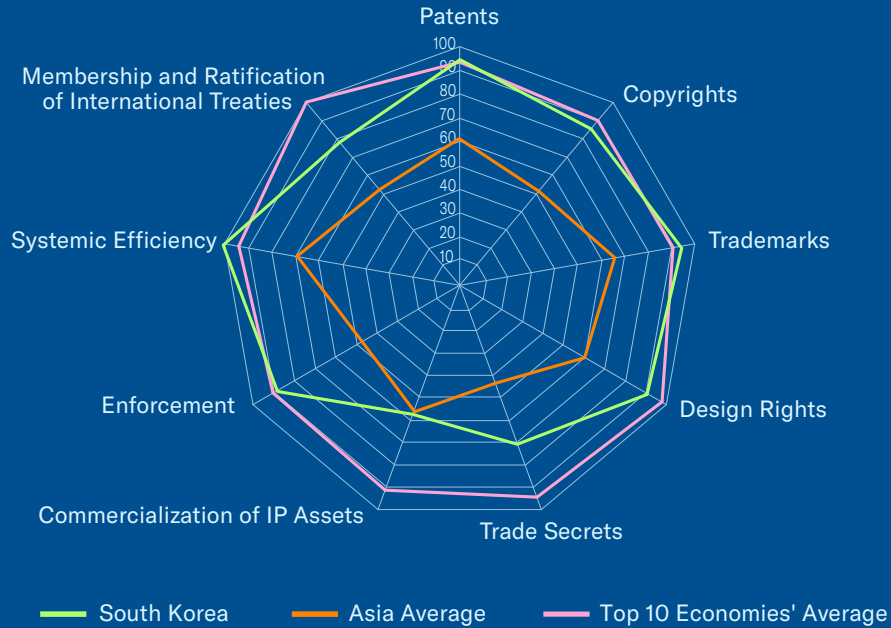
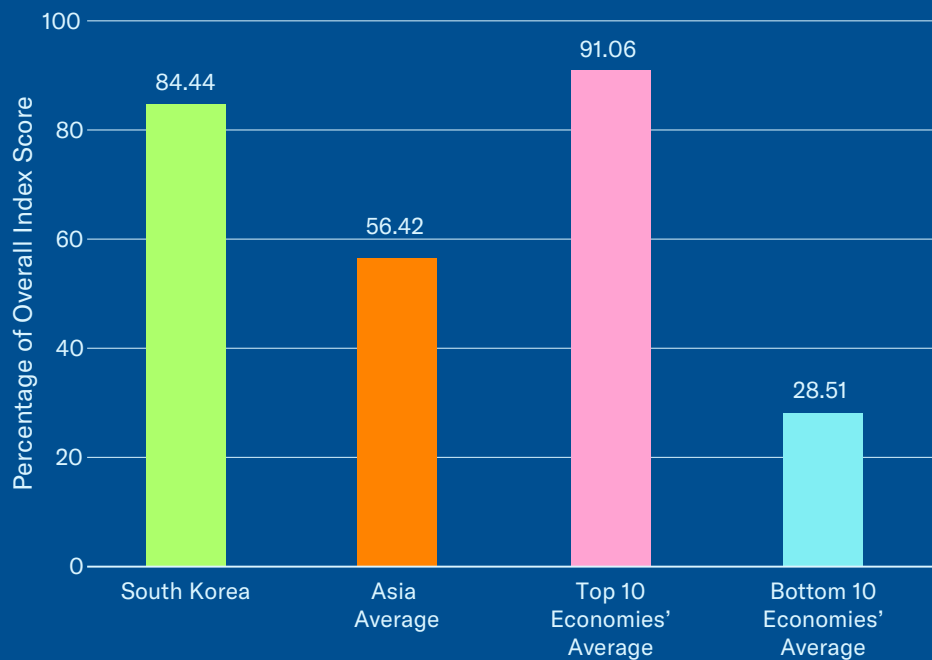
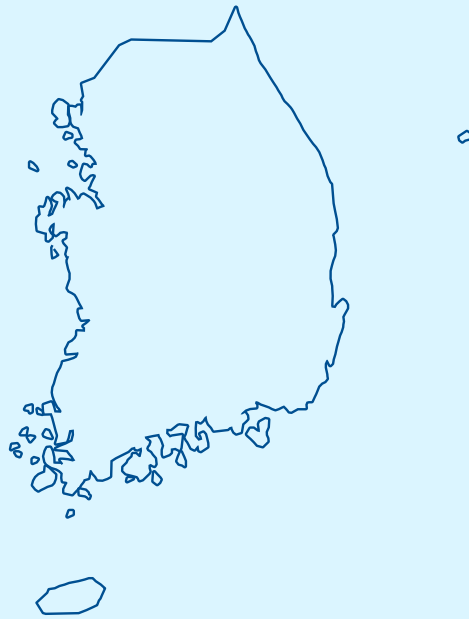


