IP IN TIMES OF RECESSION

A Comprehensive Guide for IP Professionals

MARCH 2024

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Executive Summary

In compiling the data for this report, we have gained a comprehensive understanding of the 2020 recession, primarily driven by the unprecedented COVID-19 pandemic. The pandemic's global economic repercussions were substantial, leading to widespread shutdowns, disruptions in various industries, supply chain issues, and a sharp stock market decline. We have also identified key indicators commonly used to recognize a recession, including GDP fluctuations, unemployment rates, consumer spending patterns, business investments, and stock market performance. These indicators can help us gauge economic health and anticipate potential economic headwinds.

Internally, INTA has consulted with J.P. Morgan to assess the current economic climate, with the latest report indicating mild recession-like conditions in early 2023. J.P. Morgan's analysis relies on the National Bureau of Economic Analysis' six-factor test, considering personal income, employment, spending, wholesale/retail sales, and industrial production. Their assessment suggests mild recessionary headwinds, distinct from the full-blown recession experienced in early 2020.

Furthermore, we have outlined ways to recognize a recession, and the potential impact on intellectual property (IP), which can be distinct from broader economic trends. These include fluctuations in IP filings, licensing and litigation activity, changes in IP portfolio management, increased IP theft and infringement, and shifts in IP-related investment across different industries.

The data reveals that recessions can take various forms, with the COVID-19 recession serving as a unique example. The response of the IP system during this recession demonstrated its adaptability and resilience, as it played a critical role in overcoming the crisis through public and private investments, trade secrets, patents, and IP licensing.

As we move forward, it is essential to remain vigilant and closely monitor changes in IP-related activities, as they can provide early indications of a recession's impact. Different regions and industries may respond differently, as demonstrated by the data, making it crucial for organizations to adapt their IP strategies to navigate the challenges and opportunities presented by recessions.

Better IP reporting and improved IP accounting standards would help companies, including SMEs, gain access to funding, which is generally harder in times of recession, especially for companies that rely on intangible assets. Accounting standards should not require a blanket exclusion of trademarks and complementary IP that are developed in-house from recognition as assets on corporate balance sheets.

Companies are focusing on predictable legal budgets. Therefore, it may be preferable for companies to use fixed-fee deals.

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Law firms may help generate revenue by helping distressed businesses seek creative methods of resolving ongoing debt issues. It is important to recognize the sectors that are affected by recession comparatively more and help them prioritize their legal work. During economic downturns, companies and individuals may consider enforcement of their IP rights as a source of funding that could lead to compensation or licensing deals. Law firms should encourage their clients to partner in IP endeavors. For example, collaboration with other companies or universities could help cut the costs of R&D, overhead, and payroll in return for a shared revenue. It is advisable for companies to revise their strategies for entering new markets/jurisdictions, if any. Licensing from a local company instead of making an investment during unpredictable times may be more beneficial.

Law firms may help distressed companies review their IP registrations, identifying the core rights and perhaps abandoning the remainder (or offering them for transfer/license to another company), which would cut annuity costs and thereby cut administrative costs for monitoring. Not all IP rights are aligned with business interests that are relevant in the moment. This may also require the review and sale of businesses that are a liability rather than a benefit. Recessionary times may also be the best time for acquiring IP from companies in need of cash flow.

Law firms may help distressed companies review their IP rights and help them to determine whether all their rights are registered, consider whether they need to be registered and, if so, whether they can still be registered in light of grace periods. Because a lot of local companies see IP registration as an unnecessary expenditure, they may be missing an opportunity to gain revenue from their unregistered rights.

A recession impacts IP in many ways, including the budgets allocated by companies to protect and enforce IP rights, investment in technology relevant to IP assets, staffing of in-house legal teams and within IP departments in law firms, and the sale and purchase of IP assets. The direct impact of a recession is that budgets are reduced across businesses, which decreases the funds available to protect, maintain, and enforce IP rights. Companies are likely to focus on core brands and core markets and less likely to oppose third-party marks or file cancellation actions. Budget restrictions are also likely to deter business owners from litigating over IP assets. During a recession, law firm teams may invest more in technology to increase work product efficiency. Our research indicates that legal tech spend within in-house departments increases in times of budget crisis. Merger and acquisition activity tends to decline before a recession. However, companies that have the resources to invest may reap the benefits as our research also shows that companies that make acquisitions during a recession are likely to see better shareholder returns in the long term. Overall, a recession tends to reduce the investment in maintaining and protecting IP assets but leads to greater investment in legal tech to gain efficiency in tough times.

Executive Summary

Technology could be an especially important tool to help the IP community to weather the impact of recession. This seems to be a consistent finding in both the external reports and our original research conducted through this Project Team's survey in 2023. Implementation of legal tech solution for in-house use seems to bring the highest result although, sharing of the IP data between the clients and the vendors, as also between multiple vendors becomes problematic. Currently, there doesn't seem to be a cost-effective solution to this lack of technology "harmonization." In-house practitioners lack the time to prioritize this, while law firms find it a technical and resource burden.

Online infringement is typically expected to increase during recessions, and most expect enforcement budget and costs to be a primary concern. A more specific study might be required to investigate the issue more granularly.

Recession may also bring financial implications to law firms. The key problem for tech adoption is cost and technical know-how, and these require a longer-term investment to resolve. It is recommended that law firms should prepare for technology adoption well ahead of a potential recession.

Introduction and Methodology

INTA's Recession & IP ("Project Team") was created to help provide trademark and intellectual property (IP) practitioners and administrators the right tools to manage their valuable IP rights, particularly trademarks, in the most efficient way during a recession. Recessions, in general, have significant effects on economies, businesses, and individuals. Economic recessions also have a significant and long-lasting impact on the legal sector. The legal sector is not, however, homogeneous, it encompasses various distinct practices and areas. While there are several studies and reports on the impact of recession, including those that have considered its impact on the legal industry, there were none that focused on the impact of recession on the IP industry. IP practitioners had no resources, be it reports or studies that would help them in dealing with the impact of recession on their trademarks/IP, irrespective of whether they were in-house, in law firms or provided other IP services.

The Project Team was tasked with creating an efficient method of administering and managing trademark/IP portfolios during an economic crisis, by identifying a recession, assessing the impact on trademark and other IP assets, and researching the measures that can be taken by IP practitioners to minimize exposure, and secure and administer their IP during a recession.

The Project Team had twelve experts and was led by co-chairs. The experts were divided into four groups to research the following topics:

(1) Identifying recession;

(2) Understanding its potential financial impact;

(3) Understanding/preparing for its potential impact for trademark practitioners; and

(4) How stakeholders use technology in times of recession

Some members participated in more than one group. Each group then met on several occasions and the group members conducted their own research and presented their content for the relevant section of this Report. All the sections were reviewed, revised, and finalized by the co-chairs, with additional input from each group.

We have relied upon the third-party data and public resources for the first three chapters. For the fourth chapter, we have obtained primary data through a Project Team Survey conducted of INTA members.

In developing the outline of the paper, the Project Team first needed to clarify what a recession is. Although the term “recession” is defined in various dictionaries, the team quickly learned that there is no consensus among the world’s economists on a single definition. The International Monetary Fund states that recession “is a sustained period when economic output falls and unemployment rises.” The National Bureau of Economic Research’s (NBER) definition emphasizes that “a recession involves a significant decline in economic activity that is spread across the economy and lasts more than a few months.” Further, the NBER states that it “treat[s] the three criteria [for identifying a recession]—depth, diffusion, and duration—as somewhat interchangeable. That is, while each criterion needs to be met individually to some degree, extreme conditions revealed by one criterion may partially offset weaker indications from another.”

The lack of uniformity of the definition of “recession” meant there is also no defined way of identifying a recession. Moreover, it was found that there is usually a lag between when a recession hits and when its impact is felt. These initial learnings led us to form a group to examine the question of how to identify a recession. While some may argue that the legal sector copes better with recessions in general than other sectors, law firms and legal departments are not immune to the effects of recession and experience various impacts during economic downturns, including a direct impact on spending.

The next important step in preparing this Report was to understand the financial impact of “recession” in general, as well as its specific impact on trademark/IP practitioners. We created our second group to look at how one could prepare for an impact caused by a recession.

Our Report then outlines ways to recognize a recession’s impact on trademarks and IP, which can be distinct from the broader economic trends. In this context, it is also worth mentioning the importance of the financial treatment of IP in the context of the prevalent accounting standards. Current international accounting rules do not allow trademarks and complementary intellectual property that are developed in-house to be recognized as assets on corporate balance sheets. An INTA Board Resolution in 2022 supports the position that accounting standards should not require a blanket exclusion of trademarks and complementary IP that is developed in-house from recognition as assets on corporate balance sheets. INTA conducted and presented a Report on its 2023 INTA Recession Impact on IP and Technology Survey, which supports and reemphasizes this view.

Our third group was organized to help in understanding the potential impact of a recession on trademarks/IP, including from the lens of the prevailing account standards.

As we know, the recession in 2020 was largely caused by the COVID-19 pandemic, which led to widespread economic shutdowns and disruptions across the world. The stock market experienced a significant decline in early 2020, with the S&P 500 dropping nearly 34 percent between February and March.[1] This was due to investor concerns about the impact of the pandemic on the global economy and the potential for a long-term recession.

It has been observed that those trademark practitioners who adopted certain technology were less negatively impacted by this most recent recession. As such, we created a fourth group to study the impact and role of technology in dealing with recession. This group's focus was two-fold: to assess both how technology can be used to deal with recession and how the impact of recession on technology-based IP differs from that on non-technology-based IP.

[1] S&P 500 dropping 34% in Q1 2020: https://intelligent.schwab.com/article/stock-market-corrections-not-uncommon

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For more about our Project Team and their bios, please view the below link:
Project Team Members.

SECTION 1 Identifying a Recession

To slow the spread of the COVID-19 virus during the pandemic, many jurisdictions implemented lockdowns and other restrictions on businesses and social gatherings. This had a significant impact on industries such as travel, hospitality, and entertainment, which saw a sharp decline in demand. The pandemic also disrupted global supply chains, as factories and transportation systems were forced to shut down or reduce operations. This led to shortages of some goods and services, while others saw a glut of supply due to reduced demand. Overall, the COVID-19 pandemic and its associated economic shutdowns and disruptions were the primary cause of the recession in 2020.

There are several ways to identify a recession. We have identified key indicators commonly used to recognize a recession, including GDP fluctuations, unemployment rates, consumer spending patterns, business investments, and stock market performance. These indicators help us gauge economic health and anticipate potential economic headwinds.

One of the most common ways to identify a recession is through changes in GDP. If the GDP of a country declines for two consecutive quarters or more, it is generally considered to be in a recession.

Unemployment rate: During a recession, there is usually an increase in the unemployment rate. When people lose their jobs, they tend to spend less money, which can further stall the economy. While an increase in the unemployment rate can be a sign of economic distress and a potential contributor to a recession, the declaration of a recession is a more complex process that considers multiple indicators, not just a specific period of time or a set number of quarters.

Consumer spending: A decrease in consumer spending is also a sign of a recession. When people are worried about their jobs or the state of the economy, they may cut back on spending, which can lead to a decline in economic activity.

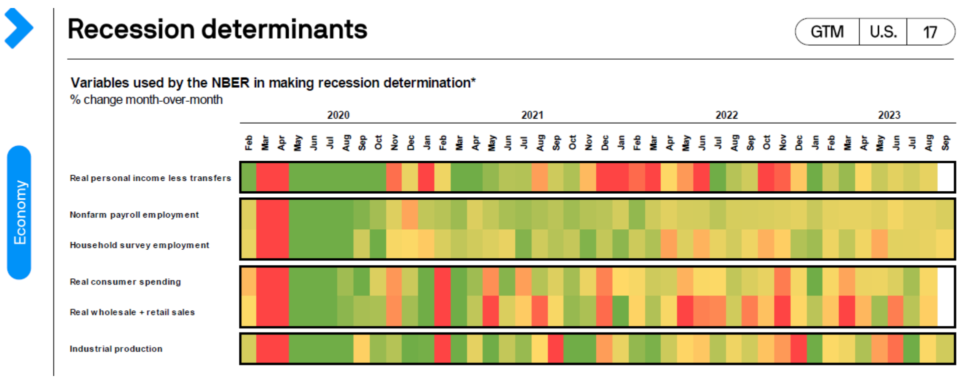
Business investment: During a recession, businesses may cut back on investments and expansion plans, which can also contribute to a decline in economic activity. This is further impacted by the financial treatment of IP. The current accounting standards do not allow in-house-developed brands to be identified/valued on corporate balance sheets. This practice has a huge impact in financial terms and deprives companies of an important way to demonstrate the stabilizing long-term value of brands and their underlying IP, particularly for SMEs and MSMEs.

Stock market: The stock market can also be an indicator of a recession. A sharp decline in stock prices can be a sign that investors are concerned about the state of the economy.

Internally, INTA consults with our partner J.P. Morgan to identify and predict potential economic headwinds. In early 2023, J.P. Morgan reported to the INTA Board of Directors that we are currently in (and can likely expect) mild recession-like market conditions for the near future. To make this determination, J.P. Morgan has relied on the National Bureau of Economic Analysis and their six-factor test of economic indicators. As detailed in the heat map below (Exhibit 1 updated in Q3 of 2023), the Bureau retrospectively examines quarterly economic data to determine the existence of a recession. Factors examined include personal income, employment, spending, wholesale/retail sales, and industrial production. The heat map indicates the above-described full-blown recession in early 2020 due to COVID-19 (all red indicators), but only mild recessionary activity three years later in early 2023 (a mix of green and yellow indicators). Thus, INTA is operating under the assumption that we are facing mild recessionary headwinds in 2023, but certainly not a full-blown recession.

EXHIBIT 1

Extract from: Guide to the Markets - U.S. Data are as of October 24, 2023[2]



Recognizing a recession that may impact intellectual property

There are several ways to recognize a recession that may impact intellectual property (IP):

Impact on IP filings: A recession could affect the number of patent, trademark, design, and copyright applications filed. This can be an early sign that companies and individuals are cutting back on investments in new technology and creative works, or conversely, that they are using the IP system as a way to overcome a recession.

Impact on IP licensing and litigation: During a recession, companies may be less willing to pay licensing or royalty fees for the use of IP. This can result in decreased revenue for IP holders who rely on these fees as a source of income. Additionally, companies may become more reluctant to engage in IP litigation due to the associated costs. Economic players may opt to go for a safer or less expensive way to conduct business and choose to proceed through an IP licensing program instead of expanding their own business.

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[2] J.P.Morgan Guide to the Markets https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:5ac87722-e290-3e4b-a235-6acc23b83005

Changes in IP portfolio management: During a recession, companies may reassess their IP portfolios and divest assets that are not essential to their core business. This can result in a focus on maintaining the value of their core IP assets, and away from the non-core or less profitable assets in the company's IP portfolio.

Increase in IP theft and infringement: In a recession, counterfeiters may be more likely to engage in IP theft or infringement as they look for ways to cut costs and maintain their market position. Furthermore, consumers who face difficulties affording the lifestyle they want are more likely to buy counterfeit products at lower cost.

Impact on IP-related investment: A recession can affect investment in IP-related assets, such as patents and trademarks, depending on the industry. Some industries are impacted by recession in a way that may increase their activity (for instance pharmaceutical industries during the COVID-19 recession). Some other industries could conversely see their activity decrease because of a recession.

Overall, a recession can have significant impact on intellectual property, including on investments in new technology and creative works, changes in IP portfolio management, and an increase in IP theft and infringement. Monitoring changes in IP filings, licensing and litigation, and investment can help identify early signs of a recession's impact on IP.

Takeaway:
There may be different types of recessions for different reasons. While most past recessions may have resulted from, economic and financial crises, the latest one was created by the COVID-19 pandemic. The IP system responded differently in the latter, as it was used as a tool to overcome the crisis. During this recession, the public and private investments (to develop vaccines) were higher, as was the intensive use of the trade secrets, patents, and IP licensing. The rise of entrepreneurs and the new businesses (start-ups) was also noted; they took advantage of the virtual ecosystem, offering new products and services, leading to the creation of the new trademarks.

Analysis of WIPO IP Statistics as factor in Identifying a recession from the WIPO IP Statistics Data Center[3]

Search 1:
- **Type of Search: Trademarks**
- **Year Range: 2007-2021**
- **Report type: Total Count by Filing Office**
- **Indicator: Class count in total applications (direct and via Madrid)**

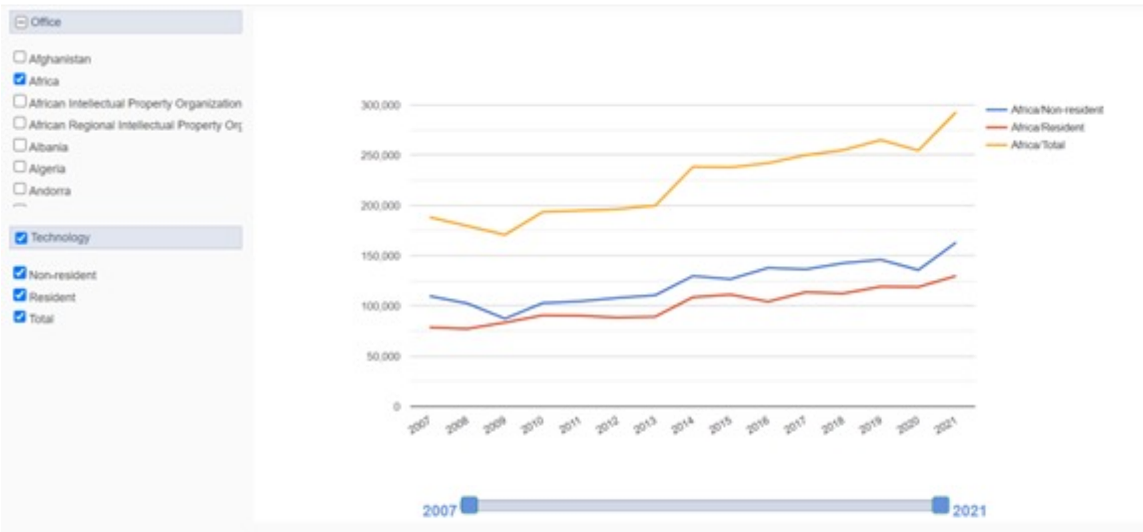
This search was conducted to assess the volumes of applications by years. The figures show the number of applications the year before a Recession (2007 for the recession in 2008, or 2019 for the recession in 2020) and the following year. It also shows applications by residents and non-residents, which may help to understand how applicants chose to protect their trademarks nationally and internationally.

[3] https://www3.wipo.int/ipstats/key-search/indicator

Africa

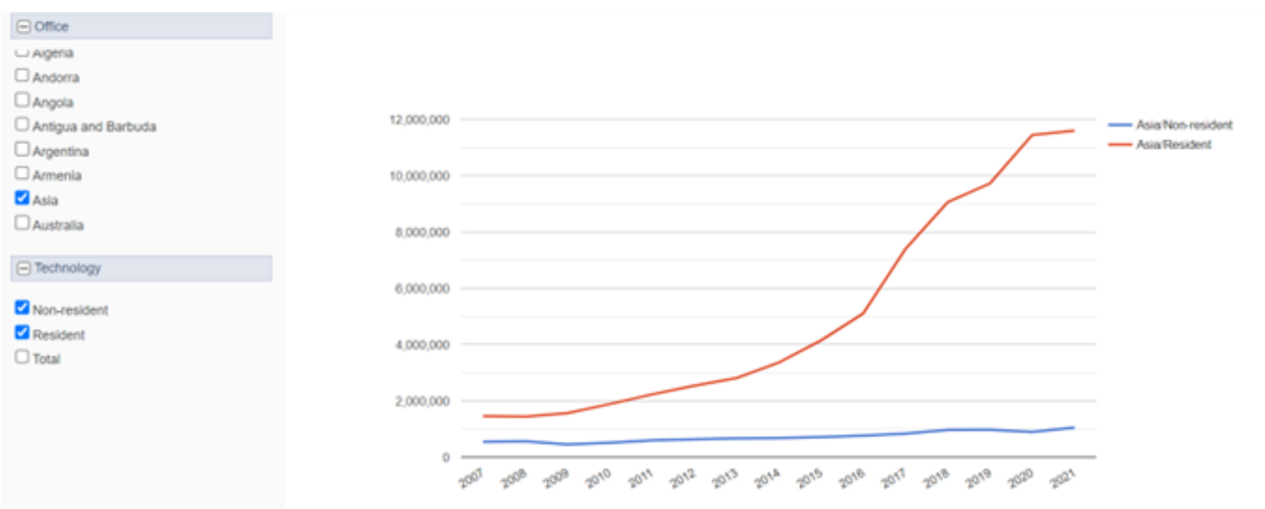
The figure shows that non-resident applications declined from 2007 until 2010, when they started to climb until 2019. In 2020 applications went down again (although the total applications in that year were higher than between 2008 and 2010).

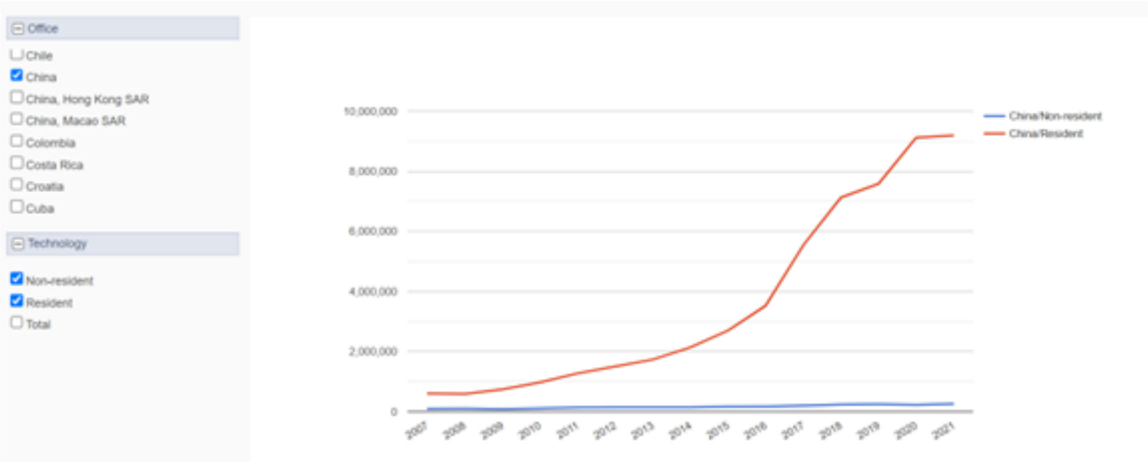
However, residents behaved differently, as their filings remained flat during 2007 and 2008, and even started increasing a year earlier than non-resident applications (2009). From 2019 to 2020 the applications slightly decreased, but immediately after, in 2021, went up again. One may conclude that there is a difference in the way resident applicants respond to recessions relative to non-resident applicants, as they increased their trademark filings soon after COVID-19 hit, while the increase in filings after the 2008 recession had a flatter line.



