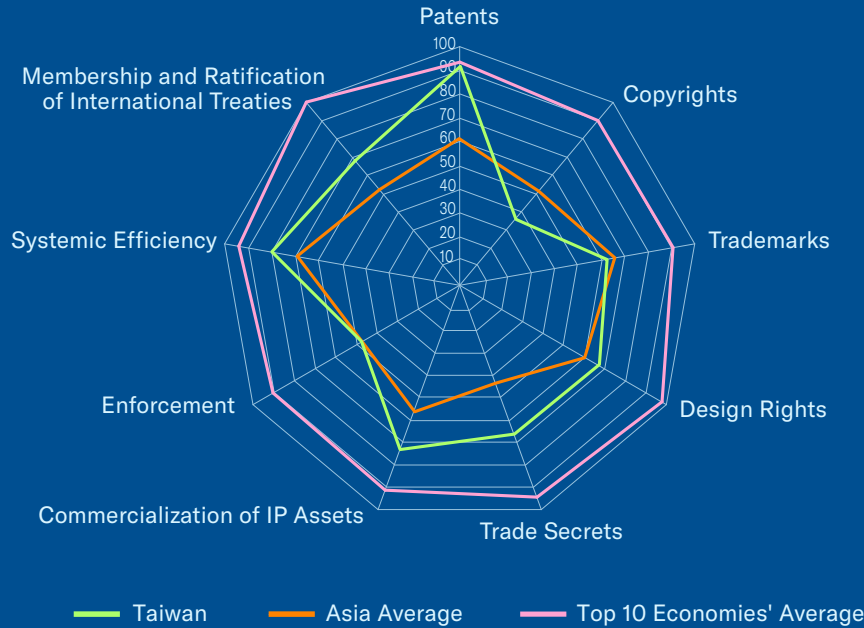
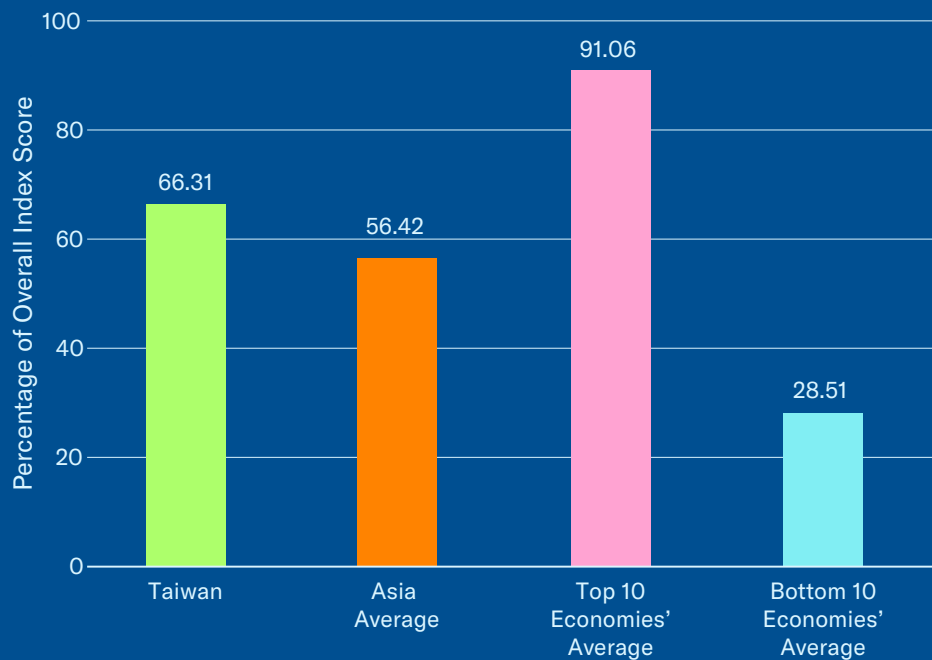


## Category Scores



## Overall Score in Comparison





## Key Areas of Strength

- Continued strong support for SMEs developing IP assets through TIPO fast-track examination procedure and expanded technical assistance
- Amendments to trade secrets law improved IP environment in 2020
- Pharmaceutical linkage regime operational—strengthens protection and enforcement of biopharmaceutical IP rights
- Term of protection for industrial design rights extended from 12 to 15 years
- Patent framework in line with international standards
- Although facing political hurdles to becoming a contracting party, Taiwan has in many cases implemented the provisions of several international IP treaties

## Key Areas of Weakness

- Important gaps in digital copyright regime; 2022 Copyright Act amendments do not fundamentally address this
- New Copyright Act introduces unprecedentedly broad exceptions regime related to educational, personal use, and nonprofit copyright exceptions
- Relatively high rates of online piracy and physical counterfeiting

