs Act II (*Ley de Farmacos*

II) as one of the measures of the National Drug Policy that seeks to improve the availability of drugs and reduce out-of-pocket costs. During the bill's long iteration through Congress, new provisions were added that put IP rights at risk. Specifically, provisions of the act greatly extend the reach of nonvoluntary licenses and incorporate discretionary elements, such as "shortage" or "economic inaccessibility" of products, as a legitimate ground for issuing a license. The draft also included provisions that effectively reduce a rightsholder's use of its trademarks in the course of trade. At the time of this research, the legislation was still pending in the Chilean Congress. Separately, individual members of Congress have also continued to pressure the government to use compulsory licenses as a cost-containment tool and have submitted new compulsory license proposals for hepatitis C products to the Ministry of Health.

In 2020, in response to the COVID-19 global pandemic, the Chamber of Deputies passed a unanimous resolution endorsing the use of compulsory licenses for any and all products, diagnostics, medical devices, and other medical paraphernalia related to the COVID-19. This was followed up with a legislative proposal and a set of amendments published by a group of senators. This proposal, Bulletin 13,572-11, would introduce sweeping changes to Chile's compulsory licensing regime, including an expedited and abbreviated process for the hearing and granting of compulsory licensing applications; the pre-fixing of applicable royalties to a maximum of 5% of the sales price of the licensed product; a broad elimination of liability for manufacturers, individuals, and legal entities that violate existing IP rights (including patent rights and trade secrets) for the production or distribution of any "medicines, vaccines, and other technologies subject to patent rights, utility models, undisclosed information, intended to meet public health needs or other public interest

within the national territory, in a context of health alert, epidemic or pandemic decreed by the health authority, and that without knowledge of the existence of affected industrial property rights or acting in good faith, violate the provisions of Law No. 19.039.” As stated repeatedly in the Index, compulsory licensing is not a cost-containment tool; cost is not a relevant justification or basis for compulsory licensing under the TRIPS agreement. TRIPS Article 31, the amendments introduced in the 2001 Doha Ministerial Declaration, and the subsequent General Council decision allowing for the export of medicines produced under a compulsory license (outlined in Paragraph 6), form the legal grounds for compulsory licensing for medicines. The chairman’s statement accompanying the General Council decision (concerning Paragraph 6 of the Doha Declaration) underscores that these provisions are not in any way intended for industrial or commercial objectives, and, if used, it is expected that they would be aimed solely at protecting public health. In addition, Article 31 and the Doha Declaration suggest that compulsory licensing represents a “measure of last resort” to be used only after all other options for negotiating pricing and supply have been exhausted. As Chile and the global community move forward in 2023 and beyond, it is clear that the COVID-19 pandemic will continue to have a profound impact on the global economy and on how we interact and live as a global society. Undermining IP rights through the use and threats of compulsory licensing is counterproductive and is more likely to leave the world, including Chile, more vulnerable to the next global health challenge.

Copyrights, Related Rights, and Limitations

11. Legal measures which provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking); 12. Expeditious injunctive-style relief and disabling of infringing content online; 13. Availability of frameworks

that promote cooperative action against online piracy; and 15. Technological protection measures (TPM) and digital rights management (DRM) legislation: As noted over the course of the Index, rightsholders face significant challenges in protecting their copyrighted content in Chile. As a contracting party to both the WIPO Internet Treaties and the 2003 United States–Chile Free Trade Agreement (FTA), Chile is obliged to provide a minimum standard of copyright protection for rightsholders that is currently not available. Both the U.S. FTA and WIPO Internet Treaties contain several important standards and measures related to copyright enforcement in the internet and digital realm, including a defined notice-and-takedown mechanism for communication service providers; extensive TPM and DRM protection provisions; definitions of obligations pertaining to related rights; protection against satellite piracy; and general civil and criminal enforcement procedures for all IP rights, including copyrights. But years after ratification of the FTA and over two decades after accession to the WIPO Internet Treaties, major gaps still exist in Chile’s legal framework, and current enforcement remains inadequate.

