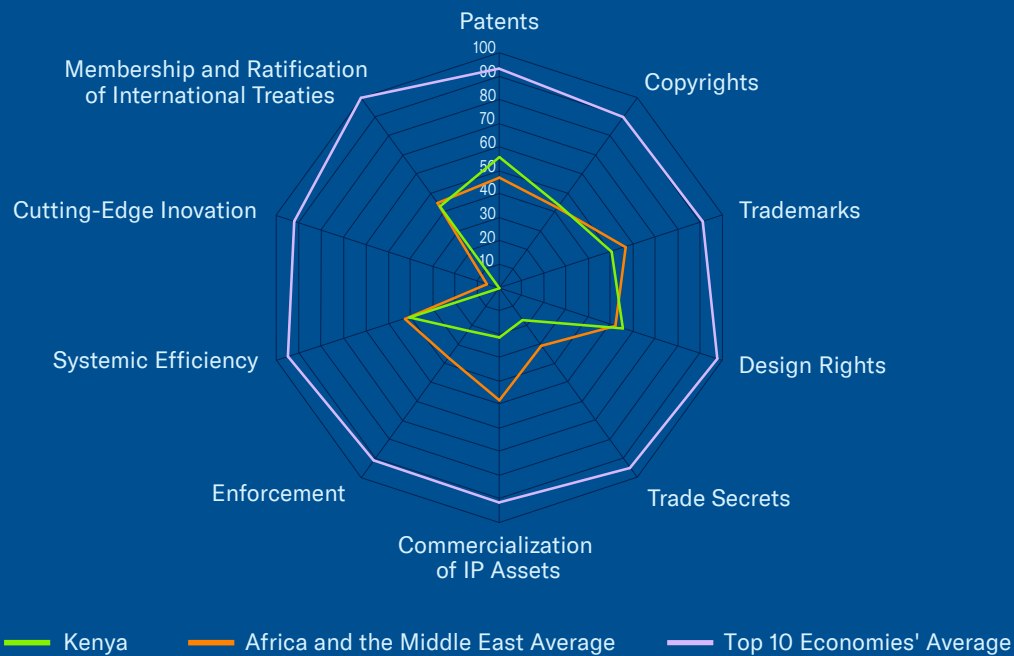


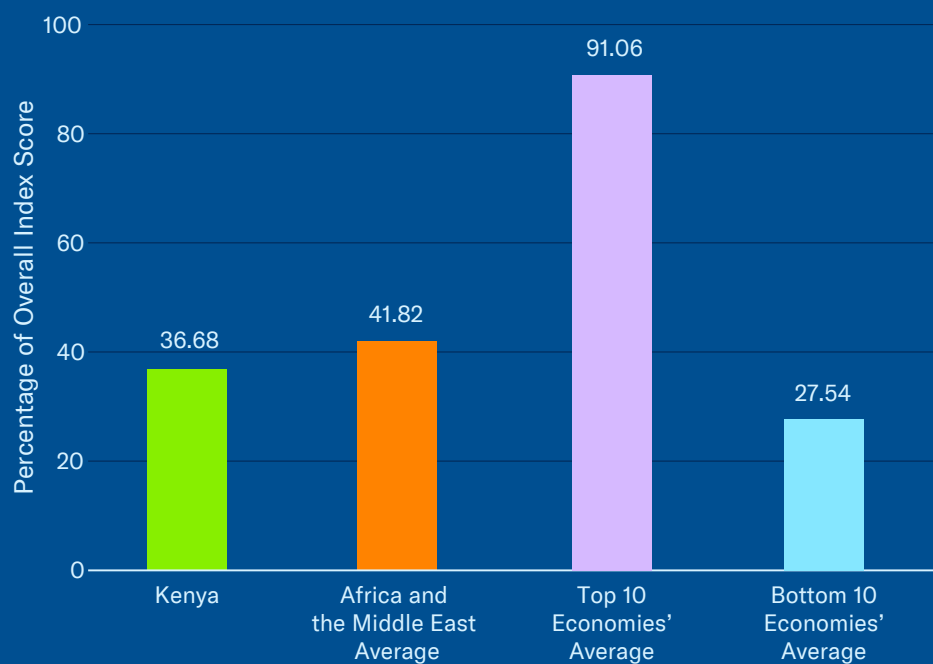
Kenya

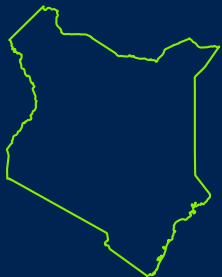
Rank
42/55

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 rightsholders to register their rights with the Anti-Counterfeit Authority
- 2020 Anti-Counterfeit Act amendments strengthen enforcement powers
- 2019 copyright amendments strengthened protection of copyright in Kenya
- Basic IP framework is 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 requirements under the 2019 Data Protection Act
- Draft IP Bill would combine IP authorities under one office; it is unclear whether each section would have enough resources and staff
- Barriers are in place for licensing and technology transfer
- No R&D or IP-specific tax incentives are in place
- No targeted incentives for the creation and use of IP assets for SMEs
- Weak and backlogged judicial system with notable deficiencies in criminal enforcement
- Important gaps exist 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		Category 7: Enforcement	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.00
2. Patentability requirements	0.50	30. IP as an economic asset	0.50
3. Patentability of CII	0.25	31. Tax incentives for the creation of IP assets	0.00
4. Plant variety protection	1.00		
5. Pharmaceutical-related enforcement	0.00	32. Physical counterfeiting rates	0.30
6. Legislative criteria and use of compulsory licensing	1.00	33. Software piracy rates	0.26
7. Pharmaceutical patent term restoration	0.00	34. Civil and precedural remedies	0.25
8. Membership of a Patent Prosecution Highway	0.50	35. Pre-established damages	0.00
9. Patent opposition	0.75	36. Criminal standards	0.25
		37. Effective border measures	0.25
Category 2: Copyrights and Limitations		38. Transparency and public reporting by customs	0.25
10. Term of protection	0.53		
11. Exclusive rights	0.50	Category 8: Systemic Efficiency	
12. Expeditious legal remedies disabling access to infringing content online	0.25	39. Coordination of IP rights enforcement	0.50
13. Cooperative action against online piracy	0.25	40. Consultation with stakeholders during IP policy formation	0.25
14. Limitations and exceptions	0.50	41. Educational campaigns and awareness raising	0.50
15. TPM and DRM	0.50	42. Targeted incentives for the creation and use of IP assets for SMEs	0.25
16. Government use of licensed software	0.50	43. IP-intensive industries, national economic impact analysis	0.50
Category 3: Trademarks Rights and Limitations			
17. Term of protection	1.00	Category 9: Cutting-Edge Innovation	
18. Protection of well-known marks	0.50	44. IP incentives for orphan medicinal product development	0.00
19. Exclusive rights, trademarks	0.25	45. IP incentives for orphan medicinal product development, term of protection	0.00
20. Frameworks against online sale of counterfeit goods	0.25	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
Category 4: Design Rights and Limitations			
21. Industrial design term of protection	0.60	Category 10: Membership and Ratification of International Treaties	
22. Exclusive rights, industrial design rights	0.50	47. WIPO Internet Treaties	0.50
