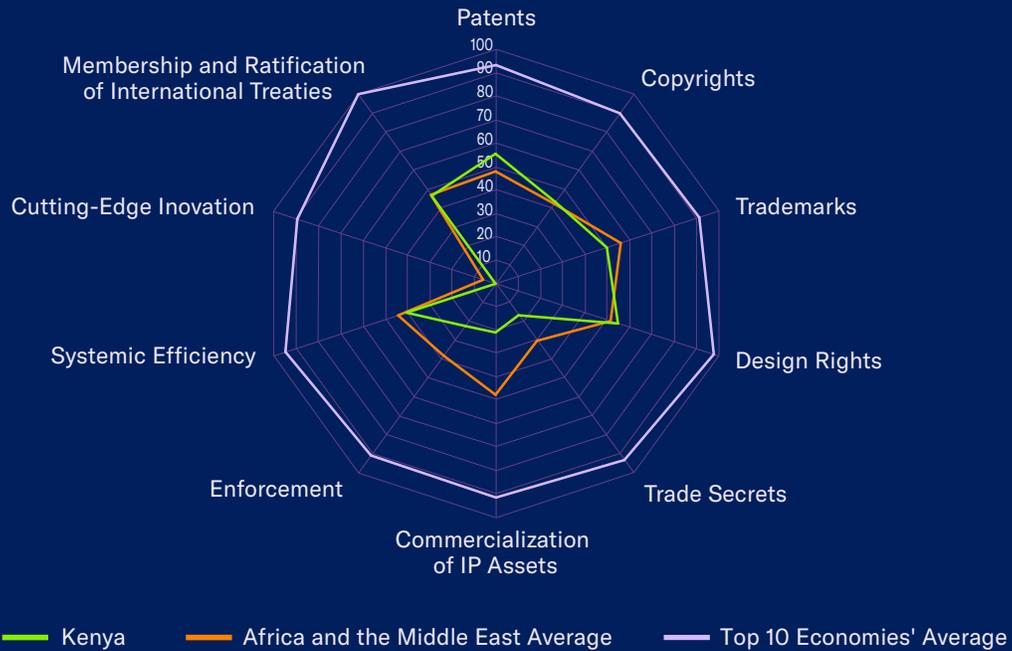




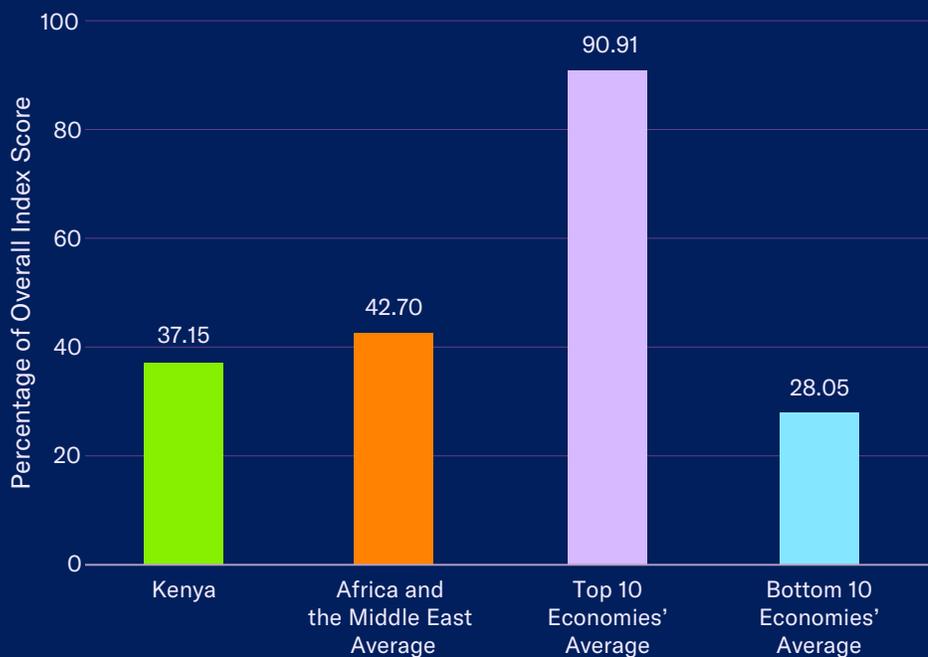
Kenya

Rank
42/55

Category Scores



Overall Score in Comparison





Key Areas of Strength

- 2024 ARIPO-China National Intellectual Property Administration (CNIPA) PPH – first PPH for Kenya and other ARIPO parties
- 2021 Anti-Counterfeit Amendment Regulations allow rights holders to register their rights with Anti Counterfeit Authority
- 2020 Anti Counterfeit Act amendments strengthen enforcement powers
- 2019 copyright amendments strengthened protection of copyright in Kenya
- Basic IP framework in place, including several sector-specific rights
- Dedicated IP bodies and enforcement agencies
- Recent efforts to improve knowledge and frameworks for proper use and commercialization of IP assets

Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- Data Protection (General) Regulations 2021 do not provide clarity on potential data localization
- Barriers in place for licensing and technology transfer
- No R&D or IP specific tax incentives in place
- Weak and backlogged judicial system with notable deficiencies in criminal enforcement
- Important gaps in copyright protection and enforcement, particularly in the digital space
- Legislative and resource barriers to border enforcement

| Indicator | Score | Indicator | Score |
|---|-------------|--|-------------|
| Category 1: Patents Rights and Limitations | 5.00 | 29. Direct Government intervention in setting licensing terms | 0.00 |
| 1. Term of protection | 1.00 | 30. IP as an economic asset | 0.50 |
| 2. Patentability requirements | 0.50 | 31. Tax incentives for the creation of IP assets | 0.00 |
| 3. Patentability of CII | 0.25 | Category 7: Enforcement | 1.56 |
| 4. Plant variety protection | 1.00 | 32. Physical counterfeiting rates | 0.30 |
| 5. Pharmaceutical-related enforcement | 0.00 | 33. Software piracy rates | 0.26 |
| 6. Legislative criteria and active use of compulsory licensing | 1.00 | 34. Civil and procedural remedies | 0.25 |
| 7. Pharmaceutical patent term restoration | 0.00 | 35. Pre-established damages | 0.00 |
| 8. Membership of a Patent Prosecution Highway | 0.50 | 36. Criminal standards | 0.25 |
| 9. Patent Opposition | 0.75 | 37. Effective border measures | 0.25 |
| Category 2: Copyrights and Limitations | 3.03 | 38. Transparency and public reporting by Customs | 0.25 |
| 10. Term of protection | 0.53 | Category 8: Systemic Efficiency | 2.00 |
| 11. Exclusive rights | 0.50 | 39. Coordination of IP rights enforcement | 0.50 |
| 12. Expeditious legal remedies disabling access to infringing content online | 0.25 | 40. Consultation with stakeholders during IP policy formation | 0.25 |
| 13. Cooperative action against online piracy | 0.25 | 41. Educational campaigns and awareness raising | 0.50 |
| 14. Limitations and exceptions | 0.50 | 42. Targeted incentives for the creation and use of IP assets for SMEs | 0.25 |
| 15. TPM and DRM | 0.50 | 43. IP-intensive industries, national economic impact analysis | 0.50 |
| 16. Government use of licensed software | 0.50 | Category 9: Cutting-Edge Innovation | 0.00 |
| Category 3: Trademarks Rights and Limitations | 2.00 | 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 | 0.50 | 46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development | 0.00 |
| 19. Exclusive rights, trademarks | 0.25 | Category 10: Membership and Ratification of International Treaties | 3.25 |
| 20. Frameworks against online sale of counterfeit goods | 0.25 | 47. WIPO Internet Treaties | 0.50 |
| Category 4: Design Rights and Limitations | 1.10 | 48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks | 0.75 |
| 21. Industrial Design Term of Protection | 0.60 | 49. Patent Law Treaty and Patent Cooperation Treaty | 0.75 |
| 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 | 0.50 | 51. Membership of the Convention on Cybercrime, 2001 | 0.00 |
| 23. Protection of trade secrets (Civil Remedies) | 0.25 | 52. The Hague Agreement Concerning the International Registration of Industrial Designs | 0.00 |
| 24. Protection of trade secrets (Criminal Sanctions) | 0.25 | 53. Post-TRIPS FTA | 0.25 |
| 25. Regulatory data protection term | 0.00 | | |
| Category 6: Commercialization of IP Assets | 1.25 | | |
| 26. Barriers to market access | 0.50 | | |
| 27. Barriers to technology transfer | 0.25 | | |
| 28. Registration and disclosure requirements of licensing deals | 0.00 | | |

Total Score: 19.69

Spotlight on the National IP Environment

Past Editions versus Current Score

Kenya's overall score has increased from 19.44 out of 53 indicators in the 13th edition to 19.69. This reflects a score increase on indicator 53.

Area of Note

In early 2025, Kenya's cabinet announced plans to merge three of the major government IP agencies — the Kenya Industrial Property Institute, the Anti-Counterfeit Authority, and the Kenya Copyright Board — into a single, unified national IP office. The proposal echoes similar ideas in a 2020 draft IP bill released by the Industrial Property Institute. At the time of research, no formal merger had taken place. The Index will continue to monitor these developments in 2026.

Patent Rights and Limitations

2. Patentability requirements; and 3. Patentability of computer-implemented inventions (CIIs):

In early 2025, the Extraordinary 15th Session of the Administrative Council of the African Regional Intellectual Property Organization (ARIPO) adopted changes to the Harare Protocol on Patents and Industrial design, which have now taken effect. These changes provide future applicants with greater procedural flexibility and more clearly defined timelines but also raise user fees. Unfortunately, the changes did not bring about more wholesale improvements to the patenting process. As past editions of the Index have noted, both Kenya's Patent Act and the Harare Protocol lack clarity on the extent to which CIIs qualify as patentable subject matter.

