COUNTRY: **SOUTH AFRICA**

SCORE: 51.26 | RANK: 20/24

South Africa has some useful laws in place for cybercrime and electronic commerce but is in danger of falling behind international best practice in other key areas.

South Africa does not yet have privacy legislation in place. Draft legislation was supposed to be considered in 2012, but it has been delayed. Some limited Internet filtering and censorship also occurs, which may inhibit development of the digital economy.

South Africa has only very basic copyright laws, which are not aligned with current international best practice, and the country has not signed the WIPO Copyright Treaty.

Another potential barrier in South Africa is the existence of a complex system of domestic preferences in government procurement opportunities.

South Africa has low levels of broadband penetration and continues to face ICT infrastructure challenges.

Minor improvements in South Africa's infrastructure were not accompanied by any policy changes, and the country falls two spots in the 2013 Scorecard rankings to 20th.

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DATA PRIVACY		
1. Are there laws or regulations governing the collection, use, or other processing of personal information?	✖	A draft Protection of Personal Information Bill is being considered by the South African government. It was debated in Parliament in late 2012. Until it is enacted, there is no real privacy protection in place in South Africa. Privacy remains a basic right under the South African Constitution, but its application to the day-to-day use of personal information remains uncertain. Sections 50 and 51 of the Electronic Communications and Transactions Act 2002 provide some extremely limited privacy protections for information collected electronically.
2. What is the scope and coverage of privacy law?	Not applicable	
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	✖	
4. Is the privacy law compatible with the Privacy Principles in the APEC Privacy Framework?	✖	
5. Is an independent private right of action available for breaches of data privacy?	Available	Section 14 of the South African Constitution of 1996 / Bill of Rights provides a limited right to privacy. There have been a small number of cases under this provision, mainly involving government action such as searches by law enforcement agencies.
6. Is there an effective agency (or regulator) tasked with the enforcement of privacy laws?	None	The draft Protection of Personal Information Bill contains a proposal to establish an information protection regulator.
7. What is the nature of the privacy regulator?	Not applicable	
8. Are data controllers free from registration requirements?	✔	It is proposed that when the Protection of Personal Information Bill has been enacted, data controllers will be obliged to notify the information protection regulator of the broad categories of personal data that they collect, as well as the purpose of collecting and processing such personal information.
9. Are cross-border transfers free from registration requirements?	✔	It is unclear what cross-border transfer requirements will be implemented in the proposed legislation.
10. Is there a breach notification law?	✖	The current draft of the Protection of Personal Information Bill contains a requirement to notify the regulator when a security breach occurs. Further details may be developed as the bill is refined.

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SECURITY		
1. Is there a law or regulation that gives electronic signatures clear legal weight?	✔	Section 13 of the Electronic Communications and Transactions Act 2002 covers electronic signatures.
2. Are ISPs and content service providers free from mandatory filtering or censoring?	◑	There are some content restrictions in place in South Africa, mainly relating to child pornography. These are based on a combination of recent (2009) amendments to the film and literature classification laws and the earlier (2002) Electronic Communications and Transactions Act (ECT Act). The ECT Act requires ISPs to respond to takedown notices regarding illegal content, including both child pornography and copyright violations. The ECT Act exempts ISPs from any liability for hosting or monitoring such content as long as they belong to a recognized industry association and abide by takedown notices.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	None	There are currently no security requirements in South African law apart from common law duties not to treat information negligently. The proposed privacy legislation is likely to contain some very basic security requirements.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no mandatory security audit requirements in South Africa.
5. Are there security laws and regulations requiring specific certifications for technology products?	No requirements	Certification requirements are not yet part of the South African ICT environment. South Africa is not a participant in the Common Criteria Recognition Agreement (CCRA).
CYBERCRIME		
1. Are cybercrime laws in place?	✔	Sections 86 and 87 of the Electronic Communications and Transactions Act include comprehensive cybercrime provisions.
2. Are cybercrime laws consistent with the Budapest Convention on Cybercrime?	✔	South Africa signed the Convention on Cybercrime in 2001 but has not yet ratified it. The South African legislation is consistent with the text of the Convention.
3. What access do law enforcement authorities have to encrypted data held or transmitted by data hosting providers, carriers, or other service providers?	Access with a warrant	The Regulation of Interception of Communications and Provision of Communication-Related Information Act allows access to all electronic information subject to appropriate judicial oversight.
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Section 90 of the Electronic Communications and Transactions Act states that a court in South Africa has jurisdiction when: (a) the offence was committed in the Republic; (b) any act of preparation towards the offence or any part of the offence was committed in the Republic, or where any result of the offence has had an effect in the Republic; (c) the offence was committed by a South African citizen or a person with permanent residence in the Republic or by a person carrying on business in the Republic; or (d) the offence was committed on board any ship or aircraft registered in the Republic or on a voyage or flight to or from the Republic at the time that the offence was committed.
INTELLECTUAL PROPERTY RIGHTS		
1. Is the country a member of the TRIPS Agreement?	✔	South Africa became a member of the TRIPS Agreement in 1995.
2. Have IP laws been enacted to implement TRIPS?	✔	South Africa's Copyright Act 1978 includes a basic copyright protection regime.
3. Is the country party to the WIPO Copyright Treaty?	✖	South Africa signed the WIPO Copyright Treaty in 1997. However, it has not been ratified.
4. Have laws implementing the WIPO Copyright Treaty been enacted?	◑	South Africa's copyright legislation is very basic and has not been updated to include key digital copyright issues such as anti-circumvention technology. Enforcement of online copyright in South Africa is poor.
5. Are civil sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	Basic civil sanctions (including damages and injunctions) are available.

