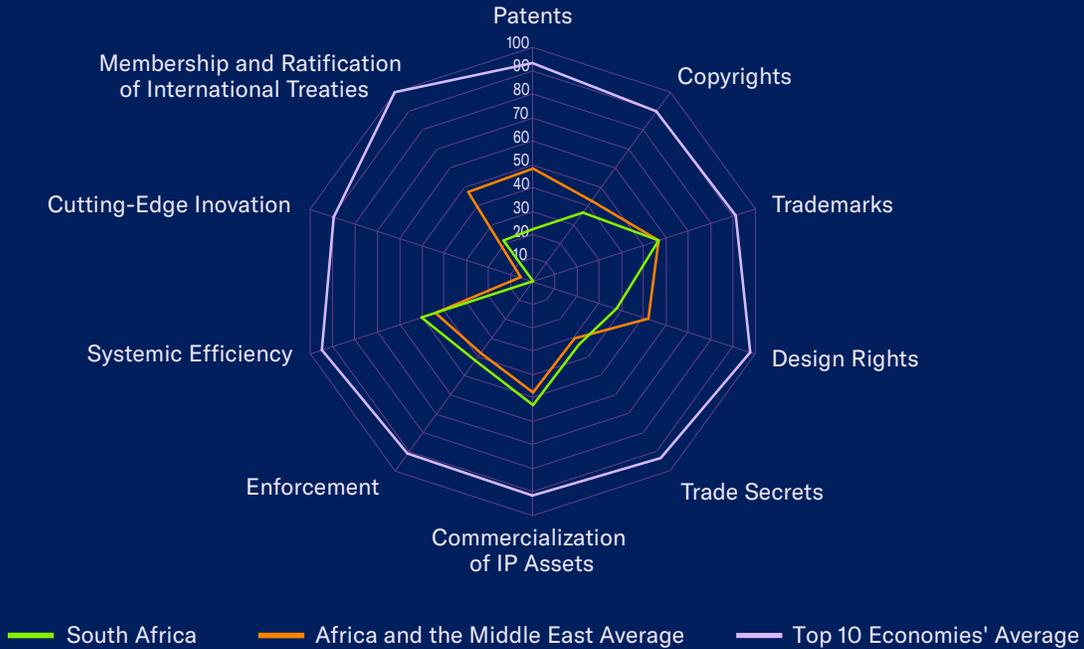




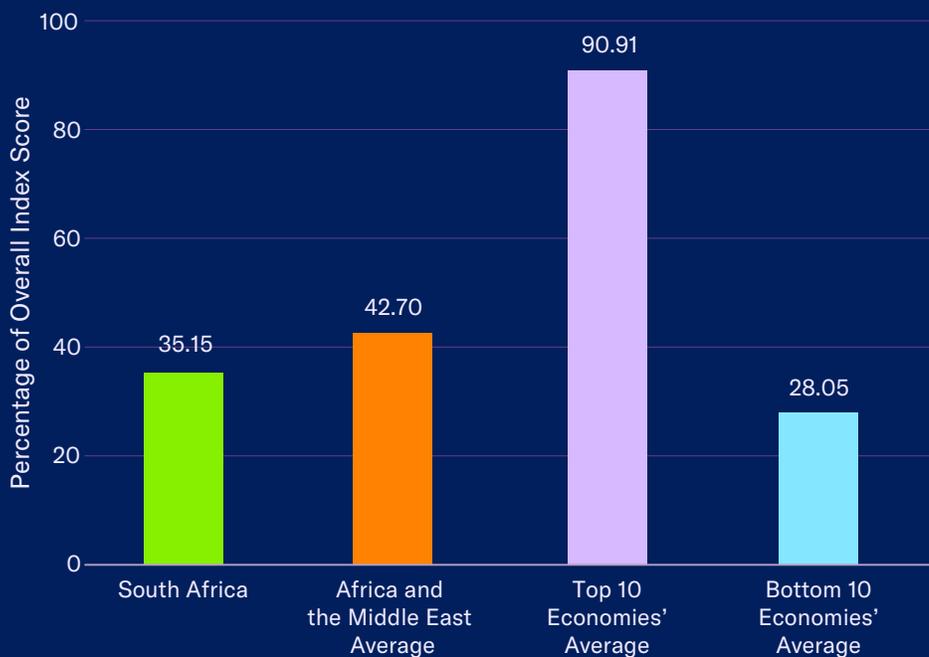
South Africa

Rank
46/55

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

Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- 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 of use of existing developed IP through CLs, parallel imports and restricting patentability of pharmaceuticals
- Proposed copyright amendments create uncertainty for rights holders through expansive 'fair use' definitions
- Major gaps in laws and enforcement across all categories of the Index

Indicator	Score	Indicator	Score
Category 1: Patents Rights and Limitations		2.00	
1. Term of protection	1.00	29. Direct Government intervention in setting licensing terms	0.25
2. Patentability requirements	0.00	30. IP as an economic asset	0.50
3. Patentability of CII	0.00	31. Tax incentives for the creation of IP assets	0.67
4. Plant variety protection	1.00	Category 7: Enforcement	
5. Pharmaceutical-related enforcement	0.00	2.93	
6. Legislative criteria and active use of compulsory licensing	0.00	32. Physical counterfeiting rates	0.50
7. Pharmaceutical patent term restoration	0.00	33. Software piracy rates	0.68
8. Membership of a Patent Prosecution Highway	0.00	34. Civil and procedural remedies	0.50
9. Patent Opposition	0.00	35. Pre-established damages	0.25
Category 2: Copyrights and Limitations		2.53	
10. Term of protection	0.53	36. Criminal standards	0.50
11. Exclusive rights	0.50	37. Effective border measures	0.50
12. Expeditious legal remedies disabling access to infringing content online	0.00	38. Transparency and public reporting by Customs	0.00
13. Cooperative action against online piracy	0.50	Category 8: Systemic Efficiency	
14. Limitations and exceptions	0.25	2.50	
15. TPM and DRM	0.50	39. Coordination of IP rights enforcement	0.25
