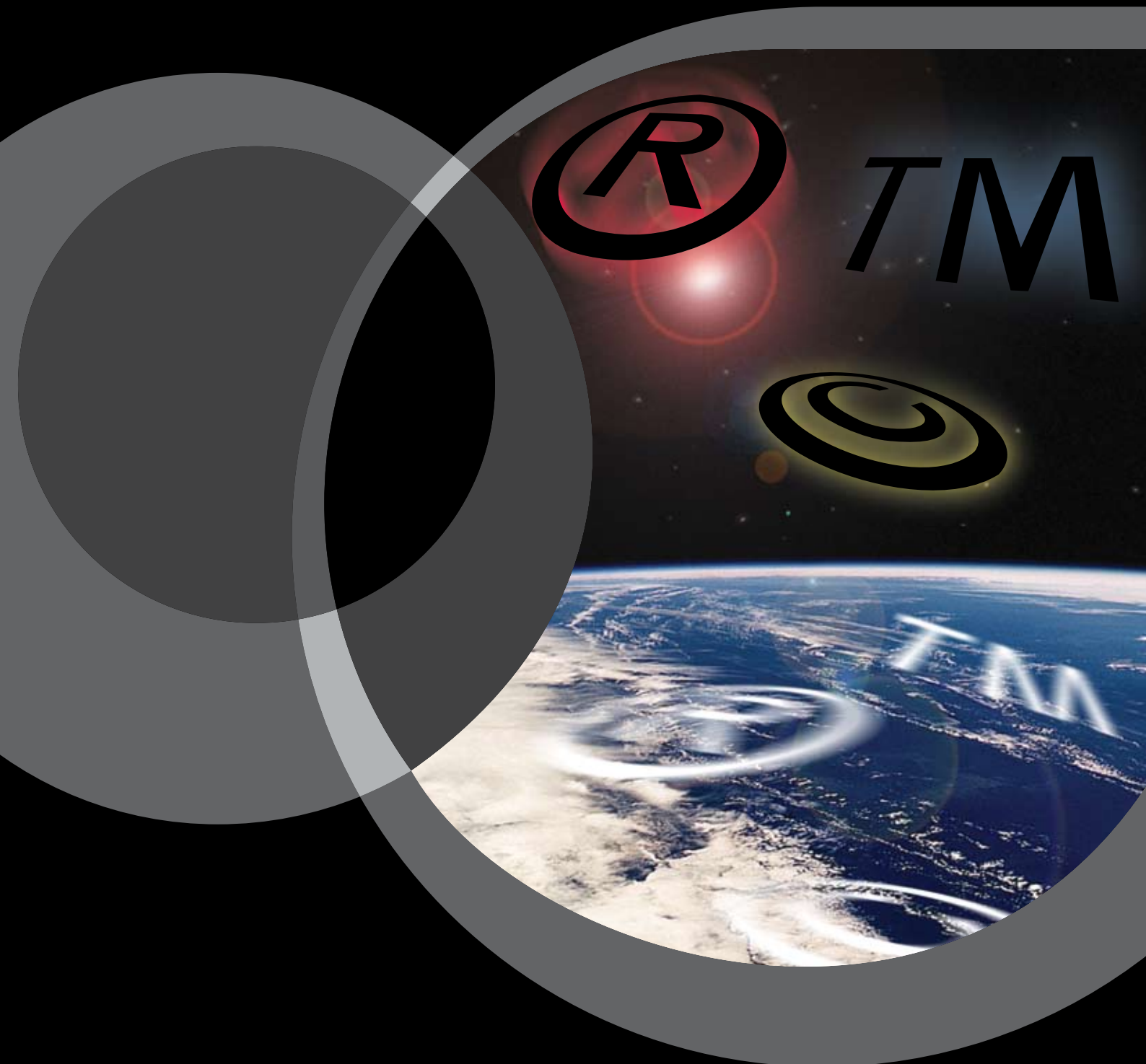


Global Intellectual Property Index

The Report - May 2008



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Foreword

We are pleased to present the initial issue of the Global Intellectual Property Index (GIPI).

Taylor Wessing has been at the forefront of intellectual property (IP) for very many years. The merger of Taylor Joynson Garrett and Wessing in 2002 to form Taylor Wessing was prompted to a large degree by both firms' focus on this area. It also highlighted the fact that the United Kingdom and Germany are leading jurisdictions for Intellectual Property, a factor confirmed by the results of GIPI.

We live and work in a global market and IP is a global issue. For companies operating in this market, safeguarding IP in today's developing economies is just as important as securing protection in the developed ones. It is vital in this global system that all jurisdictions learn from and support each other so that businesses can be assured that their rights are protected while at the same time ensuring that such rights are not used improperly to restrict legitimate competition. IP law is developing rapidly in order to meet the challenges of the ever increasing change in technology and no jurisdiction can afford to be complacent about its legal system for IP.

In any legal system the four most important factors are speed, cost, independence and certainty of outcome. Perhaps it is not surprising that countries with a long tradition of creativity and innovation appear high in the results. Arguably, the survey reveals a bias to common law systems, but it is noteworthy that two civil code jurisdictions, Germany and the Netherlands, are consistently in the top five ranks. It is notable that the United Kingdom and United States, although scoring well in only three of these four factors, and badly in the costs factor, nevertheless still figure highly in the GIPI. This says a lot about what business people and their advisers really want. At the same time it is worrying that the BRIC¹ countries figure uniformly at the bottom of the GIPI. It remains to be seen how those jurisdictions will adapt their IP systems to the rapid development that their markets are undergoing. China, for one, has started to put in place more effective measures for IP protection. Perhaps this is a case where market perception is lagging reality.

Fundamentally the GIPI is not about who is "top" and who is "bottom"; rather it is intended to make a significant contribution to the ongoing debate in this very important area. The GIPI will be published at regular intervals. We would urge all readers to take part in the online survey and encourage their colleagues to do so. The more who take part, the wider the spectrum of opinions and experiences it will reflect and the broader and more comprehensive the debate will become.



Michael Frawley
Managing Partner (UK)

Taylor Wessing LLP

¹ Brazil, Russia, India and China

Executive summary

Taylor Wessing's Global Intellectual Property Index (GIPI) provides the first comprehensive assessment of how the IP regimes of 22 important jurisdictions compare with each other. They are rated in respect of obtaining, exploiting, enforcing and attacking the three main types of IP rights: trade marks, patents and copyright. The GIPI ratings are shown in the table on the left below, with countries ranked in order.

To allow for statistical margins of error, it may be better to consider the jurisdictions in tiers. These are shown in the table on the right below.

The Global IP Index - Ranks and Ratings

Jurisdiction	Rank	Rating
UK	1	768
USA	2	762
Germany	3	749
Netherlands	4	740
Australia	5	733
Canada	6	732
New Zealand	7	724
Singapore	8	709
France	9	693
Israel	10	664
Japan	11	659
Spain	12	652
South Africa	13	619
South Korea	14	619
Poland	15	576
Dubai (UAE)	16	575
Italy	17	571
Mexico	18	550
India	19	489
Brazil	20	484
Russia	21	480
China	22	448

Jurisdiction by tier

Tier 1	UK
	USA
	Germany
Tier 2	Netherlands
	Australia
	Canada
	New Zealand
	Singapore
	France
Tier 3	Israel
	Japan
	Spain
	South Africa
	South Korea
Tier 4	Poland
	Dubai (UAE)
	Italy
Tier 5	Mexico
	India
	Brazil
	Russia
	China

The overall ranks of the GIPI, shown in the first table above, are derived from three separate sub-indices, one for each of the main three types of IP right: trade marks, patents and copyright. The ranks for each of these are set out over the page.

The GIPI will be updated regularly. To participate in the GIPI by rating those jurisdictions with which you are familiar please go to www.global-ip-index.com.

Ranks by type of IP rights

Rank	Trademark Index	Patents Index	Copyright Index
1	UK	UK	USA
2	Germany	USA	UK
3	Netherlands	Germany	Germany
4	Australia	Netherlands	Netherlands
5	New Zealand	Canada	Canada
6	USA	Australia	New Zealand
7	Canada	New Zealand	Australia
8	Singapore	Singapore	Singapore
9	France	France	France
10	Israel	Japan	Israel
11	Spain	Israel	Japan
12	Japan	Spain	Spain
13	South Africa	South Korea	South Korea
14	South Korea	South Africa	South Africa
15	Poland	Dubai (UAE)	Italy
16	Dubai (UAE)	Poland	Poland
17	Italy	Italy	Mexico
18	Mexico	Mexico	Dubai (UAE)
19	Brazil	India	India
20	India	Russia	Brazil
21	Russia	Brazil	Russia
22	China	China	China

Points to note:

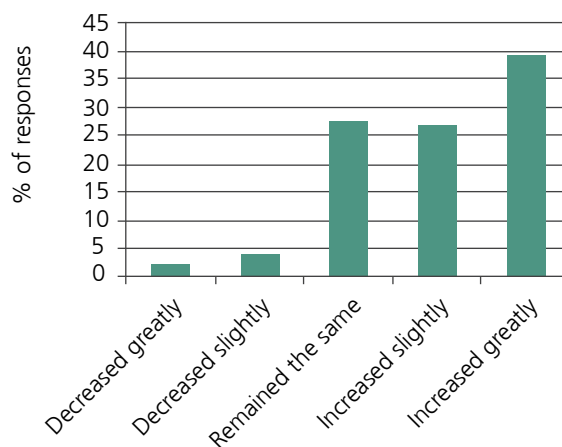
- Tier 1 jurisdictions perform strongly in all three areas of IP: only the UK and Germany are in the top three for each index, and they plus just the Netherlands are in the top five for each area.
- Seven of the nine jurisdictions in tiers 1 and 2 are common law legal systems.
- The highest ranked in Asia, in tier 2, is Singapore (a common law country). Japan follows in tier 3 but 50 points behind Singapore, with China in tier 5 and 300+ points below the tier 1 jurisdictions.
- Despite intended harmonisation of IP laws, there is a wide variance within the EU: the UK and Germany are in tier 1, whereas Poland and Italy are in tier 4.
- Brazil, Russia, India and China (the so-called "BRIC" developing countries) are consistently and by a significant margin in the bottom tier of all four indices, with China bottom of each.
- The size of a jurisdiction (measured by GDP) seems to have little effect on its tier; jurisdictions do well if they are generally places where the rule of law is highly regarded.
- The size of a jurisdiction (measured by GDP) seems to have little effect on its tier; jurisdictions do well if they are generally places where the rule of law is highly regarded.
- Cost does not seem to be a major factor: jurisdictions where the costs of obtaining and enforcing IP are high are generally in the higher tiers.