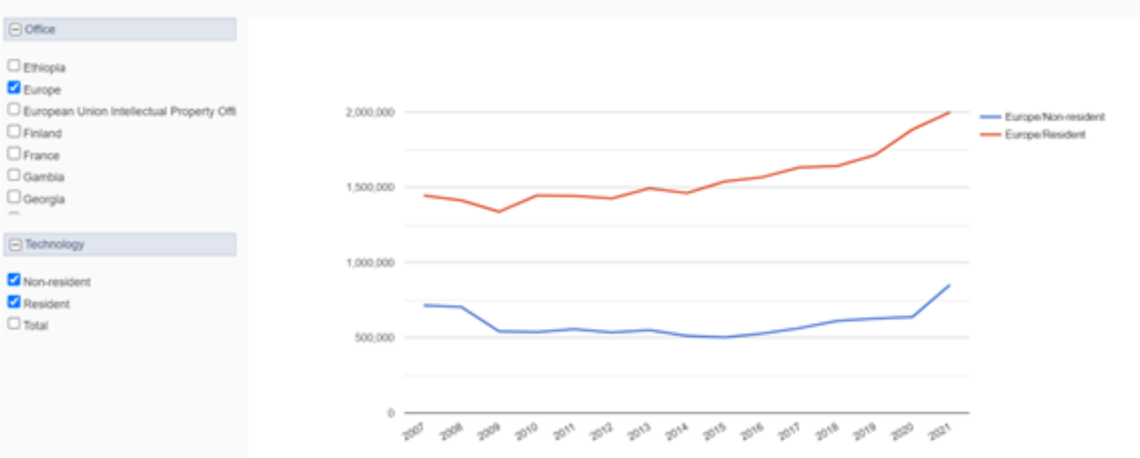
Asia

The Asian figure shows two dramatically different behaviors on the part of resident and non-resident applicants. While the non-resident line remained relatively flat in response to the recessions, residents continued to increase their filings. Some years had fewer steep lines, but the number of applications increased year by year.

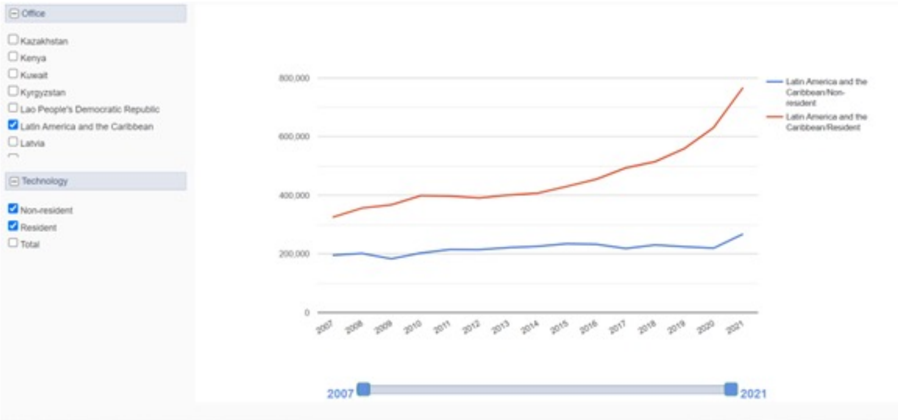




Europe
The European figures are interesting as well, because applicants (both residents and non-residents) dramatically increased their trademark filings just as COVID-19 hit. This differed from the previous recession in 2008 where there was a decrease in filings and only non-resident filings climbed back after a new recession came about.

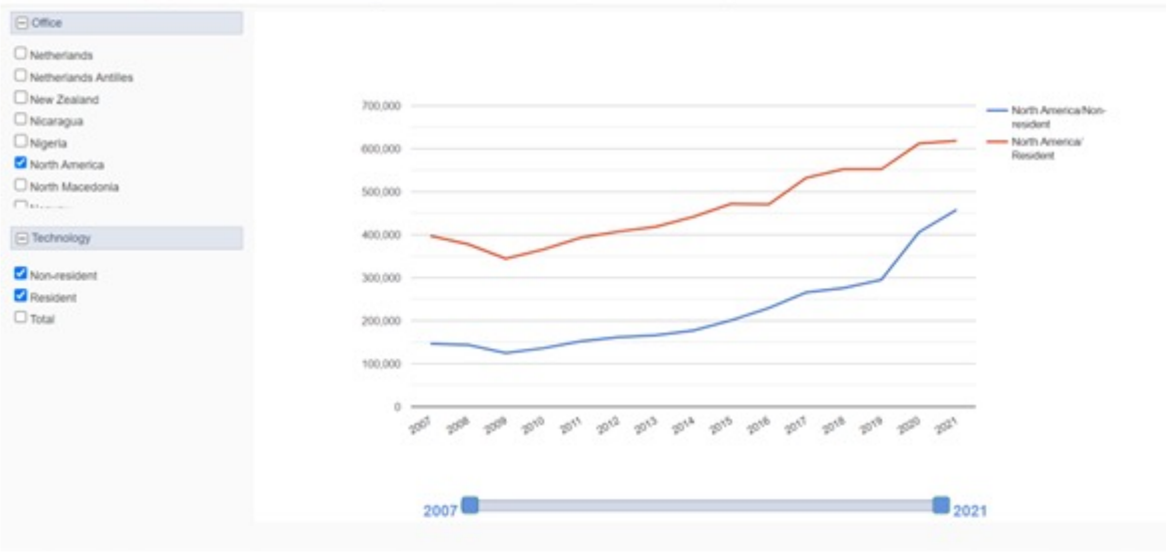


Latin America and The Caribbean
The LATAM and Caribbean numbers show that residents filed more applications, as if recessions had no impact on them, while non-residents show flatter lines, with a significant increase as of 2020.



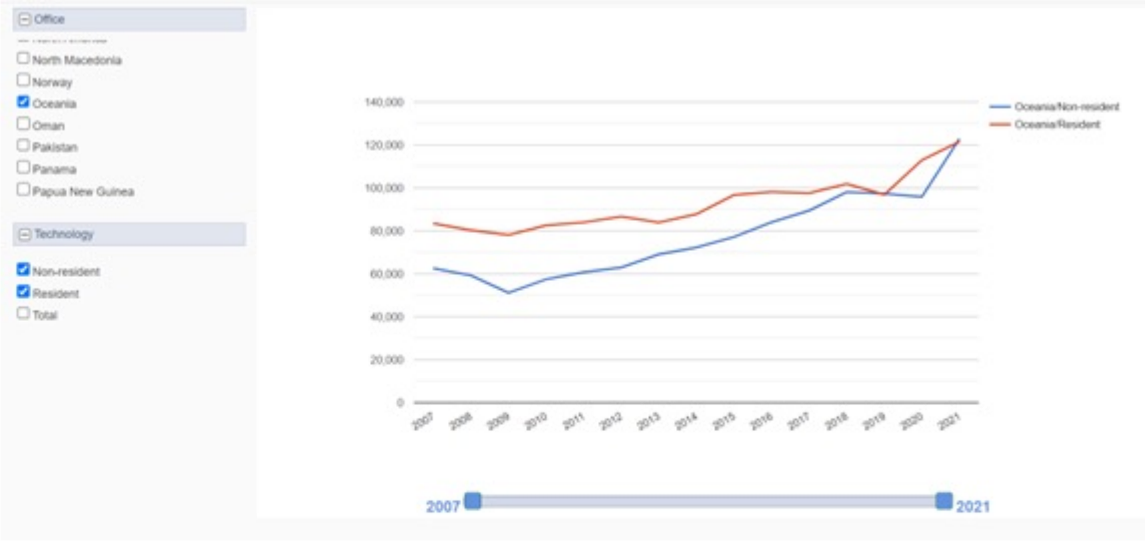
North America, including United States

In North America, there seems to be parallel trademark filing behavior between residents and non-residents. Perhaps the decrease in applications by residents shows a steeper line between 2008 and 2009, and a flatter increase in filings between 2020 and 2021. In turn, non-residents account for a dramatic increase of filings since 2019.



Oceania

Oceania shows opposite responses when comparing the 2008 recession and COVID-19.



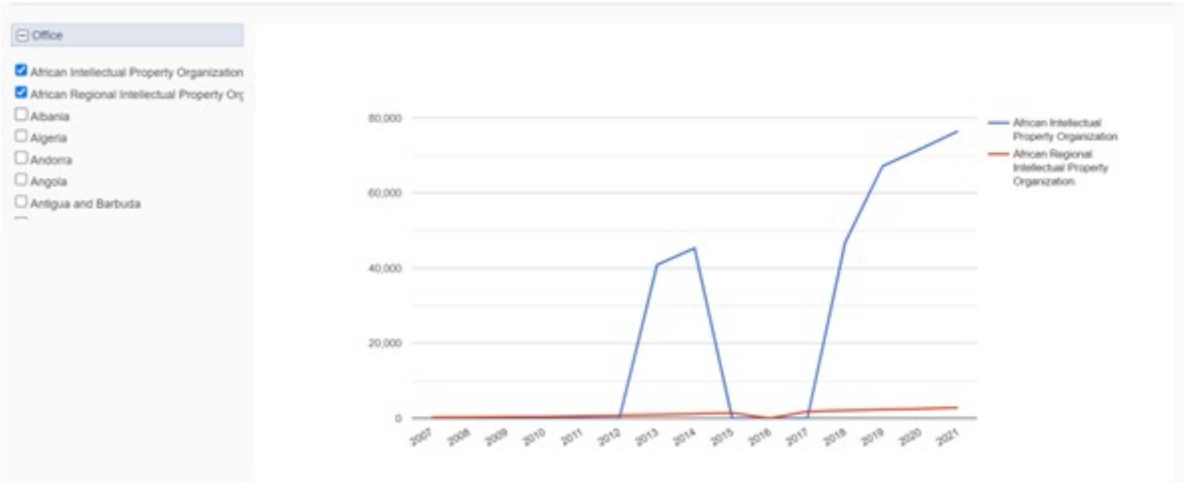
Search 2

- **Type of Search: Trademarks**
- **Year Range: 2007-2021**
- **Report type: Total Count by Filing Office**
- **Indicator: Trademarks in force (direct and via Madrid)**

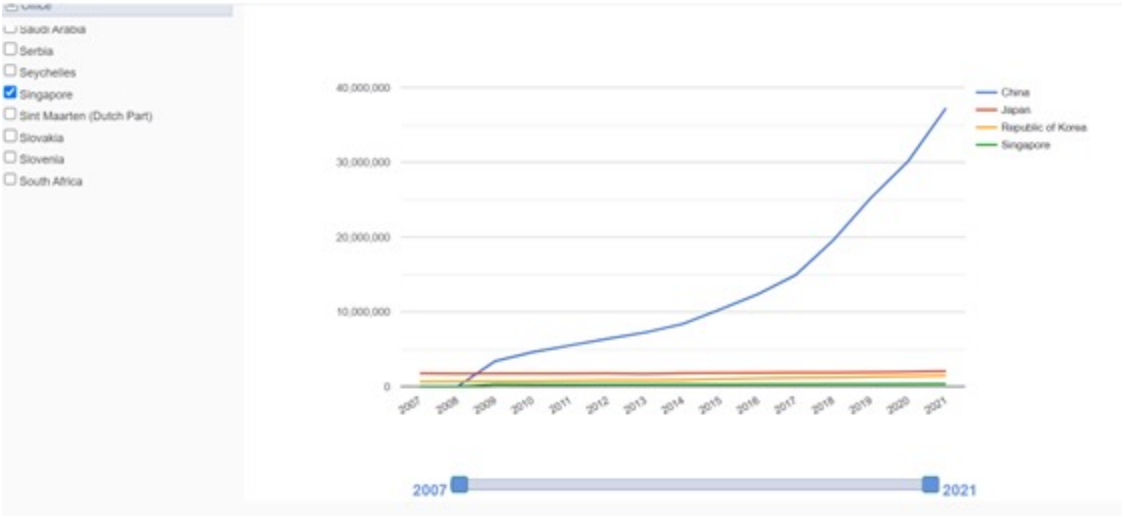
This search tends to determine the number of trademarks in force, to indirectly determine how brand owners are maintaining their registrations, i.e., renewal volumes.

Contrary to the previous search, WIPO Center does not have numbers by continent, therefore these numbers correspond with IP Offices. In some cases, we selected some Offices to show a trend in a region, rather than following a specific jurisdiction.

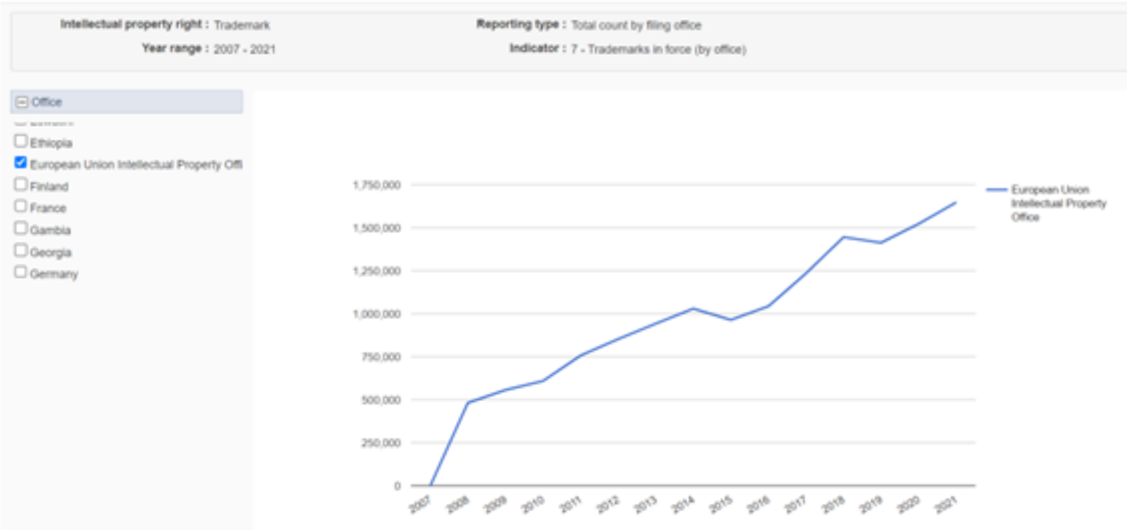
African Regional intellectual Property Organization



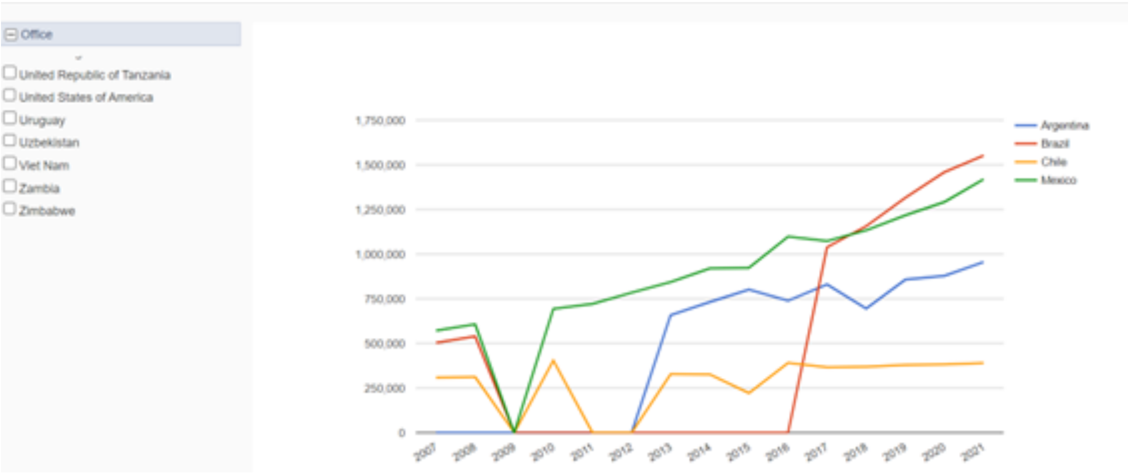
Asia: (China, Japan, Republic of Korea and Singapore, for the lack of Asian Report)



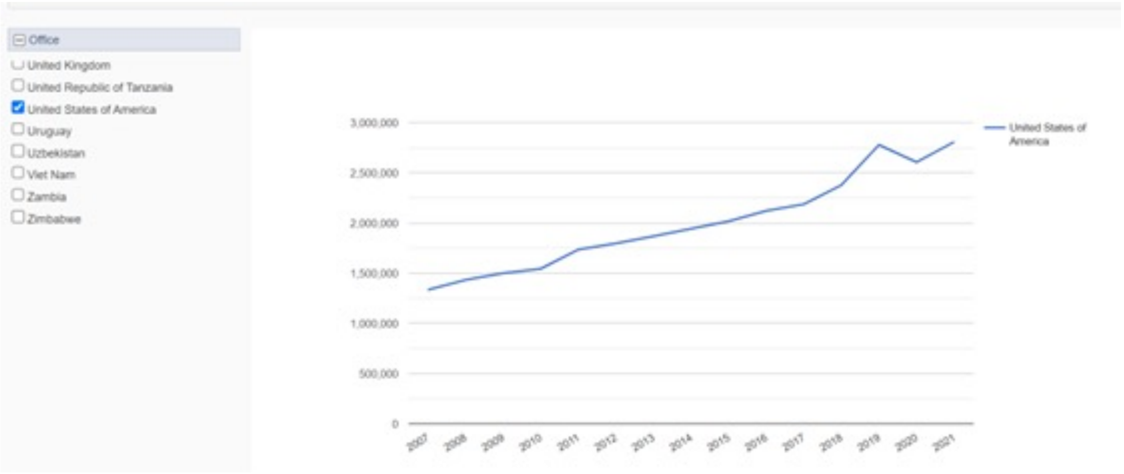
European Union Intellectual Property Office



Latin American and the Caribbean (Argentina, Brazil, Chile, Mexico)



United States of America

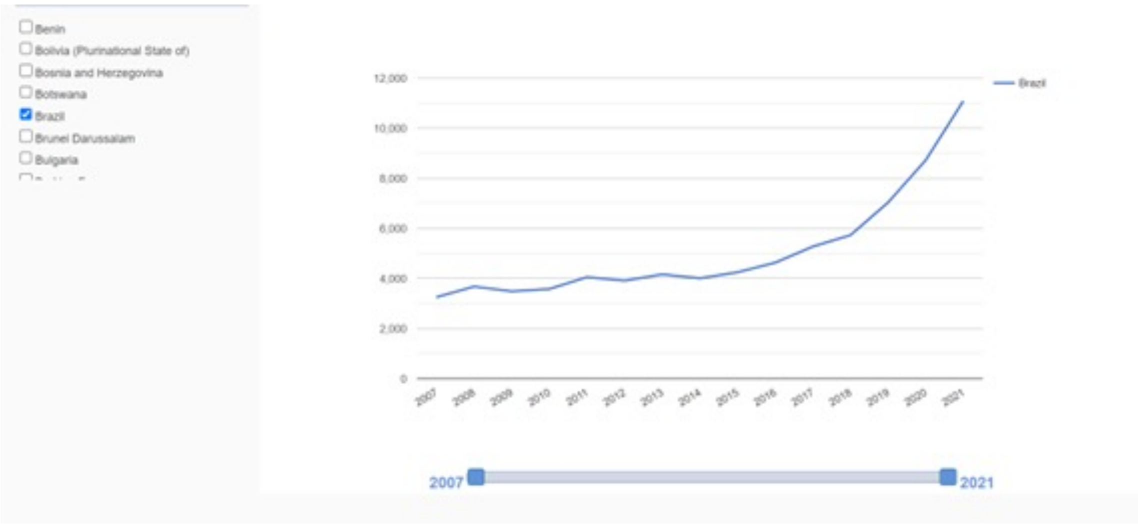


Search 3

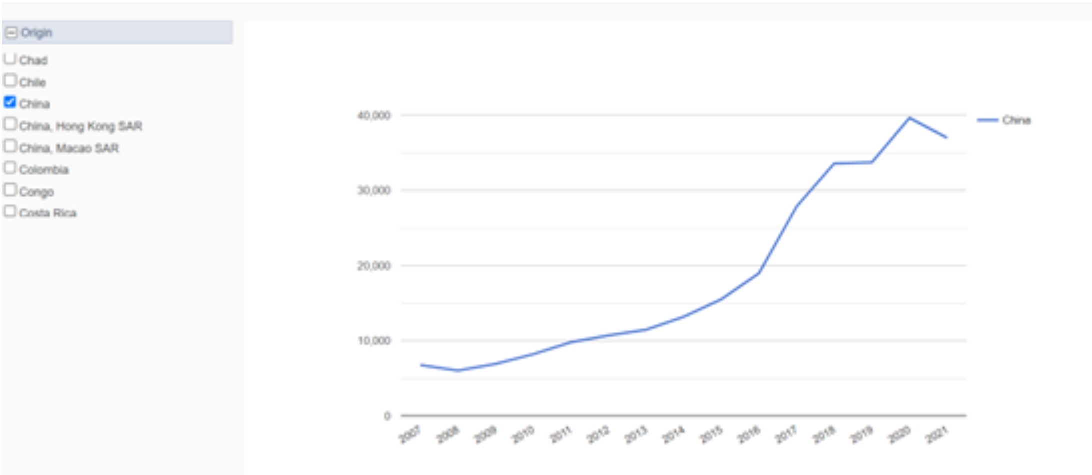
- **Type of Search: Trademarks**
- **Year range: 2007-2021**
- **Report Type: Total count by applicant´s origin**
- **Indicator: Resident Class per count per 100 billion USD GDP (2017 PPP)**

This search may show how residents behave in a recession, taking GDP as a reference.

