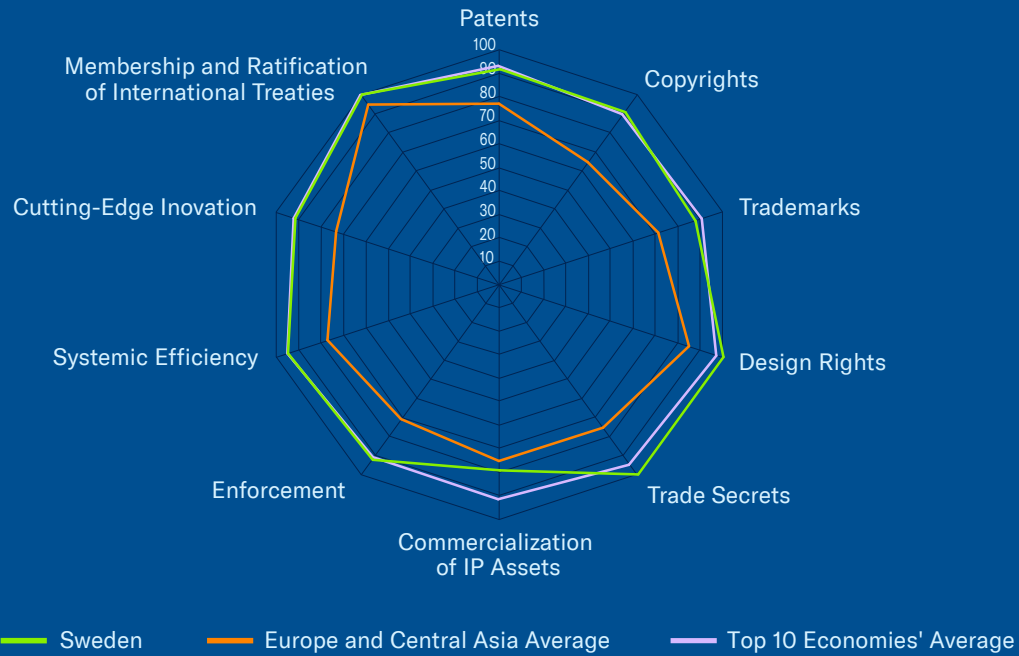




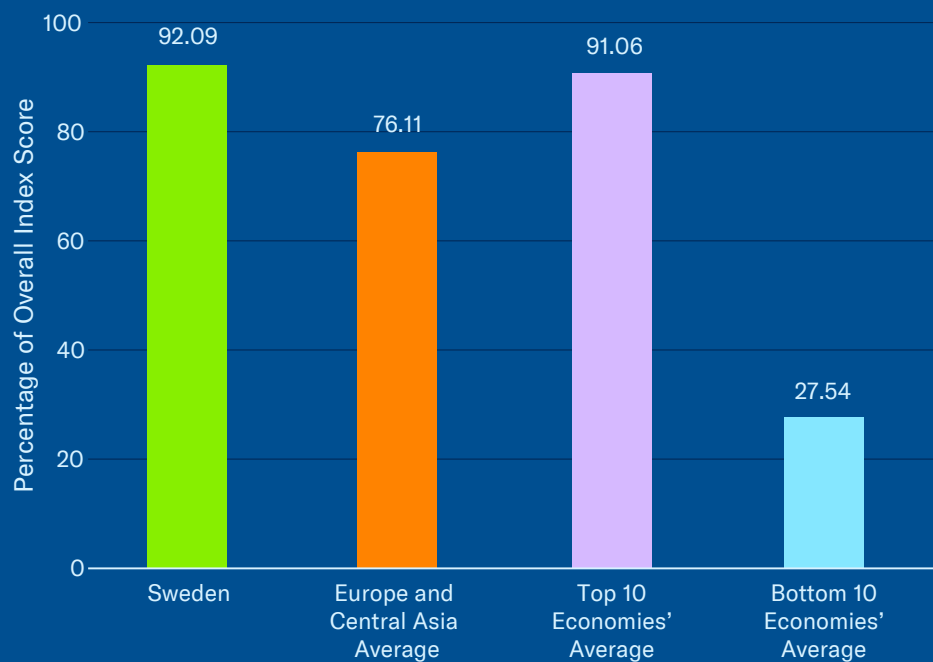
Switzerland

Rank
11/55

Category Scores



Overall Score in Comparison





Key Areas of Strength

- Provided an extended data exclusivity period of up to 15 years for designated orphan drugs since 2019
- R&D and IP tax incentives have been in place since 2019
- Strong and sophisticated national IP environment
- Strong patent rights and enforcement environment
- Switzerland is a founding member of EPO and a full participant in PPH initiatives

Key Areas of Weakness

- 2020 copyright law amendments only partially address online infringement; amendments do not include the option of disabling access to infringing content online or content hosted by foreign sites
- Overly broad interpretation of limitations and exceptions for copyright; this remains unchanged after 2020 amendments
- Crucial gaps in enforcement and prosecution of online copyright infringement

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	1.00
2. Patentability requirements	1.00	30. IP as an economic asset	0.75
3. Patentability of CII	1.00	31. Tax incentives for the creation of IP assets	1.00
4. Plant variety protection	1.00	Category 8: Systemic Efficiency	
5. Pharmaceutical-related enforcement	0.50	32. Physical counterfeiting rates	0.82
6. Legislative criteria and use of compulsory licensing	1.00	33. Software piracy rates	0.79
7. Pharmaceutical patent term restoration	1.00	34. Civil and precedural remedies	0.75
8. Membership of a Patent Prosecution Highway	1.00	35. Pre-established damages	0.75
9. Patent opposition	1.00	36. Criminal standards	0.75
Category 2: Copyrights and Limitations		37. Effective border measures	1.00
10. Term of protection	0.63	38. Transparency and public reporting by customs	1.00
11. Exclusive rights	0.50	Category 9: Cutting-Edge Innovation	
12. Expeditious legal remedies disabling access to infringing content online	0.00	39. Coordination of IP rights enforcement	1.00
13. Cooperative action against online piracy	0.50	40. Consultation with stakeholders during IP policy formation	1.00