Background

Recent studies, such as *Ballow et al. (2004)*, suggest that only 20% of the average company's value is made up of tangible and financial assets, with 80% being excluded from its book value. This 80% can broadly be viewed as IP – goodwill, brand value, and other intangibles such as patents, know how, copyright, trade marks, designs and the like.

The importance of IP to corporations is growing. Respondents to the questionnaire which formed part of the research for GIPI indicated that their company spent more time dealing with IP related issues than it did three years ago:

How has the time that your organisation spends dealing with intellectual property changed over the last three years?



Two thirds of respondents say that the time their organisation spends dealing with IP has increased over the past three years. Fewer than 6% of respondents feel that their organisation spends less time dealing with IP issues than three years ago. When asked why organisations were spending more time on IP issues, the most common response was that there is much more awareness of IP and its value.

In a global economy that increasingly revolves around creative output, inventions, know-how, information and brand names, IP is one of the most valuable assets a company has. Whether a business is successful or not often depends on how carefully it protects, defends and exploits its IP - these are the keys to a company's innovative power and creativity and they secure its reputation and market position. The ease with which that can be done will differ from jurisdiction to jurisdiction.

The consequence of this global economy, the rise of the internet, knowledge-based economies, and low-cost travel is that those

making IP decisions are increasingly involved with IP regimes other than their own. In doing so, comparisons will inevitably be made of their relative speed, cost, independence and certainty of outcomes. Such comparisons promote understanding of and respect for the virtues and limitations of the various IP regimes. Ideally, this should be applied for the benefit of all by encouraging a move towards best practice and harmonisation.

To facilitate this, we have developed the GIPI to provide a simple, single, up-to-date point of reference by which the IP regimes of different jurisdictions can be assessed. It is intended to stimulate discussion and lend support to calls for appropriate change. The GIPI will be updated regularly, so that ranks and ratings can be monitored over time. We intend this to be a tool useful to business leaders and law and policy makers alike.

Introduction to the GIPI

The GIPI has been developed by Taylor Wessing in association with Z/Yen Limited, who have expertise in developing similar indices in other areas², and with the support of Managing Intellectual Property magazine.

A detailed overview of the methodology used to create the GIPI can be found in Appendix A. In summary, the GIPI ratings for each jurisdiction are calculated using a 'factor assessment model' applied to two distinct sets of information:

- **jurisdiction assessments** – these come from respondents to an online questionnaire (see Appendix B). Respondents separately assess a jurisdiction's regime for obtaining, exploiting, enforcing and attacking the relevant type of IP (trade mark, patent and copyright). Only those assessing three or more jurisdictions were given statistical weight and a respondent's own jurisdiction was weighted against them. The online questionnaire runs continuously to keep the GIPI up-to-date with people's changing assessments.
- **instrumental factors** – currently 43 factors drawn from external sources (see Appendix C). These include data on the number of specialist IP judges and lawyers relative to the population, the number of patent or trade mark filings and the number of patents or trade marks granted and in force.

For the first GIPI model, 341 senior respondents – CEOs, IP lawyers, in-house counsels, law firm partners - gave 9,333 individual jurisdiction assessments. The respondents came from a range of jurisdictions, primarily based in Europe and North America, but with sufficient numbers from Asia and Pacific Rim, Latin American and EMEA countries to give statistical accuracy. Guidance was given on the factors that may impact on their assessments. These were tailored for each question and for each IP right, but included speed and cost of procedures and proceedings, availability of specialist advisers and judges, certainty and fairness and the preponderance of 'red tape'.

The factor assessment model combines these two different sets of input and a tested predictive element to generate 11 sub-indices from which three IP area indices – a patent index, a trade mark index and a copyright index - are derived. These IP area indices are fully scored and ranked. The overall GIPI combines these results, leading to the ratings, ranks and tiers identified.

We will continue to identify additional instrumental factors and welcome suggestions. However, to serve as such, data is needed for enough of the 22 jurisdictions analysed to be statistically valid. Unfortunately, judgments and statistics on case outcomes are not available for most of the 22 jurisdictions analysed. This means that, whilst we have gathered such information for patent cases in some countries, no specific weight was given to it. However, trends in case outcomes, to the extent perceived, will no doubt have been reflected in respondents' answers to the enforcing and attacking IP questions. As it is, bald statistics as to wins and losses can help identify some trends but, without analysing the underlying facts and issues, they are necessarily artificial.

² e.g. the Global Financial Centres Index launched in March 2007 by the City of London Corporation

The GIPI results

The overall GIPI results are set out below. This shows the rank and rating for each jurisdiction. In addition, it shows the list of 22 jurisdictions divided into tiers. This is done to allow for statistically marginal differences. The tiers are identified using a standard statistical tool, known as single-link hierarchical clustering.

The Global IP Index – May 2008

Jurisdiction	Tier	GIPI Rank	GIPI Rating	Trade Mark Rank	Patent Rank	Copyright Rank
UK	1	1	768	1	1	2
USA		2	762	6	2	1
Germany		3	749	2	3	3
Netherlands	2	4	740	3	4	4
Australia		5	733	4	6	7
Canada		6	732	7	5	5
New Zealand		7	724	5	7	6
Singapore		8	709	8	8	8
France		9	693	9	9	9
Israel		3	10	664	10	11
Japan	11		659	12	10	11
Spain	12		652	11	12	12
South Africa	13		619	13	14	14
South Korea	14		619	14	13	13
Poland	4	15	576	15	16	16
Dubai (UAE)		16	575	16	15	18
Italy		17	571	17	17	15
Mexico		18	550	18	18	17
India	5	19	489	20	19	19
Brazil		20	484	19	21	20
Russia		21	480	21	20	21
China		22	448	22	22	22

Analysis and commentary: The GIPI

The results confirm some reasonably widely held, but often unsubstantiated, views, for example that the USA has a well-developed and strong copyright regime. It also ties in with some partly comparable studies, at least with regard to patent regimes. Taylor Wessing also participates as a contributing firm to a project coordinated by US law firm, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP. This has gathered comparative patentee win rate data from 30 different countries over the last 10 years. Mike Elmer, partner at Finnegan Henderson and chairman of that project, concludes:

"The GIPI provides valuable insight for global companies formulating IP enforcement strategies, and well complements the patent litigation data from our project."

The following features and themes can be identified from the GIPI results:

The tier 1 jurisdictions

The UK, USA and Germany perform well overall and also in all three areas of IP. The UK heads up both the trade mark and patent index and rank second in the copyright index. The USA leads the copyright index but is in 6th place for trade marks. Germany is in the top three in all three indices. The UK, Germany and the Netherlands are the only jurisdictions to appear in the top 5 in all indices.

The UK and USA are both seen as jurisdictions with strong respect for intellectual property generally with the use of the English language viewed by some as an important strength. It should be noted that the GIPI questionnaire was only distributed in English so there is likely to be an inherent bias here.

The USA is seen as a good jurisdiction for enforcing IP: costs are not awarded against you which decreases the risk, and triple damages are available. Germany is ranked second behind the USA for IP enforcement, partially because it has specialist judges, it is relatively speedy, relatively cheap, and also seems more likely to grant interim injunctions.

Tier 1 Jurisdictions – An overview

Tier 1 Jurisdictions	GIPI Rating	Comments
UK	768	Viewed favourably by most respondents, particularly for obtaining and exploiting trademarks. Strong overall, except for copyrights where it is rated behind the USA.
USA	762	Viewed favourably by most with a particularly strong rating for enforcing and exploiting copyrights. In 6 th place for trademarks and second behind the UK for patents.
Germany	749	Third overall and in the top three places for trademarks, patents and copyright. Litigation in Germany is seen as relatively inexpensive and quick.

The tier 2 jurisdictions

Of the tier 2 jurisdictions, France is generally considered "brand friendly" and has a powerful luxury goods lobby. Despite this, a number of respondents remarked to the effect that the French courts often disappoint plaintiffs trying to enforce their IP rights. In particular, damages awarded in France are usually moderate and can seemingly act as a deterrent for some plaintiffs to sue before French courts.

The Netherlands is seen as fast and efficient at dealing with registration, in particular. Singapore, also a tier 2 jurisdiction, is rated significantly higher than any of the other Asian jurisdictions. Japan is the second Asian jurisdiction in 11th place - a full 50 points behind Singapore.

Tiers 3 and 4 jurisdictions

These tiers include three European jurisdictions. Spain has non-specialist judges and proceedings reportedly take a long time. Poland is improving and appears to be doing well at integrating into European norms. Italy, on the other hand, is below Poland and continues to frustrate.

Regional systems

Despite the intended harmonisation of rules within the EU, there is a wide variance in the ratings and ranks of European jurisdictions. The UK and Germany are tier 1 jurisdictions whereas Poland and Italy are in tier 4, the latter over 175 points behind the lowest tier 1 jurisdiction (and below Poland and Dubai).

The lack of a regional system in Asia is seen as a shortcoming. In particular, one respondent commented:

"Asia is generally a mess compared to the EU and US because there is no multi-jurisdictional system."

The BRIC jurisdictions

The BRIC jurisdictions form tier 5 of the GIPI. They are at the bottom of the list in all four indices and by a significant margin. China is bottom of each index and is more than 300 points lower than the tier 1 jurisdictions. Brazil, Russia and India are still seen as very poor jurisdictions in which to manage all forms of IP.

The 2007 Special 301 Report by the Office of the United States Trade Representative reports that the top priorities are to address weak IP protection, particularly in China and Russia. Although the report shows progress, in many countries "rampant counterfeiting and piracy have continued to plague China and Russia".

It appears that things are improving as China has recently joined the two key WIPO treaties for copyright protection and Russia has made strong commitments to improve its IP protection and enforcement. The quotes below from two respondents are typical of a number of comments about China:

"China is improving almost monthly."

"China is improving as it becomes more aware of the value of IP and of the need to protect its own IP."

Similarly, Brazil has improved its IP enforcement efforts.

Size of economy

During the research for the GIPI, we were keen to establish whether the size of an economy affects IP management. Overall, size of GDP seems to have little effect on the ability to manage IP. All tier 1 jurisdictions are members of the G7 group of the world's leading economies. Of the remaining four members, Canada and France are in tier 2, Japan is tier 3 and Italy is tier 4. It appears that both large and small jurisdictions can get IP management right if they are generally places where the rule of law is highly regarded.