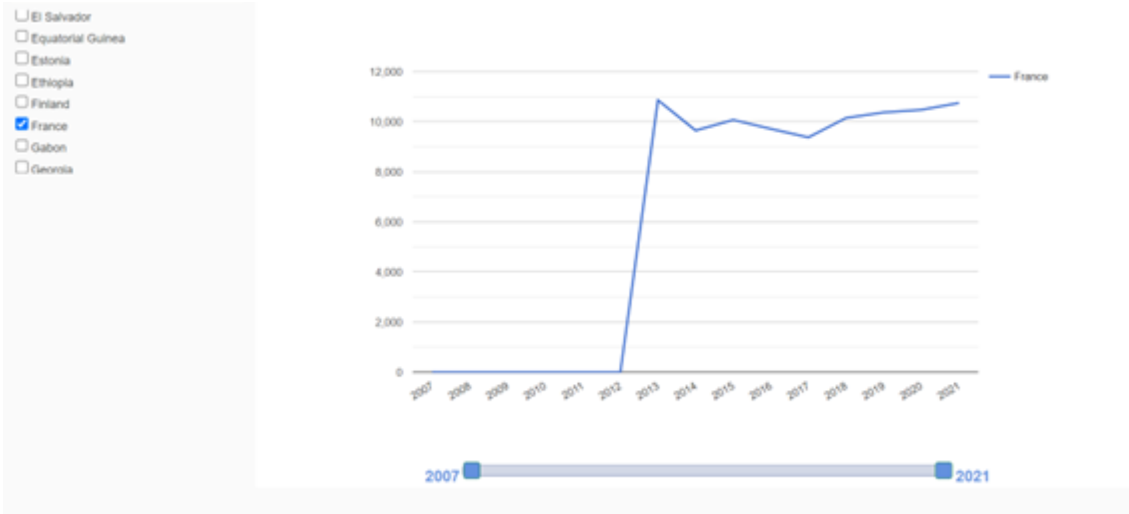
Brazil



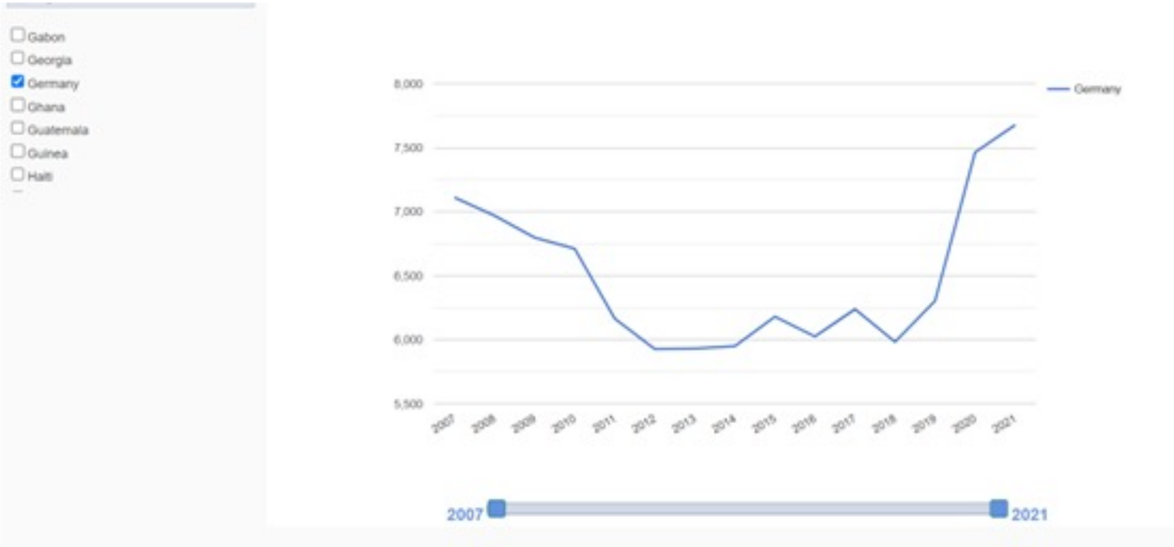
China



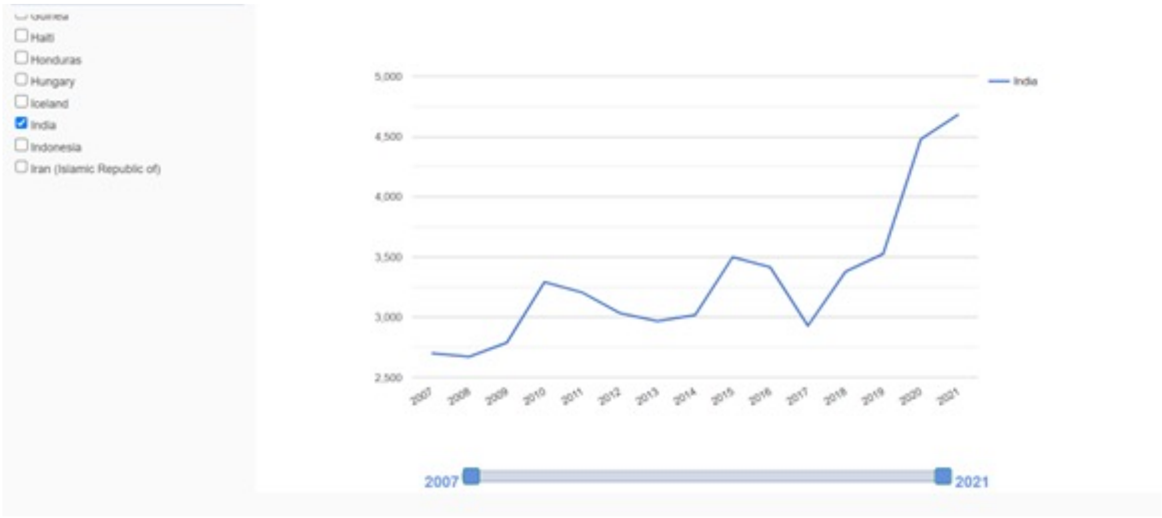
France



Germany



India


Haiti
Honduras
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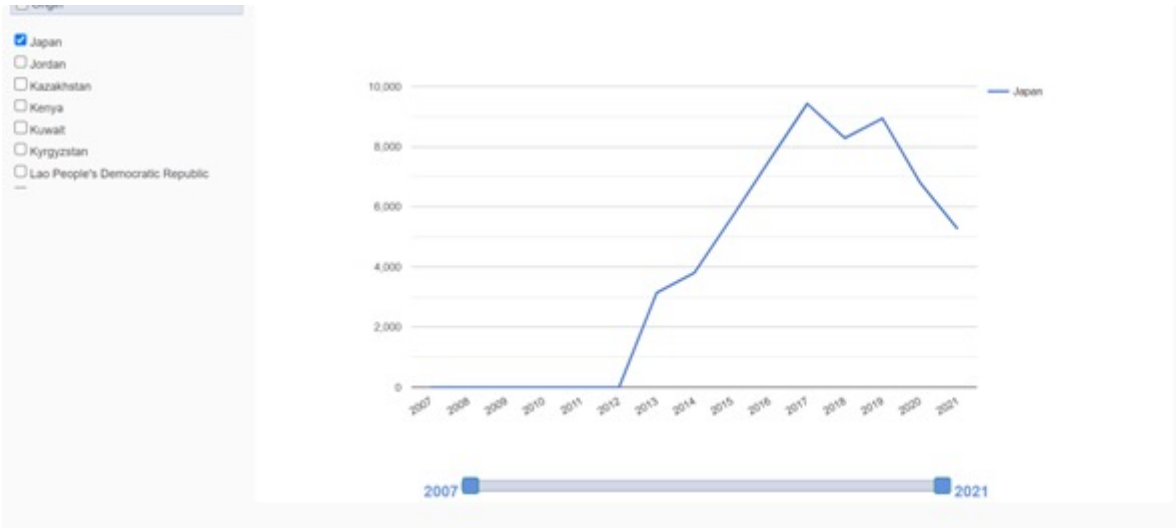
Japan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Kazakhstan
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Kuwait
Kyrgyzstan
Lao People's Democratic Republic
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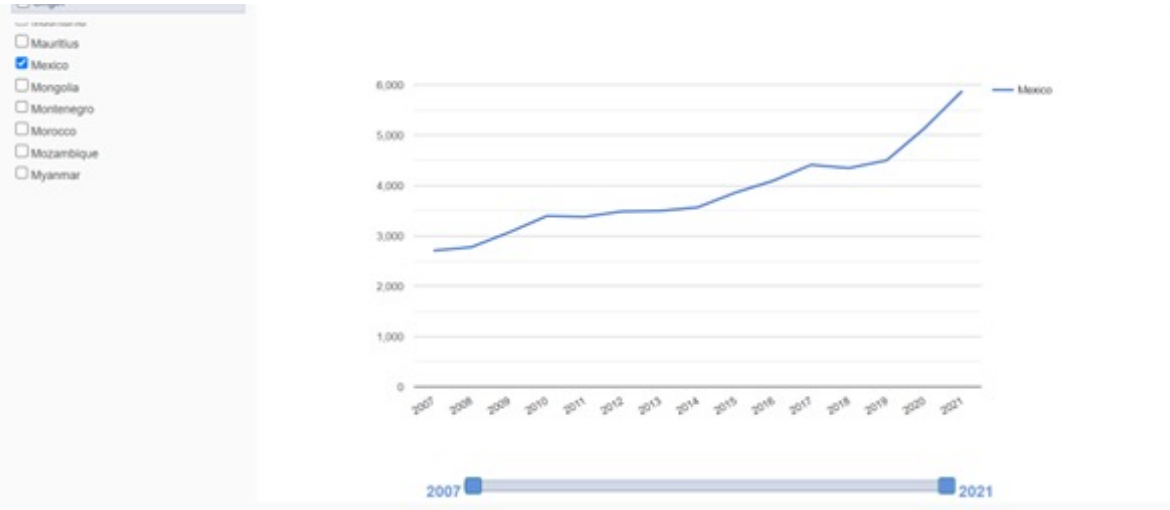
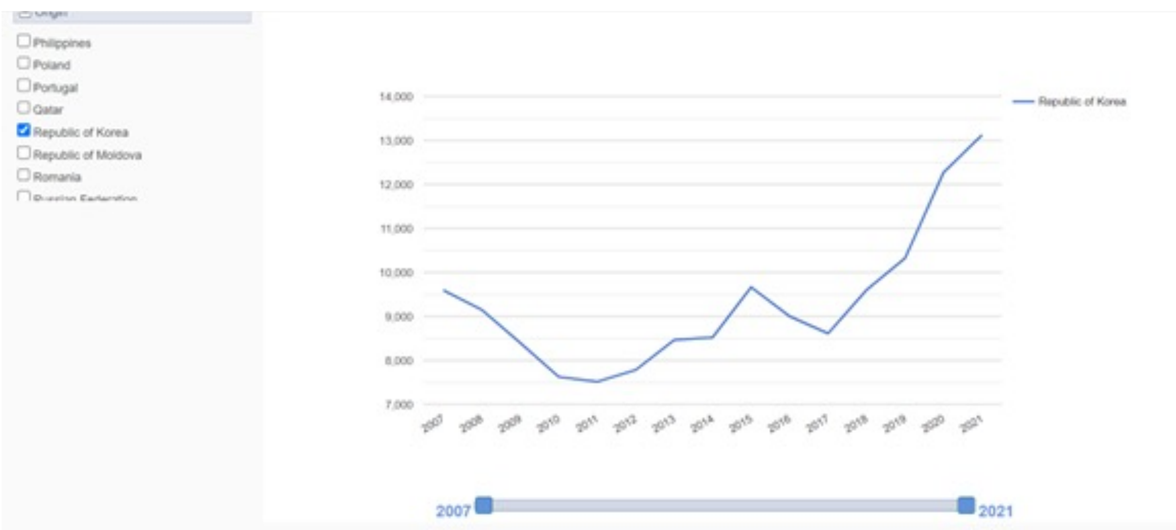
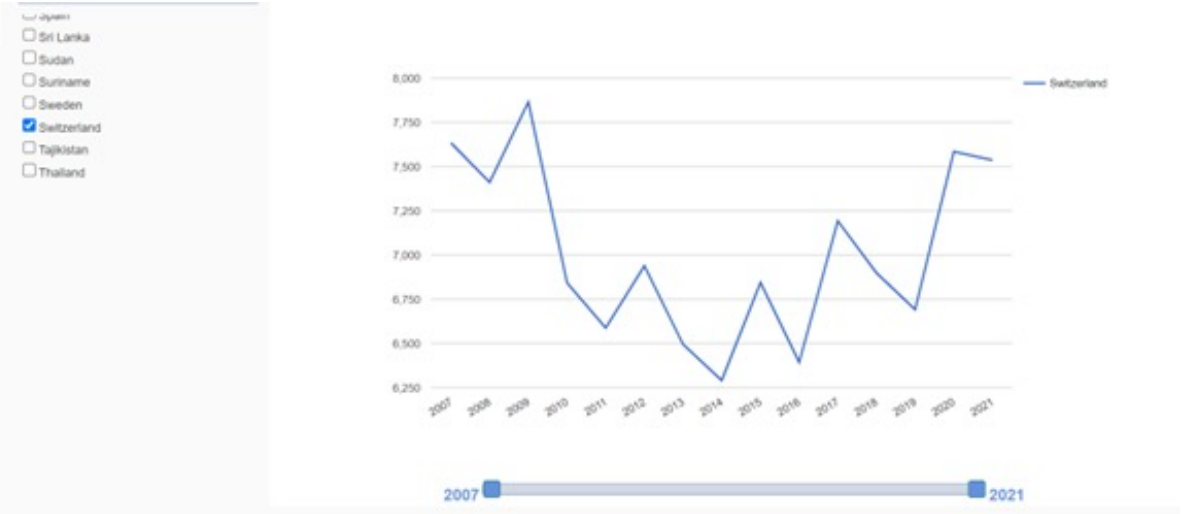


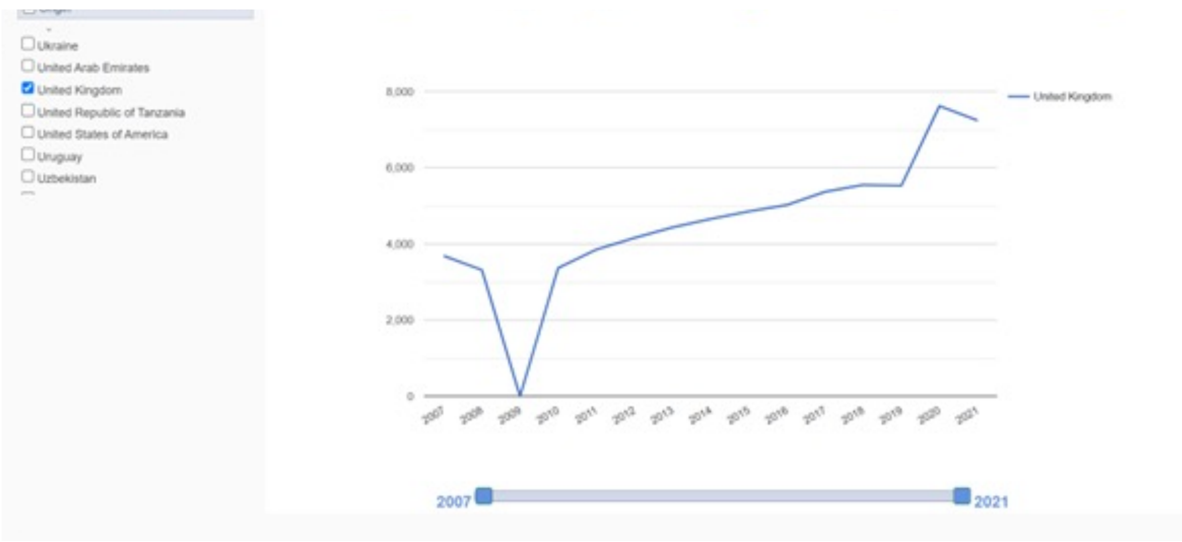
Republic of Korea



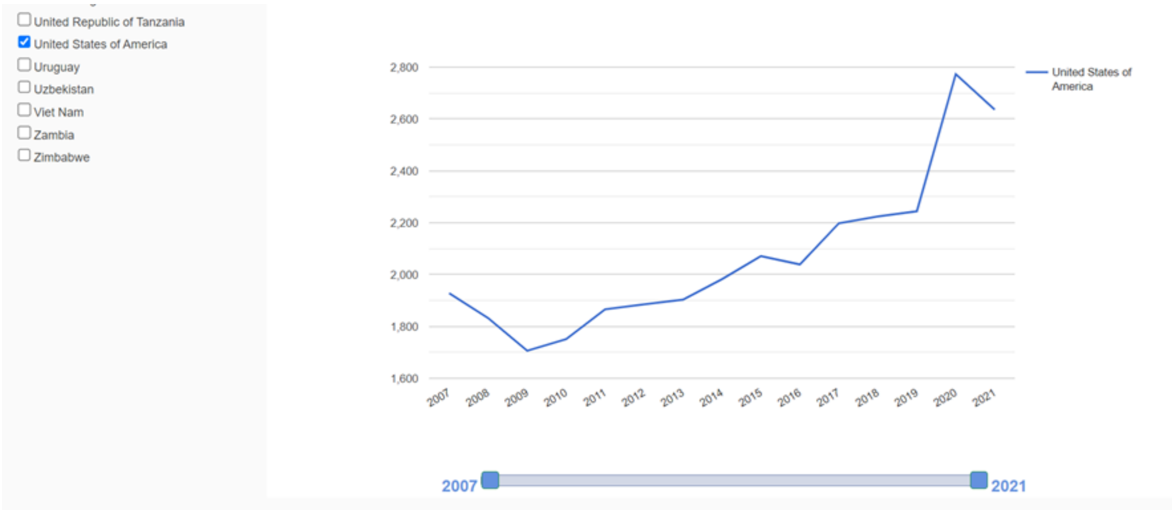
Switzerland



United Kingdom



United States of America



Summary

In compiling this data, we have developed a comprehensive understanding of the 2020 recession, primarily driven by the unprecedented COVID-19 pandemic. The pandemic's global economic repercussions were substantial, leading to widespread shutdowns, disruptions in various industries, supply chain issues, and a sharp stock market decline.

We have also identified key indicators commonly used to recognize a recession, including GDP fluctuations, unemployment rates, consumer spending patterns, business investments, and stock market performance. These indicators help us gauge economic health and anticipate potential economic headwinds.

Internally, INTA consulted with J.P. Morgan to assess the economic climate, with the latest Report, as of this writing, indicating that there were mild recession-like conditions in early 2023. J.P. Morgan's analysis relies on the six-factor test of the National Bureau of Economic Analysis, which includes personal income, employment, spending, wholesale/retail sales, and industrial production. Their assessment suggests mild recessionary headwinds, distinct from the full-blown recession experienced in early 2020.

Furthermore, we have outlined ways to recognize a recession's impact on IP, which can be distinct from broader economic trends. These include fluctuations in IP filings, licensing and litigation activity, changes in IP portfolio management, increased IP theft and infringement, and shifts in IP-related investment across different industries.

In conclusion, our research reveals that recessions can take various forms, with the COVID-19 recession serving as a unique example. The response of the IP system during this recession demonstrated its adaptability and resilience, as it played a critical role in overcoming the crisis through public and private investments, trade secrets, patents, and IP licensing.[4]

As we move forward, it is essential to remain vigilant and closely monitor changes in IP-related activities, as they can provide early indications of a recession's impact. Different regions and industries may respond differently, as demonstrated by the data, making it crucial for organizations to adapt their IP strategies accordingly to navigate the challenges and opportunities presented by recessions.

[4] https://www.wipo.int/web/patent-analytics/exploring-covid-19-vaccine-patents https://www.wipo.int/publications/en/details.jsp?id=4650&plang=EN

Financial Impact of Recession

Neither law firms nor corporate legal teams are immune to the effects of recessions. Discussed in greater detail in this section are several IP-related topics that affect both.

Mergers and Acquisitions

The financial impact on law firms, in-house legal departments, and IP offices in relation to mergers and acquisitions (M&A) can be significant during a recession.

In a recessionary environment, the number of mergers and acquisitions tends to decline. Uncertainty about the economic outlook, tighter credit conditions, and reduced investor confidence can all lead to a decrease in M&A transactions.

Companies may be more cautious in making large-scale acquisitions or investments, leading to smaller deals. This can impact the fees and revenues earned by law firms and legal departments involved in M&A work.

During a recession, distressed M&A activity tends to rise. Distressed M&A refers to the acquisition or sale of financially troubled companies or assets. Law firms and in-house legal teams may see an increase in work related to insolvency, debt restructuring, and distressed asset transactions. As economic conditions worsen, parties involved in ongoing M&A transactions may seek to renegotiate or reevaluate deal terms.

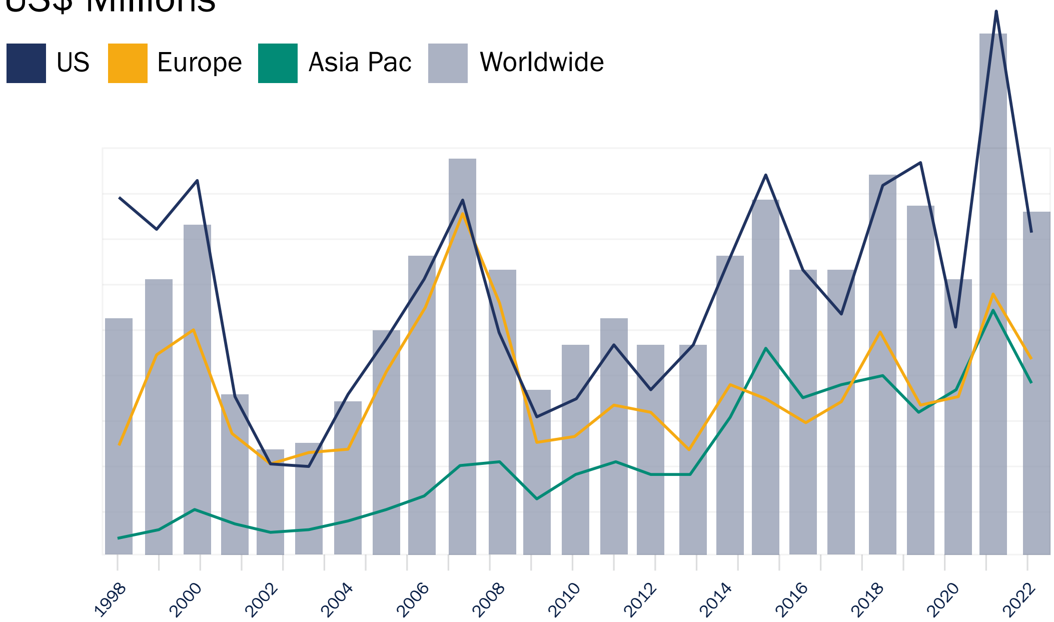
In a recessionary period, companies may face financial constraints and cost-cutting measures, including reducing their spending on legal advisory services. This can put downward pressure on the fees charged by law firms.

M&A activities tend to decline in a recessionary period; the below table provides a simple example.[5]

[5] https://www.refinitiv.com/perspectives/market-insights/two-year-ma-boom-runs-out-of-steam/#:~:text=By%20the%20end%20of%20Q3,percent%20so%20far%20this%20year

SECTION 2 Financial Impact of Recession

Global YTD M&A Values
US$ Millions



It is important to note that the specific impact may vary depending on the severity and duration of the recession, the industry sectors involved, and the geographic region. However, overall, the financial impact of a recession on law firms, in-house legal departments, and IP offices involved in M&A tends to be challenging, with reduced deal activity, smaller transactions, and potential fee pressures. Because of that, it is important to examine each recession period and its effects separately. The last three recession periods are discussed below.

The 1990 recession: The 1990 recession, triggered by several factors such as tight monetary policy and the oil-price shock caused by the first Gulf War, not only reduced demand for legal services, but also forced law firms to face the fact that they were growing too fast. A National Law Journal article noted that nationwide demand for corporate transactional work was declining towards the end of 1987. Hostile takeovers became more difficult as courts and state legislatures permitted companies to implement strong takeover defenses.

After the recession period, the ratio of M&A activities increased in the period between 2005 and 2007. There was a significant increase in debt-financed acquisitions and equity investments in the U.S. from 2005 to 2007. Moreover, investments in high-risk securities to increase profit margins made companies riskier. Although the M&A wave was framed as short, it was a period of intense activity. In mid-2007, before the great recession, the wave of mergers and acquisitions came to an end with the subprime mortgage crisis that started in the U.S. and spread across the world.

The 2008 recession (the Great Recession): The 2008 recession, also known as the Global Financial Crisis, was a severe worldwide economic and financial downturn that began in 2008. It originated in the United States with problems in the housing market, particularly the subprime mortgage sector. Risky lending practices and flawed credit rating practices contributed to a housing bubble that eventually burst, leading to widespread foreclosures and a collapse in housing prices.

The crisis spread to the global financial system through complex financial instruments known as mortgage-backed securities that contained poorly performing loans. Major financial institutions faced significant losses, liquidity problems, and a loss of confidence, culminating in the bankruptcy of Lehman Brothers in September 2008.

The repercussions of the crisis were felt worldwide, resulting in a severe recession, high unemployment rates, plummeting stock markets, and a contraction in economic activity. Governments and central banks implemented measures such as stimulus packages and monetary easing to stabilize the financial system and stimulate economic recovery.

The 2008 recession led to significant regulatory reforms in the financial sector and increased awareness of the risks associated with complex financial instruments and unsustainable lending practices. The recession's impact was long-lasting, shaping the global economy for years to come.

After the 1990 recession period, companies gradually started to recover and started to turn toward mergers and acquisitions. However, the high number of mergers and acquisitions that took place during this period did not continue in the same way because of the crisis that took place in 2008 and, in fact, there was a significant decrease in the number of mergers and acquisitions in 2009.

