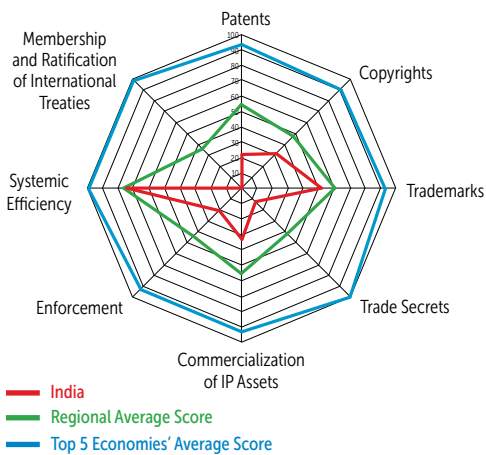
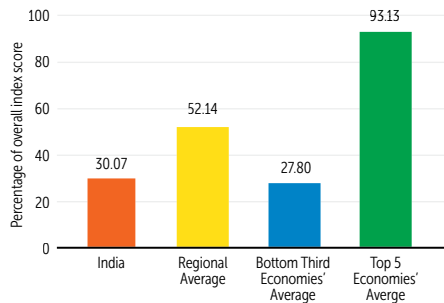


INDIA

Rank 44 / 50



Overall Score in Comparison



Strengths and Weaknesses

KEY AREAS OF STRENGTH

- ✓ Revised July 2017 "Guidelines for Examination of Computer Related Inventions (CRIs)" significantly improves the patenting environment for CIs
- ✓ Injunctive relief available against copyright-infringing websites
- ✓ New trademark guidelines should make it easier for well-known marks to be recognized and receive protection
- ✓ Launch of the Scheme for IPRs Awareness to meet the commitment to IP education and awareness included in the National IPR Policy

KEY AREAS OF WEAKNESS

- ✗ Limited framework for protection of life sciences IP
- ✗ Patentability requirements outside international standards
- ✗ Lengthy pre-grant opposition proceedings
- ✗ Previously used compulsory licensing for commercial and nonemergency situations
- ✗ Limited participation in international IP treaties
- ✗ No participation in international PPH tracks

INDICATOR	SCORE
Category 1: Patents, Related Rights, and Limitations	
1. Patent term of protection	1.00
2. Patentability requirements	0.00
3. Patentability of computer-implemented inventions (CIs)	0.75
4. Pharmaceutical-related patent enforcement and resolution mechanism	0.00
5. Legislative criteria and active use of compulsory licensing of patented products and technologies	0.00
6. Patent term restoration for pharmaceutical products	0.00
7. Membership in Patent Prosecution Highways (PPHs)	0.00
8. Patent opposition	0.00
Category 2: Copyrights, Related Rights, and Limitations	
9. Copyright (and related rights) term of protection	0.47
10. Legal measures that provide necessary exclusive rights that prevent infringement of copyrights and related rights (including Web hosting, streaming, and linking)	0.25
11. Expedient injunctive-style relief and disabling of infringing content online	0.75
12. Availability of frameworks that promote cooperative action against online piracy	0.25
13. Scope of limitations and exceptions to copyrights and related rights	0.00
14. Digital rights management (DRM) legislation	0.25
15. Clear implementation of policies and guidelines requiring that any proprietary software used on government ICT systems should be licensed software	0.25
Category 3: Trademarks, Related Rights, and Limitations	
16. Trademarks term of protection (renewal periods)	1.00
17. Ability of trademark owners to protect their trademarks: requisites for protection	0.50
18. Legal measures available that provide necessary exclusive rights to redress unauthorized uses of trademarks	0.25
19. Availability of frameworks that promote cooperative private action against online sale of counterfeit goods	0.25
20. Industrial design term of protection	0.60
21. Legal measures available that provide necessary exclusive rights to redress unauthorized use of industrial design rights	0.50
Category 4: Trade Secrets and Related Rights	
22. Protection of trade secrets	0.25
23. Regulatory data protection (RDP) term	0.00
Category 5: Commercialization of IP Assets	
24. Barriers to market access	0.25
25. Regulatory and administrative barriers to the commercialization of IP assets	0.25
26. IP as an economic asset	0.50
Category 6: Enforcement	
27. Physical counterfeiting rates	0.29
28. Digital/online piracy rates	0.42
29. Civil and procedural remedies	0.25
30. Pre-established damages and/or mechanisms for determining the amount of damages generated by copyright infringement	0.00
31. Criminal standards including minimum imprisonment and minimum fines	0.25
32. Effective border measures	0.25
33. Transparency and public reporting by customs authorities of trade-related IP infringement	0.00
Category 7: Systemic Efficiency	
34. Inter-governmental coordination of IP rights enforcement efforts	0.25
35. Consultation with stakeholders during IP policy formation	1.00
36. Educational campaigns and awareness raising	1.00
Category 8: Membership in and Ratification of International Treaties	
37. WIPO Internet Treaties	0.00
38. Singapore Treaty on the Law of Trademarks	0.00
39. Patent Law Treaty	0.00
40. At least one free trade agreement (FTA) with substantive and/or specific IP provisions such as chapters on IP and separate provisions on IP rights provided it was signed after WTO/TRIPS membership	0.00
TOTAL	12.03

Spotlight on the National IP Environment

Past Editions versus Current Scores

India's overall score has increased substantially from 25% (8.75 out of 35) in the 5th edition of the Index to 30% (12.03 out of 40) in the 6th edition. This reflects a relatively strong performance in the new indicators as well as positive reform efforts on patentability of CIIs and registration procedures for well-known marks.