Costs

We also sought to discover whether cost was a major factor in identifying a good IP regime - it appears not. The jurisdictions where costs of obtaining and enforcing IP are high are generally towards the top of the GIPI rankings despite this.

Instrumental factors

In order to identify some of the key, but potentially less apparent, drivers behind the ratings, we examined the correlation of each instrumental factor to a jurisdiction's overall

GIPI rating. The twelve instrumental factors with the highest correlations (measured by R squared - a widely used measure of correlation) are shown below:

Instrumental	R Squared with
Opacity Index	0.886
Political Risk	0.857
E - Readiness Score	0.856
International Property Rights Index	0.852
Corruption Perception Index	0.833
Gross Annual Salary of Judges	0.824
Operational Risk Rating	0.807
Ease of Doing Business Index	0.805
Index of Economic Freedom	0.793
Legal System & Property Rights	0.769
Global Competitiveness Index	0.732
Economic Freedom of the World	0.719

It is interesting to note that the key drivers of the ratings are indicators of the more general 'rule of law' rather than IP specific factors (such as the numbers of patents or trade marks filed). The Opacity Index, Political Risk Index, Corruption Perception Index, The Gross Annual Salary of Judges (often cited as an indicator of corruption levels), and the Operational Risk Rating are all measures of the general rule of law. There are only two specific property rights indicators in this list. The remaining instrumental factors in the list are indicators of general business competitiveness: e-Readiness Score, Ease of Doing Business Index, Index of Economic Freedom, Global Competitiveness Index and the Economic Freedom of the World.

Looking ahead

We asked respondents what factors impacting on their assessment of IP regimes and ease of doing business might change significantly over the next two to three years. Two issues cropped up frequently in the responses:

- **Harmonisation** – this primarily related to application procedures for trade marks (with countries such as Canada, New Zealand, Israel and the UAE possibly joining the Madrid System and an increasing move away from relative

ground examination) and also patents (with the coming into force of the London Agreement to reduce translation burdens at the EPO and the potential switch by the US to a first-to-file system – see below);

- **e-Business for registries** - more registries are expected to develop their website capabilities and make it ever easier (and cheaper) for IP owners and IP users to file and search for patents and trade marks online.

In fact, these issues themselves can be related since e-business can bring the registry closer together with its users but also with other registries. For example, some pilot (and some fully implemented) schemes are in place whereby a registry in one country may do prior art searches for the registry in another country. Equally, harmonisation may bring a greater sharing of the examination burden. This could lead to materially faster patent examination.

A number of respondents pointed to the planned reforms of the US patent system. These are presently before Congress and may come into force during the course of this year. If implemented as proposed at the time of writing, they would change the US first-to-invent system to a first-to-file system as exists in all other patent regimes. The change would mean no more interference proceedings before the USPTO to identify who was indeed the first to invent the invention. These can be expensive, drawn out and give rise to uncertainty that does not arise outside the US. The reforms may also address the controversial issue of when triple damages may be available and which sets the US system apart from most, if not all, others. Whilst the GIPI results do not fully concur with the first comment of this (American) respondent, the second comment indicates there may be some volatility to the US rating going forward:

"The USA [is] currently the most reliable, predictable and equitable jurisdiction. However, pending patent reform rule/legislation would destroy that ranking."

For a more detailed analysis of the results, it is necessary to consider each of the separate IP rights in turn.

Analysis and commentary: Trade Mark Index

The Trade Mark Index

Jurisdiction	Rank	Rating
UK	1	783
Germany	2	766
Netherlands	3	763
Australia	4	761
New Zealand	5	757
USA	6	751
Canada	7	748
Singapore	8	722
France	9	713
Israel	10	696
Spain	11	678
Japan	12	658
South Africa	13	649
South Korea	14	618
Poland	15	584
Dubai (UAE)	16	582
Italy	17	569
Mexico	18	540
Brazil	19	484
India	20	479
Russia	21	479
China	22	446

Variance within the EU

The variance for EU Member States seems wide, given that trade mark law has been harmonised within the 15 older Member States for more than a decade. The following factors impacted on these results and may determine future ones:

- The **UK** is ranked first with a noticeably higher rating. As a high-cost litigation jurisdiction, the UK fares better than expected. Unsurprisingly given the low-cost, quick and effective *ex parte* interim injunctions available in Germany, it scored more highly than the UK in relation to enforcement. Subject to that, the speed, transparency and quality of both application and litigation procedures in the UK make it attractive. With the recent dropping by the UKIPO of relative ground examination (aligning it with OHIM) and the new option of fast-track examination, the cost and speed of registration at the UKIPO is also favourable.
- Normally perceived as pro-brand owner due to its strong fashion and luxury goods sector, **France** is ranked ninth. This was not expected and the reasons for this are unclear. Its pro-brand owner credential may possibly have waned a little as the French courts are now no longer assuming jurisdiction for any use on the internet (as in most jurisdictions, it must now be, at least implicitly, targeted at the national consumers). Recent changes to implement the Enforcement Directive, have added to the remedies now available to successful claimants so this may lift France's rating in future.
- At over 200 points behind the UK, **Italy** is ranked 17th – it is below Dubai (UAE). As Italy is not a high-cost jurisdiction, respondents indicate that its low rank stems from the slow speed of its procedures. A trade mark application can typically take four years (in contrast to six months in the UK, or even five months if using the new fast-track procedure).

- New EU accession country, **Poland**, is ranked 15th, ahead of Italy. Poland's new IP laws have been in place since 2000, aligning themselves with EU law well before accession in 2003. However, perceptions were tarnished by a 2005 Supreme Court decision that had the effect of curtailing trade mark enforcement against resellers of counterfeit goods in Poland. This was reversed with new legislation in 2007. Its role as the new Eastern frontier to the EU makes it vulnerable as an overland entry point for counterfeits. The relaxing of customs inspections at Poland's land border crossing points with its EU neighbours (pursuant to the Shengen Agreement) is a risk highlighted in one respondent's comment:

"Poland entry into Shengen could have a significant impact. Early signals are not positive."

However, Poland is one of the few Member States to have implemented the simplified Customs Regulation 1383/2003 procedure, so its seizure and destruction procedures are relatively streamlined.

US ranked sixth

The **USA** lags noticeably behind its usual peers here. Based on respondent feedback, this is influenced by the complexity of the US application procedure, in particular the intent-to-use route. In addition, its register is overcrowded (making clearance hard) and the USPTO takes a very strict approach to broad specifications, with potentially dire consequences given recent decisions on defrauding the USPTO. Two comments summed this up:

"United States has become formalistic and silly. It substitutes canned paragraphs and computerized searches for informed judgment."

"USA needs to change law re: specifications."

These factors have some limiting effect on the benefits of the US adopting the Madrid Protocol. Finally, the US has its own generic drug names register (the US Adopted Name

register) operating in parallel with the WHO's International Non-proprietary Names register run for the rest of the world. This adds a costs, time and risk burden when trying settle on a worldwide generic name for new drugs.

Major sporting events

These often lead to greater scrutiny and enhancement of the host country's IP regime. Apart from this year's Olympics in **China**, imminent ones include the FIFA World Cup 2010 in **South Africa**, the Rugby World Cup 2011 in **New Zealand**, and the UEFA EURO 2010 football finals in **Poland**. New rules have been or will be introduced to protect the tournament's brands and protect against ambush marketing. In the case of South Africa, it is thought that neighbouring countries may also review certain aspects of their IP regime as a result.

Protection for famous marks

The Paris Convention and the GATT-TRIPS Agreement (to which all 22 GIPI countries are signatories) include provisions for the protection of unregistered but famous marks. In particular, Article 16(2) and (3) TRIPS extended Article 6bis of the Paris Convention to give protection against use of famous marks on services and non-similar goods. However, implementation of this is patchy. For example, section 56 of the **UK** Trade Mark Act 1994 only refers to services and identical or similar goods, not non-similar goods, and in **Canada** there are no special provisions for famous marks at all. Indeed, it remains unclear whether protection is afforded in the **US** to famous unregistered marks that have not yet been used there – a point still to be decided by the Supreme Court. In contrast, **China** has implemented these obligations, as has **South Africa**. Registers or other formal recognition of which marks are "famous" exist in **China**, **Japan** (once ruled upon by appeal examiners or court judges), the Czech Republic, **Russia**, Ukraine, Belarus and Bulgaria. For those on the lists, this is advantageous. However, such lists can be invidious for those whose brands are not on them and they are not universally

welcomed. Many of the respondents worked at companies with famous marks. It seems very likely that the treatment of their brands under these rules will have had a direct bearing on their responses, even if not articulated into specific comments on this.

Registry procedure

Despite the intentions underlying the 1994 Trademark Law Treaty and revisions to it, a number of jurisdictions suffer from excessive red tape for routine tasks, such as recording assignments or licences and effecting renewals. They require the filing of multiple documents, some to be bilingual, notarised and legalised, as well as supporting affidavits and powers of attorney. To differing degrees, this relates to **India, Italy, South Korea** and **Russia**, amongst others. The extension of the Madrid System is cited frequently by respondents as a positive move. Imminent or likely new members are New Zealand, Canada, Israel and the UAE, all included in the GIPI and whose future ratings may be affected as a result.

The BRIC countries

These are, by some margin and consistently, in a bottom tier of their own. However, various respondents and our analysis suggest that **China's** rank and rating, at least, may lag behind reality. As a result of hosting the 2008 Olympics and two WTO complaints filed against it by the US government, China's IP regime has been reforming rapidly. Legislation has been amended and there is greater buy-in from Chinese senior officials and professionals. There has been more effective enforcement against counterfeiters, including recent high-profile successes for Pfizer and Louis Vuitton, including the imposition of liability on landlords for sales on counterfeits on their premises. *Referring to a case decided this April in which an infringer, one respondent:*

"The recent case of GUCCI who won a claim against the Zhejiang company and a number of other western companies' successful claims, have shown that enforcement measures are now becoming much more forceful and carried out more strenuously by the courts and local authorities."

In 2006, there were over 14,000 civil IP trials (up 5% on the previous year) and over 2,250 criminal IP trials. In the latter, 3,500 were sentenced. Perceived foreign bias is being addressed and enforcement by foreign trade mark owners is now common. All this adds up to progress which has yet to be reflected in the trade mark index results. In terms of respondent comments, many focused on China, with a few on Russia and India.

The general view was that progress, some quite rapid, is being made in China, although one view was more tempered:

"China will need more than 2 – 3 years".