Based on several reports, we were able to analyze the recession periods and of the number of M&A activities in Turkey[6] and Los Angeles (the U.S.). In these recession periods, the report observed that these places were financially affected by the recession in 1990 but that at the end of this recession period, companies increased their M&A activities to recover themselves. While mergers and acquisitions generally increased between 2003 and 2007 worldwide, the report observed that the global crisis in 2008 has had a downward impact on mergers and acquisitions and that the M&A activities, which generally increased, decreased with the 2008 recession period.

The number of mergers and acquisitions from 1999 to 2010 in Turkey.

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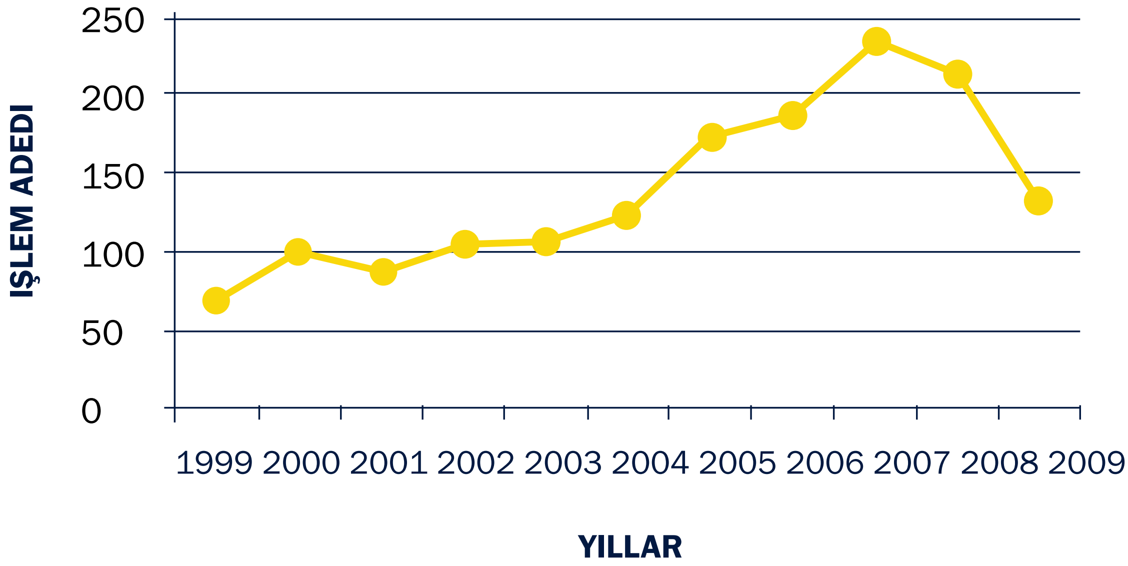
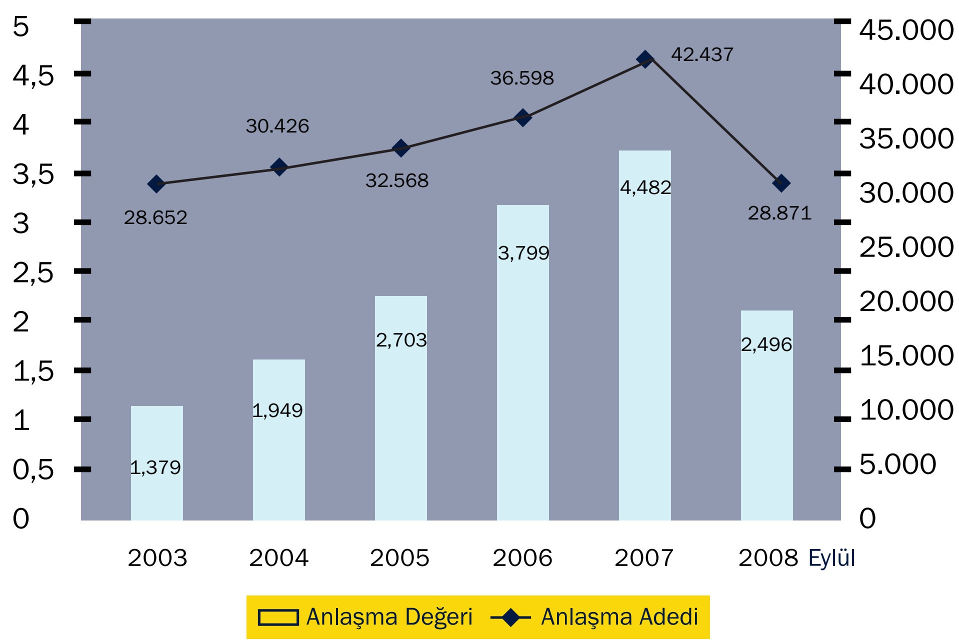
[6] https://dergipark.org.tr/tr/download/article-file/203467



Mergers and Acquisitions in the World during the Period of 2003-2008;



Columns indicate M&A value (in million $)
Lines indicate M&A number.

The 2020 recession (COVID-19): Toward the start of the pandemic, the Daily Journal reported that “deal flow has softened, transactional work is down, especially in M&A, real estate/finance” but that other practices such as litigation and bankruptcy would likely generate work.

Since the emergence of COVID-19 and its subsequent coverage in various media outlets, there has been a notable decline in deal activity. According to Marsh McLennan’s estimation, approximately 25 to 30 percent of active deals in the Pacific region were put on hold due to concerns related to the pandemic.[7] In the first half of 2022, M&A work declined 23 percent year over year, while equity markets were down 68 percent, the slowest period since 2005.[8] Industry experts are confirming that demand for M&A work was “concerningly weak” in the first half of 2023.[9] On the other hand, according to the experts “deal activity shows promising signs of recovery” as we approach the end of 2023 and into 2024.[10]

COVID-19 has further widened any existing valuation gaps between sellers and buyers, particularly when considering the short-term and long-term prospects of the target business.

Moreover, it is expected that opportunistic buyers will likely contribute to an increase in deal activity. Distressed asset investors, such as specialized investment funds, are actively evaluating opportunities to acquire undervalued equity or debt packages. Industries facing significant financial strain, such as travel and leisure, are particularly vulnerable in this regard. It is anticipated that even traditional investors may pursue transactions involving distressed assets when favorable circumstances arise, and strategic alignment is evident.

Our research indicates that this recession period has had a different effect on M&A activities. According to Forbes,[11] “*Moreover, unlike in past crises that have affected M&A deals and activity, this time there has also been a sea of change in the manner in which M&A transactions are developed and negotiated. With all of the principal players working remotely, the effective use of new and creative collaborative tools, technologies and techniques have become more critical as buyers, sellers, providers of M&A financing, and all of their respective legal and financial advisors adjust to the changed environment.*” As seen, each recession period has affected different jurisdictions differently, both during and after the recession. Therefore, it is necessary to examine them separately. Based on our observations and the above explanations, the recession period that had the greatest impact on merger and acquisition activities was the Great Recession in 2008. Companies have started planning their future strategies, taking into account possible crisis situations.

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7 https://www.marshmclennan.com/insights/publications/2020/november/covid-19--what-are-the-impacts-on-m-a-activity.htm0
8 https://www.law.com/international-edition/2022/08/21/law-firms-are-rushing-headlong-into-a-recession/
9 https://www.burfordcapital.com/insights-news-events/insights-research/recession-hedge-nylj/
10 https://www.bcg.com/press/26october2023-m-a-pick-up-2024-despite-headwinds
11 https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/?sh=4e3d23b2200a

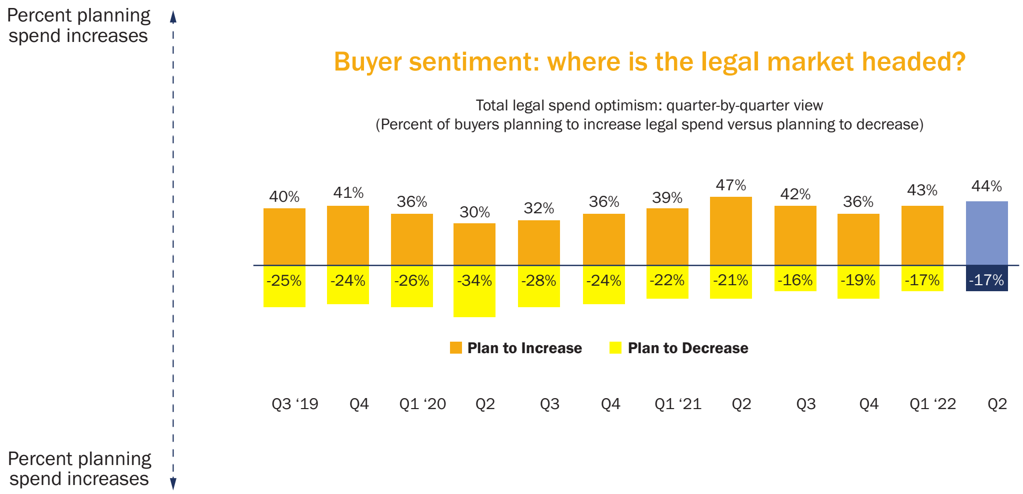
The importance of the financial treatment of IP is also worth mentioning. The current international accounting rules do not allow trademarks and complementary intellectual property that are developed in-house to be recognized as assets on corporate balance sheets. This exclusion of IP rights as financial assets deprives companies of an important way to demonstrate the value of their IP rights and limits management attention to IP, hampering its strategic contribution to the protection of creative and innovative competitiveness and longevity of companies. Better IP reporting and improved IP accounting standards would also help SMEs gain access to funding, which is generally harder in times of recession, especially for companies that rely on intangibles. A 2022 INTA Board Resolution supports the position that accounting standards should not require a blanket exclusion of trademarks and complementary IP that are developed in-house from recognition as assets on corporate balance sheets.[12]

[12] https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20220518_INTA-Board-Resolution-on-International-IP-Accounting-Standards.pdf

BUDGET

Thomson Reuters' Market Insights Survey of legal clients answers important budgetary questions. The survey explains the theory of net spend optimism and the difference between those clients that say their legal spending will increase and those that say it will decrease. As per the survey, net spend optimism has increased with the start of the pandemic in Q2 2020 and still continues. While clients were hesitant to spend at the very beginning of the pandemic due to the uncertainty of the economy, spend optimism has been steadily increasing since.

In Q2 2022, 44 percent of clients said they expect to increase their legal spending, while only 17 percent said they plan to decrease. But this trend was not consistent across all sectors—companies in technology, media, and telecoms (TMT) showed lower optimism in the first half of 2022.[13]



There are usually delays between when a true recession hits and when the impact is actually felt on a company's legal spending, demonstrating that a major decrease in legal spending may be looming. The 2008 recession spurred changes that remain today. More legal work shifted from outside legal counsel to in-house. "The ratio of outside legal spend to inside spend averages 60% to 40%, with 60% of the budget spent with law firms and other providers. However, since in-house legal services are essentially purchased 'wholesale,' whereas law firms bill at a retail rate, the overall volume of the work being done in-house likely exceeds 50%."[14]

What we learned from the 2008 recession is that partners who lower their hourly rates will be in a better position to gain routine work. Companies are focusing on predictable legal budgets, thus fixed-fee deals will likely increase, and companies are less willing to pay Top 25 American law firms to do regular, routine work.

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[13] https://www.thomsonreuters.com/en-us/posts/legal/insights-in-action-legal-spend-optimism/

[14] https://www.mlaglobal.com/en/insights/articles/why-the-legal-industry-can-handle-the-next-recession

In-house law departments struggled to increase their budgets back to where they were prior to the 2008 recession.

Law firms are facing a reduction in corporate and deal work, in addition to increased costs, leading to a decrease in profits for many of the largest international law firms. While billable hours declined by only one percent in the first quarter of 2023, payroll expenses rose almost 11 percent, and overhead rose almost 13 percent.

In a recession, some clients feel the need to aggressively pursue litigation that they normally would not pursue as an additional source of funds. But with companies struggling financially and enduring increased capital costs, and law firms facing a slowdown in work, law firms often offer discounts or alternative fee arrangements.

A 2022 half-year analysis of the largest U.S. firms by Citi found that the drop in demand for legal services cut revenue growth by 5 percent, down 14.6 percent from the year before. In this period, expenses increased by 14.7 percent.[15]

Earlier in the year, there was optimism that 2023 would bring an increase in regulatory activity, litigation, and restructuring work, as clients would seek the help of law firms to attempt to resolve the financial challenges associated with the recession.

It is important to recognize the sectors that are having downturns and help them prioritize their legal work. Law firms can use litigation as a recession hedge by shifting IP and corporate lawyers to help with litigation. Law firms may help generate revenue by helping distressed businesses seek creative methods of resolving ongoing debt issues.

LITIGATION-ENFORCEMENT-PROSECUTION

Economic recessions have significant and long-lasting impacts on the legal sector. However, the relationship between the legal sector and recessions may differ from that of other industries. Indeed, as stated in McKinsey & Company's report titled "COVID-19: Implications for Law Firms"[16] in May 2020, law firms tend to withstand downturns better than the overall economy does.

That said, the legal sector is not a homogeneous industry; it encompasses distinct practices and areas. And while it is argued that the sector, as a whole, copes better with recessions than other sectors, the level of impact of an economic crisis can vary depending on the specific subfield of a law practice.

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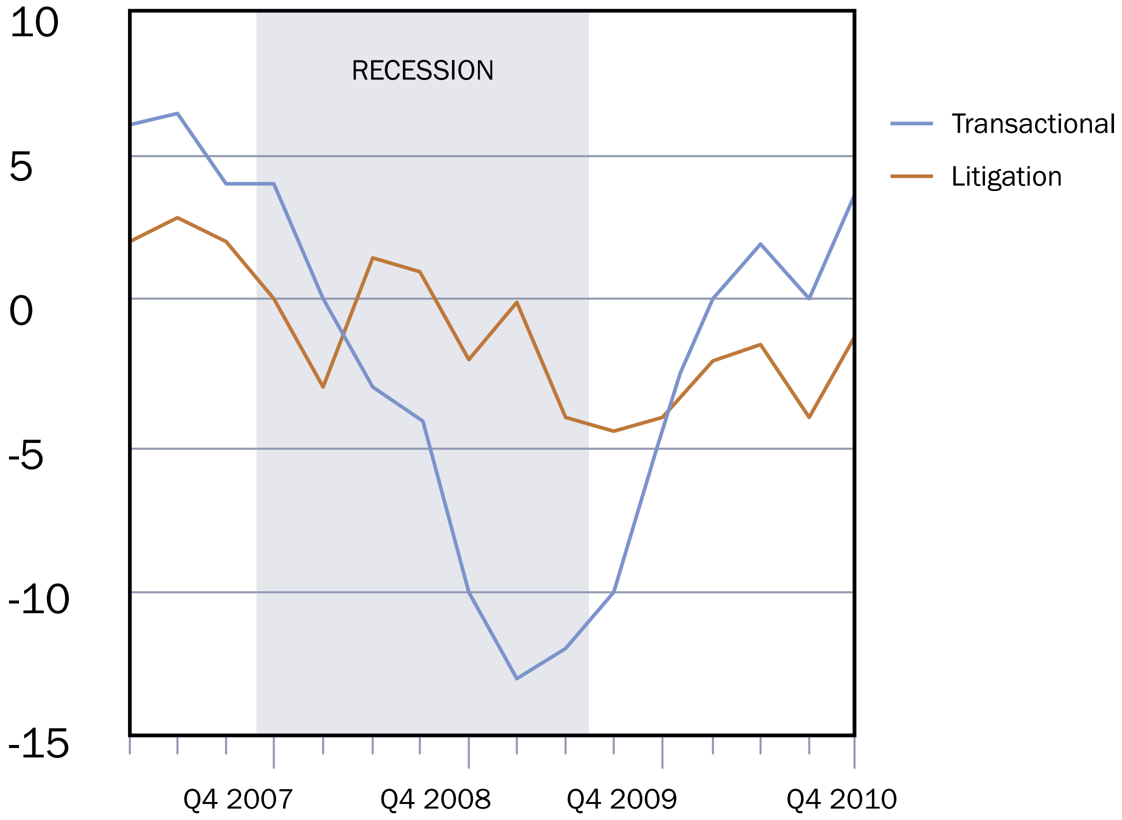
[15] https://www.privatebank.citibank.com/newcpb-media/media/documents/insights/2023-Citi-Hildebrandt-Client-Advisory.pdf

[16] https://www.mckinsey.com/~/media/McKinsey/Industries/Financial%20Services/Our%20Insights/COVID%2019%20Implications%20for%20law%20firms/COVID-19-Implications-for-law-firms-vF.ashx

In this context, some have argued that the litigation field is recession-proof. Towards the start of the pandemic, the Daily Journal reported that "deal flow has softened, transactional work is down—especially in M&A, real estate/finance," but that other practices such as litigation and bankruptcy would likely generate work.[17]

Furthermore, as expressed in McKinsey & Company's report titled "COVID-19: Implications for Law Firms," in May 2020, dispute and investigation practices are less correlated with the overall economy compared to transactional practices. The graph below, sourced from Peer Monitor, also demonstrates that while the 2008–2009 recession had a significant negative effect on transactional demand, demand for litigation remained relatively stable.

Demand for law-firm services, 2007–10, % (year-over-year change)



[17] Sandy Lechtick, *How COVID-19 Will Impact the Legal Profession*, DAILY. J. (Apr 13, 2020) https://dailyjournal.com/articles/357167

Similarly, within this framework, according to the “Los Angeles Law Firms Before and After Recessions” publication of the Milken Institute Report in May 2021[18] which examines the situations of law firms in Los Angeles after economic crises, the wave of securities fraud toward the start of the 2000s and ensuing government enforcement created significant work for litigators. Litigation work continued to grow during the period following 2001 as white-collar enforcement became more aggressive. In this regard, it is stated that actions during economic downturns lead to an increase in the number of lawsuits after the recession, as they become the subject of litigation.

Michael McDonald’s article titled “Finance and Law: Recessions and Lawsuits”[19] from July 26, 2016, suggests that during economic downturns, companies and individuals facing cash shortages and seeking any available financing may turn to litigation as a source of funding. Particularly, if lawyers may be willing to base a significant portion of their fees on the outcome of the case, this could incentivize the initiation of lawsuits.

On the other hand, an alternative viewpoint maintains that during economic downturns, businesses tend to reduce their costs, and litigation expenses are among the costs that would be cut. Companies are cautious about allocating their limited budgets to litigation expenses. For instance, even if they have a strong case, it would be quite challenging to collect damages from a failing company on the opposing side if the lawsuit concludes favourably. The high cost of legal proceedings and the uncertainty of the outcome make individuals and organizations hesitant to pursue litigation.

This dual situation is also evident in patent litigation. An article[20] examining the status of patent litigation during economic downturns, mentions that there is a disagreement among practicing attorneys regarding the impact of economic downturns on the rates of patent litigation. One perspective, supported by data from previous recessions, suggests that downturns lead to an increase in litigation as the potential returns from patent litigation become relatively more attractive compared to sales of products and services. In other words, during downturns, litigation serves as a substitute for traditional sales. The contrary perspective highlights the decrease in patent litigation during the most recent recession, attributing it to capital constraints that generally lower overall litigation rates during economic downturns.

It is difficult to reach a conclusion regarding the relationship between litigation activities and economic recessions. On one hand, there is an argument that individuals and companies, seeking to reduce expenses, are less willing to initiate lawsuits during such periods. On the other hand, there is a perspective that economic downturns transform litigation into a source of income for individuals and companies in search of revenue opportunities. Thus, it is not possible to draw an overarching conclusion about the correlation between economic downturns and litigation processes, as this correlation seems to vary on a case-by-case basis.

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[18] https://lowellmilkeninstitute.law.ucla.edu/wp-content/uploads/2021/04/LA-Law-Firms-Before-and-After-Recessions-April-25-2021FINAL.pdf

[19] https://abovethelaw.com/2016/07/finance-and-law-recessions-and-lawsuits/

[20] Marco, Alan C. and Miller, Shawn P. and Sichelman, Ted M., Do Economic Downturns Dampen Patent Litigation? (August 20, 2015). 12 Journal of Empirical Legal Studies 481 (2015) (Forthcoming).

STAFFING AND EMPLOYMENT

The pandemic recession has led to a decreased demand for legal services, as companies reduce their budgets and individuals have less disposable income. As a result, law firms have seen a drop in clients and a decrease in revenue. This has forced many law firms to downsize. The effects of the last three recessions on legal employment are discussed below.

The 1999 and Early 2000s Recession: When findings related to the recession of the early 2000s are observed, the most important element to note is that the 2001–2003 recession pushed more female lawyers than male ones out of the workplace.

According to an article by the scholar Deborah J. Merritt,[21] the recession of the early 2000s impacted female lawyers more profoundly, given that women constituted 29.8 percent of employed lawyers. She also states that: “[b]y 2003, despite more women graduating from law school (and disproportionately male senior lawyers departing the workforce), only 27.6% of employed lawyers were women.”

The 2008–2009 Recession (The Great Recession): While the number of job losses varied by country and region, the blog LawShucks reported that 12,196 people (4,633 lawyers and 7,563 staffers) were laid off at 138 large law firms in 2009.[22]

In addition, the impact of the recession on law firm employment was particularly difficult for then-recent law school graduates who were entering the job market at a time when jobs were scarce. According to the National Association of Law Placement (NALP): “in the USA the overall employment rate of 88.3% for Class of 2009 graduates for whom employment status was known represents a 3.6 percentage point drop from the recent historical high of 91.9% for the Class of 2007 and masks a number of weaknesses in the job market faced by this class. For example, separate research from NALP found that between 3,200 and 3,700 graduates who reported jobs in law firms had their start dates deferred beyond December 1, 2009. In addition, a far higher percentage of this class reported employment that was temporary, with 41% of public interest jobs reported as being temporary, 30% of business jobs being reported as temporary, 69% of academic jobs being reported as temporary, and even 8% of the private practice jobs being reported as temporary. Overall, nearly 25% of all jobs were reported as temporary, a figure that includes judicial clerkships.”[23]

[21] https://www.lawschoolcafe.org/2013/02/20/unemployed-lawyers/

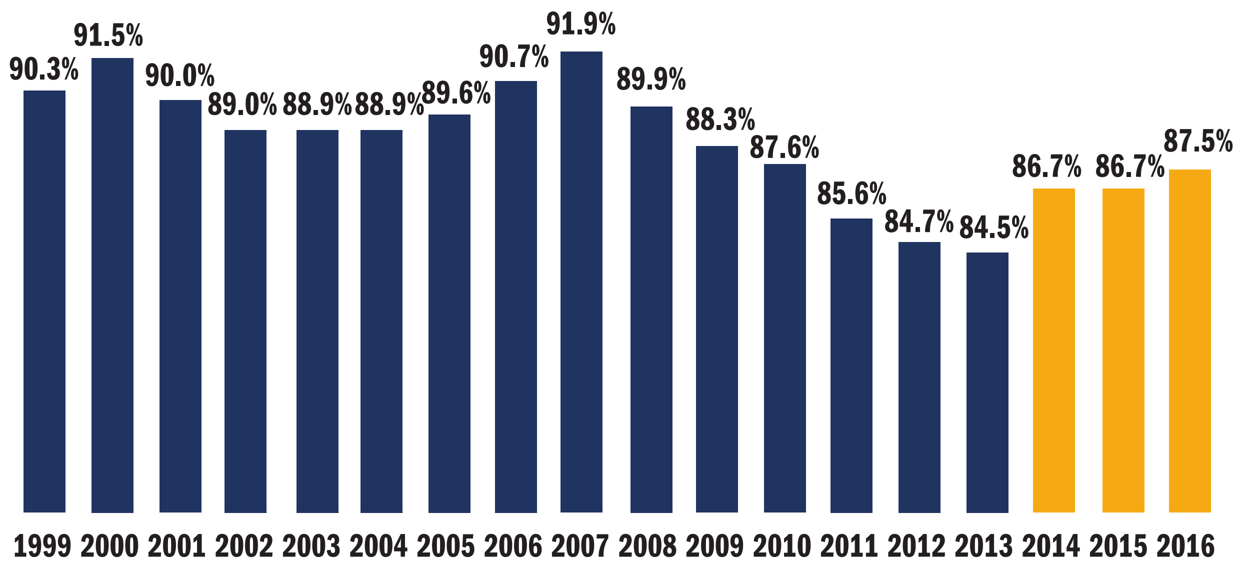
[22] https://www.abajournal.com/news/article/biglaw_laid_off_more_than_12000_people_in_2009_the_worst_year_ever

[23] https://www.nalp.org/09salpressrel

According to an article in The Bar Examiner[24] in the Winter issue of 2017–2018, "[b]eginning with the class of 2008, the overall employment rate for new law school graduates declined for six years in a row, even as the national and legal economies recovered. That rate has only begun to improve over the last three years. The overall employment rate for the class of 2016, the most recent class for which complete employment data is available, was up by almost one full percentage point from the previous year to 87.5 percent of graduates for whom employment status was known, compared with 86.7 percent for the class of 2015."