## Category Scores



## Overall Score in Comparison





## Key Areas of Strength

- Increasingly active stance toward combating online piracy; stands as an example to southeast Asia and emerging markets
- Amendments to the Unfair Competition Prevention and Trade Secret Protection Act in 2020 strengthened criminal sanctions for trade secret theft
- Amendments to the Patent Act and Unfair Competition Prevention and Trade Secret Protection Act in 2020 strengthened the basis for which damages can be awarded for patent and trade secret infringement
- Patenting standards are in line with international best practices
- Relatively robust legal framework for trademark and design protection
- Membership in Global PPH and IP5 and new post-grant patent opposition mechanism streamline the patent office
- KIPO provides SMEs with a variety of educational and technical assistance programs as well as the right to reduced filing fees

## Key Areas of Weakness

- Not a contracting party to the Patent Law Treaty and the Convention on Cybercrime
- Some barriers to market access that discriminate against foreign IP owners
- Onerous licensing registration requirements

Indicator	Score
<b>Category 1: Patents, Related Rights and Limitations</b>	<b>8.50</b>
1. Term of protection	1.00
2. Patentability requirements	1.00
3. Patentability of CIIIs	1.00
4. Plant variety protection	1.00
5. Pharmaceutical-related enforcement	0.50
6. Legislative criteria and use of compulsory licensing	1.00
7. Pharmaceutical patent term restoration	1.00
8. Membership of a Patent Prosecution Highway	1.00
9. Patent opposition	1.00
<b>Category 2: Copyrights, Related Rights, and Limitations</b>	<b>5.99</b>
10. Term of protection	0.74
11. Exclusive rights	1.00
12. Injunctive-type relief	1.00
13. Cooperative action against online piracy	1.00
14. Limitations and exceptions	0.75
15. TPM and DRM	1.00
16. Government use of licensed software	0.50
<b>Category 3: Trademarks, Related Rights, and Limitations</b>	<b>3.75</b>
17. Term of protection	1.00
18. Protection of well-known marks	1.00
19. Exclusive rights and trademarks	0.75
20. Frameworks against online sale of counterfeit goods	1.00
<b>Category 4: Design Rights, Related Rights, and Limitations</b>	<b>1.80</b>
21. Industrial design term of protection	0.80
22. Exclusive rights and industrial design rights	1.00
<b>Category 5: Trade Secrets and the Protection of Confidential Information</b>	<b>2.10</b>
23. Protection of trade secrets (civil remedies)	0.75
24. Protection of trade secrets (criminal sanctions)	0.75
25. Regulatory data protection term	0.60