The same respondent indicated that the IP regime in India may benefit from the opening up of the legal market in India (foreign law firms not being permitted there).

Analysis and commentary: Patents Index

The Patents Index

Jurisdiction	Rank	Rating
UK	1	761
USA	2	746
Germany	3	737
Netherlands	4	715
Canada	5	709
Australia	6	706
New Zealand	7	680
Singapore	8	677
France	9	672
Japan	10	648
Israel	11	621
Spain	12	615
South Korea	13	604
South Africa	14	592
Dubai (UAE)	15	569
Poland	16	553
Italy	17	551
Mexico	18	540
India	19	508
Russia	20	502
Brazil	21	491
China	22	477

The tier 1 jurisdictions

The UK, USA and Germany are ranked top because they each have:

- relatively speedy and effective procedures;
- specialist patent courts (albeit at appeal level only in the US); and
- well-respected judges. And yet, they differ substantially as follows:

Considering each in turn:

- The **UK** is a common law country, with a reasonably streamlined system (limited discovery, no depositions or juries). It is considered a high-cost jurisdiction (costs of £1 million not uncommon) but a party losing, either overall or on each issue, can be required to pay the winner's costs. This is a real disincentive to litigation because of the uncertainties this can create. The UK is still perceived as somewhat anti-patent and scored

highly as a jurisdiction in which to challenge patents. It may be that the status of the English Patents Court, coupled with its procedures, make it an attractive jurisdiction in which to challenge weak patents; it has attracted a large number of revocation suits from generic companies seeking to attack second generation pharmaceutical patents. It may be that the ability to attack weak patents is just as important to users of the system as the ability to enforce good patents.

- The **USA** is also a common law country but with jury trials, extensive discovery, depositions, and the potential for triple damages and forum shopping within the US. Costs are rarely awarded against the losing party. Domestic patentees can also resort to the International Trade Commission (to keep out "foreign" competition). However, these factors are balanced, for some, by its first-to-invent system, which can lead to expensive and protracted interference proceedings when no similar dispute would exist in first-to-file countries. In addition, in the past few years the specialist appeals court has had a high proportion of decisions reversed by the Supreme Court creating uncertainty, although at district court level about 60% of decisions have been favouring patentees. On balance and notwithstanding high-costs (attorney fees of US\$3.5 million are not uncommon for patent trials), the US is perceived as patentee friendly. The planned reforms of the US patent regime are potentially very significant. One respondent voiced their concerns as follows:

"Is the US really moving to 'first to invent' and are the US examiners really likely to take a harder line on 'inventive step'? At present, they seem to grant far too much that is clearly 'obvious'."

- **Germany** differs from the US and UK in being a civil law country but also by (uniquely in Europe) dealing with issues of validity and infringement in separate courts. Costs are much less than in the US and UK (typically about €200-250,000), making Germany especially patentee friendly (it scored highly for enforcement). On the other hand, Germany has stronger than usual compensation rights for employee

inventors, which may explain its lower scoring for exploitation (likewise the complexities of EU competition laws relating to patent licences may impact on that – and help explain why Canada and the US scored better than Germany in this area).

European Variance

Whilst the UK and Germany rank highly, there is wide variance (over 200 points) within Europe. France and Spain feature less well, with Spain 150 points below the top. Italy is notably another 64 points behind and is ranked below the new EU Member State of Poland (with low scoring for enforcing and attacking patents). This seems to stem from having procedures that are slower than the top-rated jurisdictions, notwithstanding that costs in France and Italy are lower than in the UK and that patentee win-rates are higher. The factors considered below seem to have influenced this:

- Starting with the **Netherlands**, this jurisdiction shares with the three leading jurisdictions the factors listed above. In the late 1990s it also had the great attraction of being a system which was prepared to determine patent infringement disputes on a pan-European basis, meaning one could resolve all European infringement issues in a single action. That made it an extremely attractive proposition for patentees. However, for better or worse, the Dutch courts' ability to do that has been curtailed by both domestic decisions and by the decision of the European Court of Justice in *Roche v. Primus*.
- Perceptions of **Spain** link to the fact that, until 1992, there was no patent protection for pharmaceuticals. Other factors include (i) its government-controlled drug-pricing regime, making it the prime source (with Greece) of parallel traded drugs, (ii) its unwillingness to sign up to the London Agreement, and (iii) its stance on language in the Community Patent negotiations.
- **France's** lower ranking (below New Zealand and Singapore for enforcement) is probably a reflection of the pre-October 2007 position whereby damages were likely to be assessed on the basis of patentee's lost profits, with no punitive element. This was considered

a weakness for patentees. As part of the implementation of the Enforcement Directive, a new law allows judges to take into account profits made by the infringer, and other elements of damage such as the commercial confusion as well as the lost profit for the patent holder.

- **Italy** has appeared to put itself at the bottom of the league, no doubt because memories of the notorious "Italian Torpedo" are still fresh in everyone's minds. As one respondent put it:

"It just takes for ever! - Initiating an action in Italy is known as the 'Italian torpedo' – everything just grinds to a halt!"

Although most commentators had assumed that such torpedoes could no longer be launched following a decision of the Italian Supreme Court in 2003, the recent litigation between *Research in Motion v Visto Corporation* shows that such weapons may not have been completely disabled! For the time being Italy remains low on patentee's lists of countries in which to litigate.

That there is such a marked difference between European jurisdictions when under the European Patents Convention they are supposed to be applying the same law to the same patents is an indictment of the failure of the legislating authorities to put in place a comprehensive unified system of patent litigation. An example of this is the litigation filed by Document Security Systems against the European Central Bank in relation to its patents covering anti-counterfeiting technology. The patent in issue has been found to be invalid by the English and French courts but valid in the German and Dutch courts. Furthermore, the lack of any centralised system, even on appeal, means that there is no single court which can provide a definitive resolution.

That this should still be the case 30 years after the EPC came into effect is all the more shocking. Business people require certainty above all and the type of forum shopping which is now common in pan-European litigation does nothing to provide that certainty. The implementation of the London Agreement will assist in reducing the cost of obtaining European-wide patents.

However, what industry and practitioners are crying out for is a single unified enforcement system, the legislative failure to provide that is a marked failing. As one respondent commented:

"We hope that Europe will be treated as one, rather than having to file and fight in each different country."

Technology-rich jurisdictions

- Given **Israel's** focus in recent years on the high tech sector and the importance of it to that economy it is perhaps surprising that that jurisdiction only appears in "mid-table".

"The courts in Israel are erratic with respect to applying legal principles in a predictable manner; costs are an issue in the US and the UK."

- South Korea** and **Japan** get mid-tier rankings. Both are high originators of PCT applications: for filings in 2007, Japan was second (ahead of Germany) and South Korea was fourth (ahead of the UK and France). Indeed, countries from North-East Asia account for more than a quarter of PCT filings in 2007. In addition, Japan has now been operating with specialist IP courts since 2005, with patent cases concentrated in just the Tokyo and Osaka district courts, such that the speed and quality of its first instance decisions are said to have improved. Even so, this may be offset by the very long delays currently being experienced in simply having patents examined in Japan.

Cooperation

Looking ahead, the overall results and questionnaire feedback indicates a need for greater collaboration between patent offices, leading to more harmonisation of patent laws and practice. This can include a sharing of the patent examination burden and results, and the mutual recognition of patents granted (along the lines adopted in Israel).

Such collaborations are already happening in some quarters. The Patent Prosecution Highway between the USPTO and the Japanese Patent Office has led to the fast-tracking of patent applications in both

countries. The EPO has just recently agreed to join a pilot scheme, along similar lines to another pilot scheme already in place between the UKIPO and USPTO.

The BRIC countries

The position of the BRIC countries at the foot of the Index is a marked result. Within a margin of error they are all on the same level.

- China** certainly has made significant efforts over the past few years to improve its IP systems, including with the set up of specialist IP courts (the third civil division) and substantive decisions sometimes within two month. However, red tape continues, e.g. requiring all documentary evidence to be legalised and notarised. In terms of perception, at least so far these efforts do not appear to have gained recognition.
- Likewise, **Russia** is undergoing a third overhaul of its IP laws in a decade. It is clear, from PCT filings and elsewhere, that these low-cost competitor countries are increasingly developing their own technologies.
- In China and Korea the focus tends to be on telecoms hardware and semi-conductors, whereas in **India** it is IT services and software. Both China and **Brazil** achieved double-digit growth in PCT filings in 2007, with China now in seventh place. There were also ~300,000 national patent applications filed in the first six months of 2007 at the Chinese State IP Office and over 400% growth in filings from a decade ago at the Indian patent office. As a result of the latter, the Indian IP office has applied to become an additional search and examining office for PCT applications but it still has a backlog of its own. Perceptions of the Indian IP regime may be clouded by its two to three year trials (better than the five to ten year trials of before) and the strength of its generic pharmaceutical industry.

As the BRIC countries develop, from being seen purely as countries with vast reservoirs of cheap labour to more knowledge-based economies, how they adjust their systems to provide good, effective protection for that knowledge will be one of the challenges which they have to meet. It will be interesting to see if these efforts are reflected in future editions of the GIPI.

Analysis and commentary: Copyright index

The Copyright Index

Jurisdiction	Rank	Rating
USA	1	797
UK	2	756
Germany	3	745
Netherlands	4	744
Canada	5	743
New Zealand	6	737
Australia	7	734
Singapore	8	733
France	9	694
Israel	10	680
Japan	11	675
Spain	12	668
South Korea	13	638
South Africa	14	615
Italy	15	598
Poland	16	596
Mexico	17	577
Dubai (UAE)	18	574
India	19	476
Brazil	20	473
Russia	21	451
China	22	413

In copyright, the **USA** is well ahead of European and other jurisdictions - 41 points ahead of the **UK** and over 50 points ahead of **Germany** and the **Netherlands**. Again, there is a lack of consistency within the EU jurisdictions. The UK, Germany and the Netherlands are the European leaders in copyright, whereas **France**, **Spain** and Italy are rated poorly, with **Italy** in 15th position, some 100 points behind the next European jurisdiction and almost 200 points behind the USA. Surprisingly, even France is more than 100 points below the USA.

These variations are interesting, not least since all 22 jurisdictions are members of the Berne Convention and are members and signatories of the WTO GATT-TRIPS Agreement. In terms of harmonisation, there has been a raft of European directives on copyright and related rights. The clarity of some has been much criticised but

equally their implementation has sometimes been inconsistent and confusing, e.g. present UK database law. This may account in part for the variance within the EU.

