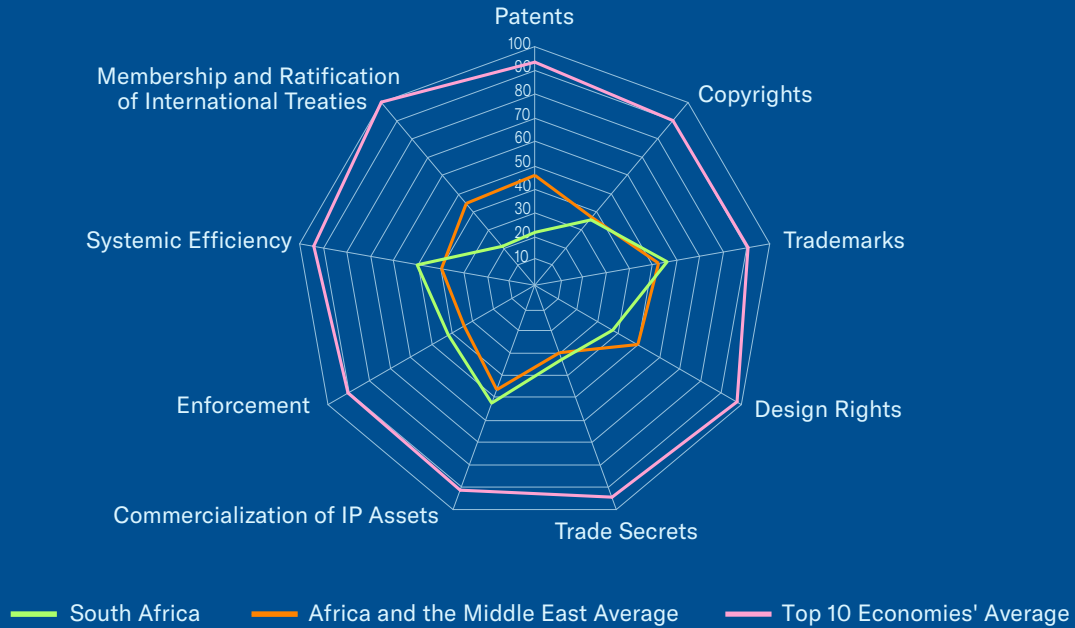
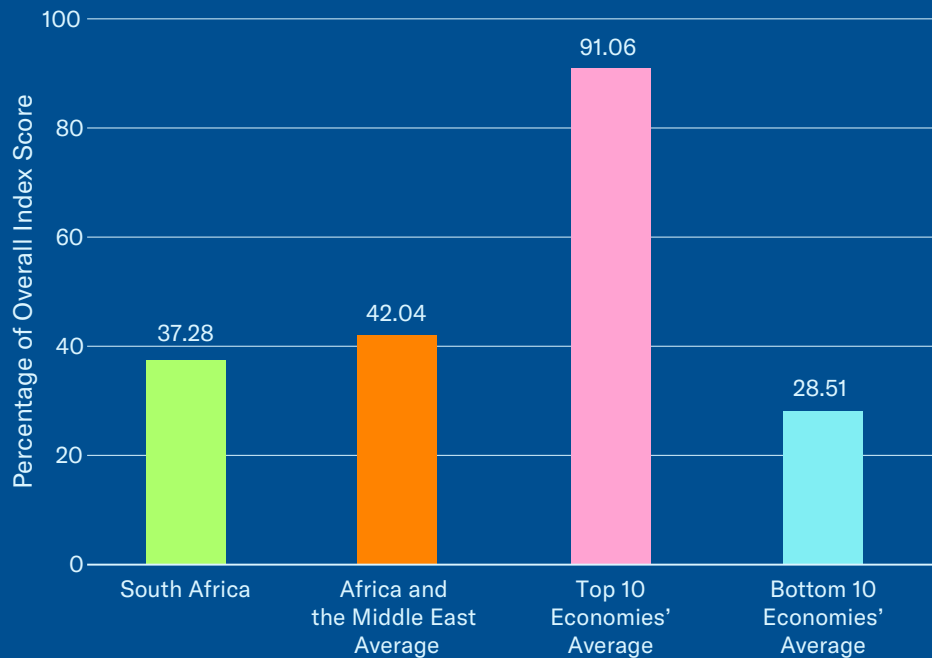


