COUNTRY: **SOUTH AFRICA**

SCORE: 61.3 | RANK: 14/24

South Africa recorded the biggest overall improvement in this year's Scorecard, jumping an impressive six places from 20th place in 2013 to 14th in 2015.

This result was built on significant gains in information technology (IT) infrastructure (South Africa was the fastest improver in this section of the report) and the introduction of new privacy legislation. South Africa's comprehensive privacy law, the Protection of Personal Information Act 2013, was enacted in August 2013.

South Africa also has some useful laws for cybercrime and electronic commerce.

However, some limited Internet filtering and censorship still occurs, which may inhibit development of the digital economy, and South Africa has only very basic copyright laws, which are not aligned with current international best practice. They have not yet 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, but they are improving quickly. The government released ambitious targets in December 2013 for the South Africa Connect plan.

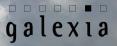| Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
DATA PRIVACY (SCORE: 9.2/10 | RANK: 3/24)		
1. Are there laws or regulations governing the collection, use, or other processing of personal information?	✔	South Africa's comprehensive privacy law, the Protection of Personal Information Act 2013, was enacted in August 2013.
2. What is the scope and coverage of privacy law?	Comprehensive	The legislation is comprehensive and covers all sectors.
3. Is the privacy law compatible with the Privacy Principles in the EU Data Protection Directive?	✔	The Protection of Personal Information Act 2013 was based on, and is compatible with, the European Union (EU) Data Protection Directive.
4. Is the privacy law compatible with the Privacy Principles in the APEC Privacy Framework?	✔	South Africa is not a member of Asia-Pacific Economic Cooperation (APEC), however the Protection of Personal Information Act 2013 appears equivalent to, or more far-reaching than, the APEC Privacy Principles.
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?	National regulator	The Information Regulator is the national privacy regulator of South Africa. It is an independent body with a national jurisdiction. As of September 2015, the regulator has not been appointed. It is expected that further information will become available at <www.informationregulator.co.za>.
7. What is the nature of the privacy regulator?	Sole commissioner	The Information Regulator <www.informationregulator.co.za> consists of a chairperson and four additional members.
8. Are data controllers free from registration requirements?	✔	There are no registration or notification requirements in South Africa.
9. Are cross-border transfers free from registration requirements?	✔	Cross-border transfers do not require registration, however transfers to recipients in foreign countries are forbidden unless they satisfy certain requirements, most notably that the recipient is subject to a law, code or contract that ensures a level of privacy protection equivalent to that of South Africa.

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
10. Is there a breach notification law?	✔	The Protection of Personal Information Act 2013 contains a requirement to notify the Information Protection Regulator and the data subject involved as soon as reasonably possible when a security breach is believed to have occurred. The notification of the data subject is not required when the identity of the data subject cannot be established.

SECURITY (SCORE: 3.6/10 | RANK: 20/24)

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
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 South Africa, mainly relating to child pornography. In 2009, amendments expanded the requirements of the Electronic Communications and Transactions (ECT) Act 2002. However the prescreening of content provision mandated by these amendments was subsequently declared unconstitutional. As it stands, the ECT Act requires Internet service providers (ISPs) to respond to takedown notices regarding illegal content, including both child pornography and copyright violations. The 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. In mid-2015, the government developed the Films and Publications Amendment Bill 2015 as a first step in updating South Africa's censorship regime to cover new technology platforms. The bill has not yet been released for public comment, but it is expected to include severe restrictions and a wide-ranging classification regime for online content. The proposal is controversial in South Africa, and its progress is being watched closely by stakeholders.
3. Are there laws or enforceable codes containing general security requirements for digital data hosting and cloud service providers?	Limited coverage in legislation	The Protection of Personal Information Act 2013 contains broad security requirements and contains a provision for the Information Regulator <www.informationregulator.co.za> to issue codes of conduct.
4. Are there laws or enforceable codes containing specific security audit requirements for digital data hosting and cloud service providers?	None	There are no specific security audit requirements.
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 IT environment, although they may be given a higher profile following the passage of the draft Cybercrimes and Cybersecurity Bill <www.justice.gov.za/legislation/invitations/CyberCrimesBill2015.pdf>. The draft was the subject of a public consultation round that ended in December 2015. South Africa is not a participant in the Common Criteria Recognition Agreement (CCRA) <www.commoncriteriaportal.org>.