In addition to some of the general IP comments discussed for the previous indices, the following matters relate just to the copyright index:

The "copyright heritage" of the jurisdiction

There are broadly two types of copyright regime:

- Those based on the USA and UK model of copyright protection, which tend to view copyright as a valuable commercial property (although copyright law in USA and UK probably has less of the common law basis of other areas of law in these jurisdictions)
- Those, such as France, that see copyright as an author's right linked to his reputation.

It appears that copyright regimes based on the US/UK model generally do better in this index (with some exceptions, such as Germany and the Netherlands). In these US/UK-type regimes, copyright is viewed as a valuable commercial property. In contrast, other regimes, such as France, see copyright as an author's right linked to their reputation. The former approach seems to be becoming more important in other EU jurisdictions. In the US, there is also a legacy procedure of optional registration. This gives early registrants the benefit of statutory damages and, unusually for US litigation, recovery of attorney costs from a losing defendant. As a result, registration is the norm.

The type of regime tends also, subject to EU directives, to determine how a country deals with the ownership of commissioned literary works, including software, or of an artist's resale royalty right (*droit de suite*). The latter exists in over 50 countries, having now been introduced at EU level (yet to be fully implemented). **New Zealand** and **Australia** are also considering it. Unusually, **Canada's** heritage derives from both types of copyright regimes. That, in itself, has led to some confusing results in Canada but it

also has the advantage that, unusually for a common law regime, claimants have the option to elect for statutory damages, giving them the best of both regimes.

Importance of the Film and Music lobby

Index ratings reflect the existence of a strong copyright industry that materially exports. The US is perceived as being more effective than the UK at enforcing copyright rights, even if, in practice, the difference is not great. A material reason for this is the power and renown of the US film and music industry (embodied in the Motion Picture Association of America and the Recording Industry of America). They run high-profile campaigns to protect their members' copyright, including actions against those operating peer-to-peer file sharing systems and, more controversially, those using them. This has led to a few concerns as voiced by one respondent as below:

"The copyright laws in the US seem to have been captured by vested interests of the popular music and motion picture industries. This is good for them in the short term, but poor in the long term for all concerned."

The UK's rating may likewise reflect its strong copyright-based industries, which account for over 7% of UK GDP: One (British) respondent remarked:

"UK enforcement is relatively cheap and effective. If we had specialist judges dealing with copyright disputes, they could play a more active role in case management and thereby keep disclosure and evidence under control."

In contrast, **India** is ranked 19th but its sizeable film industry is largely domestically driven.

Contractual restrictions and collecting societies

Respondents clearly rate **Germany** as copyright-friendly. This may be because of, rather than despite, the protective stance it takes on behalf of authors vis-à-vis the

copyright industry (certain parameters apply to the freedom of contract, termination rights and statutory remuneration claims). Furthermore, whilst some outside Germany have been critical of the performance of German collecting societies, this has likewise not adversely affected its rank. It also scored well for exploiting copyright. This may stem from the previously favourable (now diminished) tax regime relating to film financings.

Adaptability to new technologies

Jurisdictions that fail to adapt, or do so slowly, to the latest manner of copying and distributing copyright-protected works receive lower ratings. This includes the need to cater for infringements by circumventing copy-protection and digital distribution, as well as format and time shifting. Given this, **Canada** scored well for enforcement notwithstanding an unfavourable decision relating to peer-to-peer file sharing. However, the favourable online royalty rates recently set by the Canadian Copyright Board may help explain this.

The BRIC countries

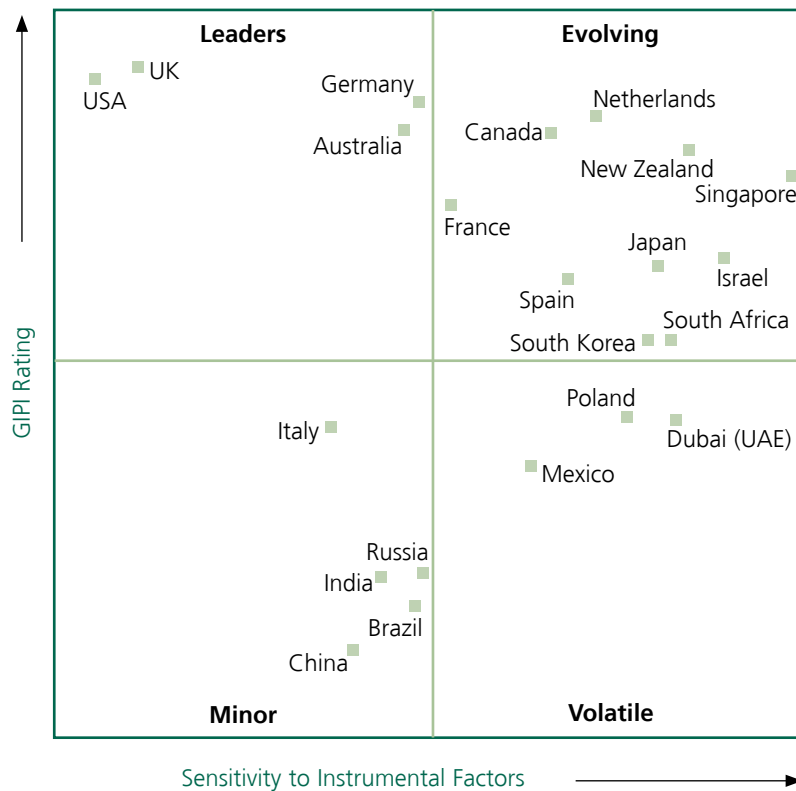
As with the other IP rights, change is afoot in **China**. Its laws are being aligned to its new WTO Copyright Treaty and Performance and Phonograms Treaty obligations. Also, there will be new lower thresholds for sentences for copyright crime (if involving >500 copies then three years' imprisonment and if >2,500 then seven-year imprisonment, in addition to the fines imposed). Even so, one respondent concludes:

"In China copyright is often unenforceable and the benefits of copyright are not understood."

This is confirmed in the US Section 301 Reports and figures published by OHIM relating to the source of pirated copyright material intercepted by customs EU ports of entry.

Jurisdiction analysis

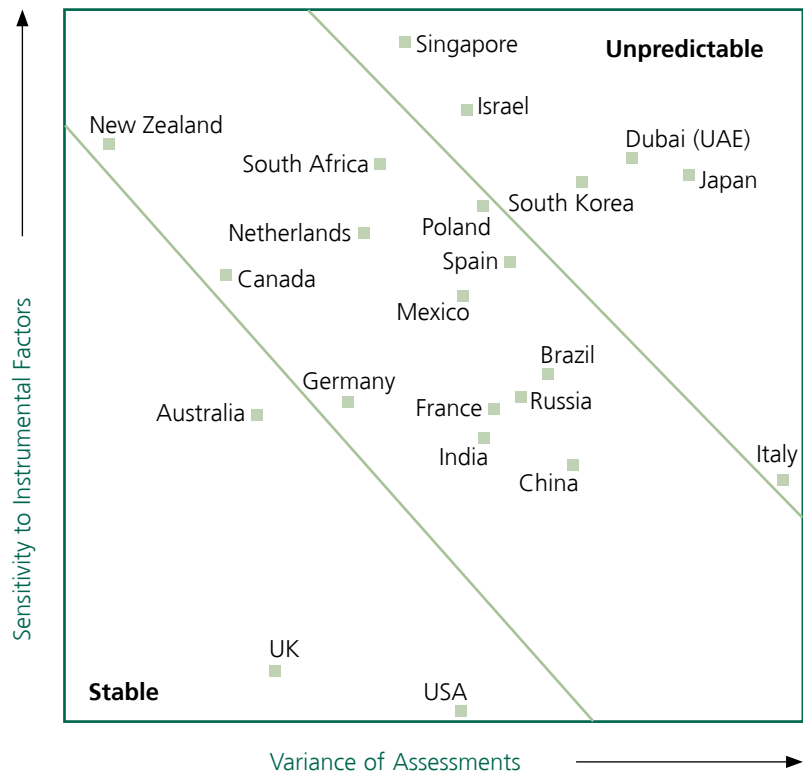
In order to examine how stable the rankings might be in the future, the overall GIPI rating has been contrasted with a jurisdiction's sensitivity (measured by the variance of a jurisdiction's ratings in the 11 sub-indices). Each set of instrumental factors was examined to see how it changed financial centre rankings. The variance of the scores is termed 'sensitivity'. If a jurisdiction's ranking changed markedly over the 11 sub-indices, it might be anticipated that it had a lot of potential to improve, or decline. If a jurisdiction's ranking remained fairly stable over the sub-indices, its rating is more likely to remain fairly stable in the future:



This categorisation identifies four types of jurisdiction:

- Leaders: the tier 1 jurisdictions appear here;
- Volatile: tier 2 and 3 jurisdictions with good ratings, but susceptible to change;
- Evolving: the tier 4 jurisdictions that are not rated highly, but might be able to move upwards rapidly if they could improve in some respects;
- Laggards: the tier 5 centres – the BRIC jurisdictions are grouped closely – they seem unlikely to change their ratings soon.

Another measure of how volatile a jurisdiction's ranking might be is the 'spread' or variance of the individual assessments given to each jurisdiction (i.e. some respondents assessed them highly and other respondents assessed them poorly). The sensitivity described above and the variance of assessments are plotted together below:



There are three 'bands' of jurisdictions:

- The 'Unpredictable' jurisdictions in the top right of the chart have a high sensitivity and a high variance of assessments. These jurisdictions (typically tier 3 and 4 jurisdictions) have the highest potential volatility in GIPI ratings. It will be interesting to watch their progress in the future.
- The 'Stable' jurisdictions in the bottom left of the chart (including the tier 1 jurisdictions) have a low sensitivity and a lower variance of assessments. These jurisdictions are likely to exhibit the lowest volatility in future GIPI ratings.
- 'Dynamic' jurisdictions in the centre have the potential to move in either direction.

Appendix A - Methodology

The GIPI ratings for different jurisdictions are calculated by a 'factor assessment model' built using two distinct sets of input:

- **jurisdiction assessments** – to construct the GIPI ratings we use assessments drawn from respondents to an online survey. Respondents assess the competitiveness of the jurisdictions which they know. The online survey runs continuously to keep the GIPI up-to-date with people's changing assessments.
- **instrumental factors** - drawn from external sources. For example, enforcing patents in a jurisdiction is indicated by 'instrumental factors' including the number of cases brought, the success rate and the number of patents lawyers. Not all jurisdictions have data for all instrumental factors and the statistical model takes account of these gaps.