14. Limitations and exceptions	0.25	41. Educational campaigns and awareness raising	0.75
15. TPM and DRM	0.50	42. Targeted incentives for the creation and use of IP assets for SMEs	0.75
16. Government use of licensed software	1.00	43. IP-intensive industries, national economic impact analysis	0.75
Category 3: Trademarks Rights and Limitations		Category 10: Membership and Ratification of International Treaties	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	1.00
18. Protection of well-known marks	1.00	45. IP incentives for orphan medicinal product development, term of protection	0.50
19. Exclusive rights, trademarks	1.00	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	1.00
20. Frameworks against online sale of counterfeit goods	0.50	Category 5: Trade Secrets and the Protection of Confidential Information	
Category 4: Design Rights and Limitations		23. Protection of trade secrets (civil remedies)	1.00
21. Industrial design term of protection	1.00	24. Protection of trade secrets (criminal sanctions)	1.00
22. Exclusive rights, industrial design rights	1.00	25. Regulatory data protection term	1.00
Category 6: Commercialization of IP Assets		Category 10: Membership and Ratification of International Treaties	
26. Barriers to market access	1.00	47. WIPO Internet Treaties	1.00
27. Barriers to technology transfer	1.00	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	1.00
28. Registration and disclosure requirements of licensing deals	0.75	49. Patent Law Treaty and Patent Cooperation Treaty	1.00
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	1.00
		51. Membership of the Convention on Cybercrime, 2001	1.00
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	1.00
		53. Post-TRIPS FTA	1.00

Percentage of Overall Score: 85.83%

• Total Score: 45.49

Spotlight on the National IP Environment

Past Editions versus Current Score

Switzerland's overall Index score has increased from 42.99 out of 50 indicators in the twelfth edition to 45.49 out of 53 indicators. This reflects a strong performance for the new indicators added under Category 9: Incentives for Cutting-Edge Innovation.