CYBERCRIME (SCORE: 9.8/10 | RANK: 4/24)

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
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. In addition, the government has introduced a draft Cybercrimes and Cybersecurity Bill <www.justice.gov.za/legislation/invitations/CyberCrimesBill2015.pdf>. The draft was the subject of a public consultation round that ended in December 2015.
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.

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
4. How does the law deal with extraterritorial offenses?	Comprehensive coverage	Section 90 of the Electronic Communications and Transactions Act 2002 states that a court in South Africa has jurisdiction "where: (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 (SCORE: 14.4/20 | RANK: 14/24)

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
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. In mid-2015, the government released a draft bill to amend and update South African copyright law <www.gov.za/sites/www.gov.za/files/39028_gon646c.pdf>. The bill is now the subject of a public consultation period.
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.
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 further 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 <ispa.org.za/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 is 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 <ispa.org.za/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 new data protection legislation is a positive development. Overall, cloud computing is the subject of adequate protection.

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
SUPPORT FOR INDUSTRY LED STANDARDS & INTERNATIONAL HARMONIZATION OF RULES (SCORE: 9.8/10 | RANK: 10/24)		
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 closely mirrors 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 (SCORE: 1.8/10 | RANK: 22/24)		
1. Are there 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 <gissa.org.za/special-interest-groups/open-source/foss-documents/policy-on-free-and-open-source-software-use-for-south-african-government/view>.
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.
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 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 World Trade Organization (WTO) plurilateral Agreement on Government Procurement.

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
IT READINESS, BROADBAND DEPLOYMENT (SCORE: 12.7/30 | RANK: 20/24)		
1. Is there a national broadband plan?	• By 2016, 50% of population with access to speeds of 5 Mbps • By 2020, 90% of population with access to speeds of 5 Mbps; 50% to speeds of 100 Mbps • By 2030, 100% of population with access to speeds of 10 Mbps; 80% to speeds of 100 Mbps	The South African government released targets in December 2013 for the South Africa Connect plan <www.gov.za/sites/www.gov.za/files/37119_gon953.pdf>. The headline targets are: • By 2016, 50% of population with access to speeds of 5 Mbps • By 2020, 90% of population with access to speeds of 5 Mbps; 50% to speeds of 100 Mbps • By 2030, 100% of population with access to speeds of 10 Mbps; 80% to speeds of 100 Mbps There are further subtargets for: • Schools and health facilities with access to speeds of 1 Gbps by 2030 • Government facilities with access to speeds of 100 Mbps by 2030 South Africa's broadband penetration, broadband speeds, and affordability are very low, and the South Africa Connect targets are ambitious. The type of infrastructure to be installed has not been finalized. South Africa's previous broadband plan was released in July 2010. It recognized national broadband issues and set the following targets: • By 2019, universal access to broadband [min 256 kbps] (Universal access is defined as meaning there will be a public IT access point within a 2 km 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.
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 been the subject of limited debate in the press.
3. Base Indicators		
3.1. Population (millions) (2014)	53	In 2014, the population of South Africa increased by 0.7%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.2. Urban Population (%) (2014)	64%	[World Bank, Data Catalog, Indicators, Urban Population (2015) <data.worldbank.org/indicator/SP.URB.TOTL.IN.ZS>]
3.3. Number of Households (millions) (2014)	13	In 2014, the number of households in South Africa increased by 0.7%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
3.4. Population Density (people per square km) (2014)	45	[World Bank, Data Catalog, Indicators, Population Density (2015) <data.worldbank.org/indicator/EN.POP.DNST>]
3.5. Per Capita GDP (US$ 2014)	$6,478	In 2014, the per capita gross domestic product (GDP) for South Africa increased by 1.5% to US $6,478. [World Bank, Data Catalog, Indicators: GDP per capita, current US$ (2015) <data.worldbank.org/indicator/NY.GDP.PCAP.CD> and GDP growth, annual % (2015) <data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG>]
3.6. IT Service Exports (2014) (billions of US$)	2.59	In 2014, the value of IT service exports for South Africa increased by 1.9% to US $2.59 billion. The five-year compound annual growth rate (CAGR) from 2009-2014 was 9.1%. [World Bank, Data Catalog, Indicators: ICT Service Exports US$ (Dec 2015) <data.worldbank.org/indicator/BX.GSR.CCIS.CD>]
3.7. Personal Computers (2014) (% of households)	28%	In 2014, 28.1% of households in South Africa had personal computers. This is an increase of 8.7% since 2013, and ranks South Africa 112 out of 183 countries surveyed. The growth from 2013 is below the five-year CAGR from 2009 to 2014 of 10.4%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.aspx>]