The jurisdiction assessments and instrumental factors are used to build a predictive model of IP jurisdiction competitiveness using support vector machine (SVM) mathematics. SVMs are based upon statistical techniques that classify and model complex historic data in order to make predictions on new data (see below for more on SVMs).

The SVM used for the GIPI provides information about the confidence with which each specific classification is made and the likelihood of other possible classifications. The predictive model provides the overall index by answering questions such as:

If a London based trade mark lawyer gives France and Germany certain assessments then, based on the instrumental factors for France, Germany and Italy, how would that person assess Italy?

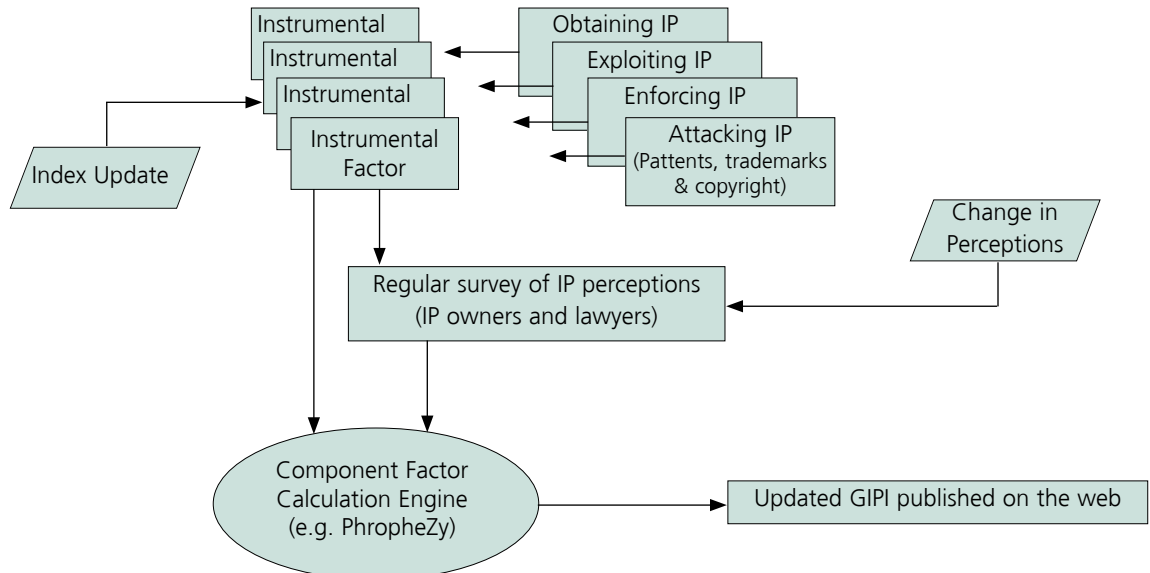
For each of the 11 areas covered by the questionnaire:

IP Area	Obtaining	Exploiting	Enforcing	Attacking
Trade marks	X	X	X	X
Patents	X	X	X	X
Copyright	- *	X	X	X

* copyright arises automatically without the owner prosecuting an application to a registry

the predictions made by the SVM are combined with the actual assessments to create a matrix of how each respondent assessed or was predicted to have assessed each of the 22 jurisdictions. This matrix is used to develop 11 sub-indices, one for each of the 121 areas above. These sub-indices are used to create three IP area indices for patents, trade marks and copyrights.

The process of creating the GIPI is outlined diagrammatically below:



A full list of the instrumental factors used in the GIPI model is in Appendix C. We have set a number of guidelines to ensure that jurisdiction assessments and instrumental factors are selected and used in a way that will generate a credible, dynamic rating of IP competitiveness.

The guidelines for independent indices used as instrumental factors are:

- indices should come from a reputable body and be derived by a sound methodology;
- indices should be readily available;
- relevant indices can be added to the GIPI model at any time;
- updates to the indices are collected and collated every six months;
- no weightings need be applied to the indices - the SVM calculates which factors are the most influential;
- indices are to be entered into the GIPI model as directly as possible, whether they are a rank, a derived score, a value, a distribution around a mean or a distribution around a benchmark;
- if a factor is at a national level, the score is used for all areas in that country – nation based factors are avoided if area or city based factors are available;

- if an index has multiple values for a jurisdiction, the most relevant value is used (and the method for judging relevance noted);
- if an index does not contain a value for a particular jurisdiction, a blank is entered against that jurisdiction (no average or mean is used). Only indices which have values for at least half the GIPI jurisdictions are used;

Creating the Global IP Index does not involve totalling or averaging instrumental factors. An approach involving totalling and averaging would involve a number of difficulties:

- indices are published in a variety of different forms: an average or base point of 100 with scores above and below this; a simple ranking; actual values; a composite 'score';
- indices would have to be normalized, e.g. in some indices a high score is positive while in others a low score is positive;
- not all jurisdictions are included in all indices;
- the indices would have to be weighted.

Note on Support Vector Machines

Support Vector Machines (SVMs) are algorithms that develop classification and regression rules from data. SVMs result from classification algorithms first proposed by Vladimir Vapnik in the 1960s, arising from his work in Statistical Learning Theory [Vapnik, 1995, 1998]. While some of the ideas behind SVMs date back to the 1960s, computer implementations of SVMs did not arise until the 1990s with the introduction of a computer-based approach at COLT-92 [Boser, B., Guyon, I. and Vapnik, V., 1992].

SVMs are now used as core components in many applications where computers classify instances of data (e.g. to which defined set does this group of variables belong), perform regression estimation and identify anomalies (novelty detection). SVMs have been successfully applied in time series analysis, reconstructing chaotic systems and principal component analysis. SVM applications are diverse, including credit scoring (good or bad credit), disease classification, handwriting recognition, image classification, bioinformatics and database marketing, to name a few.

SVMs are said to be independent of the dimensionality of feature space as the main idea behind their classification technique is to separate the classes in many data dimensions with surfaces (hyperplanes) that maximise the margins between them, applying the structural risk minimisation principle. The data points needed to describe the classification algorithmically are primarily those closest to the hyperplane boundaries, the "support vectors". Thus, only a small number of points are required in many complex feature spaces. SVMs can work well with small data sets, though the structure of the training and test data is an important determinant of the effectiveness of the SVM in any specific application.

SVMs compete forcefully with neural networks as well as other machine learning and data mining algorithms as tools for solving pattern recognition problems. Where SVMs do not perform well it is arguable that the algorithmic rules behind the support vector algorithm do not so

much reflect incapacabilities of the learning machine (as in the case of an overfitted artificial neural network) but rather regularities of the data. In short, current opinion holds that if the data in the domain is predictive, SVMs are highly likely to be capable of producing a predictive algorithm. Importantly, SVMs are robust tools (understandable implementations, simple algorithmic validation, better classification rates, overfitting avoidance, fewer false positives and faster performance) in practical applications. "The SVM does not fall into the class of 'just another algorithm' as it is based on firm statistical and mathematical foundations concerning generalisation and optimisation theory" [Burbridge & Buxton, 2001].

Sources:

- Boser, B., Guyon, I. and Vapnik, V., "A Training Algorithm for Optimal Margin Classifiers", in Fifth Annual Workshop on Computational Learning Theory (COLT-92), pages 144-152, Pittsburgh, ACM (1992).
- Burbidge, Robert and Buxton, Bernard, "An Introduction to Support Vector Machines for Data Mining", Keynote YOR 12 (Young Operational Research 11th Conference, University of Nottingham, 28 March 2001), Computer Science Department, University College London, Gower Street, WC1E 6BT, UK - <http://www.orsoc.org.uk/conf/previous/yor12/Keynote - Robert Burbidge.doc>.
- Michie, D., Spiegelhalter, D.J. and Taylor, C.C., Machine Learning, Neural and Statistical Classification, Ellis Horwood (1994), out of print – see <http://www.amsta.leeds.ac.uk/~charles/statlog/>.
- Vapnik, Vladimir N., The Nature of Statistical Learning Theory, Springer-Verlag, New York (1995).
- Vapnik, Vladimir N., Statistical Learning Theory, John Wiley & Sons (1998).

Appendix B – Questionnaire

The online questionnaire runs continuously and a link to each GIPI report is sent to all respondents. The questions in the current version of the questionnaire are as follows:

Section 1 – Personal Details:

Your name:

Your job title/main area of responsibility:

The name of your organisation:

In which industry sector is your organisation?

Advertising, PR and Marketing
 Banking and Financial Services
 Construction
 Drinks
 Energy and Utilities
 Fashion and Luxury Goods
 Government and Public Services
 Healthcare
 Hotel, Travel and Leisure
 Information Technology and Communications
 Media
 Not for Profit
 Pharmaceuticals
 Professional and Business
 Property and Real Estate
 Retail
 Other – please specify

Where is the headquarters of your organisation?

Approximately how many employees does your organisation have worldwide?

Fewer than 100
 100-150
 500-1,000
 1,000-2,000
 2,000-5,000
 More than 5,000

Where are you based?

Sections 2 to 4 - Trade Marks, Patents and Copyright

Jurisdictions for all sections are:

Australia	Brazil
Canada	China
Dubai (UAE)	France
Germany	India
Israel	Italy
Japan	South Korea
Mexico	Netherlands
New Zealand	Poland
Russia	Singapore
South Africa	Spain
UK	USA

For each question below, respondents were asked to take account of factors such as:

- Adequate body of clear law
- Availability of competent professionals to assist
- Clear and fair tax regime
- Level of respect for IP in general
- Speed
- Adequacy of court procedures

Trade Marks

Do you feel qualified to answer questions on obtaining, exploiting, enforcing and attacking Patents in different jurisdictions?

If you are familiar with obtaining trade marks in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about obtaining trade marks in any particular jurisdiction?

If you are familiar with exploiting trade marks in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting trade marks in any particular jurisdiction?

If you are familiar with enforcing trade marks in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting trade marks in any particular jurisdiction?

If you are familiar with attacking trade marks in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting trade marks in any particular jurisdiction?

Patents

Do you feel qualified to answer questions on obtaining, exploiting, enforcing and attacking Patents in different jurisdictions?

If you are familiar with obtaining Patents in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about obtaining patents in any particular jurisdiction?

If you are familiar with exploiting patents in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting patents in any particular jurisdiction?

If you are familiar with enforcing patents in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting patents in any particular jurisdiction?