16. Government use of licensed software	0.25	40. Consultation with stakeholders during IP policy formation	0.75
Category 3: Trademarks Rights and Limitations		2.25	
17. Term of protection	1.00	41. Educational campaigns and awareness raising	0.75
18. Protection of well-known marks	0.50	42. Targeted incentives for the creation and use of IP assets for SMEs	0.25
19. Exclusive rights, trademarks	0.50	43. IP-intensive industries, national economic impact analysis	0.50
20. Frameworks against online sale of counterfeit goods	0.25	Category 9: Cutting-Edge Innovation	
Category 4: Design Rights and Limitations		0.75	
21. Industrial Design Term of Protection	0.50	44. IP incentives for orphan medicinal product development	0.00
22. Exclusive rights, industrial design rights	0.25	45. IP incentives for orphan medicinal product development, term of protection	0.00
Category 5: Trade Secrets and the Protection of Confidential Information		1.00	
23. Protection of trade secrets (Civil Remedies)	0.50	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
24. Protection of trade secrets (Criminal Sanctions)	0.50	Category 10: Membership and Ratification of International Treaties	
25. Regulatory data protection term	0.00	1.50	
Category 6: Commercialization of IP Assets		3.17	
26. Barriers to market access	0.50	47. WIPO Internet Treaties	0.50
27. Barriers to technology transfer	0.50	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.00
28. Registration and disclosure requirements of licensing deals	0.75	49. Patent Law Treaty and Patent Cooperation Treaty	0.50
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
		51. Membership of the Convention on Cybercrime, 2001	0.50
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
		53. Post-TRIPS FTA	0.00

Total Score: 18.63

Spotlight on the National IP Environment

Past Editions versus Current Score

South Africa's overall score remains unchanged at 18.63 out of 53 indicators.