Patents, Related Rights, and Limitations

3. Patentability of computer-implemented inventions (CIIs): The revised July 2017 "Guidelines for Examination of Computer Related Inventions (CRIs)" significantly improves the patenting environment for CIIs in India. Unlike previous drafts of the guidelines, there is no requirement for hardware innovation. Local legal analysis suggests that although they do not carry the force of primary or secondary legislation, these new guidelines should create more certainty for innovators in the computer software space. Future editions of the Index will monitor the extent to which these guidelines are being applied in practice and the extent to which patents are being granted for qualifying inventions. Because of these new guidelines, India's score has increased on this indicator.

Copyrights, Related Rights, and Limitations

11. Expedient injunctive-style relief and disabling of infringing content online: In an otherwise challenging copyright environment in India, a positive trend has emerged over the past few years: Rights holders are increasingly able to defend and enforce their copyrights through injunctive relief. Since 2012, there have been a number of cases in which access to websites offering pirated and infringing content—including notorious international sites like The Pirate Bay—has been disabled through court orders. Injunctions have been issued by both the High Court of Delhi and High Court of Bombay, with the Department of Telecommunications instructing Indian ISPs to carry out the order. Although the case law and procedures are still evolving (particularly with regard to disabling access to specific URLs versus entire websites), this is nevertheless a positive development that will hopefully act as a strong deterrent against online piracy in India. Indeed, as noted in previous editions of the Index, Indian rights holders suffer as much at the hand of online piracy as do foreign entities. In fact, one of the major cases brought to the High Court involved the illegal broadcasting of Indian cricket matches on nonsanctioned websites.

Trademarks, Related Rights, and Limitations

17. Ability of trademark owners to protect their trademarks: requisites for protection: Like many jurisdictions, rights holders in India have long struggled with lack of clarity on the protection of well-known marks, with case law offering sometimes conflicting judgments. To provide more clarity, since 2003, the Office of the Controller General of Patents, Designs and Trade Marks (CGPDTM) has compiled a list of marks that it recognizes as well-known. This list has grown to close to 100 marks and includes international brand names such as Philips, Intel, Pepsi, Toshiba, Honda, and Mars. Unfortunately, this list is not exhaustive and does not include many marks that by any reasonable standard would be considered well-known. Recognizing this, the CGPDTM issued a new set of Trade Mark Rules in May 2017. Rule 124 allows individuals and entities to apply directly to the Registrar to receive official recognition for their marks as "well-known." Still, the associated guidelines would benefit from further clarity on what constitutes supporting evidence. Specifically, according to the guidelines, a determining factor for the Registrar would be the availability of court judgments in India that recognize the applying mark as well-known. This would be a narrow basis on which a determination could be made, as the majority of well-known marks globally have yet to be determined as being well-known in an Indian court of law. Hopefully, in 2018, it will be clarified that an Indian court judgment is not a prerequisite or determining factor for receiving recognition as a well-known mark. On this basis, India's score for this indicator has increased. In a broader positive step that affects not only well-known marks but all registrations, the CGPDTM has reduced trademark pendency to 1 month and has eased the procedure for filing applications by reducing the number of associated forms from 74 to 8.

Commercialization of IP Assets

26. IP as an economic asset: Indian policymakers have long recognized the economic potential of IP as an asset. Successive government strategies—whether sector specific or more general—have highlighted the need for more effective technology transfer mechanisms and routes for commercializing IP. For instance, two of the seven objectives of the *National Intellectual Property Rights (IPR) Policy* deal with the generation and commercialization of IP assets. Similarly, the *National Biotechnology Development Strategy 2015–2020* focuses on increasing technology transfer capacities by creating a Technology Development and Translation network across the country with a global partnership that includes 40 new bio-incubators, 5 new bio-clusters, 150 technology transfer offices, and 20 bio-connect offices in research institutes and universities. There is also a long-standing effort to introduce a national technology transfer framework. Since the mid-2000s, the Indian government has intermittently explored developing its own private-public technology transfer framework, the "Protection and Utilisation of Public Funded Intellectual Property Bill," first introduced in 2008. Yet despite these efforts, technology transfer activities remain fairly limited. Relatively few Indian universities have functioning technology transfer offices. The institutions with the most advanced and developed technology transfer capabilities are the Indian Institutes for Technology, with the institutes in Madras and Mumbai having technology and start-up incubators in place. WIPO statistics suggest that

patenting by Indian public research organizations (PROs) and universities is still quite limited. In 2016 India had no university among the top 50 Patent Cooperation Treaty (PCT) applicants for universities. In 2013, a total of 55 PCT patent applications were made by Indian universities and 104 by PROs, most of which came from the Council of Scientific and Industrial Research. This compares with 3,920 applications by U.S. universities, which were the largest source of patenting applications by all universities globally, and 829 PCT applications from PROs in France, which filed the most applications globally in 2013.

Systemic Efficiency

36. Educational campaigns and awareness raising: The government of India has a clear commitment to increasing awareness of the importance of IP rights and respect for creators and innovators. Awareness-raising and education efforts form a central part of the *National Intellectual Property Rights (IPR) Policy*. Specifically, the Department of Industrial Policy and Promotion has launched a three-year national campaign—“Creative India, Innovative India!”—and has created the Cell for IPR Promotion and Management to spearhead its implementation. Some key features of this multifaceted and comprehensive initiative include IP awareness workshops and seminars in collaboration with industry organizations, academic institutions, and other stakeholders; technical training and capacity building with key enforcement agencies; and a broad public awareness-raising campaign on the ill effects of counterfeiting and piracy that targets even school-aged children. In addition to this campaign, other long-standing initiatives are in place. For example, the Rajiv Gandhi National Institute of Intellectual Property Management is a national center of excellence for IP rights training, management, research, and education. The institute conducts programs for the wider public as well as technical training for IP professionals, examiners, and academic researchers.