Indicator	Score
<b>Category 1: Patents, Related Rights and Limitations</b>	<b>8.25</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	1.00
6. Legislative criteria and use of compulsory licensing	1.00
7. Pharmaceutical patent term restoration	1.00
8. Membership of a Patent Prosecution Highway	0.50
9. Patent opposition	0.75
<b>Category 2: Copyrights, Related Rights, and Limitations</b>	<b>2.53</b>
10. Term of protection	0.53
11. Exclusive rights	0.25
12. Injunctive-type relief	0.25
13. Cooperative action against online piracy	0.25
14. Limitations and exceptions	0.50
15. TPM and DRM	0.50
16. Government use of licensed software	0.25
<b>Category 3: Trademarks, Related Rights, and Limitations</b>	<b>2.50</b>
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	0.50
<b>Category 4: Design Rights, Related Rights, and Limitations</b>	<b>1.35</b>
21. Industrial design term of protection	0.60
22. Exclusive rights and industrial design rights	0.75
<b>Category 5: Trade Secrets and the Protection of Confidential Information</b>	<b>2.00</b>
23. Protection of trade secrets (civil remedies)	0.75
24. Protection of trade secrets (criminal sanctions)	0.75
25. Regulatory data protection term	0.50

Indicator	Score
<b>Category 6: Commercialization of IP Assets</b>	<b>4.42</b>
26. Barriers to market access	1.00
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	0.50
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>3.36</b>
32. Physical counterfeiting rates	0.45
33. Software piracy rates	0.66
34. Civil and precedural remedies	0.50
35. Preestablished damages	0.25
36. Criminal standards	0.25
37. Effective border measures	0.50
38. Transparency and public reporting by customs	0.75
<b>Category 8: Systemic Efficiency</b>	<b>4.00</b>
39. Coordination of IP rights enforcement	0.75
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	0.50
43. IP-intensive industries, national economic impact analysis	0.75
<b>Category 9: Membership and Ratification of International Treaties</b>	<b>3.75</b>
44. WIPO Internet Treaties	0.75
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	1.00
48. Membership of the Convention on Cybercrime, 2001	0.50
49. The Hague Agreement Concerning the International Registration of Industrial Designs	0.50
50. Post-TRIPS FTA	0.00

**Total: 32.16**



# Spotlight on the National IP Environment

## Past Editions versus Current Score

Taiwan's overall score has increased from 66.29% (32.15 out of 48.5) in the tenth edition to 66.31% (32.16 out of 48.5). This reflects a score increase on indicator 32.

## Area of Note

In mid-2022, Taiwan passed amendments to most major IP laws, including the Patent Act, Copyright Act, Trademark Act, and the National Security Act, the latter of which relates to the protection of trade secrets and industrial espionage. The legislative package is in anticipation of Taiwan joining the CPTPP. As detailed here with respect to the most consequential changes, overall, this is a mixed package. Although some improvements have been made to Taiwan's national IP environment—including the stiffening of criminal penalties for industrial espionage—the most substantive changes relate to the protection of copyright. As detailed here, these legislative changes raise more questions and concerns than provide solutions to Taiwan's long-standing problems with the infringement of copyright. Covering 50 indicators across nine 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 Taiwanese government and Legislative Yuan work on implementing these new laws and consider additional legislative changes, we encourage them to use the findings of the Index and accompanying Statistical Annex as a guide.

## 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. Expedient injunctive-style relief and disabling of infringing content online; 13. Availability of frameworks that promote cooperative action against online piracy; 14. Scope of limitations and exceptions to copyrights and related rights; and 15. Technological protection measures (TPM) and digital rights management (DRM) legislation:** As has been noted over the course of the Index, rightsholders face significant challenges in protecting their content in Taiwan. The existing legal framework has major gaps, and enforcement remains inadequate. The Copyright Act has historically provided for standard exclusive rights, including reproduction and performance. In 2009, amendments to the Copyright Act introduced a notice-and-takedown mechanism including safe harbors for ISPs that remove access to infringing sites or forward notices from rightsholders to infringing users. However, much ambiguity surrounded how the mechanism should be implemented. For instance, it was not clearly defined what infringements ISPs should take action against, nor was it explained how ISPs should handle or respond to notices. In practice, although evidence suggests that local ISPs frequently respond to rightsholder notices, the law does not provide a mechanism for addressing foreign content, which has become major source of online piracy.

Efforts have been made on the ground to improve levels of enforcement, and relevant Taiwanese authorities have been active. A special IPR Police Force has been created, and the Taiwanese Intellectual Property Office (TIPO) has recognized copyright infringement as a major challenge and acted accordingly. TIPO regularly publishes enforcement statistics on raids, arrests, and prosecutions. Still, digital and online piracy remain major problems in Taiwan. File-sharing, streaming, and deep-linking sites, particularly from abroad, represent the top platforms for illegal content.

The U.S. State Department has noted the continued high levels of copyright infringement, including with respect to online piracy, academic book piracy, and illegal access to content through set-top boxes. In light of these challenges, amendments to the Copyright Act aimed at modernizing protection have been under review for close to a decade. In 2014, draft amendments were proposed that introduced the concept of a right of distribution and public communication and revised the definition of public transmission and broadcast to include aspects applicable in the digital and online arenas. The amendments also sought to further clarify exceptions to copyright provided under its fair use doctrine for education, libraries, software, and antenna systems. The proposed amendments also expanded criminal liabilities beyond possession or distribution of physical goods to works more broadly, including digital works. The proposed revisions were never acted upon by the Legislative Yuan and have remained dormant.