Area of Note

As noted below under Category 2: Copyrights and Limitations, South Africa has been reforming its copyright laws for over a decade. In 2024 testimony before Parliament, the Department of Trade, Industry, and Competition outlined plans to expand these reform efforts to other areas of South Africa's national IP environment, including patents and design rights. Specifically, the Department is proposing to translate key ideas contained in the 2018 document, *Intellectual Property Policy of The Republic of South Africa Phase I*, into new legislation and/or official policies. As noted in the Index at the time of its publication, this document — and the thinking it represents — is fundamentally flawed. It focuses almost exclusively on ways in which South Africa could better access existing and developed forms of IP rather than on how IP can be created, commercialized, and become an industrial asset in South Africa.

For all economies — emerging and developed alike — what drives innovation, technological advances, and, ultimately, economic development and growth is the creation of new forms of intangible assets and IP. *The IP Policy* is silent on this. Instead, it proposes to introduce new, more restrictive standards of patentability, change the existing framework for the issuance and use of compulsory licenses, permit parallel importation of medicines, and establish a new pre- and post-grant patent opposition mechanism.

At the time of the research, no draft bill had been published, but legislative plans presented to Parliament fully embraced these ideas. They particularly focused on compulsory licensing and parallel imports, which were identified as the second of three key priority areas. As the South African government pursues a program of national IP rights reforms, we encourage them to use the findings of the Index and the accompanying Statistical Annex as a guide in 2025 and beyond.

Copyrights 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; 14. Scope of limitations and exceptions to copyrights and related rights; and 15. Technological protection measures and digital rights management legislation:

In 2025, there was no discernible progress on meaningful copyright reform in South Africa. As detailed in previous editions of the Index, South Africa has, over the past decade, been engaged in reforming its copyright laws, with draft amendments considered for both the Copyright Act and the Performers' Protection Act. At the time of the research, the bill was still under review by the Constitutional Court after a hearing held in May 2025. The proposed legislation has long suffered from serious deficiencies; however, South African policymakers correctly identified the need to modernize the existing copyright laws. This remains as true today as it was in 2015, when the efforts began.

As in the rest of the world, the ICT and internet revolutions are fundamentally changing how South Africans interact socially and economically. Having an effective, modern copyright regime that encourages innovation and creativity is critical to making the most of the socio-economic opportunities that these deep structural changes offer. In 2010, the South African Government, together with WIPO, examined the contribution of copyright-based industries to the South African economy. The report found that these industries contributed 4.11% to GDP and 4.08% to national employment. While substantial, these contributions are smaller than those in other economies with more modernized copyright frameworks, such as the United States and Korea, where WIPO estimated contributions to be over 10%.

Given the size and breadth of South Africa's creative sector, with the right IP-based incentives in place, the copyright industries could become an even more powerful driver of economic growth and development. Unfortunately, the draft amendments do not fundamentally address the current shortcomings in South Africa's copyright regime. Instead, they add more uncertainty and potential difficulties for rights holders. Most notably, the draft amendments have consistently sought to introduce a new, more expansive system of copyright exceptions and limitations.

For many years, there has been a lack of clarity in South Africa about what constitutes copyright infringement and what constitutes fair reproduction and use, with no comprehensive definition in the current Copyright Act and only limited case law. All the 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 evaluated against the three-step test embodied in the Berne Convention and the WTO TRIPS Agreement.

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, the proposed amendments do little to fundamentally strengthen rights holders' ability to enforce their rights or address the growing issue of online piracy. Notably, the draft legislation still does not include additional enforcement measures, such as disabling access through an injunctive relief program. The last decade has seen a sharp increase in the number of economies using judicial or administrative mechanisms to disable access to infringing content effectively.

The Index will continue to monitor these developments in 2026.