Patent Rights and Limitations

In May 2024, the Swiss Federal Council proposed a set of amendments to the Patent Act. These suggested changes would introduce a new “clearing house” hosted by the Federal Institute of Intellectual Property (IPI) for patents relating to plant varieties. Under a proposed new notification procedure, prospective plant breeders would notify IPI of their intention to use a specific plant variety and inquire about the existence of any related patent rights. IPI would subsequently forward this notification to the registered rightsholder who would have 90 days to assert any existing right. Under draft Article 35d(3), a rightsholder's failure to make such an assertion would automatically allow the prospective breeder to use the relevant plant variety for its commercial purposes, regardless of any preexisting and duly granted patent rights. The Index will monitor these developments in 2025.

9. Patent opposition:

As noted last year, in late 2022, the Swiss Federal Council published draft amendments to the Patent Act. The proposed amendments are built on proposals first developed by IPI and shared with the public in 2019–2020. In March 2024, the Swiss National Council and Council of States voted for a finalized set of amendments to the Act. These changes introduce the possibility of a full patent examination upon request and introduce important changes to patent nullity and opposition proceedings.

Specifically, the amendments have eliminated the existing administrative opposition route. Instead, challenges to any decision taken by IPI, including the granting of a patent right, will now take place via the judiciary and the Federal Patent Court. Unlike the 2022 proposals, Article 59c(5) of the final bill makes clear that any third-party patent challenge has no suspensive effect on any existing duly granted patents. At the time of research, it was unclear whether these legislative changes would require a referendum to become law.

Copyrights and Limitations

11. Legal measures that provide necessary exclusive rights that prevent infringement of copyrights and related rights (including web hosting, streaming, and linking); 12. Expeditious legal remedies disabling access to infringing content online; 13. Availability of frameworks that promote cooperative action against online piracy; and 14. Scope of limitations and exceptions to copyrights and related rights:

As noted in previous editions of the Index, online piracy in Switzerland is a long-standing issue and a departure from Switzerland's otherwise gold-standard IP regime. The landmark 2010 Federal Supreme Court decision *Federal Data Protection and Information Commissioner v. Logistep AG* established a broad precedent that IP addresses were viewed as constituting “personal data.” This ruling has severely limited the ability to identify and build cases against infringing users and has discouraged Swiss prosecutors from taking on such cases. Although rightsholders have successfully been able to defend their rights in some cases, overall, the enforcement environment has been difficult.

For example, a 2014 judgment in the Zurich Canton High Court (*Obergericht Zürich*, case UE130087) on illegal file sharing recommended the prosecution of the alleged infringing activity, but the case also reaffirmed that the monitoring of the alleged infringer's activity was a violation of the individual's privacy. Without a legal tool for targeting infringing users or the platforms on which they operate, digital and online piracy has remained widespread, and Switzerland has become a hub for sites hosting infringing content.

The USTR's list of notorious marketplaces (*Review of Notorious Markets for Counterfeiting and Piracy*) continues to include references to sites and platforms hosted in or through Swiss entities. The Swiss Government has long recognized this broader problem and has announced an ambitious reform plan following the recommendations by the Swiss Working Group on Copyright (AGUR12) in 2014. In December 2015, as draft copyright law was presented for public discussion, but given the more than 1,200 contributions received, it underwent further review by a new multistakeholder group (AGUR12 II). In late 2017, the Swiss Federal Department of Justice and Police (*Eidgenössische Justiz und Polizeidepartement*) published new draft amendments and announced that copyright reforms would finally go ahead. These amendments were approved by the Swiss Federal Council (*Bundesrat*) in November 2017 and by the Federal Assembly (*Schweizer Parlament*) in 2019, and they finally became law in April 2020. As the Index has noted throughout this drawn-out legislative process, the Swiss Government should be commended for finally taking legislative action and attempting to address a long-standing weakness in its national IP environment. The final amendments introduced new measures to fight piracy. Specifically, the amendments require ISPs to both remove and keep infringing content off their servers.