In 2019, smaller reforms were passed by the Yuan. Amendments to Articles 87 and 93 strengthen existing DRM and TPM provisions by punishing manufacturers, importers, and distributors of pirated TV boxes with up to two years imprisonment and/or a fine. In 2020 and 2021, this piecemeal reform effort continued with TIPO releasing for public comment a new batch of draft amendments and a finalized draft Copyright Act approved by the Executive Yuan.

In large measures, these amendments were passed in 2022. Although some provisions strengthen the enforcement framework, overall, these enacted amendments do not fundamentally change the dynamics of copyright enforcement and online piracy in Taiwan. To begin with, the most far-reaching changes in the new Copyright Act relate to the law's exceptions and limitations regime. Under revised Articles 44-63 and 65, the new legislation introduces an unprecedentedly broad exceptions regime related

to educational, personal use, and nonprofit copyright exceptions. Specifically, Articles 46, 46bis, 47, 51, and 55 seem to allow the wholesale use of copyrighted material for these purposes.

Such exceptions go well beyond the three-step test originating in the Berne Convention because they directly and materially affect a rightsholder's ability to exploit their work. These new exceptions also affect technological protection measures. Specifically, Article 80ter (9) allows the circumvention of technological protection measures if it is done in accordance or fulfillment with any of the exceptions outlined under the new exceptions and limitations regime. Given the new expansive definitions introduced for copyright exceptions related to education, personal use, and nonprofit entities, it would now appear that the circumvention of TPM and DRM protection in Taiwan is lawful if it is done by an educational institution or on a nonprofit basis.

A lack of clarity also exists regarding the protection of sound recordings and relevant exclusive rights attached to such performances under Article 26 and Article 26bis. Fundamentally, the 2022 amendments do not effectively address long-standing challenges, and Taiwan continues to lack many legal tools for more effective copyright enforcement. Specifically, although Article 100 now includes digital piracy as an actionable criminal offense not requiring a formal complaint—provided certain thresholds of estimated economic damage are met—the new Copyright Act does not include a defined and copyright-specific mechanism of injunctive-style relief whether through the judiciary or administratively.

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, the UK, India, Singapore 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 are also introducing “dynamic” injunctions. Such an injunction addresses the issue of mirror sites and disables infringing content that reenters the public domain by simply being moved to a different access point online. These types of dynamic injunction orders are becoming more commonplace, with similar mechanisms available in, for example, the Netherlands, Greece, Singapore, India, and the UK. They have proven to be effective in reducing the availability of copyright-infringing content within these jurisdictions.

Considering this, Taiwan’s long and winding path to finally enacting changes to its Copyright Act feels like a lost opportunity. The Index and other industry stakeholders have for years documented the many challenges that rightsholders in Taiwan face in effectively enforcing their copyright, yet instead of improving the legal environment, the new amendments to the Copyright Act have arguably made a difficult situation even worse through the expansion of copyright exceptions and limitations. The Index will continue to monitor Taiwan’s efforts to improve its copyright environment in 2023 and the extent to which enacted changes that affect indicators 14 and 15 have a negative impact on rightsholders in Taiwan.

## Trade Secrets and the Protection of Confidential Information

**24. Protection of trade secrets (criminal sanctions):** As noted in previous editions of the Index, in 2019, the Taiwanese Legislative Yuan passed a new trade secrets law. The new law replaced the 2013 Trade Secrets Protection Act. It provided several important updates, including introducing criminal penalties for trade secret violations; stronger protection for foreign rightsholders; and better protection for confidential information during criminal investigations. Since the law’s enforcement, criminal prosecution rates

have increased. The protection of trade secrets and confidential information has been further enhanced by 2022 amendments to the National Security Act. The new law targets economic espionage of what are termed “national core technologies” and includes criminal sanctions of fines between TWD1 million and 100 million (USD30,000-3 million) and prison sentences of up to 12 years. The Index will monitor how this law is applied in 2023 and beyond.

## Membership and Ratification of International Treaties

Taiwan is a full member of the WTO but is not eligible for membership in the UN or affiliated institutions, including WIPO. Taiwan is therefore unable to join and become a contracting party to any WIPO-administered treaty. Taking into consideration these political hurdles to Taiwan becoming a contracting party to many of the treaties included in the Index, since the fifth edition of the Index, Taiwan has not been scored on whether it is a signatory to and has acceded to these treaties. Instead, the Index has measured the extent to which core elements of the treaties included in the Index are present in equivalent Taiwanese domestic legislation. This is, however, not possible to do with all the treaties included in the Index. For example, those treaties whose primary goal is to establish and harmonize administrative and operational procedures for the international registration of IP rights cannot be wholly scored for Taiwan. Such treaties measured in the Index include the Patent Cooperation Treaty, Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and parts of the Hague Agreement Concerning the International Registration of Industrial Designs. Consequently, the maximum score for Taiwan in this category is 5.5 and not 7. Overall, Taiwan’s maximum available score in the Index is therefore 48.5, not 50.