If you are familiar with attacking patents in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting patents in any particular jurisdiction?

Copyright

Do you feel qualified to answer questions on exploiting, enforcing and attacking copyright in different jurisdictions?

If you are familiar with exploiting copyright in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about exploiting copyright in any particular jurisdiction?

If you are familiar with enforcing copyright in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about enforcing copyright in any particular jurisdiction?

If you are familiar with attacking copyright in the following jurisdictions, please rate them from 1 to 10 with 1 being Very Poor and 10 being Excellent.

Do you have any comments about attacking copyright in any particular jurisdiction?

Section 5 – Other questions

Are there any other jurisdictions that you would like to see featured in the Global Intellectual Property Index?

How has the time that your organisation spends dealing with intellectual property changed over the last three years?

- It has decreased greatly
- It has decreased slightly
- It has remained the same
- It has increased slightly
- It has increased greatly

If the time your organisation spends dealing with intellectual property has changed over the last three years, why is this?

Are there any factors that affect the ease of doing business in any jurisdictions that you think might change significantly over the next two to three years?

We are keen to track changes in people's perceptions about jurisdictions over the time. Would you be prepared to participate in this survey on a regular basis?

Do you have any business contacts or associates who may be interested in helping us with this survey?

Appendix C - Instrumental factors

Administrative & Economic Regulation - OECD

http://www.oecd.org/document/36/0,3343,en_2649_33733_35790244_1_1_1_1,00.html

The analysis is based on summary indicators of product market regulation that measure the degree to which policies promote or inhibit competition. These are broadly divided in economic and administrative regulation barriers. The former include tariffs, regulatory barriers, discriminatory procedures, barriers to foreign ownership, public ownership and involvement in business operation by the state as well as barriers to competition such as antitrust exemptions and legal hurdles; the latter mainly reflect the country's licenses and permits system, communication and simplification of rules and procedures as well as sector specific and overall administrative burdens.

Ease of Doing Business Index - World Bank

<http://www.doingbusiness.org/economyrankings/>

The ease of doing business index is developed by the World Bank and ranks economies on the simple average of country percentile rankings on each of 10 key areas – starting a business, dealing with licences, employing workers, registering property, obtaining credit, investors' protection, paying taxes, cross-border trading, enforcement of contracts and closing a business. Each indicator set studies a different aspect of the business environment and country rankings vary, sometimes significantly, across indicator sets.

Opacity Index - Kurtzman Group

<http://www.opacityindex.com/>

The Index is a score between 0 and 100, which is aimed to reflect everyday business risk and is calculated by averaging the scores given to each of five sub-indices. It draws upon 65 objective variables from 41 sources including the World Bank, the International Monetary Fund, the International Security Services Association, the International Country Risk Guide and individual country's regulators. The sub-indices reflect corruption, efficacy of the legal system, deleterious economic policy, inadequate accounting and governance practices and detrimental regulatory structures.

Corruption Perception Index - Transparency International

http://www.transparency.org/policy_research/surveys_indices/cpi/2007

The annual Corruption Perceptions Index (CPI) ranks more than 150 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. The data is gathered from sources spanning the last three years, each providing a ranking of countries. The index reflects the views of business people and analysts from around the world, including experts who are residents in the countries evaluated. The surveys used in compiling the CPI ask questions that relate to the misuse of public power for private benefit. The sources do not distinguish between administrative and political corruption or between petty and grand corruption.

Index of Economic Freedom - The Heritage Foundation

<http://www.heritage.org/Index/>

The Index of Economic Freedom measures 161 countries against a list of 50 independent variables divided into 10 broad factors of economic freedom. The higher the score on a factor, the greater the level of government interference in the economy and the less economic freedom a country enjoys. The factors are trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regulation and informal market activity.

Economic Freedom of the World Index - The Fraser Institute

<http://www.freetheworld.com/release.html>

The Economic Freedom of the World Index, which ranks 130 countries, is a joint venture involving 71 research institutes in 71 countries around the world. The purpose of the index is to bring the often forgotten topic of economic freedom into mainstream public debate. The index is divided into five components: size of government (Expenditure, Taxes and Enterprises); legal structure and security of property rights; access to sound money; freedom to trade internationally and regulation of credit, labour and business.

Political Risk Score - Maplecroft Analysis

<http://maps.maplecroft.com/loadmap?template=min&issueID=7&close=y>

This instrumental factor is based on the analysis of Maplecroft, where countries are given scores most commonly based on analysis of the past, present and future political situation and the related effects on the investment climate. The measure of political risk is based on 2006 country data provided by the World Bank Institute. A composite indicator is derived from six separate WBI governance datasets: voice and accountability, political stability, government effectiveness, regulatory quality, rule of law and control of corruption.

Operational Risk Rating - Economist Intelligence Unit

<http://www.viewswire.com/>

The Economist Intelligence Unit has developed an indicator of operational risk that monitors 150 countries and is updated every quarter or if certain events require it. The index is comprised of 10 indicators that have different weightings allocated according to their importance from a business point of view. The underlying categories are: macroeconomic; foreign trade and payments; financial; tax policy; legal and regulatory; security; political stability; government effectiveness; labour market; and infrastructure.

Super Growth Companies - Grant Thornton

<http://www.grantthornton.ca/resources/IBR2007SuperGrowthPressReleaseCanadaFinalMarch27-2007.pdf>

A "Super Growth" company is one which has grown considerably more than the average measured against key indicators including turnover and employment. The Super Growth Companies Index ranks countries according to the proportion of Super Growth Companies in the country. It is a unique research project, which forms part of the Grant Thornton International Business Owners Survey (IBOS), which surveys more than 7000 business owners worldwide in 30 countries.

World Competitiveness Scoreboard - IMD

<http://www.imd.ch/research/publications/index.cfm?nav1=true>

The World Competitiveness Scoreboard presents the overall ranking for the 61 countries and regional economies covered by the World Competitiveness Yearbook. The economies are ranked from the most to the least competitive and performance can be analyzed on the basis of time-series. The main factors underlining the index are economic performance, government efficiency, business efficiency and infrastructure.

Global Competitiveness Index - World Economic Forum

<http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>

The report in 2007 ranks a record 131 economies accounting for more than 98% of world GDP. The Global Competitiveness Index rankings are drawn from a combination of publicly available hard data and the results of the Executive Opinion Survey, a comprehensive annual survey conducted by the World Economic Forum, together with its network of partner institutes (leading research institutes and business organizations) in the countries covered by the Report.

E - Readiness Score - Economist Intelligence Unit

http://economist.com/markets/rankings/displaystory.cfm?story_id=8908442

The E-readiness score is published annually by the Economist Intelligence Unit. It ranks countries according to the state in which their information and communications technology (ICT) is in and the capability to its businesses, governments and consumers to utilise it. The index is comprised of nearly 100 criteria with different weightings that are grouped in six main categories – connectivity, business environment, social and cultural environment, legal environment, consumer and business adoption or the scale on which businesses and consumers use ICT, as well as government and policy vision or how committed the country's government is. The latest survey includes 69 different countries with scores from 0 to 10, 0 being the lowest and 10 the highest score.

Global Legal Service Centres - GaWC

<http://www.lboro.ac.uk/gawc/rb/rb5.html>

Cities are scored based on the number of particular law branches they contain. For the UK and the USA, cities score points according to the number of law firms with foreign branches and for the rest of the world, cities are scored based on the number of UK/USA law branches in the city.

Mastercard Global Network Connectivity - Mastercard

<http://www.mastercard.com/us/company/en/wcoc/index.html>

This index considers the six major specialized corporate services sectors: banking/finance, management consulting, advertising, legal, accounting and insurance. It focuses on the top 100 firms that operate in 315 cities worldwide, each firm with offices in at least 15 countries (including the headquarters). Calculations for the Master Card global network connectivity index were made using the Taylor methodology applied to and measuring the connectivity among a sample of 24 cities.

Human Development Index - UN Development Programme

<http://hdr.undp.org/>

The Human Development Report is published annually by the United Nations Development Programme. It is calculated for the 177 countries for which data is available and is the base used to determine whether a country is developed, developing or underdeveloped. The report ranks country using the Human development Index, which measures the average achievements in a country in three basic dimensions of human development: a long and healthy life (measured by life expectancy), knowledge and education (measured by the adult literacy rate) and a decent standard of living (measured by the natural logarithm of GDP per capita at purchasing power parity in USD).

Tertiary Education Graduates Ratio - UNESCO

<http://www.educationcounts.edcentre.govt.nz/>

This instrumental factor is an important indicator of the present and future composition of a country's workforce in terms of skills. It represents the ratio of people that take tertiary education degrees opposed to all of the country's population at graduation age. The statistics obtained from UNESCO data bases divides tertiary education to type A – mainly theoretically based and designed to lead to advanced research programmes and highly skilled professions; type B – more occupationally specific and designed to lead straight to the labour market; and advanced research programmes. The ratio used for our survey considers the type A tertiary graduates.

GFCI 3 - City of London

<http://www.zyen.com/Activities/On-line%20surveys/GFCI.htm>

The Global Financial Centres Index is a ranking of the competitiveness of financial centres based on over 18 thousand financial centre assessments from an online questionnaire together with over 60 indices. It is published twice a year by the City of London Corporation. The ranking is an aggregate of indices from five key areas: people, business environment, market access, infrastructure and general competitiveness.

Total Tax Rates - World Bank & PwC

<http://www.doingbusiness.org/ExploreTopics/PayingTaxes/>

The Total Tax Rate measures the amount of taxes payable by the business in the second year of operation, expressed as a share of commercial profits. The total amount of taxes is the sum of all the different taxes payable after accounting for deductions and exemptions. The taxes withheld (such as sales tax or value added tax) but not paid by the company are excluded. The taxes included can be divided into five categories: profit or corporate income tax; social security contributions and other labour taxes paid by the employer; property taxes; turnover taxes and other small taxes (such as municipal fees and vehicle and fuel taxes).

Corporate Tax Rates - OECD

http://www.oecd.org/document/60/0,2340,en_2825_293564_1942460_1_1_1_1,00.html

The OECD provides annual figures of central government corporate income tax rates. The figures used in this survey are the basic rate (inclusive of surtax, if any) and adjusted (if applicable) to show the net rate where the central government provides a deduction in respect of sub-central income tax.