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6. Are criminal sanctions available for unauthorized making available (posting) of copyright holders' works on the Internet?	✔	The Copyright Act includes criminal penalties — a fine (of R5,000) and/or imprisonment of up to three years per infringement for a first conviction. The maximum fine and/or imprisonment penalty for second conviction is R10,000 and/or five years, per infringement.
7. Are there laws governing ISP liability for content that infringes copyright?	✔	Section 75 of the Electronic Communications and Transactions Act establishes an ISP liability regime, including takedown notices. This is enhanced by the ISPA Code of Conduct <ispa.org.za/code-of-conduct>, which acknowledges liability for copyright infringing works after adequate notice and warning.
8. Is there a basis for ISPs to be held liable for content that infringes copyright found on their sites or systems?	✔	The combination of the general principles in the copyright legislation and the more specific provisions in the ISPA Code of Conduct are sufficient to extend to ISPs when they are made aware of infringing content.
9. What sanctions are available for ISP liability for copyright infringing content found on their site or system?	Civil	It appears unlikely that criminal liability would extend to ISPs for hosting infringing content, as the bar for criminal sanctions in the general copyright law is set very high, and the investigation and criminal enforcement of online copyright breaches in South Africa are very rare.
10. Must ISPs take down content that infringes copyright, upon notification by the right holder?	✔	Section 77 of the Electronic Communications and Transactions Act includes the details of the takedown regime. Many ISPs are also signatories to the ISPA Code of Conduct, which includes a simple takedown notice process.
11. Are ISPs required to inform subscribers upon receiving a notification that the subscriber is using the ISP's service to distribute content that infringes copyright?	✖	There is no mandatory requirement to inform subscribers regarding copyright breaches.
12. Is there clear legal protection against misappropriation of cloud computing services, including effective enforcement?	Comprehensive protection	South Africa has comprehensive cybercrime legislation but has some gaps in the enforcement of copyright protection. The absence of data protection legislation is also a risk. Overall, cloud computing is the subject of adequate protection.
SUPPORT FOR INDUSTRY-LED STANDARDS & INTERNATIONAL HARMONIZATION OF RULES		
1. Are there laws, regulations or policies that establish a standards-setting framework for interoperability and portability of data?	✔	The Standards Act 2008 regulates all aspects of standards setting in South Africa.
2. Is there a regulatory body responsible for standards development for the country?	✔	The South African Bureau of Standards (SABS) <www.sabs.co.za>.
3. Are e-commerce laws in place?	✔	Electronic Communications and Transactions Act 2002.
4. What international instruments are the e-commerce laws based on?	UNCITRAL Model Law on E-Commerce	The Electronic Communications and Transactions Act is very similar to the UNCITRAL Model Law on E-Commerce, although the electronic signatures provisions are slightly different.
5. Is the downloading of applications or digital data from foreign cloud service providers free from tariff or other trade barriers?	✔	Although tariffs and other trade barriers are a concern in some sectors in South Africa, the information technology sector remains free and open.
6. Are international standards favored over domestic standards?	✔	South Africa favors international standards.
7. Does the government participate in international standards-setting process?	✔	South Africa was a founding member of the International Standards Organization and remains active in international standards development processes.
PROMOTING FREE TRADE		
1. Are any laws or policies in place that implement technology neutrality in government?	✖	In 2007, South Africa adopted a formal policy on the use of open source software in government <www.sita.co.za/FOSS/FOSS1.html>.
2. Are cloud computing services able to operate free from laws or policies that mandate the use of certain products (including, but not limited to, types of software), services, standards, or technologies?	◑	The government's strategy is to implement mandatory requirements for open source software over time. The strategy has not yet been implemented.

