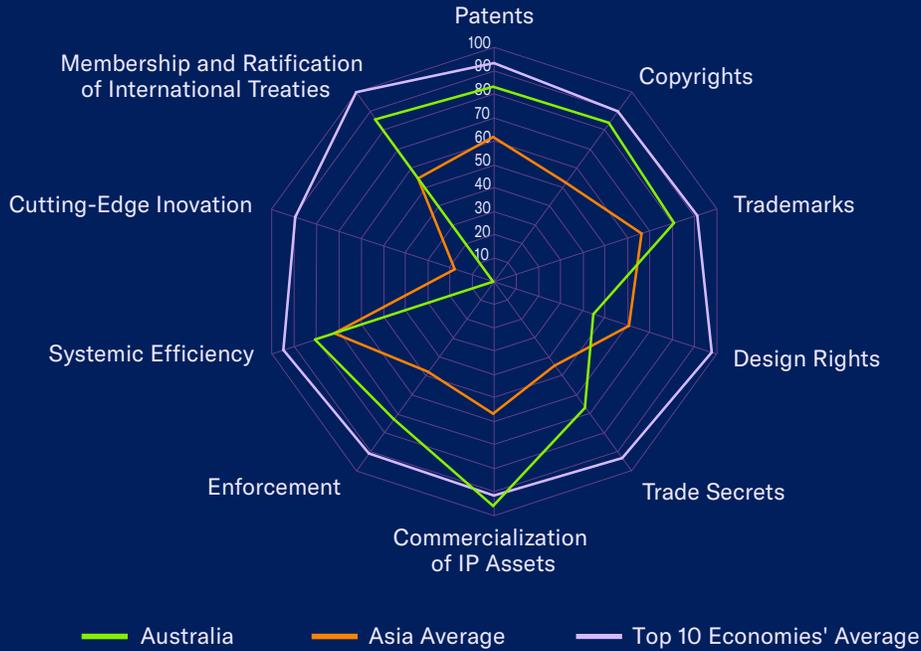




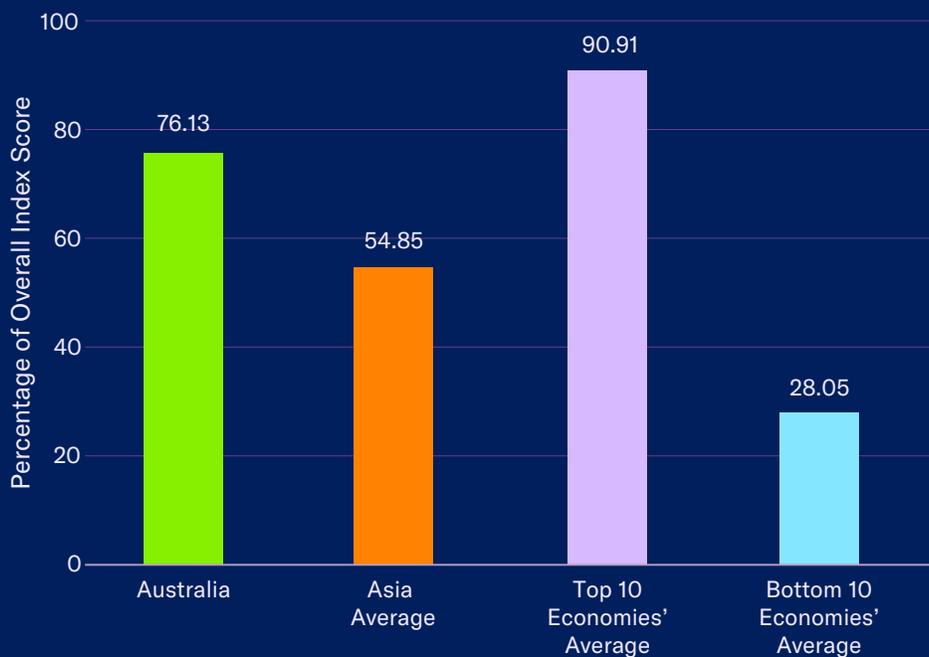
Australia

Rank
15/55

Category Scores



Overall Score in Comparison





Key Areas of Strength

- Global leader on copyright enforcement in the online space
- Established system of injunctive relief permitting the disabling of foreign-hosted infringing websites
- 2018 National Security Legislation Amendment (Espionage and Foreign Interference) introduces stiff penalties for industrial espionage on behalf of a foreign state entity
- No administrative or regulatory burdens in place hindering licensing activity
- 2019/2020 case law clarified grounds for patentability of biotechnology inventions

Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- Pre-grant patent opposition system causes significant delays to patent grants
- Not a contracting party to the Hague Agreement
- Gaps in pharmaceutical-related patent enforcement mechanism