Indicator	Score
<b>Category 6: Commercialization of IP Assets</b>	<b>3.42</b>
26. Barriers to market access	0.50
27. Barriers to technology transfer	0.75
28. Registration and disclosure requirements of licensing deals	0.25
29. Direct government intervention in setting licensing terms	0.50
30. IP as an economic asset	0.75
31. Tax incentives for the creation of IP assets	0.67
<b>Category 7: Enforcement</b>	<b>6.16</b>
32. Physical counterfeiting rates	0.73
33. Software piracy rates	0.68
34. Civil and precedural remedies	0.75
35. Preestablished damages	1.00
36. Criminal standards	1.00
37. Effective border measures	1.00
38. Transparency and public reporting by customs	1.00
<b>Category 8: Systemic Efficiency</b>	<b>5.00</b>
39. Coordination of IP rights enforcement	1.00
40. Consultation with stakeholders during IP policy formation	1.00
41. Educational campaigns and awareness raising	1.00
42. Targeted incentives for the creation and use of IP assets for SMEs	1.00
43. IP-intensive industries, national economic impact analysis	1.00
<b>Category 9: Membership and Ratification of International Treaties</b>	<b>5.50</b>
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	1.00
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	1.00
48. Membership of the Convention on Cybercrime, 2001	0.00
49. The Hague Agreement Concerning the International Registration of Industrial Designs	1.00
50. Post-TRIPS FTA	1.00

**Total: 42.22**



# Spotlight on the National IP Environment

## Past Editions versus Current Score

South Korea's overall score has increased from 83.94% (41.97 out of 50) in the tenth edition to 84.44% (42.22 out of 50) in the eleventh edition. This reflects a score increase on indicator 42.

## Copyrights, Related Rights, and Limitations

Over the past decade, South Korea has taken an increasingly active stance toward combating online piracy. In 2009, amendments to the Copyright Act introduced a graduated warning system operated by the Ministry of Culture, Sport, and Tourism and the Korean Communication Commission (KCC). Under the law, the KCC sends three sets of notices to infringing users and online service providers and can order the suspension of users' accounts for up to six months if an inadequate response is secured. Korea also has in place an administrative mechanism for responding to rightsholders' requests for removing access to infringing content online. The legal basis is found in Article 102(2)f of the Korean Copyright Act, which provides limited liability for ISPs that respond to a court or related administrative body order to delete or disable access to infringing content. This order comes from the KCC but is based on a request from the Korean Copyright Commission (which in turn responds to rightsholder notices of infringing content and sites). Industry reports suggest that more than 400 infringing websites have been disabled in Korea under this mechanism. A 2016 study by the Motion Picture Association found on average a 90% drop in visits to disabled sites within three months of an order to disable access. In addition, the data suggested a 15% drop in visits to infringing websites and a 50% reduction for peer-to-peer sites following three instances of disabling a given site.

The result of these reforms has been that copyright piracy in Korea has decreased substantially. This has been achieved at the same time as internet connectivity and speed have increased manifold with more Koreans than ever accessing content online. At the same time, the creative sector in Korea has flourished. For example, the 2012 WIPO commissioned study, *The Economic Contribution of Copyright-Based Industries in the Republic of Korea*, found that the copyright industries made a substantial contribution to both national economic output and employment. Looking at economic impact, this was estimated at 9.89% of total national economic output (gross domestic product) in Korea and 6.24% of total employment. More recent research suggests that the economic impact of Korea's cultural industries and the creative economy was substantial and valued at over USD12 billion in exports in 2019. As such, Korea stands as an example to southeast Asia and emerging markets around the world of what strong and consistent protection of copyright can achieve in terms of stimulating innovation, cultural production, and income-generating economic activity. In 2021, the Ministry of Culture, Sports and Tourism announced that Korea's copyright environment and the Copyright Act would be reformed. At the time of research, no formal legislative proposal had been revealed. The Index will continue to monitor these developments in 2023.

## Commercialization of IP Assets

**26. Barriers to market access:** South Korea is a relatively open economy. No economy-wide mandatory localization requirements, significant or systematic import substitution policies, or bans are in place. Similarly, no policies are in place that mandate the sharing of proprietary technology or divulging IP assets as a precondition for full market access. There are, however, restrictions on foreign investment and ownership with some

sectors of the Korean economy completely closed off. For many other sectors, foreign investment is capped at a minority ownership amount.