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
4. IT and Network Readiness Indicators		
4.1. ITU ICT Development Index (IDI) (2015) (Score is out of 10 and covers 167 countries)	4.90	South Africa's ITU ICT Development Index (IDI) for 2015 is 4.9 (out of 10), resulting in a rank of 88 (out of 167) economies. The 2015 IDI for South Africa increased by 10.9%, and the IDI ranking improved by two spots from a rank of 90 since 2013. [International Telecommunication Union (ITU), Measuring the Information Society (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/mis2015.aspx>]
4.2. World Economic Forum Networked Readiness Index (NRI) (2015) (Score is out of 7 and covers 143 countries)	3.99	South Africa has a Networked Readiness Index (NRI) score of 3.99 (out of 7), resulting in a rank of 75 (out of 143) countries and a rank of 19 (out of 40) in the upper middle income grouping of countries. The 2015 NRI for South Africa increased by 0.3% and declined from a rank of 70 since 2014. [World Economic Forum, Global Information Technology Report (2015) <reports.weforum.org/global-information-technology-report-2015>]
4.3. International Connectivity Score (2014) (Score is out of 10 and covers 52 countries)	3.94	South Africa has an International Connectivity Score of 3.94 (out of 10), resulting in a rank of 18 (out of 26) in the resource-driven grouping of countries. [International Connectivity Scorecard (2013) <www.connectivityscorecard.org>]
5. Internet Users and International Bandwidth		
5.1. Internet Users (millions) (2014)	26	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
5.2. Internet Users as Percentage of Population (2014)	49%	In 2014, 49% of the population in South Africa used the Internet, resulting in a ranking of 90 out of 199 countries surveyed. This represents an increase of 19.3% since 2013. The growth from 2013 is below the 5-year CAGR from 2009-2014 of 42.1%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/en/ITU-D/Statistics/Pages/publications/wtid.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.
5.3. International Internet Bandwidth (2014) (bits per second per Internet user)	149,542	The International Internet Bandwidth (per Internet user) of South Africa has increased by 5% since 2013. The growth from 2013 is above the five-year CAGR from 2009-2014 of -17.6%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
5.4. International Internet Bandwidth (2014) (total gigabits per second [Gbps] per country)	3,894	South Africa has increased its International Internet Bandwidth by 11% since 2013 to 3,894 Gbps, and is ranked 12 out of 215 countries surveyed. The growth from 2013 is below the five-year CAGR from 2008-2013 of 14.3%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6. Fixed Broadband		
6.1. Fixed Broadband Subscriptions (millions) (2014)	2	South Africa has increased the number of fixed broadband subscribers by 46% since 2013 to 2 million, and is ranked 49 out of 215 countries surveyed. The growth from 2013 is above the five-year CAGR from 2009-2014 of 30.5%. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6.2. Fixed Broadband Subscriptions as % of households (2014)	13%	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>] Note: This may be skewed by business usage in some countries.
6.3. Fixed Broadband Subscriptions as % of population (2014)	3%	South Africa has increased its fixed broadband subscriptions (as a % of the population) by 4.9% since 2013, which is below the five-year CAGR from 2009-2014 of 27.7%. This ranks South Africa 124 out of 215 countries surveyed. [International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]
6.4. Fixed Broadband Subscriptions as % of Internet users (2014)	6%	[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (June 2014) <www.itu.int/ITU-D/ict/publications/world/world.html>]

Q SOUTH AFRICA	RESPONSE	EXPLANATORY TEXT
7. Mobile Broadband		
7.1. Mobile Cellular Subscriptions (millions) (2014)	79	In 2014, South Africa increased the number of mobile cellular subscriptions by 3.1% and is ranked 18 out of 215 countries surveyed. The number of subscriptions account for 150% of the population.
		[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <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, tablets, etc.).
7.2. Active Mobile Broadband Subscriptions per 100 inhabitants (2014)	47	South Africa has decreased the number of active mobile-broadband subscriptions (as a % of the population) by -20% since 2013. This ranks South Africa 71 out of 215 countries surveyed.
		[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <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.
7.3. Number of Active Mobile Broadband Subscriptions (millions) (2014)	25	In 2014, South Africa decreased the number of active mobile-broadband subscriptions by -20% and is ranked 22 out of 215.
		[International Telecommunication Union (ITU), World Telecommunication/ICT Indicators Database (Dec 2015) <www.itu.int/ITU-D/ict/publications/world/world.html>]