Number of Public Prosecutors – EU, Efficiency of Justice (CEPEJ)

http://www.coe.int/T/DG1/LegalCooperation/CEPEJ/evaluation/2006/CEPEJ_2006_eng.pdf

"European Judicial Systems: Facts and Figures" was first published in December 2004 by the European Commission of the Efficiency of Justice (CEPEJ). It was the result of an experimental exercise, based on a Pilot Scheme (Questionnaire) for evaluating judicial systems designed to obtain comparable, objective quantitative and qualitative figures concerning the organisation and functioning of judicial systems. One of the sections of the report is devoted to public prosecutors. The numbers quoted in GIPI reflect the number of prosecutors per 100, 000 inhabitants in each country.

Number of Professional Judges - CEPEJ

http://www.coe.int/T/DG1/LegalCooperation/CEPEJ/evaluation/2006/CEPEJ_2006_eng.pdf

Another section of "European Judicial Systems: Facts and Figures" was dedicated to judges and court staff. In general a judge is defined as a person entrusted with the task of delivering or participating in a judicial decision. The definition must be placed in the context of the European Convention of Human Rights and the case-law of the European Court of Human Rights (ECHR). In particular: "the judge decides, according to the law and following an organised proceeding, or any issue within his/her jurisdiction." Professional judges are described in the explanatory note of the evaluation of the scheme as "those who have been trained and who are paid as such (and where their main function is to work as a judge)". The figures in GIPI reflect the number of such professional judges per 100, 000 inhabitants for each country.

Gross Annual Salary of Judges - United Nations

http://www.coe.int/T/DG1/LegalCooperation/CEPEJ/evaluation/2006/CEPEJ_2006_eng.pdf

Recommendation 94 (12) on the independence, efficiency and role of judges states that the remuneration of judges should be guaranteed by law and "commensurate with the dignity of their profession and burden of responsibilities". The Consultative Council of European Judges confirmed the fact that an adequate level of remuneration is necessary to guarantee that a judge can operate freely, without the pressure aimed at influencing their decision and or their behaviour (CCJE, Opinion (2001) No. 1:14). The figures used for GIPI reflect the average gross annual salaries for the judges in the different countries and are given in euros.

Number of Courts - CEPEJ

http://www.coe.int/T/DG1/LegalCooperation/CEPEJ/evaluation/2006/CEPEJ_2006_eng.pdf

"European Judicial Systems: Facts and Figures" by CEPEJ has a whole section dedicated to the courts. The figures in GIPI reflect the number of courts per 100, 000 inhabitants. Because of the different definitions of a court in the different countries the figures taken were the number of court locations per 100, 000 inhabitants regardless of the number of judges or panels of judges that work in these locations.

Judiciary Independence - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

This index is derived from the questionnaire of the Global Competitiveness Report of the World Economic Forum. It is an answer to the question "Is the judiciary in your country independent from political influences of members of government, citizens or firms? No – heavily influenced (=1) or Yes – entirely independent (=7)".

Impartial Courts - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

This index is derived from the questionnaire of the Global Competitiveness Report of the World Economic Forum. It is an answer to the question: "The legal framework in your country for private businesses to settle disputes and challenge the legality of government actions and/or regulations is inefficient and subject to manipulation (=1) or is efficient and follows a clear, neutral process (=7)".

Protection of IP - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

This index is derived from the questionnaire of the Global Competitiveness Report of the World Economic Forum. It is an answer to the question: "Property rights, including over financial assets are poorly defined and not protected by law (=1) or are clearly defined and well protected by law (=7)".

Protection of Property Rights - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

This index is derived from the questionnaire of the Global Competitiveness Report of the World Economic Forum. It is an answer to the question: "Property rights, including over financial assets are poorly defined and not protected by law (=1) or are clearly defined and well protected by law (=7)".

Legal Enforcement of Contracts - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

This index is also a part of the Economic Freedom of the World survey but it is based on the World Bank's Doing Business estimates for the time and capital required to collect a debt (assumed to be 200% of the country's per-capita income). Two ratings from 0 to 10 were structured and averaged to obtain the index – the time cost, measured in number of calendar days from the filing of the lawsuit to the day of payment and the capital cost, measured as percentage of the debt.

Legal System & Property Rights - Economic Freedom of the World

<http://www.freetheworld.com/release.html>

Legal system & property rights is one of the five fundamental sub-indices or sections used in the Economic Freedom of the World Index:

- Size of government (Expenditure, Taxes and Enterprises)
- Legal system and property rights
- Access to sound money
- Freedom to trade internationally
- Regulation of credit, labour and business

Legal system and property rights is the weighted average of several indicators, some of which were used as separate instrumental factors for GIPI due to their importance for the overall index. The indicators are as follows: judiciary independence, impartial courts, protection of property rights, military interference in rule of law and the political process, integrity of the legal system, legal enforcement of contracts and regulatory restrictions of the sale of real property. It was established that despite the fact that some of those ratings are less important, the overall legal structure and security of property rights is pivotal for the purposes of GIPI

Royalty & Licence Fee Payments - World Development Indicators

http://www.nationmaster.com/graph/eco_roy_and_lic_fee_rec_bop_cur_us_per_gdp-bop-current-us-per-gdp

Royalty and license fees are given in current (Mar 2008) US dollars per \$1 million gross domestic product. They are defined as payments and receipts for the authorized use and proprietary rights of intangible, non-produced and non-financial assets such as trade marks, copyrights, patents, franchises and industrial processes, and for the use of produced originals of prototypes such as manuscripts and films.

International Property Rights Index - AC Horst & SA LaGanga

<http://www.internationalpropertyrightsindex.org/>

The International Property Rights Index (IPRI) is a measure of both physical and intellectual property rights. The latest (2008) survey is carried across a hundred and fifteen countries that account for 96% of world GDP and is separated into three key areas: Legal and Political Environment, Physical Property Rights and Intellectual Property Rights. Data is obtained from various sources including expert surveys in most of the appraised countries.

Litigation Cost - WIPO

<http://www.wipo.int/portal/index.html.en>

The statistics for this index were obtained from the World Intellectual Property Organisation; they represent the average monetary cost of litigation measured in US dollars for lower court and appeal court (1st and 2nd level if applicable).

Litigation Length - WIPO

<http://www.wipo.int/portal/index.html.en>

The statistics for this index were obtained from the World Intellectual Property Organisation; they represent the average time cost for lower court and appeal measured in years.

Innovation Index - Economist Intelligent Unit

www.EIU.com

The Innovation Index was developed by the Economist Intelligence Unit in 2007. It is designed as a measure of the adoption of new technology for various countries and the interaction between the business and scientific sector. Among the measures used for the composition of this index are the number of patents granted and higher education enrolment rates.

R & D Expenditure - World Development Indicators

http://www.nationmaster.com/graph/eco_res_and_dev_exp_of_gdp-economy-research-development-expenditure-gdp

Research and Development expenditure is measured as a percentage of a country's GDP and is considered an important indicator to the country's approach to the issue; it is defined by the OECD as "creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications". R%D covers basic research, applied research and experimental development and reflects both public and private expenditure.

Trade mark Applications by Population - WIPO

http://www.nationmaster.com/graph/gov_tra_res_percap-government-trade-marks-residents-per-capita

This instrumental factor reflects the number of applications filed for a registration of a trade mark with a national or a regional office measured per million people of population. Trade mark is defined as a distinctive sign that identifies goods or services as those produced by a specific person or enterprise; it provides exclusive right for its owner to use it to identify goods or services or to authorize its use by other people and/or enterprises.

Trade Mark Applications by Origin – WIPO

http://www.wipo.int/edocs/prdocs/en/2006/wipo_pr_2006_437.html

The international trade mark system administered by WIPO offers a trade mark owner the possibility of having a mark protected in up to 77 countries by filing one application, in one language (English, French or Spanish), with one set of fees, in one currency (Swiss Francs). Applicants wishing to use the Madrid system must apply for trade mark protection in a relevant national or regional trade mark office before seeking international protection. The data for this instrumental factor represents the number of applications filed in such offices by the country of origin.

Madrid System of International Registration of Marks - WIPO

http://www.wipo.int/edocs/prdocs/en/2006/wipo_pr_2006_437.html

An international registration under the Madrid system produces the same effects as an application for registration of the mark in each of the contracting parties (countries) designated by the applicant. If protection is not refused by the trade mark office of a designated contracting party, the status of the mark is the same as if it had been registered by that office. In other words, the system provides a cost-effective and efficient way for trade mark holders to secure protection for their marks in multiple countries through the filing of a single application. Applicants must state in which countries (that are members of the Madrid system) they wish protection of their trade mark but countries could be added afterwards in accordance to changes in business needs. This instrumental factor shows the number of countries that were designated in registrations originally and subsequently.

General Trade Related Index of Counterfeiting - OECD

http://www.oecd.org/document/40/0,3343,en_2649_201185_39542888_1_1_1_1,00.html

The General Trade Related Index of Counterfeiting was developed for the purposes of "The Economic Impact of Counterfeiting and Piracy", a study published by the OECD in 2008. The index is based on data obtained by the customs officials for all reporting economies, i.e. the countries that participated in the study. This index is a proxy for the relative propensity of importing infringing goods from different "source" economies (145 are considered in total). This is done by dividing the seizure percentages of source economies by their respective import share of the reporting economy's total imports; from this the index is derived.

Aggregated Trade Related Index of Counterfeiting - OECD

http://www.oecd.org/document/40/0,3343,en_2649_201185_39542888_1_1_1_1,00.html

The same study develops the Aggregated Trade-Related Index of Counterfeiting (ATRIC). It aims to obtain a unique number for every economy known as being a source of counterfeit and pirated products that reflects the intensity, scope and durability of counterfeiting activities. The main purpose this index will be used for is to assess the potential effects of counterfeiting and piracy but while GTRIC covers a large number of reporting economies, ATRIC covers only four because of the need of detailed data. However the accuracy of the measurement is significantly improved.

Patent Filings by Population - WIPO

http://www.wipo.int/ipstats/en/statistics/patents/patent_report_2007.html#P812_44234

The data for this instrumental factor is obtained from the World Intellectual Property Organisation and reflects the number of national and regional patent applications per million citizens for each country.

Patents Granted - WIPO

http://www.wipo.int/ipstats/en/statistics/patents/patent_report_2007.html#P812_44234

The data for this instrumental factor is obtained from the World Intellectual Property Organisation and reflects the number of granted applications (from residents and non-residents) for each country.

Patents in Force - WIPO

http://www.wipo.int/ipstats/en/statistics/patents/patent_report_2007.html#P812_44234

The data for this instrumental factor is obtained from the World Intellectual Property Organisation and reflects the number of patents in force for each country.

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