More recent data on U.S. employment rates regarding legal services[25] states that "[t]he sector added 5,100 jobs in September [2023], bringing the total to 1,182,700, according to preliminary seasonally adjusted data released by the U.S. Bureau of Labor Statistics. ...Since hitting an all-time high in July 2022, legal sector job numbers have fluctuated as global M&A activity slows down to levels not seen in years."

Figure 1: Law graduate employment rate 9/10 months after graduation, 1999–2016



Information or data obtained from the Bar Examiner.

The COVID Recession (2020): According to a February 2021 article on the law blog Above the Law, "Biglaw Associate Layoffs In 2020 Were 'Reminiscent Of 2009 And The Great Recession,'"[26] "Biglaw firms, on average, employed 1.6 percent fewer attorneys in 2020 than at the same point in 2019."

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[24] https://thebarexaminer.ncbex.org/article/legal-profession/the-entry-level-employment-market-for-new-law-school-graduates-10-years-after-the-great-recession/

[25] https://www.reuters.com/legal/litigation/legal-jobs-rebound-amid-us-employment-surge-2023-10-06/

[26] https://abovethelaw.com/2021/02/biglaw-associate-layoffs-in-2020-were-reminiscent-of-2009-and-the-great-recession/

Another interesting data set obtained by the U.S. Bureau of Labor Statistics was illustrated by the American Lawyer[27] and can be found below. The data set demonstrates that U.S. legal jobs dropped to their lowest during March 2020 to 1,090,000 and have slowly recovered after October 2021.

Information or data obtained from the American Lawyer.

However, the experts are foreseeing another recession wave and Sara Merken has reported for Reuters that law firm layoffs are beginning to spread and has stated the following: “Large law firms are advising on fewer deals, with a smaller combined value, as mergers and acquisitions activity fell to its lowest level in more than a decade in the first quarter of 2023, according to data released ... by Refinitiv.”[28] Nevertheless, the effects as of this writing are yet to be seen.

Recessions have a significant impact on law firm employment, leading to job losses and increased competition for available positions. However, it is important to note that economic downturns are cyclical and depend on a jurisdictions’s and/or region’s specific set of conditions.

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27 https://www.law.com/americanlawyer/2023/05/05/can-the-legal-industry-keep-the-20000-jobs-gained-since-early-2020/

28 https://www.reuters.com/legal/legalindustry/law-firm-layoffs-spread-cooling-economy-keeps-clients-wary-2023-04-05/

FINDINGS:

MERGERS AND ACQUISITIONS IN TIMES OF RECESSION

- Uncertainty about the economic outlook, tighter credit conditions, and reduced investor confidence can lead to a decrease in M&A transactions. The acquisition or sale of financially troubled companies or assets tends to rise.
- Companies may be more cautious in making large-scale acquisitions or investments, leading to smaller deals. This can impact the fees and revenues earned by law firms and legal departments involved in M&A work.
- Financial constraints and cost-cutting measures, including legal advisory services, can put downward pressure on the fees charged by law firms.
- In the first quarter of 2023, large law firms were advising on fewer deals, with a smaller combined value, as mergers and acquisitions activity fell to their lowest level in more than a decade, since rising interest rates, high inflation, and fears of a recession soured the appetite of companies for dealmaking.
- The current international accounting rules do not allow trademarks and complementary IP that is developed in-house to be recognized as assets on corporate balance sheets. This exclusion of home-grown IP as financial assets deprives companies of an important way to demonstrate the value of their IP rights, limits management attention to IP, hampering its strategic contribution to the protection of creative and innovative competitiveness and longevity of companies.

BUDGET IN TIMES OF RECESSION

- More legal work shifts from outside legal counsel to in-house. The overall volume of the legal work being done in-house likely can exceed 50%.
- Companies focus on predictable legal budgets, thus fixed-fee deals tend to increase.
- Companies become less willing to pay Tier 1 law firms to do routine work.
- The reduction in corporate and deal work and the increase in expenses and overhead typically lead to a decrease in profits.

LITIGATION-ENFORCEMENT-PROSECUTION IN TIMES OF RECESSION

- Law firms tend to withstand downturns better than the overall economy does. But the effects of an economic crisis vary depending on the specific subfield of the law practice.
- It is not possible to draw a general conclusion about the correlation between economic downturns and litigation tendency.
- Although there are also counterarguments, some sources assert that the litigation field is recession-proof. It is suggested that during economic downturns, companies and individuals facing cash shortages may turn to litigation as a source of funding. In other words, during downturns, litigation serves as a substitute for traditional sales.
- According to a contrary viewpoint, the high cost of legal proceedings and the uncertainty of the outcome make individuals and organizations hesitant to pursue litigation. It would also be quite challenging to collect damages from a failing company or a bankrupt company, even if the lawsuit concludes favorably.

STAFFING AND EMPLOYMENT IN TIMES OF RECESSION

- After the recession of 2008, the overall employment rate for new law school graduates continued to decline for six consecutive years, even though the national and legal economies recovered.
- The pandemic recession led to a decreased demand for legal services in general, as a result, law firms saw a drop in clients and a decrease in revenue. This forced many law firms to downsize.
- Many law firms raced to hire lawyers in 2021 and early 2022 to keep up with booming global dealmaking demand after the pandemic. But the market has shifted amid rising interest rates, high inflation, and recession fears. Lawyers and staff at big law firms are continuing to face layoffs as global deals take a dive and client demand falters.

Recommendations and Conclusion

- Better IP reporting and improved IP accounting standards would help companies, including SMEs, gain access to funding, which is generally harder in times of recession, especially for companies that rely on intangible assets. Accounting standards should not require a blanket exclusion of trademarks and complementary IP that are developed in-house from recognition as assets on corporate balance sheets.
- Companies are focusing on predictable legal budgets. Therefore, they would prefer fixed-fee deals.
- Law firms may help generate revenue by helping distressed businesses seek creative methods of resolving ongoing debt issues.
- It is important to recognize the sectors that are affected by a recession comparatively more and help them prioritize their legal work.
- It has been suggested that during economic downturns, companies and individuals may turn to enforcing their IP rights as a source of funding, which could lead to compensation or license deals. Particularly, if lawyers are willing to base a significant portion of their fees on the outcome of the case, this could incentivize the initiation of lawsuits. However, this may not be a viable option in regions where monetary awards are generally low.
- Law firms should encourage their clients to collaborate with other companies or universities as IP partners. which would help cut R&D costs and payroll, in return for shared revenue.
- Companies may wish to revise the strategy of entering new markets/jurisdictions, if any. A licensing agreement with a local company instead of making an investment during unpredictable times may be more beneficial.
- Law firms may help distressed companies review their IP registrations, identify the core rights, and abandon the remaining rights (or offer them for transfer/license to another company), which would cut administrative costs for monitoring. Not all IP rights will be aligned with business interests or be relevant during a recessionary time. This may also require review of businesses and potentially selling the businesses that are a liability rather than revenue generators. At the same time, recessionary times might be the best time for acquiring IP from companies in need of cash flow.

Understanding the Potential Impact of Recession on Trademark Practitioners

A recession impacts the intellectual property (IP) ecosystem in many ways. Some of the major immediate impacts include:

I. **Reduced budgets allocated:** This forces business owners to focus on their core brands markets and makes them less likely to oppose third-party marks or file cancellation actions and possibly even to delay the launch of new brands and/or products.

II. **Increased spend on technology:** It appears that both law firms and the in-house departments increase their spend on technology in times of recession. While law firms tend to do so to increase the efficiency of their work product, the in-house teams appear to do so owing to the budget crisis.

III. **Changes in staffing:** Recessions have an impact on law firm employment and there may be job losses or IP practitioners that leave a firm and may not be replaced.

IV. **Decline in M&A activity before a recession**. However, companies that have the resources to invest may reap benefits as the research shows that companies that make acquisitions during a recession are likely to see better shareholder returns in the long term.

In summary, a recession tends to reduce the investment in maintaining and protecting IP assets but leads to greater investment in legal tech to gain efficiency in tough times.

With the help of the following suggestions, trademark and IP practitioners may be better able to cope with the impact of a recession.

Management/efficiency measures:
- Adopt automation/management technologies
- Adapt processes and implement new technologies
- Companies: Negotiate fees and timeline for payment
- Firms: Adopt new fee structures (fixed fees or monthly retainers). Firms may offer an “all you can eat” retainer for trademark filings for a 12-month period to maintain a trademark filing flow during a recession. The long-term benefit of this fee option is that it may result in more contentious trademark work after the 12-month fixed fee retainer has expired flowing from the new marks that have been filed.

Protection optimization.

- Prioritize territories/regions where biggest markets are allocated
- Selectively decide what to protect (word mark v. device, etc.)
- Be selective in the countries to be covered by an international trade mark application. The client may limit the countries to key target markets during a recession
- Renegotiate fees or time of payment
- Develop new fee structure
- Generate efficiency to maintain enforcement

Staffing

As concluded in the previous section, recessions have a significant impact on law firm employment, leading to job losses and increased competition for available positions. Generally, during a recession, a shift in staffing—be it from layoffs to a greater focus on and demand of paralegal work—is seen.

Additional staffing factors to consider:

- Promote paralegals and replace lawyers' prosecution work with paralegals. Promote lawyers to engage in transactional/enforcement IP work creating room for paralegals in basic prosecution work.
- Firms: Promote flexibility and adaptability for lawyers to support other areas of the firm creating space for paralegals.
- Use foreign attorneys with a favorable fee (less expensive) to process basic prosecution work.

Litigation

- Budget restrictions are likely to affect more IP owners in a way that reduces the number of litigations and only target cases with strong merits.
- However, given the rise in the number of litigation funders in recent years, we may see more appetite for litigation, particularly if the prospects for recovery of damages is high, where litigation funders front the costs of litigation with IP owners paying little of the cost upfront.
- Section 2 of this report provides further in-depth analysis of the impact of a recession on litigation.

Mergers & Acquisitions:

This segment will look at the relationship between recession and Merger and Acquisition (M&A) activities.

According to the World Bank,[29] the world economy has experienced four global recessions over the past seven decades: in 1975, 1982, 1991, and 2009; some also recognized a recession happen during Dot-com bubble (2000–2002) and the possible recession from COVID 19 in 2020. We can compare this information with the data by PwC to highlight the impact of M&A activities.[30]

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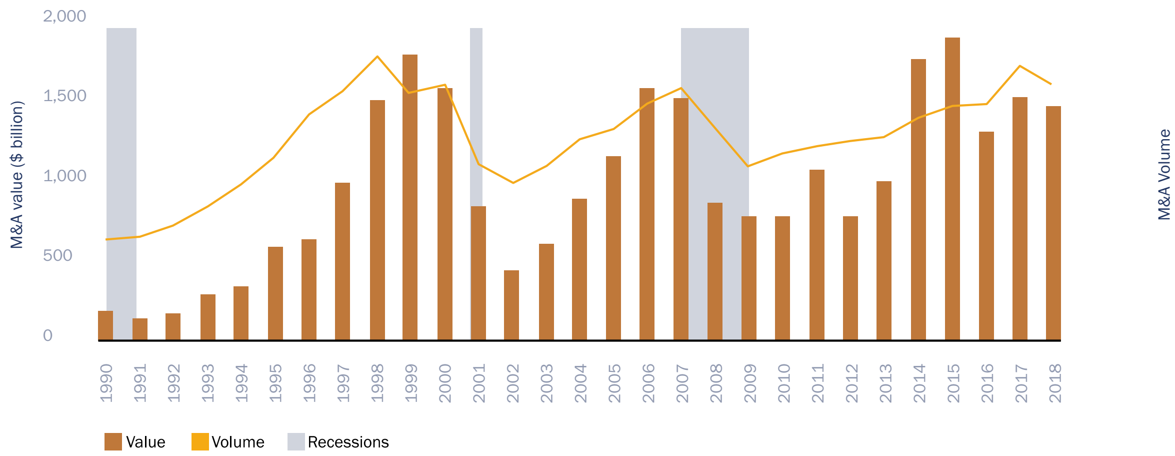
[29] https://openknowledge.worldbank.org/entities/publication/1946cab9-5b12-5dd9-a86a-9ba6888c546e

[30] https://www.pwc.com/us/en/services/consulting/deals/ma-in-uncertain-economic-times.html#content-free-1-eb48

Past M&A cycles and economic recessions

Total volume and value of deals by US acquirers declined substaintially during recent downturns, taking years to recover.



Information or data obtained from National Bureau of Economic Research.

The data from PwC clearly shows that M&A activities tend to reduce before recessions are recognized (grey bar). A possible explanation is that economic downturns create uncertainty over the valuation of companies, and the uncertainty means that the acquisition could be overpriced. As the stock market, and thereby, company valuation calculation during mergers and acquisitions are based on future earnings, M&A activities may fall well before the actual recession is recognized.[31]

However, for those who are willing to take the risk and have the cashflow to back it up, they are likely to reap the benefits. According to the PwC study mentioned above, companies that have engaged in M&A activities during a downturn see a 7.01 percent higher median shareholder return after 12 months, in comparison to those who did not.

Research that appeared in the Harvard Business Review[32] also suggests a similar conclusion. The HBR article looks at deal multiples and, after a recession, the deal multiples typically experience a V-shaped recovery. As an example, during the DotCom crisis, "Deal values plummeted from an average of 10.8x in the three years before the 2008 crisis hit to as low as 6.5x in 2009, before rebounding to the 10-year average of 11.6x by 2019."

A reduction or absence of resources to fund legal work, including for the protection, maintenance, and enforcement of IP rights, will impact businesses differently, depending on the specific business concerned.

Fast moving consumer goods brands may reduce spending on filing and prosecution, focusing on core markets only and reducing the scope of protection (not including any defensive filings). For enforcement, resources are spent on straightforward cases with strong merits. Brand owners may file fewer opposition proceedings and consider filing cancellations later on when circumstances permit.

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[31] https://www.intralinks.com/blog/2022/08/how-will-risk-recession-impact-ma-trends

[32] https://hbr.org/2020/05/the-case-for-ma-in-a-downturn

Software companies generally spend less on trademark filings, unless they roll out products with new brands regularly. Recession may not affect the filing trend in this sector. These companies may spend more on enforcement of their rights, with a view to securing more commercial licenses, therefore increasing revenue during hard times.

Similarly, patent heavy companies, such as those involved in pharmaceutical, cosmetics, or chemical industries might use budgets on research and development and attempt to protect know-how and new innovations as trade secrets, hence reducing filing fees. If the need for patent filings arises, such companies may focus on filing in core markets only. Some may choose to increase enforcement activities with a view to obtaining cross-licenses of patented technology, thereby offsetting the need to pay others for use of their patents and reducing costs to the business.

Technology:

In this section we examine the impact of recessions on technology, based on external research, while in the next section (Section 4), we assess the impact of recessions on technology based on a comprehensive survey we conducted with the INTA membership.

There is no standard definition of “legal tech” and what it entails. For our discussion, we can generally define it as any “application of scientific knowledge for practical purposes” used to improve the functions carried out by IP professionals.

Based on research from Thomson Reuters Australia in 2022,[33] “legal tech” can be divided into the following areas:

- Legal research
- Know-how and precedent solutions
- Document automation solutions
- Reporting and dashboard solutions
- Document drafting solutions
- Legal operations management solutions
- Risk and compliance solutions
- Business and finance management solutions

[33] https://www.thomsonreuters.com.au/content/dam/ewp-m/documents/australia/en/pdf/other/tech-and-the-law-2022-report.pdf

Other "legal tech" solutions include the following:[34]
- Case management software
- Billing and tracking tools
- Document management software
- Online payment solutions
- Password management
- PDF converters
- Dictation tools
- Secure communication platforms

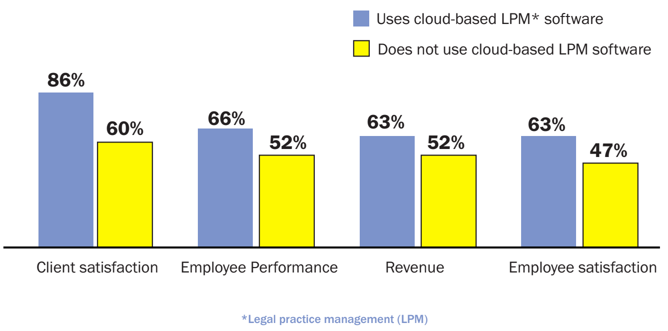
This is hardly a comprehensive list. We have found other sources that mention automation, A.I., blockchain, cloud-technology, virtual legal assistants (VLAs), and cybersecurity.[35]

Surveying various external research and papers, we can highlight that legal tech has the following positive and negative impacts on IP during times of recession:

Positive impacts:
Technology adoption during recession could reduce overall cost structure by automating processes and reducing human costs. We may understand such cost reduction both from law firm and in-house perspectives.

For law firms:
Research by a legal tech vendor suggests that "extensive use of well-implemented technology correlates with firm success."[35] The 2021 research finds successful firms (No definition was provided in the research.) are 37 percent more likely to be using online payment solutions, 41 percent more likely to use client portals, and 46 percent more likely to use client intake and client relationship management (CRM) solutions. The Clio Legal Trent Report 2022 suggested that firms with technology adoption, specifically, a cloud-based Legal Practice Management (LPM) solution, have higher client satisfaction, employee performance and satisfaction, and revenue.

Cloud-based lawyers run better law firms
% who say each of the following is good or very good



Information or data obtained from Clio Legal Trend Report 2022.

[34] https://assemblysoftware.com/learning-center/blogs/technology-for-law-firms

[35] https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-july/top-5-legal-technology-trends
https://www.plainconcepts.com/technological-trends-legaltech/

Law firms are also facing increasing pressure to adopt technology to enable remote working arrangements. According to research by BigHand, “45% of staff would look for a new job if told they had to attend the office full-time. Almost as many would leave if they had to work at the office more than three days a week.”[36] Technology is necessary to enable a more flexible working environment which helps with retaining valuable talent.

For In-house counsel:

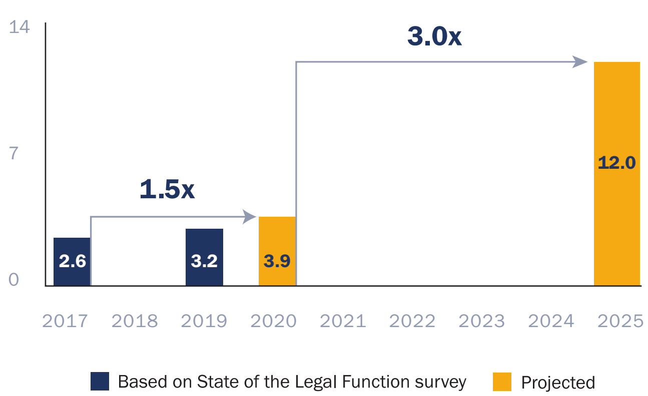
Deloitte’s “Technology in the legal department” report[37] claims that technology is one component in legal function transformation, and its effectiveness depends on the quality of the legal team’s operational strategy. To overcome the “not knowing what they don’t know” problem in technology adoption, some organizations have created the Chief Legal Operating Officer (CLOO) role to focus on transforming legal operations, which includes technology transformation.

Gaining efficiency seems to be one of the most important drivers for technology transformation for in-house teams. Citing survey results in the In-House Legal Technology report, Lawvu reported that “80% of all respondents believe that time spent on manual daily activities takes time and effort away from working on larger business goals or affects their ability to deliver services in a timely manner.” The report also suggested that burnout due to workload ranked the highest among in-house legal teams, and this has resulted in lower customer service response time and lower business growth.

The lack of integration between technology platforms is said to be f in-house counsel’s number one reason for their hesitation to implement legal tech; for those who have implemented legal tech, 32 percent expressed the lack of integration between platforms as their key concerns. The adoption rate of deeper integration and automation will be discussed and assessed further through our survey.

Legal tech budgets are growing amid crisis

Average legal technology budget as a percentage of total legal department budget



Information or data obtained from Gartner.

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[36] https://www.linkedin.com/pulse/rise-remote-working-law-firms-interlink-talent-solutions/

[37] https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-technology-in-legal-department.pdf

In terms of cost and budget, a BigHand study[38] suggests that Legal Tech adoption can lower operational costs by reducing back-office inefficiencies. Gartner has reported that the investment in legal tech is projected to increase to 12 percent of total legal budget. Both of these figures suggest that legal tech has the potential to reduce pressure for budget reduction during recession. Our survey looks at whether legal counsel consider such an investment to be worthwhile and where it falls short.

Negative impacts:

External research and data on the negative impacts of legal tech implementation is hard to find, possibly because most research is conducted by vendors or other commercial entities. This section summarizes some potential downsides of technology implementation (further insights of the negative impact or concerns of legal tech implementation can be found in our survey results).

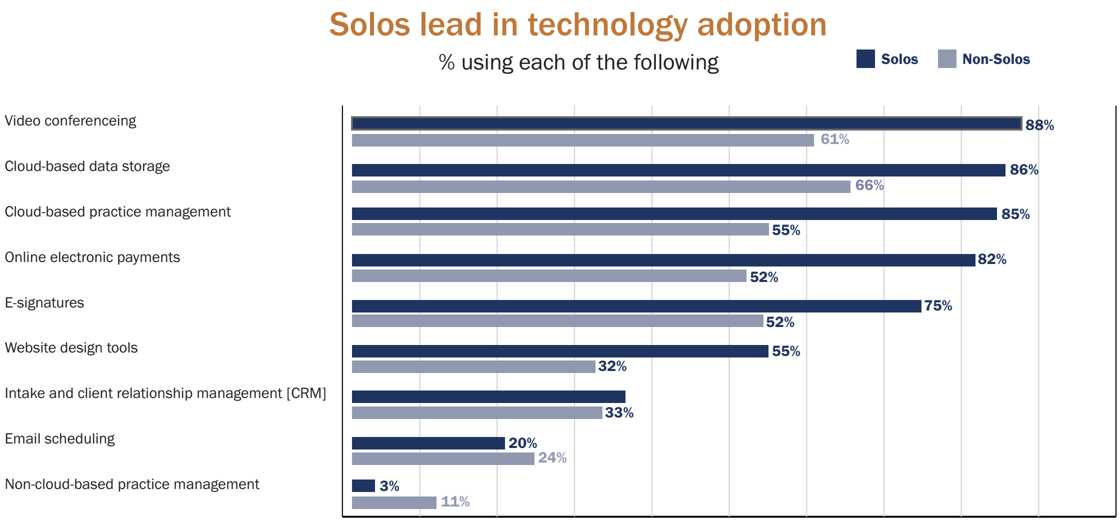
For Law firms:

Pricing pressure: Technology-enabled cost reduction and automation may lead to increased pricing pressure. For example, it is common for law firms to have an hourly pricing model. Technology could reduce the overall time required for certain tasks or, alternatively, the cost savings may be passed directly to the client, leading to reduced revenue.