In Kenya, the Industrial Property Act and Kenya Industrial Property Institute's (KIPI) *Guideline for the examination of Patents, Utility Models, and Industrial Designs* are silent on the patentability of CIIs. Section 21(3) of the Industrial Property Act excludes as patentable subject matter “discoveries, scientific theories and mathematical methods...schemes, rules or methods for doing business, performing purely mental acts or playing games...[and the] mere presentation of information.” The *Guideline* simply states that “‘methods of doing business’ is an exclusion of importance. Methods of bookkeeping, trading stocks and shares, etc., are generally not patentable.” Similarly, under Section 3, paragraph 10(h) of the Harare Protocol, “programs for computers” are explicitly excluded. ARIPO's examination guidelines state that if there is a clear technical effect and a contribution to the prior art, they may grant CIIs.

However, in practice, very few CII patents have been processed in either Kenya or through ARIPO. For example, WIPO patent statistics show that only a small number of patent applications (patent publications by technology) have been under the categories “Computer technology” and “IT methods for management.” Data for Kenya are available only for 1980-1989, during which only four patent applications were published in the categories “Computer technology” and “IT methods for management.” This compares to a total of 959 total applications during this time period. Data for ARIPO also suggests that CIIs and ICT-related patents are relatively few. Between 1980 and 2017, they published a total of 320 patent applications under the categories “Computer technology” and “IT methods for management.”

This compares with 10,421 applications during this period, representing 3.07% of all published applications. Statistics for the number of patents actually granted are not available by technology for Kenya or ARIPO. But in most jurisdictions, not all patents published are granted.

Computer software and computer-implemented inventions (CIIs) are central to nearly all socio-economic activities in the 21st century, from desktop PCs and smartphones to artificial intelligence and the Internet of Things. Clarifying the patentability of CIIs in ARIPO and Kenya would be a straightforward way to foster local innovation and technological development. This improvement could also encourage investment and resources to develop new digital and ICT-based technologies in Kenya and other ARIPO contracting states. The Index will continue to monitor these developments in 2026.

Copyrights and Limitations

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

Like many other Index economies, Kenya is developing new government policies on AI-based technologies and applications. Following a brief consultation in early 2025, the government launched the *Kenya Artificial Intelligence Strategy 2025-2030* in March. As noted in the Index, AI and machine learning are important areas of future economic activity, as advances in computational power and new technologies enable scientific research and innovation through the analysis of large volumes of data. However, there are real concerns about how the development, application, and use of these technologies will affect creators and rights holders worldwide. The *Strategy* document is silent on IP issues, specifically on the interaction between AI and copyright protection.

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 Index will continue to monitor these developments in 2026.

Trade Secrets and the Protection of Confidential Information; and Membership and Ratification of International Treaties

25. Regulatory data protection (RDP) term; and 53. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices:

As noted in last year's Index, Kenya concluded a Comprehensive Economic Partnership Agreement (CEPA) with the UAE in 2024. At the time of the Index's publication, the finalized Kenya-UAE CEPA had not been made publicly available and could not be assessed. The Agreement has since been published and can now be benchmarked in this year's Index. The UAE-Kenya CEPA includes a dedicated IP chapter. This is a positive feature of the agreement, which reflects a recognition of the importance of IP-intensive industries and the centrality of IP rights to future trade and economic development in all economies. As has been noted in the Index, this is not always the case. Many 21st-century post-TRIPS FTAs do not include a dedicated IP chapter or otherwise skirt meaningful provisions on IP rights. Unfortunately, the UAE-Kenya CEPA does not meet the standards of a modern post-TRIPS FTA, as the IP chapter lacks substantive IP provisions aligned with international best practices, as identified in the Index. Much of the IP chapter (Chapter 13) is linked to rights defined and specified in TRIPS. When signed in 1994, the TRIPS Agreement represented an unprecedented commitment and recognition of minimum global IP standards. But 30 years on from Marrakesh, TRIPS is outdated and no longer encompasses all the standards and protections a modern, innovation-based economy needs.

Still, one noteworthy and highly positive feature of the UAE-Kenya CEPA is the inclusion of a defined term of regulatory data protection for biopharmaceuticals. Under Section G, Article 13.33, the agreement contains a clearly defined RDP term of five years for submitted clinical test data as part of sanitary registration for a new medicinal product. Until now, Kenya has not had a defined period for RDP. Historically, this indicator has been scored based on whether an economy is a signatory to, and has ratified or acceded to, a modern post-TRIPS FTA that includes substantive IP provisions in line with international best practices, as identified in the Index. As such, this indicator has not accounted for the allocation of partial scores in cases where a post-TRIPS FTA includes only a limited number of substantive IP provisions, consistent with international best practices and identified in the Index.

To take better account of the increasing number of post-TRIPS FTAs that include some substantive IP provisions identified in the Index, from this edition of the Index onward, it will be possible to achieve a partial score ranging from 0, 0.25, 0.5, 0.75, and 1. Like all other indicators in this category, score allocation will still be evenly divided between the signature and ratification or accession to an international treaty. As a result of the change in the scoring methodology, the score for indicator 53 has increased by 0.25. The introduction of a five-year term of regulatory data protection, as defined in the CEPA, would be a significant and positive development in Kenya and would result in a score increase on indicator 25. The Index will continue to monitor these developments in 2026.