To begin with, Chile’s notice-and-takedown procedure does not meet the requirements of its FTA obligation with the United States. Under current Chilean law, ISPs are required to remove infringing content only on having “effective knowledge” (meaning that notice must be issued by a court, not by a rightsholder). Consequently, rightsholders’ ability to practically benefit from and use the takedown system is extremely limited. In addition, although Law No. 20,435 introduced a voluntary system under which ISPs are to forward notices from rightsholders to suspected infringers, this has over the course of the Index shown to be ineffective. With regard to injunctive-style relief, there is a possibility of achieving an injunction through a court order, but no defined or practical enforcement route, whether administrative or judicial, is available



to rightsholders. The availability of injunctive-style relief is hampered by the same lack of clear and practical rules and procedures that affects other forms of copyright enforcement in Chile.

With regard to TPM and DRM, despite ratification of the WIPO Internet Treaties and the U.S.-Chile FTA, copyright law still only protects against the circumvention of, or interference with, ISPs. Circumvention by other parties is not illegal, nor is the manufacture, distribution, or sale of circumvention devices. Proposals have been put forward in the National Congress to amend existing statutes and introduce more robust measures—including in 2021—but, overall, no meaningful action has taken place regarding the existing DRM and TPM legal framework over the course of the Index. This lack of a framework remains a key weakness in Chile's copyright environment. Although positive, a new signal piracy law enacted in 2018 does not address the issue of circumvention devices. The result is that Chile has, over the course of the Index, maintained high levels of estimated copyright infringement. For example, BSA | The Software Alliance's estimated rates of the use of unlicensed software suggest that Chile has, since 2011, had a remarkably high rate of software piracy for a high-income OECD Member State. The rate has stayed between 55% and 61% over the course of the 11 previous editions of the Index (in 2018, it was an estimated 55%). This compares to an average estimated rate of 26% for OECD Members in Western Europe and 16% for North America. Chile's estimated rate of software piracy is also higher than the regional average for Latin America, which in 2018, stood at an estimated 52%. This occurs, although, on a per capita basis, Chile is one of the wealthiest economies in the region. Similarly, more recent data suggest that Chile remains a piracy hub in Latin America, with online infringement growing. In 2020, the regional industry association ALIANZA released findings on online piracy for the Latin America region. As part of annual piracy rankings conducted by the British research

consultancy and web monitoring firm Muso, the findings suggest that Chile is a large market for online piracy in Latin America with over 1 billion recorded web visits to online sources of piracy—a per capita rate of 95 visits per person. Although Brazil is the largest total market for online piracy in Latin America—at over 7 billion web visits during the same period—on a per capita basis, Chile's rate is almost double: 95 visits per person in Chile versus 58 visits per person in Brazil. As the USTR noted in the *2022 Special 301 Report*, “It has been over 18 years since the Chile FTA entered into force ... [and] it remains critical that Chile show tangible progress in addressing the long-standing Chile FTA implementation issues and other IP issues.” The Index will continue to monitor Chile's efforts at reforming its copyright environment in 2023.

Enforcement

35. Pre-established damages and/or mechanisms for determining the amount of damages generated by infringement; and 36. Criminal standards including minimum imprisonment and minimum fines: As noted last year, the *Ley Corta de INAPI* reform package and changes to Law 19,309 on Industrial Property—in force since January 2022—also included significant changes to Chile's IP enforcement environment. The amendments included the introduction of statutory damages for trademark infringement (Law 19,309 had previously not included any form of preestablished or statutory damages for any major IP right). Instead, damage calculations had been based on general rules of civil compensation, which grants courts wide sway in assessing damages, including loss of profits. With last year's amendments added, it is now possible, in the case of proven trademark infringement, for a rightsholder to opt for a preestablished form of damages up to 2,000 monthly tax units per infringement (circa USD 120,000). Furthermore, with regard to criminal sanctions, the insertion of a new Article 28b introduces a minimum

prison sentence for trademark infringement and commercial counterfeiting. Previously, such offenses had been subject only to fines. These positive efforts continued in 2022 with the enactment of Law 21,426. The new law bolsters efforts to combat illicit trade by criminalizing associated aiding-and-abetting acts and provides new powers to Chilean enforcement authorities. The Index will monitor the extent to which these new power—and the amendments to Law 19,309 enacted last year—will improve the enforcement environment for IP rights in Chile in 2023.

Membership and Ratification of International Treaties

45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks: In 2021, the Chilean Senate approved Chile to sign up for and join the Madrid Protocol. Subsequently, Chile acceded to and became a new contracting party of the protocol in May 2022. As a result, the score on this indicator has increased by 0.5.