Job security: A.I. development has been flagged as a potential threat to legal professionals. While this is not directly related to recessions and it may require a longer time to see the actual impact, the advancement in A.I. technology may create a false impression among the general public that professional services can be replaced.

Imbalanced benefits: Technology improvement requires larger upfront investment for longer-term cost savings. Smaller firms may not have the required funding, especially during recessions, to invest in technology. This in turn provides larger law firms with a more competitive advantage. This impression seems to be shared among our respondents in the INTA survey, however, more research may be needed, as conflicting information is also available. Research by Clio found that mid-sized firms are the ones falling behind, with only 27 percent reported to be using cloud based LPM software compared to 73 percent of smaller firms. They are also less likely to use online solutions for video conferencing, electronic payments, e-signatures, and cloud-based data storage.

[38] https://www.bighand.com/en-us/resources/whitepapers/progressive-firms-use-of-technology-to-implement-and-optimize-efficient-back-office/

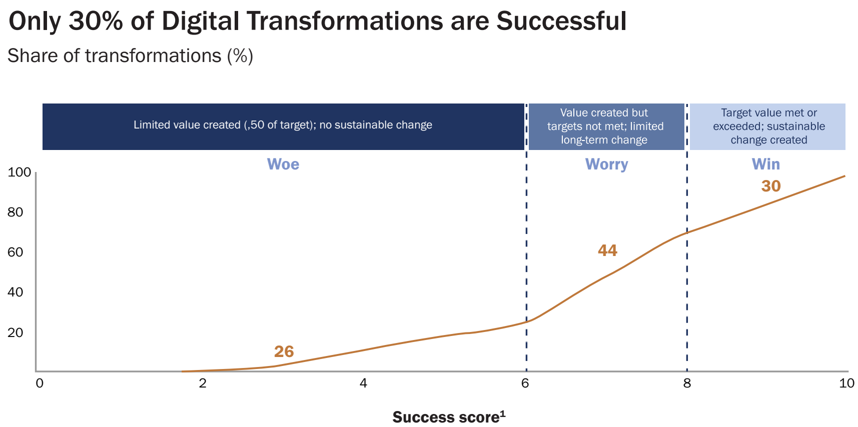


Information or data obtained from Clio "Legal Trends for Solo Law Firms" report 2023.

For in-house:

The biggest threat of legal tech implementation for in-house is probably the issue of Return on Investment (ROI). Technology implementation does not guarantee efficiency gain, and failed technology implementation is common. According to a McKinsey-Oxford study,[39] 45 percent of IT projects experience cost overrun, and 56 percent see a shortfall on the overall benefits. In a separate study by BCG in late 2020, it was estimated that 70 percent of digital transformation projects didn't meet desired outcomes.

Successful technology implementation that drives positive long term efficiency gain requires planning and executive support[40] which might be hard to come by if the implementation is driven by fear of recession or a blind faith in the benefits of technology improvements.



Information or data obtained from BCG.

[39] https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/delivering-large-scale-it-projects-on-time-on-budget-and-on-value

[40] https://www.hyland.com/en/resources/articles/seventy-percent-not-successful

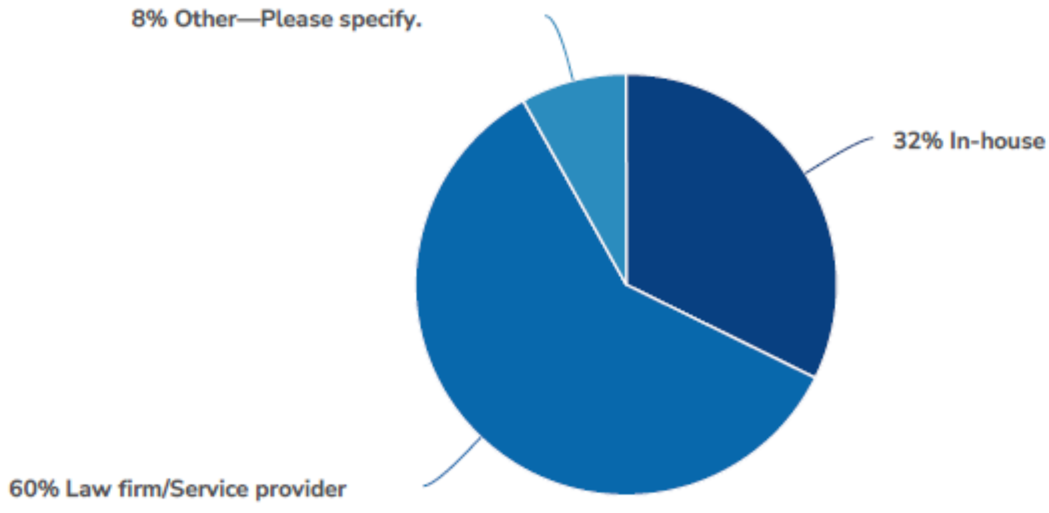
This section is the outcome of an analysis of the INTA 2023 Survey of Trademark Practitioners and Technology conducted for this project.

The section above, based on our external research, helps in understanding the potential impact of recession on IP, particularly if technology was adopted for managing the IP assets. This section evaluates the relationship of legal tech and recession based on the data collected from our survey of INTA members. The goal of the survey was to evaluate the impact of technology in the following areas:

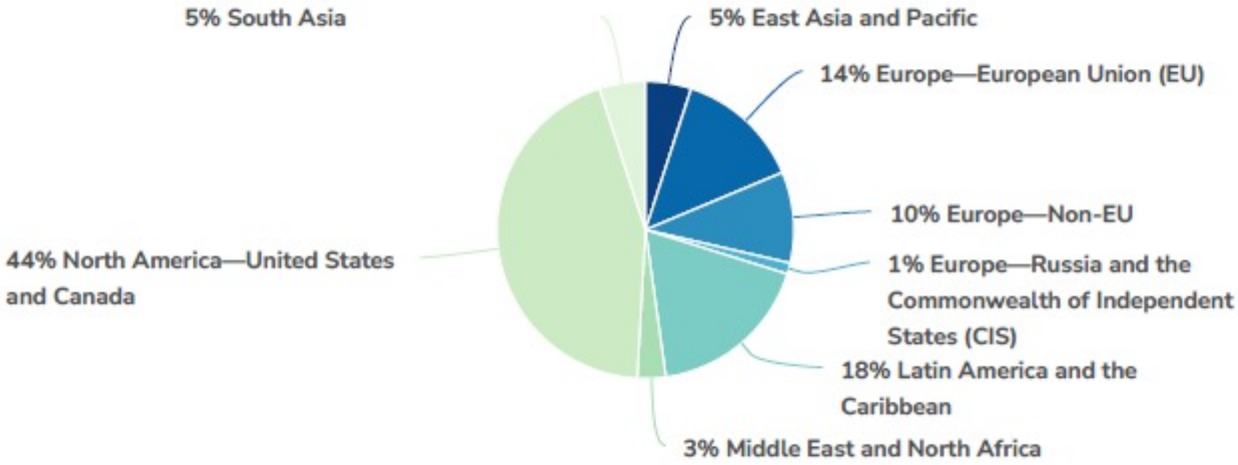
- How technology impacts process and efficiency
- The impact of Internet/online infringements
- The business impacts of technology adoption

While Generative A.I. has been a topic of interest, we did not include it in the survey. We are still at the beginning stages of understanding its practical applications for in-house and law firms. More time will be required to survey its actual impact.

We had a total of 161 IP professionals respond to the survey, with 60 percent in law firms/ service providers and 32 percent in-house.



In terms of geographical spread, 44 percent of respondents were from the U.S. and 24 percent were from Europe. Only 18 percent were from the Latin American and Caribbean region, 10 percent from Asia Pacific region, and 3 percent from the Middle East and North Africa. We have taken this distribution into account when formulating our conclusions.



How does technology impact processes and efficiency?

Without a standard definition of what "legal tech" is, the INTA survey took a more generalist approach to answer three key questions:

1. Has technology been able to improve efficiency in a cost-effective way in non-recession environments?
2. Is there a potential to improve such efficiency gain through deeper technological automation and integration?
3. Would these improvements help legal professionals to counter the impact of a recession?

Has technology been able to improve efficiency in a cost-effective way under non-recession environments?

The INTA survey asked the general question "Has your firm/company used technology to gain efficiency in managing IP portfolios locally or internationally (Cloud or locally hosted)?"

The question aimed to establish a baseline of the respondent's familiarity with technology in this context. About 90 percent of respondents have tried implementing technology (including the 2 percent categorized as "other," based on their comments). The remaining 10 percent who have not yet explored technology to improve efficiency are fairly equally spread across all geographical locations.

Figure 1: Has your firm/company used technology to gain efficiency in managing IP portfolios locally or internationally (cloud or locally hosted)?

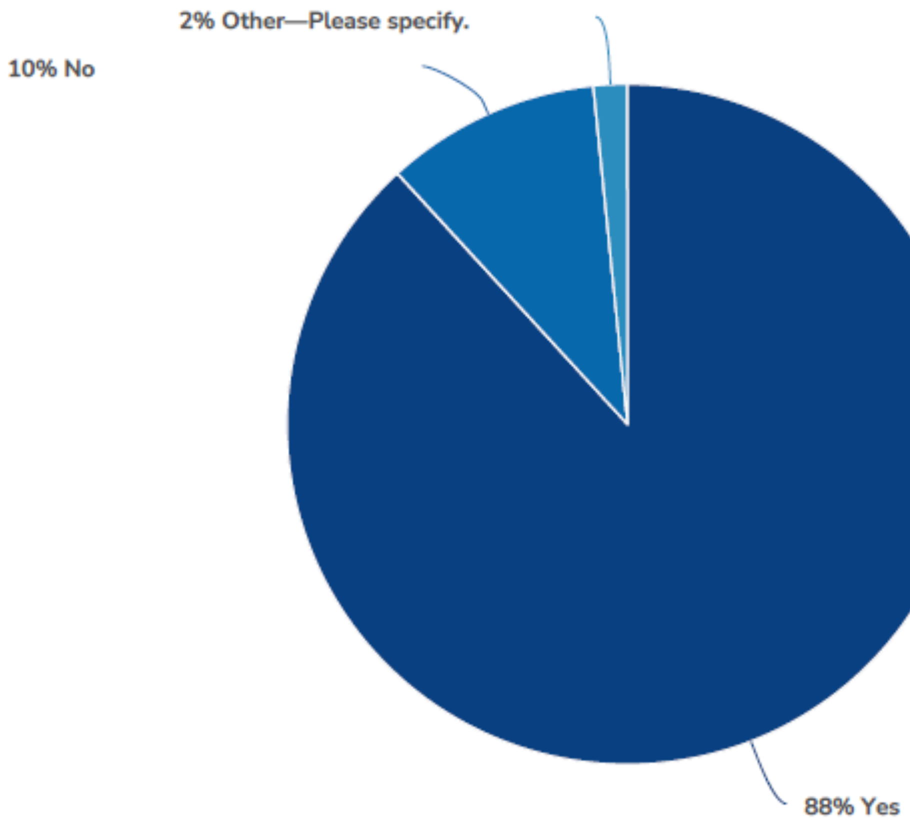
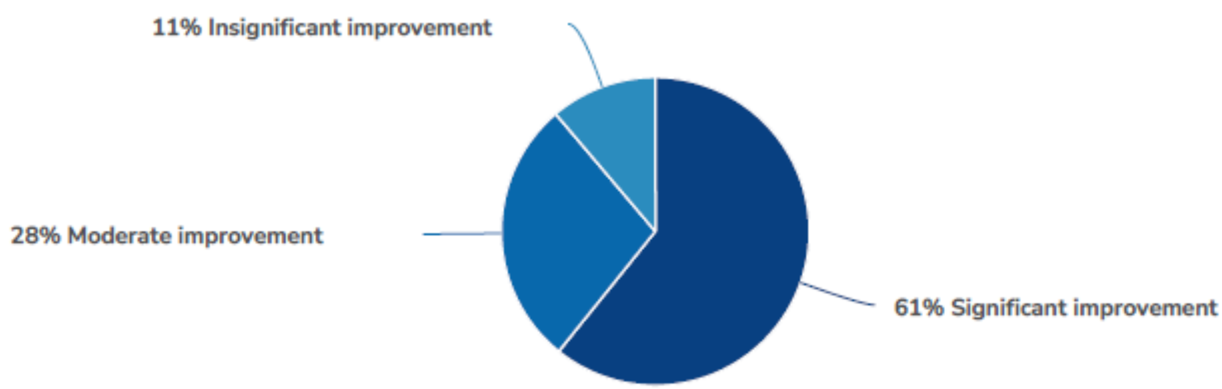


Figure 2: Does the said software improve your work and cost efficiency?

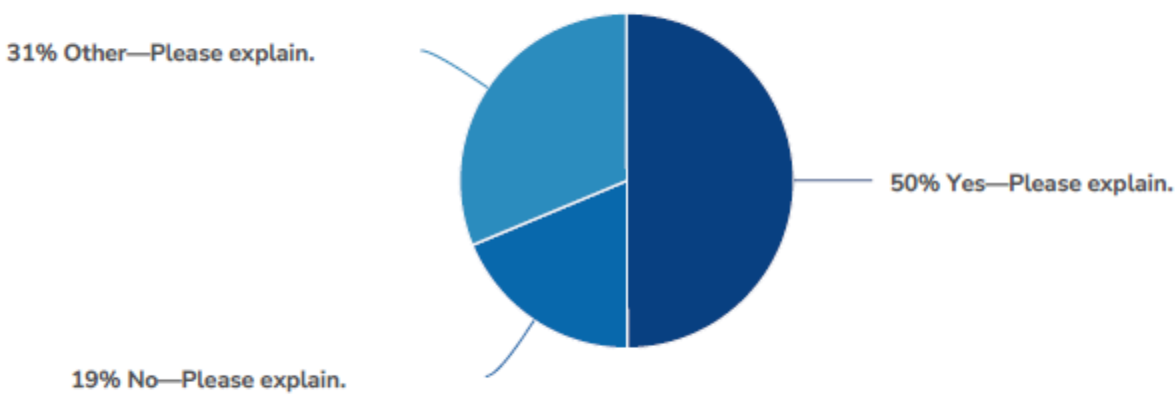


Out of those who have used technology to improve efficiency, only 61 percent find that it brings significant improvement in both work processes and cost-effectiveness. The breakdown between in-house and law firms is similar. The response seems very consistent across North America, Europe, and Asia.

Practice type	Insignificant improvement	Moderate improvement	Significant improvement
In-house	13.33%	26.67%	60.00%
Law firm/ Service provider	9.38%	32.81%	57.81%
Grand Total	**10.64%**	**30.85%**	**58.51%**

The idea that technology has been creating positive value is confirmed by the next question, “Was the cost of implementing the solution worthwhile?” After consolidating the answers from the “other” category, where most have not yet adopted technology, on average 65 percent of respondents agreed that the investment in technology implementation was worthwhile. The percentage that reported experiencing a significant improvement of efficiency through the use of technology is a bit lower, at 58.51 percent.

Figure 3: Was the cost of implementing the solution worthwhile?



Practice type	Not worthwhile	Worthwhile
In-house	38%	63%
Law firm/Service provider	32%	68%
Average	**35%**	**65%**

On Recession and Cost Effectiveness of Legal Tech

Most repondents agreed that technology adoption brings significant improvement to their work. As such, we can reasonably presume that technology adoption would be an effective tool to mitigate the effects of a recession.

However, this statistic also reveals that most respondents expect technology to bring significant improvements and even moderate improvements are mostly considered "not worthwhile."

Is there a potential to improve such gain in efficiency through deeper technological automation and integration?

Different law firms and in-house companies often use different IP management software designed to optimize their own internal IP management. IP management is a very data heavy subject with numerous data points such as jurisdictions, classes, and deadlines. The ability to automate data exchange could represent significant overhead savings, which may be very helpful during recession. Integration of systems could also be a highly effective way to retain clients for law firms, as it creates a significantly higher barrier for changing service providers.

In general, workflow automation is also a key global trend. According to the "Future of Jobs 2020" report by the World Economic Forum, "just over 80% [of business leaders] report that they are accelerating the automation of their work processes." Another report claimed that workflow automation can "reduce repetitive tasks by 60–95%, accelerate approval processes by 34%, improve business processes by 60%, save organizations up to 77% of their time spent on routine tasks, help scale operations for 70% of business owners and increase data accuracy by 88%."

While 60 percent of IP professionals agreed that technology has provided efficiency and improvement, the goal of the next section of the survey was to examine whether the legal professional can ride on the general technology trend of integration and automation effectively.

Note: In contrast to automating workflow internally, which is already reflected in the above section on IP management software usage, the following section focuses on the next step of automation and integration between service providers and their clients.

Adoption rate:

Our survey showed that 31 percent of in-house legal teams have already adopted some level of integration with their service providers to automate IP management processes beyond internal workflow. Notably, 100 percent of the respondents that implemented such process integration are from North America and Europe. According to a Gartner report, nearly 90 percent of developers are using application programming interfaces (APIs), and the number of third-party APIs used in applications is expected to triple by 2025. This may reflect that the ability for integration is already present in the 3rd party management software (unless it is self-developed), but in-house teams have yet to demand or utilize such capability.

VENDORS:
There seems to be a good market potential for Legal tech vendors in the Asia Pacific market, considering the current adoption rate is low.

This is consistent with the result that only 26 percent of law firms have received requests from their clients to have technical integration of workflow with them. As of this writing, there is a preference from in-house teams to ask law firms to use their IP management systems and adopt them into the firm's workflow. Since there is no technical integration between the in-house teams' and law firms' systems, this will most likely result in duplication of workload, thus reducing efficiency overall and rendering it an ineffective tool to counter the impact of recession.

Figure 4: (For In-house) Have you adopted automation capability (such as APIs) to enhance integration with your firms/service providers?

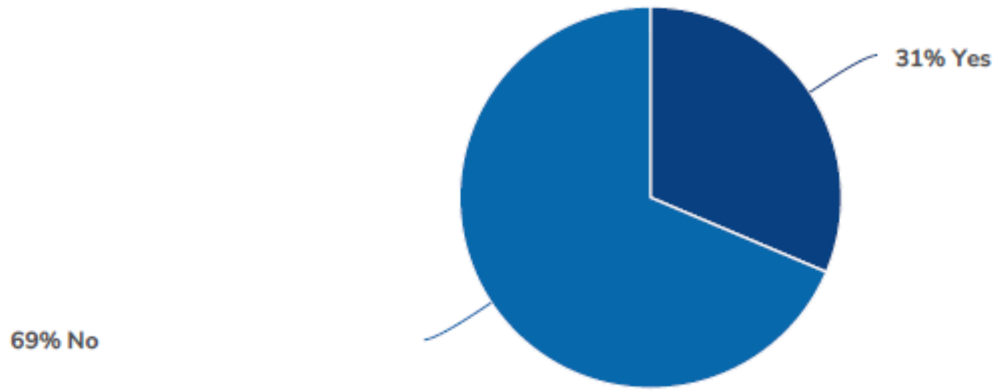


Figure 5: (For law firms/service providers) Has your client asked you to adopt its IP management system into your workflow?

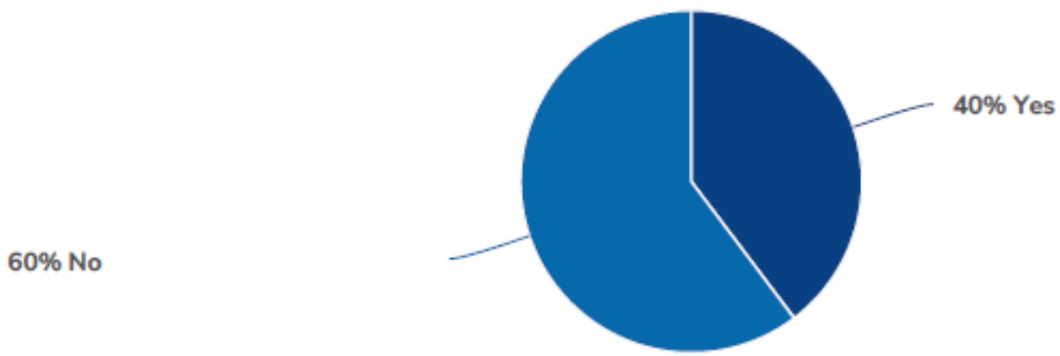
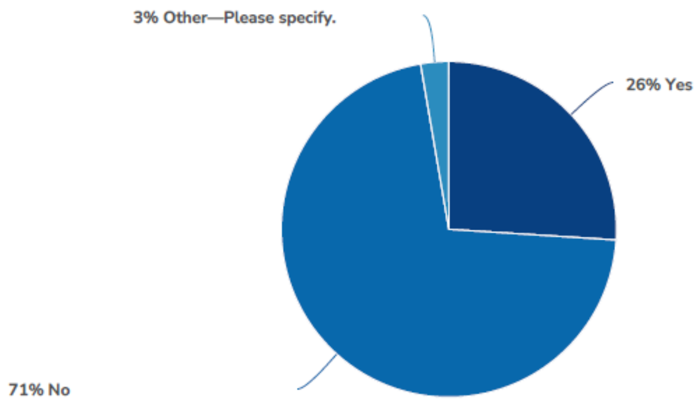


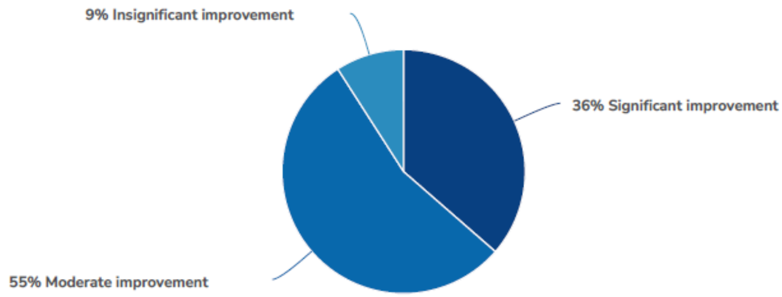
Figure 6: Have you been asked to integrate your IP data with your client's system using API (Application Programming Interface) or other similar automation methodology?



Reason for the lack of adoption (in-house):

For in-house counsel who have developed or implemented further automation with vendors, the vast majority (91%) experienced improvement in their IP management. However, only 36 percent described the improvement to be significant (in comparison to 61% to the implementation of general technology solution). The percentage of respondents who think the technology is ineffective remains similar at around 10 percent. This means 27 percent more respondents find further technical integration to be moderately effective. While this question was directed at in-house teams, the question on general technology effectiveness was directed at both in-house teams and service providers. Given that the responses from both groups are fairly similar, the comparison here can still apply.

Figure 7: How would you describe the benefits of the automation/integration function, in comparison to using IP management software independently?