Category 5: Trade Secrets and the Protection of Confidential Information		48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.75
23. Protection of trade secrets (civil remedies)	0.25	49. Patent Law Treaty and Patent Cooperation Treaty	0.75
24. Protection of trade secrets (criminal sanctions)	0.25	50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	1.00
25. Regulatory data protection term	0.00	51. Membership of the Convention on Cybercrime, 2001	0.00
Category 6: Commercialization of IP Assets		52. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
26. Barriers to market access	0.50	53. Post-TRIPS FTA	0.00
27. Barriers to technology transfer	0.25		
28. Registration and disclosure requirements of licensing deals	0.00		

Percentage of Overall Score: 36.68%

Total Score: 19.44

Spotlight on the National IP Environment

Past Editions versus Current Score

Kenya's overall Index score has increased from 18.94 out of 50 indicators in the twelfth edition to 19.44 out of 53 indicators. This reflects a score increase for indicator 8.

Patent Rights and Limitations

8. Membership of a Patent Prosecution Highway (PPH):

Historically, neither Kenya nor ARIPO have participated in the IP5 PPH or the Global PPH or have had in place a PPH on a bilateral basis. This changed in 2024 with the announcement that ARIPO and the China National Intellectual Property Administration had agreed on a PPH pilot program. At the time of research, the agreement had come into effect and would remain operational for five years. PPH initiatives and increased cooperation among IP offices are one of the most tangible ways in which the administration and functioning of the international IP system can be improved and harmonized to help inventors and rightsholders. As a result of this positive development, the score for this indicator has increased by 0.5.

Copyrights and Limitations

11. Legal measures that provide necessary exclusive rights preventing infringement of copyrights and related rights (including web hosting, streaming, and linking; 12. Expeditious legal remedies disabling access to infringing content online; and 13. Availability of frameworks that promote cooperative action against online piracy:

As noted over the course of the Index, rightsholders in Kenya have long struggled with high and persistent levels of copyright piracy with the availability of physical and digital pirated music, film, and other copyrighted content high.

Up until 2019, the Copyright Act only provided for basic exclusive rights to redress copyright infringement with limited reference to the digital or online sphere. The passing and signing into law of the Copyright (Amendment) Act of that year introduced new copyright enforcement mechanisms, including clear definitions of ISP and service providers' liability as well as an injunctive-style relief mechanism. In addition to these changes, the Amendment Act also extended copyright protection to computer programs and criminalized the circumvention of technological protection measures or the manufacture of devices to circumvent technical protections. As a result of this positive action, the scores for indicators 11, 12, and 13 increased in the eighth edition of the Index.