Category Scores



Overall Score in Comparison





Key Areas of Strength

- 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

- 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—focus is not on innovation and development of new IP in South Africa but on use of existing developed IP through CLs, parallel imports, and the restricting of patentability of pharmaceuticals
- Proposed copyright amendments create uncertainty for rightsholders through expansive “fair use” definitions
- Major gaps in laws and enforcement across all categories of the Index

Indicator	Score
Category 1: Patents, Related Rights and Limitations	2.00
1. Term of protection	1.00
2. Patentability requirements	0.00
3. Patentability of CIIIs	0.00
4. Plant variety protection	1.00
5. Pharmaceutical-related enforcement	0.00
6. Legislative criteria and use of compulsory licensing	0.00
7. Pharmaceutical patent term restoration	0.00
8. Membership of a Patent Prosecution Highway	0.00
9. Patent opposition	0.00
Category 2: Copyrights, Related Rights, and Limitations	2.53
10. Term of protection	0.53
11. Exclusive rights	0.50
12. Injunctive-type relief	0.00
13. Cooperative action against online piracy	0.50
14. Limitations and exceptions	0.25
15. TPM and DRM	0.50
16. Government use of licensed software	0.25
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	0.75
21. Industrial design term of protection	0.50
22. Exclusive rights and industrial design rights	0.25
Category 5: Trade Secrets and the Protection of Confidential Information	1.00
23. Protection of trade secrets (civil remedies)	0.50
24. Protection of trade secrets (criminal sanctions)	0.50
25. Regulatory data protection term	0.00

Indicator	Score
Category 6: Commercialization of IP Assets	3.17
26. Barriers to market access	0.50
27. Barriers to technology transfer	0.50
28. Registration and disclosure requirements of licensing deals	0.75
29. Direct government intervention in setting licensing terms	0.25
30. IP as an economic asset	0.50
31. Tax incentives for the creation of IP assets	0.67
Category 7: Enforcement	2.94
32. Physical counterfeiting rates	0.51
33. Software piracy rates	0.68
34. Civil and preceudal remedies	0.50
35. Preestablished damages	0.25
36. Criminal standards	0.50
37. Effective border measures	0.50
38. Transparency and public reporting by customs	0.00
Category 8: Systemic Efficiency	2.50
39. Coordination of IP rights enforcement	0.25
40. Consultation with stakeholders during IP policy formation	0.75
41. Educational campaigns and awareness raising	0.75
42. Targeted incentives for the creation and use of IP assets for SMEs	0.25
43. IP-intensive industries, national economic impact analysis	0.50
Category 9: Membership and Ratification of International Treaties	1.50
44. WIPO Internet Treaties	0.50
45. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.00
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	0.00
48. Membership of the Convention on Cybercrime, 2001	0.50
49. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
50. Post-TRIPS FTA	0.00

Total: 18.64



Spotlight on the National IP Environment

Past Editions versus Current Score

South Africa's overall score remains unchanged at 37.28% (18.64 out of 50).

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); 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 framework with draft amendments considered for both the Copyright Act and the Performers' Protection Act. In 2019, a bill was approved by both the National Assembly and the National Council of Provinces and was 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 again. A fresh set of stakeholder consultations were held in late 2021 and early 2022 by the Department of Trade, Industry and Competition, and a new draft law was passed by the National Assembly in June 2022. At the time of research, the president had not signed any finalized piece of legislation into law. As the Index has detailed since the first draft amendments were published, the proposed legislation has always suffered from several serious deficiencies. South African policymakers correctly identified the need to modernize the existing copyright laws; this remains as true today as in 2015 when the efforts began. Unfortunately,

none of the draft amendments, including the latest iteration, fundamentally address the current shortcomings in South Africa's copyright regime. Instead, they add more uncertainty and potential difficulties for rightsholders. Most notably, all 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 infringement of copyright and what is fair reproduction and use, with no relevant full definition in the current Copyright Act and only limited case law. All 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 as well as 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 enforce their rights more effectively or address the growing issue of online piracy. Additionally, 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. South Africa would be well served to introduce a similar mechanism to combat online piracy. The Index will continue to monitor these developments in 2023.