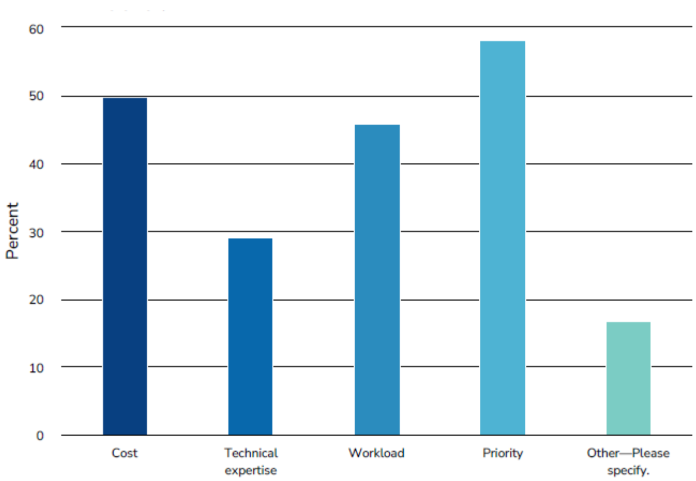


OBSERVATION:

The high "moderate improvement" feedback from in-house counsel is alarming. In-house counsel find using software to improve internal workflow to be valuable, but problems still exist. Software vendors may need to consider how data between different applications can be combined. The demand is clearly there.

The question listed out four common issues for technology adaptation: cost, technical expertise, workload, and priority. Of these, 58.3 percent and 45.8 percent of respondents listed priority and workload respectively as the main reason for the lack of further technical integration. These two reasons provide a similar outlook that respondents are not unwilling to implement further integration, but that it is a matter of timing and resources. Half of the respondents cited cost as the key obstacle. According to CRM Software's research, US $3.69 trillion were spent on IT worldwide in 2020, and 39 percent was spent on software and integration, which is the largest category of spending.[41] The seemingly high cost of integration could also be one of the reasons why more respondents find it to be only moderately effective.

Figure 8: What is the main reason for the lack of further integration? (Note: this question allows multiple answers.)



It is surprising that only 29.2 percent of in-house teams quoted technical expertise as the key obstacle. A possible explanation could be that in-house teams would have their IT division to support the development, and the technical problem is more of a workload and cost issue in liaising with the IT team.

[41] https://www.crmsoftwareblog.com/2021/08/infographics-learn-how-huge-the-it-system-integration-costs-are-worldwide/

Reason for the lack of adoption (law firm and service providers):

Sample Survey Responses

Basically we have to maintain data in two places for these clients, which makes it more onerous for our team.

There are several different systems on the market and each client chooses among them so our team has to know them all. And it takes more time than simply reporting.

We generally do not agree to adopt a different management system because it creates duplication of work, risk issues and inefficiencies. But we do give clients access to our IP management system, if they want it.

it is double time to make entries to their software and ours

Using multiple tools impact our work efficiency.

Many clients, many different softwares, we have to learn all of them, exchange correspondence through them with client but then save into our system as well.

I believe these different tools give more order to the client, but for us law firms, is the same. At the end, these tools are for the benefit of the client, more than for the benefit of the law firm.

Since clients' IP management systems differ from ours and are not meant to interact with our system, we have to duplicate data entry work.

More efficiency for client and service provider

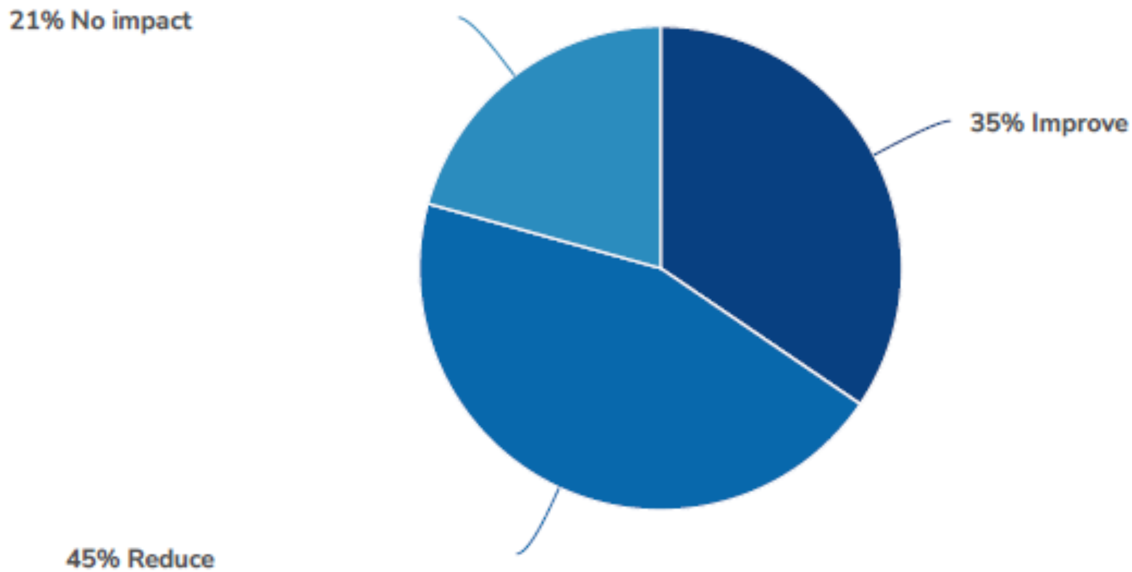
Figure 9: Comments on: "Does it improve or reduce your own work efficiency?"

One of the reasons for data integration is to address the issue that different IP management software is being used by different parties, which creates additional overhead in managing data. The survey first asked whether law firm clients are asking them to adopt the client's IP management software into the firm's workflow. A significant 40 percent of respondents answered yes, reflecting that in-house lawyers are demanding their service providers adopt the use of the in-house team's own software to minimize cost to the in-house teams.

The survey further asked law firms and service providers if this practice improves or reduces their work efficiency. The result is quite negative: 66 percent responded with a negative sentiment, within which 21 percent claimed to experience no impact and 45 percent claimed that their work effectiveness was reduced.

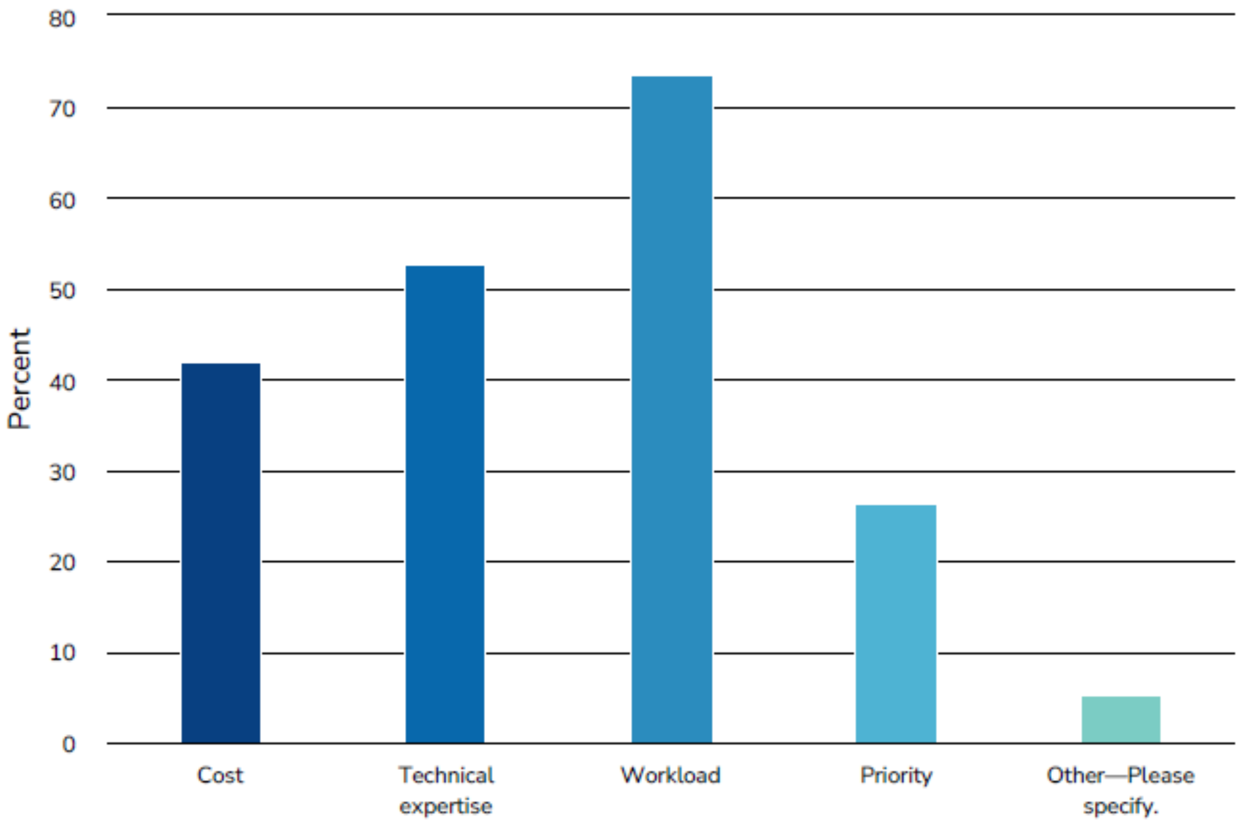
The comments from the respondents (see Figure 9) confirm our original assumption. This creates a case for further data integration and automation to reduce overhead.

Figure 10: What are the key problems you faced when implementing the integration? (Please select all that apply.)



Workload is by far the most important factor with 73.7 percent of respondents claiming it is the key problem. This is interesting, as the reason for integration in the first place is that it is supposed to reduce workload. A possible explanation would be that law firms may not have IT resources, unlike their in-house counterparts. Moreover, a lot of the work for the integration must be done by them personally, including the technical aspects. This would significantly increase the workload required to even start thinking about integration. This presumption is supported by the fact that technical expertise is listed as the second key problem.

Figure 11: What are the key problems you faced when implementing the integration?



Comparison	Rank 1	Rank 2	Rank 3	Rank 4
In-house	Priority	Cost	Workload	Technical expertise
Law firms	Workload	Technical expertise	Cost	Priority

On Recession and Integration/Automation

While most respondents agree that the adoption of technology can improve efficiency and that the associated cost of doing so is worthwhile, the respondents seem to be more divided when it comes to further technological integration. It seems that the underlying issues of using multiple different software systems can eventually lead to some performance issues. In-house lawyers always have the option to ask service providers to use their software, thereby reducing their management cost. However, they also seem to be more open to the idea of technological integration. The obstacles preventing them from doing so now are more temporary (i.e., priority), On the other hand, law firms seem to have less appetite for data integration with clients.

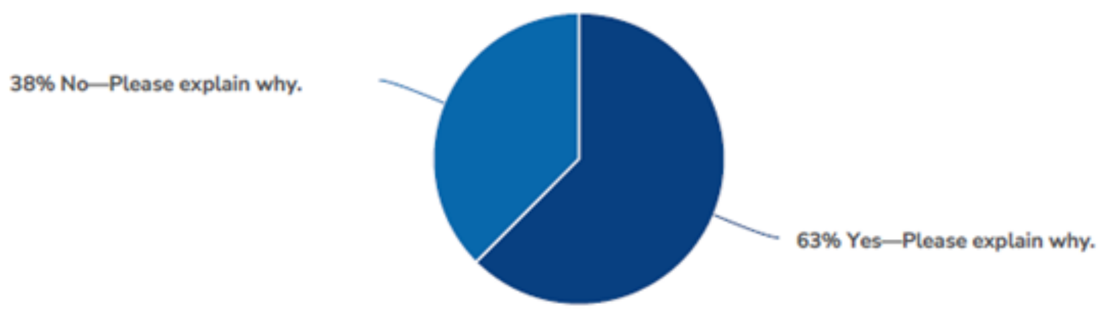
Overall, using more advanced technology applications to mitigate the impact of recession seems to be less effective, considering integration would require a much longer lead time to impleement and the current appetite and adoption are both relatively low.

On Recession and Overall Technology Adoption

Overall, a majority of 63% of respondents agree that technology is an effective tool during recession, and they would recommend their firm/company invest in technology during such challenging economic periods.

Comments for both and against are listed in Appendix 1.

Figure 12: Considering your answers to all the above questions, would recommend that your firm/company invest in IP management software to counter the impact of an economic downturn?



The impact of the Internet/online infringement

Another area that is of great concern in relation to “technology” and “IP” is the impact of Internet. According to CyberSmart,[42] an initiative by the UK Government, the ongoing economic downturn will result in a significant rise in cyberattacks, including phishing, ransomware, and scam. U.S. Federal Bureau of Investigation (FBI) data also shows that online fraud jumped 87.5 percent in a year during the 2008 global financial crisis.[43] IP counsel may be responsible for or may assist in resolving these issues.

Online issues will also affect IP counsel more directly with the increasing number of fake websites, social media accounts, misuse of trademarks by partners, cybersquatting of domain names, and illicit trade and counterfeiting (referred to here as online infringements). A report by the Economist suggests that during economic downturns individual budgets are squeezed, which inadvertently increases demand for illicit goods, especially through e-commerce channels.[44]

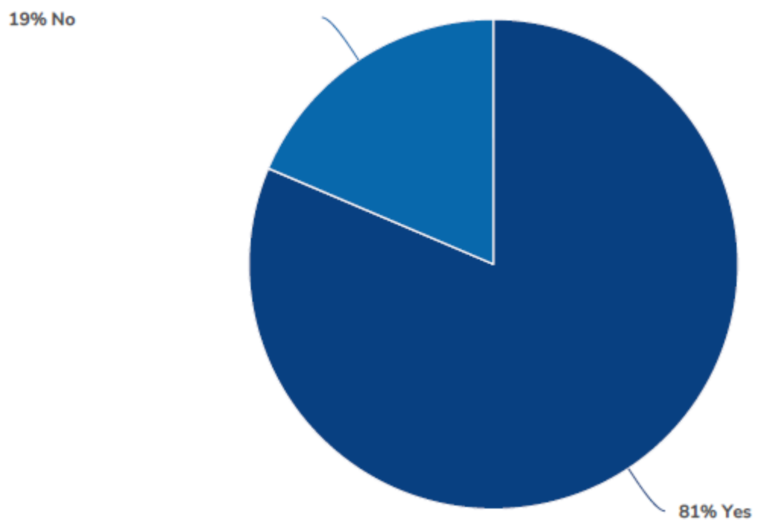


Figure 13: Have you experienced (or do you anticipate experiencing in the future), an increase in online infringements during times of economic downturn/uncertainty?

Our respondents seem to agree with this perspective, with 81 percent of them having experienced or anticipating an increase in online infringements during recession.

The survey attempts to understand how IP counsel are preparing for or reacting to these increasing threats during recession. The questions can be divided into two parts:

1. Preparation – Are IP counsel prepared to face increasing online infringement during recessions?
2. Enforcement – What are the issues faced by IP counsel when dealing with online infringement?

(Note: Online infringement is an area that requires a dedicated larger-scale study; this brief study should only be considered a rough guide).

[42] https://cybersmart.co.uk/blog/why-cybercrime-increases-during-a-recession/

[43] https://www.hyland.com/en/resources/articles/seventy-percent-not-successful

[44] https://www.fiverity.com/resources/online-fraud-jumps-87-5-in-under-a-year-during-economic-downturn

Preparation

The survey starts with two questions regarding "digital assets." Digital assets are a relatively new concept for which the definition is still evolving. Here are two aspects:

1. Digital assets as representation of online identity: This is the definition used mostly in the Online Brand Protection industry, where digital assets are defined as "the properties that help establish an online presence and identify who each of us are when connecting with others on the internet." An example of the "digital identifier" kind of digital asset is domain names or social media accounts which a brand can own and that digitally represents what the brand is. Online infringers often target these assets to create confusion, and eventually lead to the financial gain of the infringers.
2. Digital assets as representation of digital value: This definition is typically used in the finance sector and has been popularized by the Web3 industry to describe NFTs and Cryptocurrency. Investopedia defines a digital asset as "generally anything that is created and stored digitally, is identifiable and discoverable, and has or provides value."

The survey does not dive into the definition of digital assets, but instead lists some common digital assets under both types of definition (in Question 17). As digital assets are unique identifiers that either provide value or serve as the digital identity of the brand itself, we can presume that the online infringement issues mentioned above would be one of the key targets for online brand infringements, and we can assess whether IP counsel are prepared to counter increased infringement by looking into how they manage their digital assets.

Figure 14: Has your organization/client registered or purchased digital assets as part of your "technology roadmap"?

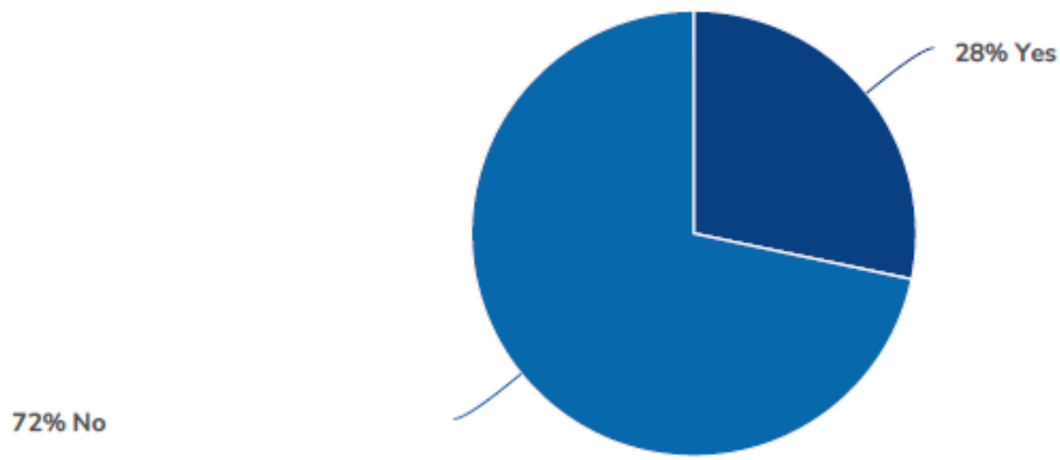
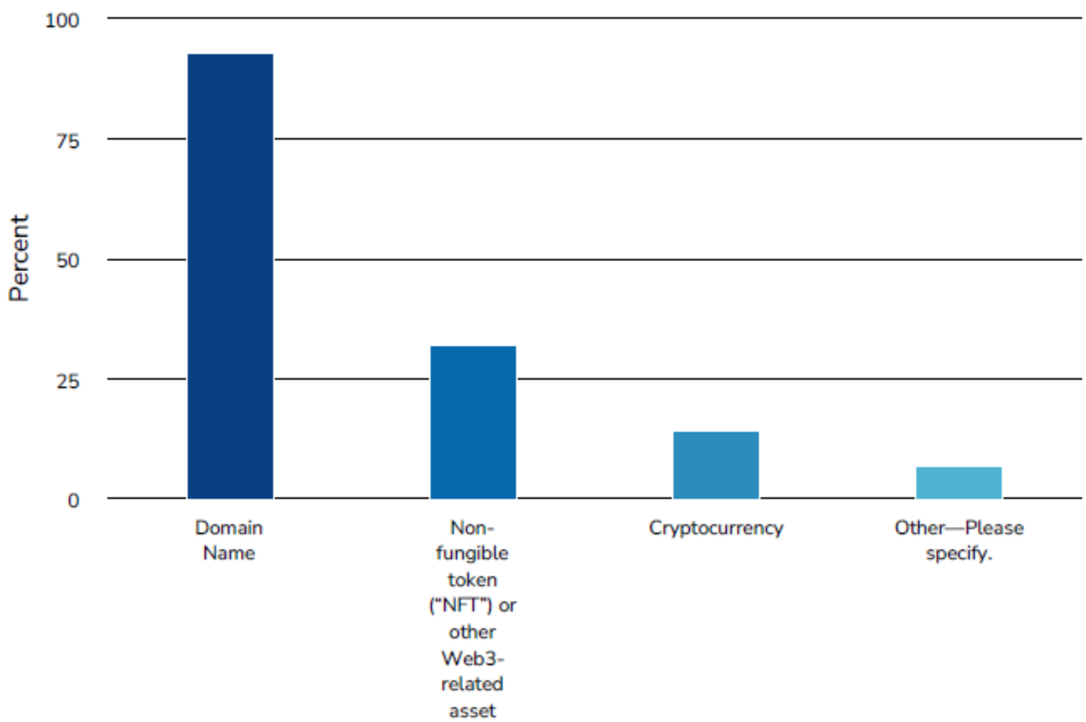


Figure 15: What type of assets?



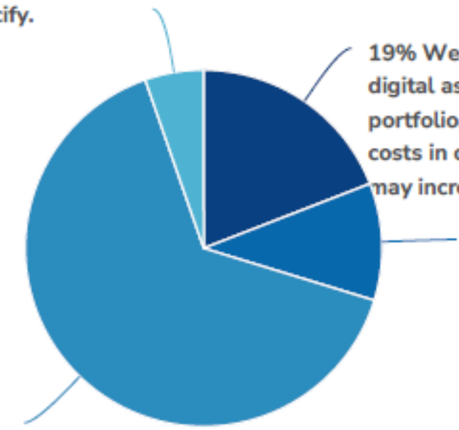
OBSERVATION:

Additional discussion among the INTA community on the definition of digital assets and their impact on IP could be beneficial, especially in the area of digital identity. Such discussion may advance our understanding of the relationship between IP and the Internet, which is built upon the concept of digital identifiers.

The survey showed that 72 percent of respondents do not register or purchase digital assets as part of their technology roadmap, but if they do, domain names are by far the most popular asset type that they protect, with 93 percent of respondents who do register or purchase digital assets as part of their technology roadmap having a plan for their domain name portfolio.

On the positive side, domain names, as the most basic infrastructure of the Internet, received relatively more attention. On the negative side, the vast majority of respondents seems to be poorly prepared if there is an influx of online infringements due to recession. Respondents do not appear to hold a different opinion of digital assets and traditional IP assets (such as a trademark portfolio), with 65 percent of respondents saying they would treat them the same as any other IP assets. Only 19 percent of respondents would increase the holding of digital assets to better defend against online issues during recession.

Figure 16: During an economic downturn, if you were faced with a significant budget cut, which of the following statements would you agree with:

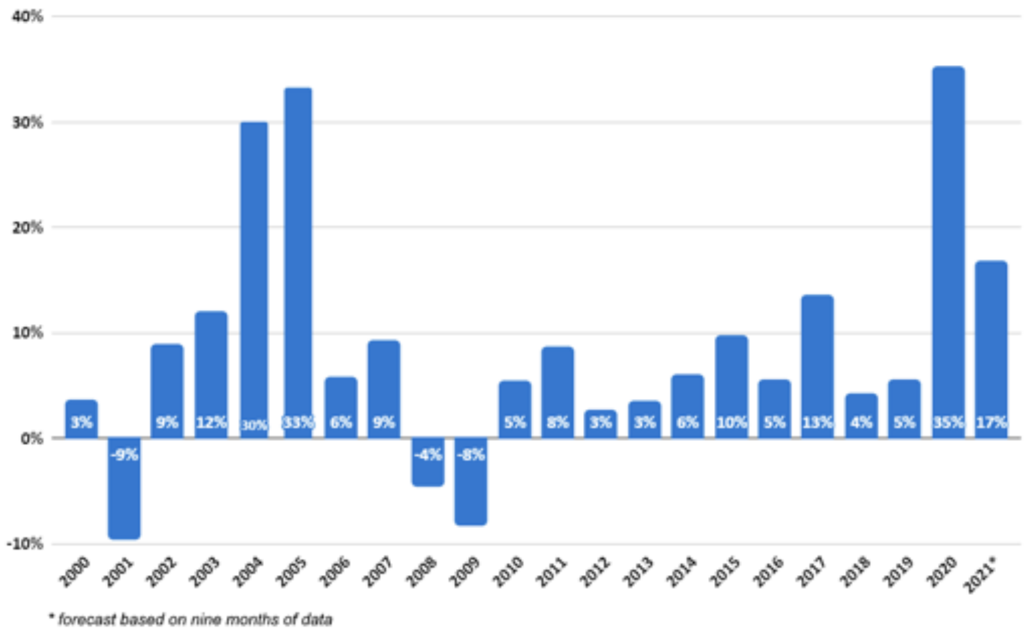


This survey did not focus on how IP professionals handle trademark portfolios during recession; however, since the majority of respondents indicated that they would handle digital assets the same as any other IP assets, it may be worthwhile for us to briefly outline how IP professionals handle IP assets during recession. According to an article published in World Trademark Review[45], since 2000 there were two periods where trademark filing experienced negative growth—2001 and 2008–2009. Another notable period is 2018–2019 where the data seems to suggest a trough preceding a massive surge in 2020. This timeline corresponds exactly to the recognized pandemic recession timeline, although not all reports recognize that there was a recession. The surge likely was triggered in 2020 as trademark applications "flowed from eCommerce businesses thriving during lockdowns. Then, in 2021, the massive popularity of NFTs and the full[46] -scale launch of NIL [name, image, likeness] efforts brought brand owners into new arenas of trademark protection."