Yet, despite these positive legal developments, copyright enforcement in Kenya has remained fraught. As internet penetration continues to rise with an increasing number of the population having access either through a fixed broadband connection or, more frequently, mobile telephone services, online piracy has also increased. For example, figures produced by "Partners Against Piracy," a local Kenyan antipiracy group, estimates that online piracy cost the Kenyan economy just under KSH100 billion (about \$750 million) in 2022. To help address this issue, in late 2023, the Kenya Copyright Board announced the launch of a new "Blank Tape Levy" scheme. Emulating similar levy systems in place in other economies in Africa and Europe, the purpose of this program is to raise funds by imposing an additional surcharge on blank media that, in the words of the board's public notice, "may be used to carry copyright protected content for private copying." At the time of research, the scheme was not operational and was facing legal action. The Index will continue to monitor these developments in 2025.

Incentives for Cutting-Edge Innovation

44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:

Kenya is in the midst of developing its health system and national health policies. The expansion of health services and provision of universal health coverage is a fundamental component of Kenya's *Vision 2030*. In 2020, the Ministry of Health released the policy blueprint *Kenya Universal Health Coverage Policy 2020–2030*. This document did not refer specifically to rare diseases or the need for building rare disease-specific health infrastructure such as registries or treatment and diagnostics centers. However, several patient groups and clinicians highlight the needs of patients with rare diseases, including the national advocacy group Rare Disorders Kenya. No specific legislative framework is in place for rare diseases, including with respect to R&D and IP-based market exclusivity incentives for orphan medicinal product development.

Membership and Ratification of International Treaties

Being a contracting party to key international IP treaties reflects an economy's broader participation in the international IP community and embrace of the highest IP standards. As such, treaty participation is a strong signal of the extent to which an economy both chooses to participate in the international IP system and adhere to established standards and best practices. Kenya's score in this category of the Index has increased from a score of 1.50, or 37.50%, in the fifth edition of the Index (the first year Kenya was included) to now achieving a score of 3.00, or 43%, of the total available score.

Overall, Kenya is a contracting party and has acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks; the Patent Cooperation Treaty; and the International Convention for the Protection of New Varieties of Plants, Act of 1991. Kenya is a signatory but has not acceded to the WIPO Internet treaties, the Patent Law Treaty, and the Singapore Treaty on the Law of Trademarks. Kenya is not a contracting party to the Convention on Cybercrime, 2001 or the Hague Agreement Concerning the International Registration of Industrial Designs.

50. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices:

Kenya has, in the past few years, either concluded or has been in the process of negotiating several FTAs and economic partnerships. For example, Kenya is a contracting party to the African Continental Free Trade Area, signed by 44 African economies in 2018. The agreement holds the potential to fundamentally revolutionize economic activity in Africa by reducing barriers to trade and economic interaction across the entire continent. Parts of the Free Trade Area (Phase I) came into force in 2019 and 2021. At the time of research, outstanding issues to be negotiated as Phase II of the agreement include a Protocol on Intellectual Property. Similarly, Kenya has been in negotiations with the United States on both a traditional FTA and, under the Biden administration, a Strategic Trade and Investment Partnership. In 2024, Kenya concluded a Comprehensive Economic Partnership Agreement (CEPA) with the UAE. Over the past three years, the UAE has on a bilateral basis concluded several CEPAs, including UAE-India CEPA (2022), UAE-Israel CEPA (2023), UAE-Indonesia CEPA (2023), and UAE-Turkey CEPA (2023). All these CEPAs include a dedicated IP chapter.

This is a positive feature of the agreements, and all parties should be congratulated for recognizing 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 skirt meaningful provisions on IP rights altogether. Unfortunately, these CEPAs do not conform to the standards of a modern post-TRIPS FTA because the IP chapters do not include substantive IP provisions in line with international best practices and identified in the Index. Indeed, although some variation exists between the individual agreements, many of the IP chapters are 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 after Marrakesh, TRIPS is outdated and no longer represents or includes all the standards and protections that a modern, innovation-based economy needs. In terms of specific feature and IP rights missing from these agreements, copyright provisions are relatively limited with no reference to the challenges that the online environment or infringement represents to rightsholders; no or limited reference is made to sector-specific provisions, including biopharmaceutical IP rights such as RDP and patent term restoration; and border measures are either nonexistent or notably weak with, for example, no reference to customs officials' authority to *ex officio* seize and suspend the release of suspected IP-infringing goods whether intended for the domestic market or in transit. At the time of research, the finalized Kenya-UAE CEPA had not been made available to the public and, for the purposes of this indicator, could not be assessed. The Index will continue to monitor these developments in 2025.