As noted over the course of the Index, with respect to barriers to digital trade, Korea imposes several direct and indirect requirements that result in significant barriers to foreign entities. Relevant legislation, including the Personal Information Protection Act 2011, allows cross-border data transfers, but the conditions for consent and disclosure requirements are high. As the USTR noted in the 2022 *National Trade Estimate Report on Foreign Trade Barriers*, these “restrictions pose barriers to the cross-border provision of internet-based services that depend on data storage and processing services ... and effectively privilege Korean over foreign suppliers in any data-intensive sector without materially contributing to privacy protection.” Local storage requirements for the public sector are also in place under the 2015 Promotion of Cloud Computing and Protection of Users Act and the Cloud Security Assurance Program. These cloud storage restrictions effectively mean that non-Korean entities are *de facto* unable to participate in the Korean government’s recently announced plans for a full digital migration.

Further sector-specific data transfer and storage restrictions are also in place for financial services, satellite mapping, and payment services. For rightsholders across many different industries and sectors, these barriers to digital trade raise serious questions and concerns. The ICT and internet revolutions have fundamentally changed how consumers interact socially and economically. In virtually all industries, business and economic interaction is today being shaped by the collection of data and digital technologies. These technologies are allowing companies across all business sectors and public and private research organizations to collect and use greater levels of data and information than ever before in “big data.”

Combined with increased computing capacity and the application of new technologies (such as artificial intelligence and machine learning) that allow us to analyze and better understand data collected, there is the possibility to make significant discoveries and breakthroughs in virtually any area of research and human socioeconomic activity. Cross-border data flows are ingrained in countless services relied on by consumers and businesses with numerous digital, automated, and virtual services relying on the seamless movement and storage of data in various locations. Public policies related to national data management must recognize this reality and be formulated accordingly. Whether directly or indirectly, the *de jure* or *de facto* mandating of local data storage and processing is likely to lead to fewer digital services being available in South Korea and less innovation in many critical sectors, including IP- and knowledge-intensive industries. The Index will continue to monitor these developments in 2023.

## Systemic Efficiency

**42. Targeted incentives for the creation and use of IP assets for SMEs:** As has been noted across the Index, South Korea has historically had a strong focus on the creation and commercialization of IP as an economic asset through government economic innovation and industrial policy. This is particularly pronounced within R&D-intensive industries, such as technology, ICT, and biotechnology, where Korea’s public and private sectors have both invested significant resources in building world-leading infrastructure and incentives to innovate and commercialize new IP assets.

The Korean government actively promotes the creation, registration, and commercialization of IP assets by SMEs. The Korean Intellectual Property Office (KIPO) provides SMEs with a variety of educational and technical assistance programs, and reduced filing fees are available for qualifying SMEs. Technical assistance programs



include support to export-oriented SMEs in developing and exploiting their IP rights, with the goal to foster “Global IP Star” companies. KIPO also hosts IP training at regional IP centers (corporate capacity building on leveraging of IP) and IP talent sharing and training projects. Depending on the business area, type of technology, or type of entity, qualifying SMEs can also apply for accelerated patent examination.

The criteria for inclusion have been expanded in recent years and now cover a broad range of entities, including companies that focus on specific technologies—for example, green technologies and technologies related to the fourth industrial revolution—as well as business type. The latter today includes entities that are engaged in export promotion or qualify as a “venture business” or other defined entity under the Invention Promotion Act. The results of these efforts can be seen in the growth of patent applications by SMEs. According to KIPO’s latest annual report, SMEs have seen the largest increase in total IP registration applications for all major IP rights in Korea over the past two years. In the two-year period before the COVID-19 pandemic (2018-2019), SMEs accounted for 26.6% of all applications. In the two-year period since the outbreak of the pandemic (2020-2021), SMEs now account for 29.8% of all applications. Looking at individual IP rights, the increases are even larger. For example, with respect to patent applications, the growth in the number of applications was just under 25%. This compares to a growth rate of 8.3% for the category “large enterprises.” Similarly, looking at applications for trademark registration, the growth in the number of applications by SMEs dwarfs that of larger companies by 43.7% to 15%. As a result of these positive efforts, the score on this indicator has increased by 0.25.