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3. Are cloud computing services able to operate free from laws or policies that establish preferences for certain products (including, but not limited to, types of software), services, standards, or technologies?	◑	The government's strategy is to implement mandatory requirements for open source software over time. The strategy has not yet been implemented.
4. Are cloud computing services able to operate free from laws that discriminate based on the nationality of the vendor, developer, or service provider?	✖	South Africa has very complex government procurement laws and policies, including the Preferential Procurement Policy Framework Act 2000. The laws attempt to resolve issues, barriers, and discrimination that existed in the apartheid era, and they therefore intervene in procurement policy in many areas. Domestic preferences are just one part of the complex requirements in South Africa. South Africa is not a member of the WTO plurilateral Agreement on Government Procurement.
ICT READINESS, BROADBAND DEPLOYMENT		
1. Is there a national broadband plan?	• By 2014, to have 5% broadband penetration (min. 256 kbps)	South Africa's broadband penetration, broadband speeds, and affordability are very low. Even growth rates are low. The South African Broadband Policy was released in July 2010 and recognizes national broadband issues and sets the following targets: • By 2019, universal access to broadband [min. 256 kbps] (Universal access is defined as meaning there will be a public ICT access point within a 2km radius of any person in sparsely populated areas) • By 2019, household broadband penetration of 15% The South African government has created a state-owned operator (Infraco) <www.infraco.co.za> to participate directly in the construction of broadband networks. Details of specific broadband targets and funded initiatives are limited, and there is concern that the broadband expansion projects that are under way are fragmented, and a comprehensive, centrally planned strategy is required. The Department of Communications aims to publish a new broadband policy before March 2013.
2. Are there laws or policies that regulate the establishment of different service levels for data transmission based on the nature of data transmitted?	No regulation and limited public debate	There are no net neutrality requirements in South Africa. Issues of net neutrality have not yet been the subject of significant consideration in South Africa.
3. Base Indicators		
3.1. Population (2011)	50,459,978	In 2011, the population of South Africa increased by 1.2%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.2. Urban Population (%) (2011)	62%	[United Nations, Department of Economic and Social Affairs, Population Division (2012). World Urbanization Prospects: The 2011 Revision, <esa.un.org/unup/CD-ROM/Urban-Rural-Population.htm>]
3.3. Number of Households (2011)	12,599,000	In 2011, the number of households in South Africa increased by 3%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.4. Population Density (people per square km) (2010)	41	[World Bank, Data Catalog, Indicators, Population Density (2012) <data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (US$ 2011)	$8,070	In 2011, the per capita GDP for South Africa increased by 3.1% to US$8,070. [World Bank, Data Catalog, Indicators: GDP per capita, current US$ (2012) <data.worldbank.org/indicator/NY.GDP.PCAP.CD> and GDP growth, annual % (2012) <data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>]
3.6. Public Cloud Services Market Value (2011) (Billions of US$)	—	South Africa is not included in this Gartner forecast. [Gartner, Forecast Overview: Public Cloud Services, Worldwide, 2011-2016 (August 2012 Update) <www.gartner.com/id=2126916>]