Indicator	Score	Indicator	Score
Category 1: Patents Rights and Limitations	7.50	29. Direct Government intervention in setting licensing terms	1.00
1. Term of protection	1.00	30. IP as an economic asset	0.75
2. Patentability requirements	1.00	31. Tax incentives for the creation of IP assets	1.00
3. Patentability of CII	1.00	Category 7: Enforcement	5.07
4. Plant variety protection	1.00	32. Physical counterfeiting rates	0.75
5. Pharmaceutical-related enforcement	0.50	33. Software piracy rates	0.82
6. Legislative criteria and active use of compulsory licensing	1.00	34. Civil and procedural remedies	1.00
7. Pharmaceutical patent term restoration	1.00	35. Pre-established damages	0.75
8. Membership of a Patent Prosecution Highway	1.00	36. Criminal standards	0.75
9. Patent Opposition	0.00	37. Effective border measures	0.50
Category 2: Copyrights and Limitations	5.88	38. Transparency and public reporting by Customs	0.50
10. Term of protection	0.63	Category 8: Systemic Efficiency	4.00
11. Exclusive rights	1.00	39. Coordination of IP rights enforcement	0.75
12. Expeditious legal remedies disabling access to infringing content online	1.00	40. Consultation with stakeholders during IP policy formation	1.00
13. Cooperative action against online piracy	0.50	41. Educational campaigns and awareness raising	0.75
14. Limitations and exceptions	1.00	42. Targeted incentives for the creation and use of IP assets for SMEs	0.50
15. TPM and DRM	1.00	43. IP-intensive industries, national economic impact analysis	1.00
16. Government use of licensed software	0.75	Category 9: Cutting-Edge Innovation	0.00
Category 3: Trademarks Rights and Limitations	3.25	44. IP incentives for orphan medicinal product development	0.00
17. Term of protection	1.00	45. IP incentives for orphan medicinal product development, term of protection	0.00
18. Protection of well-known marks	1.00	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
19. Exclusive rights, trademarks	0.75	Category 10: Membership and Ratification of International Treaties	6.00
20. Frameworks against online sale of counterfeit goods	0.50	47. WIPO Internet Treaties	1.00
Category 4: Design Rights and Limitations	0.90	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	1.00
21. Industrial Design Term of Protection	0.40	49. Patent Law Treaty and Patent Cooperation Treaty	1.00
22. Exclusive rights, industrial design rights	0.50	50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	1.00
Category 5: Trade Secrets and the Protection of Confidential Information	2.00	51. Membership of the Convention on Cybercrime, 2001	1.00
23. Protection of trade secrets (Civil Remedies)	0.75	52. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
24. Protection of trade secrets (Criminal Sanctions)	0.75	53. Post-TRIPS FTA	1.00
25. Regulatory data protection term	0.50		
Category 6: Commercialization of IP Assets	5.75		
26. Barriers to market access	1.00		
27. Barriers to technology transfer	1.00		
28. Registration and disclosure requirements of licensing deals	1.00		

Total Score: 40.35

Spotlight on the National IP Environment

Past Editions versus Current Score

Australia's overall score remains unchanged at 40.35 out of 53 indicators.

Copyrights and Limitations

14. Scope of limitations and exceptions to copyrights and related rights:

As noted last year, like many Index economies, Australia is developing a regulatory framework for the development and use of AI-based technologies. Policy discussions over the last few years have focused on the need or desirability of AI-specific laws and regulations. As part of its review, the Department of Industry, Science, and Resources published a set of proposed mandatory “guardrails” for AI-based technologies in late 2024.

With respect to the interaction between copyright and AI, over the past two years, the Attorney General has hosted a series of “Ministerial Roundtables on Copyright,” including on AI, and established a “Copyright and AI Reference Group (CAIRG).” In a separate development, the Productivity Commission published a set of interim reports on how to boost economic productivity and output. One of these reports, *Harnessing Data and Digital Technology*, includes a dedicated discussion on copyright policy and AI.

As this document and preceding government-published materials have all pointed out, AI and machine learning are important areas of future economic activity. The Productivity Commission itself estimates that the development and use of AI technologies could lead to national productivity gains of about AUS 10 billion per year (an estimated AUS 116 billion over 10 years). This would be roughly 1% of Australia's current economic output.

The Commission's report includes a detailed analysis of the interaction between copyright protection and the development of new AI applications. The report acknowledges how “copyright violation is an example of a harm that AI could exacerbate by changing economic incentives.” Also, it states that “there is evidence to suggest that large AI models are already being trained on copyrighted materials without consent or compensation.” The report also recognizes that both increased licensing and stronger enforcement are avenues for addressing unauthorized use.

During the research, the Commission sought more information and assessed whether, and to what extent, reforms to the existing Australian copyright laws were necessary to address this issue. The Commission's interim report also considers the introduction of a text and data mining (TDM) exception in Australia. Under existing copyright law and Australia's fair dealing regime, there are no specific exceptions for text and data mining. As the report notes, such exceptions have been introduced in various jurisdictions worldwide. Most of these exceptions — including the European Union's Directive 2019/790 on Copyright and Related Rights in the Digital Single Market (CDSM Directive) — require that any mining, copying, or computational analysis carried out under TDM exceptions can only be carried out on works that have been lawfully obtained or accessed. However, given the existing dynamics of the Internet and the volume of infringing content available online, it is essential that safeguards be adhered to, and that rights holders can appropriately enforce their rights.

The extent to which the development of AI technologies falls under existing copyright exceptions — including both general exceptions regimes and those specific to text and data mining — is still being determined through litigation across the globe. In fact, in the last three years there have been a growing number of copyright infringement lawsuits filed worldwide. Most of these proceedings are still pending, with only a handful reaching a final initial verdict. Consequently, there is no established international legal consensus or guiding precedent from any major legal jurisdiction on what constitutes lawful use of copyright materials for AI development.

Over the same period, there has also been a growing number of licensing settlements between rights holders and AI developers. After the Productivity Commission published its report in the summer, several rights holder groups raised concerns about the introduction of a TDM exception in Australia. In response, Attorney General Michelle Rowland stated that “any potential reform to Australia’s copyright laws must consider the impacts on Australia’s creative, content, and news media sectors.” Following an “Economic Reform Roundtable” hosted by the Government in August, Treasurer Jim Chalmers announced that the Government would be conducting another review of AI policy. The Index will continue to monitor all these developments in 2026.