A new Article 39d of the Copyright Act inserted a legal obligation on the part of internet hosting services to act against infringing content upon notification. The law states clearly that a "provider of an internet hosting service which stores information entered by users is required to prevent a work or other protected subject matter from being unlawfully remade available to third parties through the use of its services". The Swiss Federal Institute of Intellectual Property (*Eidgenössisches Institut für Geistiges Eigentum*) has publicly stated that this requirement amounts to a requirement for a "stay down" mechanism whereby hosting services must ensure that infringing content is not made accessible again after a notification of infringement has been made and acted on. The law also attempted to address the issue of the processing of personal data when filing criminal complaints. Article 77i clarifies that rightsholders filing a criminal complaint may access and use personal data for this purpose. However, as the Index also noted at the time, this does not apply to civil proceedings, which, under the new law, can only be filed once criminal proceedings have commenced. Furthermore, the amendments did not change the existing dynamic with respect to defined personal and private use exceptions to copyright. Historically, Switzerland's private use exception has been interpreted broadly and has been confirmed by the Swiss Government and existing case law to include the downloading and sharing of infringing content. Article 19 of the Copyright Act asserts that the downloading of content (other than software) for private use is not a copyright infringement (although distribution of such content that does not amount to private use, as well as any uploading of the content, represents an infringement). Such an expansive private use exception differs from other broad private copy exceptions—such as in Germany—in that, in Swiss law, no distinction is made in whether or not the downloaded copy is itself a legal version. In other words, even if the material has been made available in an illegal manner, the private use exception still applies in Switzerland.

This remains unchanged to this day. Indeed, the Federal Institute of Intellectual Property clearly stated at the time of enactment of the 2020 amendments that the changes to Swiss copyright law did not affect existing personal use exceptions: “Nothing changes for consumers of illegal content. They are allowed, for example, to continue downloading music which was published online without the permission of the rights holder for private use.” Finally, it remains unclear what the legal consequences, if any, will be for internet hosts that fail to comply with the conditions of Article 39d or under what circumstances a refusal to comply with the law is acceptable.

In summary, the reforms remain a real missed opportunity for rightsholders in Switzerland and internationally. Although the amendments address some of the shortcomings in the existing legal framework, they did not fundamentally change the dynamics of copyright enforcement and online piracy in Switzerland. Notably, the amendments did not include any requirement or option for the disabling of access to illegal content whether through the judiciary or an administrative mechanism.

The past five years have seen a sharp increase in the number of economies that use judicial or administrative mechanisms to effectively disable access to infringing content. Today, EU Member States, the UK, India, Singapore, and a host of other economies have introduced measures that allow rightsholders to seek and gain effective relief against copyright infringement online. Many of these economies are also introducing dynamic injunctions. Such an injunction addresses the issue of mirror sites and disables infringing content that re-enters the public domain by simply being moved to a different access point online. These types of dynamic injunction orders are becoming more commonplace, with similar mechanisms available in, for example, the Netherlands, Greece, Singapore, India, the UK, and Canada.

The limitations and questions about the effectiveness of the Swiss amendments and rightsholders’ ability to enforce their rights remained unaddressed in 2024. In fact, the USTR noted in the *2024 Special 301 Report* that Switzerland continued to have “high levels of online piracy and lacked effective enforcement.” 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:

Acknowledging the challenges in developing new medicines for rare diseases, many Index economies have developed legislation and special programs to encourage the development of orphan medicines. Since the mid-2010s, Switzerland has introduced several initiatives and incentive programs targeting rare diseases and orphan medicines, including the overarching 2014 *National Rare Disease Policy*. With respect to special market exclusivity incentives for orphan medicinal product development, 2016 legislative changes to the Federal Act on Medicinal Products and Medical Devices (Therapeutic Products Act, TPA), which took effect in 2019, introduced a statutory term of regulatory data protection (termed “document protection”) for orphan drugs. Under Article 11b(4), the national drug regulatory authority, Swiss Medic, will “in the case of an important orphan medicinal product...on request, grant document protection for a period of fifteen years.” Orphan status and eligibility for this extended RDP term can be withdrawn by Swiss Medic if the product no longer meets relevant eligibility criteria as a treatment for rare diseases.