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3.7. Personal Computers (% of households) (2011)	20%	In 2011, 19.5% of households in South Africa had personal computers. This is a 6.5% increase since 2010 and ranks South Africa 108 out of 182 countries surveyed. The growth from 2010 is below the five-year compound annual growth rate (CAGR) from 2006-2011 of 7.1%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may update this indicator for prior years.
4. ICT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2011) (Score is out of 10)	3.42	South Africa's ITU ICT Development Index (IDI) for 2011 is 3.42 (out of 10), resulting in a rank of 91 (out of 161 economies). The 2011 IDI for South Africa has increased by 6.9%, and the IDI ranking has declined by one place from a rank of 90 since 2010. [International Telecommunication Union (ITU), Measuring the Information Society (2012) <www.itu.int/ITU-D/ict/publications/idi/2012>] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
4.2. World Economic Forum Networked Readiness Index (NRI) (2012) (Score is out of 7)	4.34	South Africa has a Networked Readiness Index (NRI) score of 4.34 (out of 7), resulting in a rank of 50 (out of 142 economies) and a rank of 8 (out of 39) in the upper-middle income grouping of economies. The 2012 NRI for South Africa has increased by 12.5% and improved from a rank of 61 since 2011. [World Economic Forum, Global Information Technology Report (2012) <www.networkedreadiness.com/gitr>]
4.3. International Connectivity Score (2011) (Score is out of 10)	4.68	South Africa has a Connectivity Score of 4.68 (out of 10), resulting in a rank of 9 (out of 25) in the resource-driven grouping of countries/economies. [Nokia Siemens, Connectivity Scorecard (2011) <www.connectivityscorecard.org>]
4.4. IT Industry Competitiveness Index (2011) (Score is out of 100)	35.00	South Africa has an IT Industry Competitiveness Index Score of 35 (out of 100), resulting in a rank of 47 (out of 66 countries/economies included in the index). The 2011 index score is a 10.3% decrease on the 2009 score. South Africa has moved down the ranking by four places since 2009. [Business Software Alliance (BSA) / Economist Intelligence Unit (EIU), IT Industry Competitiveness Index (2011) <globalindex11.bsa.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (2011)	10,596,595	[calculated from 8.3.1. and 8.5.2.]
5.2. Internet Users as % of Population (2011)	21%	In 2011, 21% of the population in South Africa used the Internet, resulting in a ranking of 130 out of 199 countries surveyed. This is a 16.7% increase since 2010. The growth from 2010 is below the five-year CAGR from 2006 to 2011 of 22.5%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (December 2012) <www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>] Note: There may be some variations as to how countries calculate this. Some countries base this upon all or part of the population — such as between 16 and 72 years of age. Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and for prior years.
5.3. International Internet Bandwidth (bits per second per Internet user) (2011)	18,874	South Africa's International Internet Bandwidth (per Internet user) has increased by 31% since 2010. [International Telecommunication Union (ITU), Measuring the Information Society (2012) <www.itu.int/ITU-D/ict/publications/idi/2012>]
5.4. International Internet Bandwidth (2011) (total gigabits per second [Gbps] per country)	200	South Africa has increased its International Internet Bandwidth by 54% since 2010 to 200 Gbps and is ranked 42 out of 188 countries surveyed. The growth from 2010 is below the five-year CAGR from 2006 to 2011 of 140.5%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>]

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6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (2011)	907,000	South Africa has increased the number of fixed broadband subscribers by 22% since 2010, to 907,000, and is ranked 57 out of 182 countries surveyed. The growth from 2010 matches the five-year CAGR from 2006 to 2011 of 22%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and prior years.
6.2. Fixed Broadband Subscriptions as % of Households (2011)	7%	[calculated from 8.3.3. and 8.6.1.] Note: This may be skewed by business usage in some countries (refer to OECD comments about this).
6.3. Fixed Broadband Subscriptions as % of Population (2011)	2%	South Africa has increased its fixed broadband subscriptions (as a % of the population) by 21% since 2010, which is above the five-year CAGR from 2006 to 2011 of 21%. This ranks South Africa 57 out of 187 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (July 2011) <www.itu.int/ITU-D/ICTEYE/Indicators/Indicators.aspx>]
6.4. Fixed Broadband Subscriptions as % of Internet Users (2011)	9%	[calculated from 8.5.1 and 8.6.1]
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (2011)	64,000,000	In 2011, South Africa increased the number of mobile cellular subscriptions by 27.1% and is ranked 20 out of 195 countries surveyed. The number of subscriptions account for 127% of the population. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This figure may be inflated due to multiple subscriptions per head of population but excludes dedicated mobile broadband devices (such as 3G data cards and tablets).
7.2. Active Mobile Broadband Subscriptions per 100 inhabitants (2011)	20	South Africa has increased the number of active mobile broadband subscriptions (as a % of the population) by 14% since 2010. This ranks South Africa 57 out of 144 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This refers to the sum of standard mobile broadband and dedicated mobile broadband subscriptions to the public Internet. It covers actual subscribers, not potential subscribers, even though the latter may have broadband-enabled handsets. Note: In some jurisdictions this is an estimate and subsequent editions of the ITU ICT Indicators Database may adjust this indicator, both for 2011 and for prior years.
7.3. Number of Active Mobile Broadband Subscriptions (2011)	10,000,000	In 2011, South Africa has increased the number of active mobile-broadband subscriptions by 15% and is ranked 57 out of 145 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2012) <www.itu.int/ITU-D/ict/publications/world/world.html>]