[45] https://www.worldtrademarkreview.com/article/us-trademark-filing-activity-the-decline-it-indicative-of-dwindling-economy

[46] https://licensinginternational.org/news/trademark-application-surge-leads-to-longer-wait-times/#:~:text=This%20recent%20surge%20in%20requests,new%20arenas%20of%20trademark%20protection

Figure 17: USPTO Trademark filing growth by year—2000–2021



Source: https://www.worldtrademarkreview.com/article/us-trademark-filing-activity-the-decline-it-indicative-of-dwindling-economy

On Recession and IP Asset Management

The trend suggests that IP professionals will reduce trademark holdings at a rate of 8 to 9 percent during recession, while lesser recessions or economic slowdowns will see a trough in filing growth but not enough for IP professionals to reduce their trademark holdings. (This is only based on U.S. data, so more research may be required.) Some research suggests that patent monetization could be a viable strategy for weathering the impact of a recession; however this may not be applicable to trademarks. It is likely that the reduction in trademark holdings is purely for cost-saving purposes.

As we have discussed, most agree that legal tech can help reduce costs and thus reduce the need to reduce IP holdings for cost savings. This may indeed be one reason why we did not go into negative growth during 2018 and 2019. However, we do not have the data on legal tech adoption during 2001 and between 2008 and 2009 or any data that shows the effectiveness of legal tech during this time. As such, we cannot make a definitive conclusion about whether the adoption of legal tech can help reduce IP attrition.

Enforcement

The survey also tried to assess whether IP counsel are well equipped to respond to the potential increase in online brand infringement. Because the Internet is without borders, national laws and regulations often have limited enforcement effectiveness. IP lawyers must understand the rapidly changing internet policy landscape to be effective in countering online infringement.

Internet policy can be created on three levels:

- **Organizational:** This encompasses policies for infringement happening within a website or online service and the Internet policy-making authority is decentralized to the operating organization. Alibaba, eBay, and Amazon all have their own policies governing their platforms. These policies must be compliant with the national/ jurisdictional-level laws of the respective jurisdictions in which they operate, but due to the global nature of the platforms, their policies can differ from national/jurisdictional requirements.

Response
Just need to look at Whois nightmare to appreciate the impact of ICANN policy on enforcement of IP
In today's world, knowledge in policy is equally important as knowledge in law. Having a deep understanding of the IP policy landscape is essential for driving a business effectively around the challenges that exist. One way to understand it would be: if knowing how to drive a car is equivalent to having knowledge of law, knowing which route to take to the destination would be equivalent to having knowledge of policy and strategy.
Absolutely important to know the major players and what is happening with policy updates in order to help clients enforce IP rights on the Internet.
our company has a very limited presence due to regulatory restrictions
Yes, there are various data governance policies in different jurisdictions, particulary to multinational corporations.
with AI which presents both advantages and disadvantages, there is need to have some regulatory measures implemented in order that information being obtained or generated can be relied upon.
In particular as regards domain names

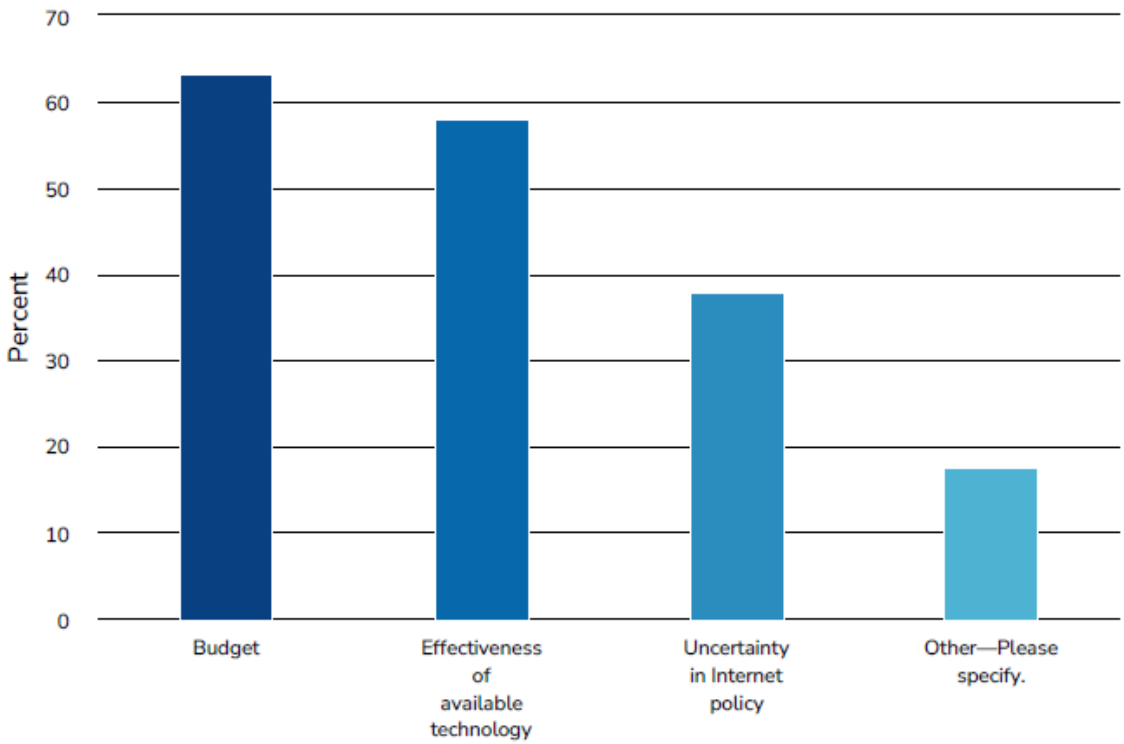
- **National:** These are policies made by a sovereign government or regional government. In the United States, the DMCA (Digital Millenium Copyright Act) and its subsequent DMCA takedown procedures are good examples of how national Internet policies can affect online enforcement.

- **Global:** Internet policies can also be developed with global effects by global organizations such as ICANN (Internet Corporation for Assigned Names and Numbers). The Whois redaction policies for domain names and how to reverse their negative impact require policy making at this level.

Our survey revealed that 88 percent of respondents consider policy knowledge regarding the governance of the Internet to be important for managing IP in the future. The “Whois redaction” issue is commonly cited as a prime example of why IP counsel should be informed of developments in this area.

Other than Internet policies, the survey also evaluated the key challenges in dealing with potential increases in online infringement during an economic downturn.

Figure 18: What would you describe as your key challenge in dealing with the increase in online infringement during an economic downturn? (Please select all that apply.)



Budget was cited as the number one concern by 63.3 percent of respondents; however, effectiveness of available technology comes as a close second. This reflects that IP counsel are aware of the ambiguous nature of online brand infringement and the technical issues involved in detecting them. The comments of some of the 17 percent of respondents who answered "other" to this question provide some further insights: Of the 14 comments we received, we can further break them down into two areas:

	Examples	Volume
Internet policy related	Internet platform not responsive, WHOIS redaction, uncertainty of outcome	9
Resources and managerial willingness	Lack of internal resources, management unwilling to invest money	5

If we group the resources and managerial willingness issues into "budget," the concern relating to budgetary reason increases to almost 70 percent.

Observation:

The INTA Internet Committee has already conducted various studies on Internet policies such as DNS abuse. Overall awareness and expertise can still be improved. Promoting engagement of the wider INTA membership with the work of the Internet Committee in a coordinated and easy-to-understand fashion might be beneficial.

On Recession and the Internet

There seems to be a consensus (81%) that recession will lead to more significant online IP issues. However, the INTA community may not have the same level of clarity as to how to deal with the issue. The current scope of the survey is not focused on Internet-related issues, but we can perhaps draw some recommendations for the areas that warrant further study:

- The Internet community always have the concept of “unique identifiers” as a foundation building block of Internet. Should these identifiers be regarded as IP? Should we utilize the same concept of trademark registrations in securing and protecting the various internet “unique identifiers” as part of our IP portfolio?
- How can the community keep up with the rapidly changing landscape of Internet policy?

The business impacts of technology adoption

The last part of the survey assesses the more general business sentiment and the outcomes of using technology to counter the impact of recession.

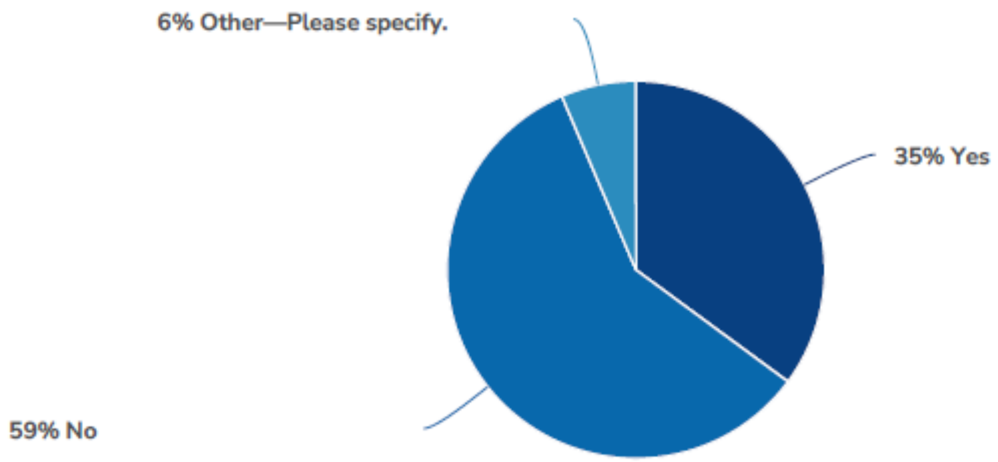
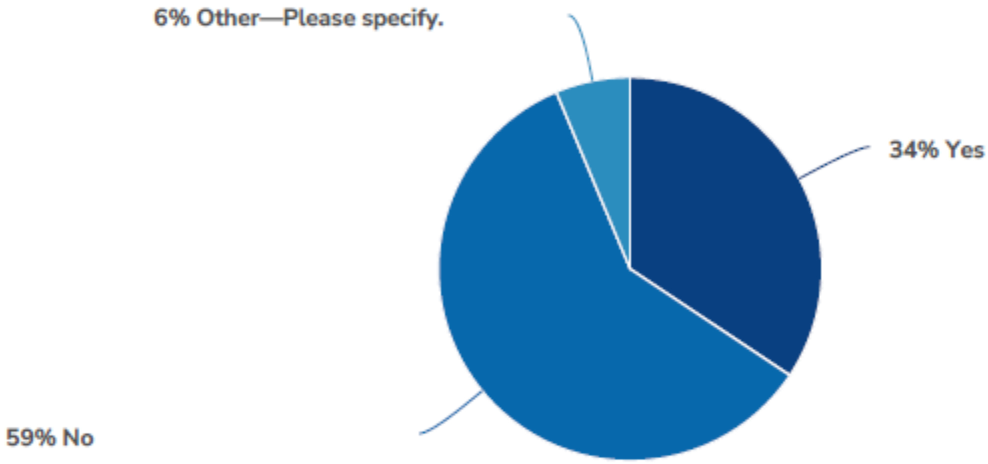


Figure 19: Has the technology budget of your organization increased during times of recession?

For 35 percent of respondents, the budget for technology investment actually increases during recession, when the expected norm would not be an increase in the budget. This high percentage may reflect that a lot of organizations value the potential cost savings or efficiency improvements that technology is anticipated to bring.

Figure 20: Has your firm changed its fee structure based on efficiencies gained with the adoption of technology?



Interestingly, 60 percent of firms retain the efficiency gain and do not change their fee structure. This indicates that firms are able to profit from technology investment. However, 34 percent of firms either passed on cost savings (reducing price) or used the better service through technology improvement to increase price. This study did not further investigate the results.

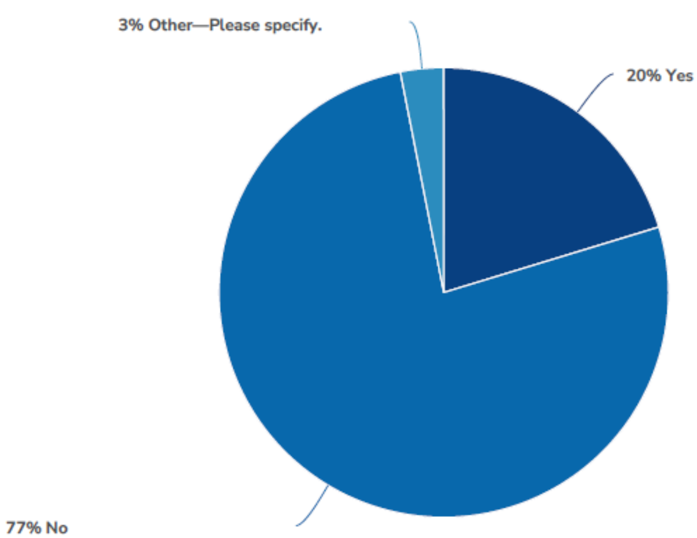


Figure 21: Have your clients demanded a lower/different fee structure due to the adoption of technology or automation of tasks?

In-house teams seem to be willing to see the adoption of technology by their preferred service providers. The vast majority of in-house practitioners did not demand a lower/different fee structure because their law firm service providers are now working more efficiently.

It is worth noting, however, that when we asked in-house counsel a similar question, 60 percent of them indicated that they have considered changing law firm partners or service providers to reduce costs during recessionary times. If law firms deployed technology during a recession to lower their costs, such cost savings could be forced to be passed on to the client to ensure retention of the client. One potential strategy to mitigate these risks is to deploy technology integration. It is generally believed that more integration leads to higher client retention because the cost to change vendors becomes higher. However, this would require much more in-depth planning and investment by the law firms and is unlikely to be a realistic tactic to implement during recession.

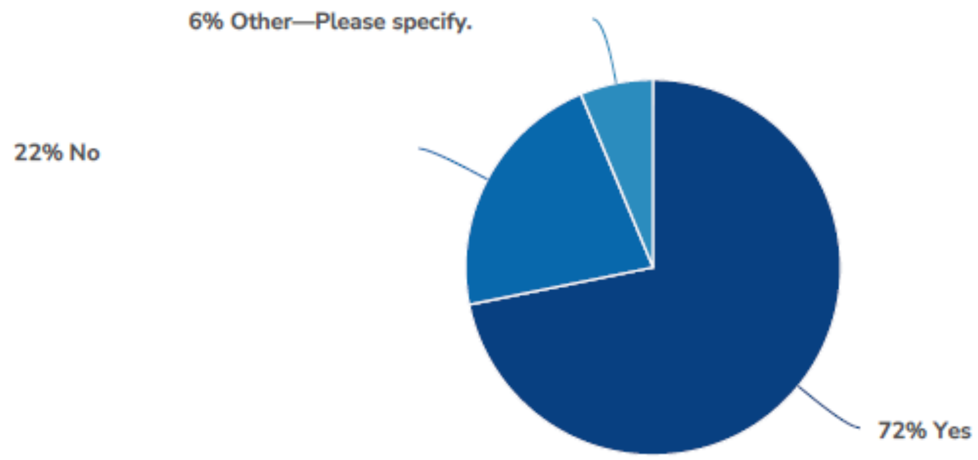
Figure 22: Have you considered changing law firm partners / external counsel to reduce cost during recession?

Value	Percent	Responses
Yes	60.0%	18
No	33.3%	10
Other—Please specify.	6.7%	2

OBSERVATION:
The implementation of legal tech should be considered as similar to a “diaster recovery” plan. If a severe recession hits, firms may not have the time to implement the technology, and this may have financial implications—i.e., 60% of in-house counsel have condsidered changing law firms to reduce costs during recession. Firms should treat technology implementation as a diaster recovery plan and ensure that it is in place before recession hits.

The potential pressure during recessionary times could be disproportionally worse for smaller firms, according to 72 percent of respondents. Smaller firms may not have the required resources to deploy new systems or learn their technical aspects and are most likely not able to proceed with an advanced technical integration to mitigate pricing pressures. However, one respondent commented that, “in many cases it is easier for smaller firms to on-board technology/tools than to on-board more employees. Therefore, on the contrary, it increases the competitiveness of smaller firms.” Further study may be required to assess the true impact of recession and technology implementation on different-sized firms.

Figure 23: Do you think technology advancement creates an additional competitive burden for smaller firms?



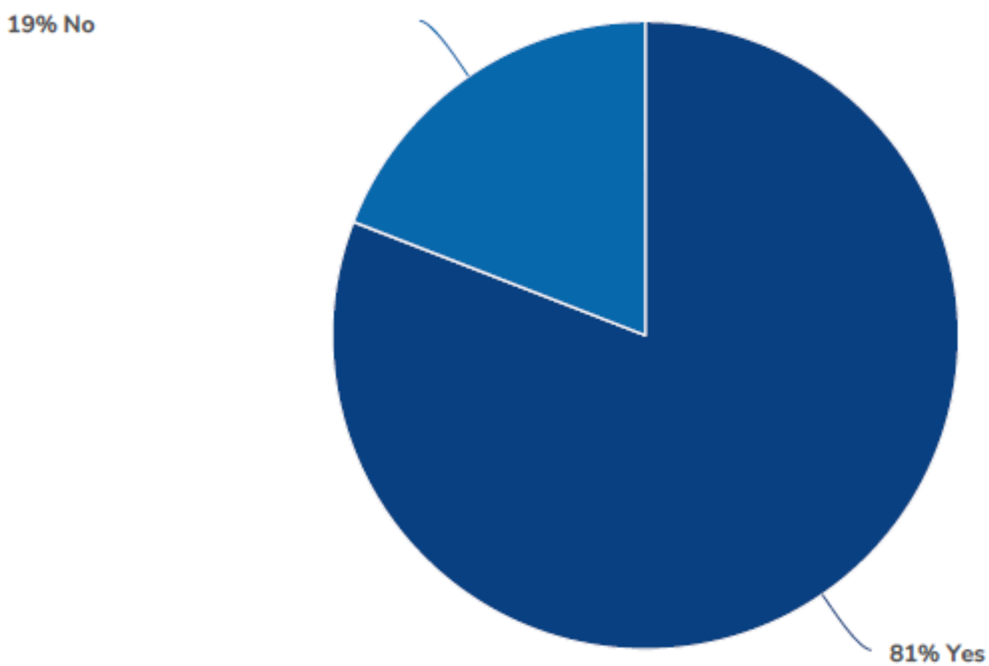
Conclusion

Technology can be an important tool to help the IP community to weather the impact of recessions. This seems to be a consistent finding both in the external reports we reviewed and in our primary research through the survey.

Implementing a legal tech solution to be used in-house seems to bring the best results, but problems arise as IP data needs to be shared between client and vendors as well as between multiple different vendors. Currently, there doesn't seem to be a cost-effective integration solution. In-house counsel indicate a lack of time to prioritize this, while law firms find it a technical and resource burden. Online infringement typically increases during recessions and, at the same time, most expect budget and costs to be a primary concern. A more specific study might be required to explore into the issue more specifically.

Recession may also bring financial implications to law firms. The key problem for tech adoption is cost and technical know-how, and these require a longer-term investment to resolve. Law firms should consider preparing for technology adoption well ahead of any potential recession.

Figure 24: Overall, do you believe that technology has improved the management, protection, and enforcement of IP during economic recessions?



Comments on "Considering your answers to all the above questions, would you recommend that your firm/company invest in IP management software to counter the impact of an economic downturn?"

Appendix 1

a S&P 500 dropping 34% in Q1 2020: https://intelligent.schwab.com/article/stock-market-corrections-not-uncommon
b J.P.Morgan Guide to the Markets https://acrobat.adobe.com/link/review?uri=urn:aaid:scds:US:5ac87722-e290-3e4b-a235-6acc23b83005
c https://www3.wipo.int/ipstats/key-search/indicator
d https://www.wipo.int/web/patent-analytics/exploring-covid-19-vaccine-patents
e https://www.wipo.int/publications/en/details.jsp?id=4650&plang=EN
f https://www.refinitiv.com/perspectives/market-insights/two-year-ma-boom-runs-out-of-steam/#:~:text=By%20the%20end%20of%20Q3,percent%20so%20far%20this%20year
g https://dergipark.org.tr/tr/download/article-file/203467
h https://www.marshmclennan.com/insights/publications/2020/november/covid-19--what-are-the-impacts-on-m-a-activity.html
i https://www.law.com/international-edition/2022/08/21/law-firms-are-rushing-headlong-into-a-recession/k https://www.burfordcapital.com/insights-news-events/insights-research/recession-hedge-nylj/
j https://www.bcg.com/press/26october2023-m-a-pick-up-2024-despite-headwinds
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l https://www.inta.org/wp-content/uploads/public-files/advocacy/board-resolutions/20220518_INTA-Board-Resolution-on-International-IP-Accounting-Standards.pdf
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n https://www.mlaglobal.com/en/insights/articles/why-the-legal-industry-can-handle-the-next-recession
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p https://www.mckinsey.com/~/media/McKinsey/Industries/Financial%20Services/Our%20Insights/COVID%2019%20Implications%20for%20law%20firms/COVID-19-Implications-for-law-firms-vF.ashx
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u https://www.lawschoolcafe.org/2013/02/20/unemployed-lawyers/
v https://www.abajournal.com/news/article/biglaw_laid_off_more_than_12000_people_in_2009_the_worst_year_ever
w https://www.nalp.org/09salpressrel
x https://thebarexaminer.ncbex.org/article/legal-profession/the-entry-level-employment-market-for-new-law-school-graduates-10-years-after-the-great-recession/
y https://www.reuters.com/legal/litigation/legal-jobs-rebound-amid-us-employment-surge-2023-10-06/
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aa https://www.law.com/americanlawyer/2023/05/05/can-the-legal-industry-keep-the-20000-jobs-gained-since-early-2020/
bb https://www.reuters.com/legal/legalindustry/law-firm-layoffs-spread-cooling-economy-keeps-clients-wary-2023-04-05/
cc https://openknowledge.worldbank.org/entities/publication/1946cab9-5b12-5dd9-a86a-9ba6888c546e
dd https://www.pwc.com/us/en/services/consulting/deals/ma-in-uncertain-economic-times.html#content-free-1-eb48
ee https://www.intralinks.com/blog/2022/08/how-will-risk-recession-impact-ma-trendsh https://hbr.org/2020/05/the-case-for-ma-in-a-downturn
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hh https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-july/top-5-legal-technology-trends/
ii https://www.linkedin.com/pulse/rise-remote-working-law-firms-interlink-talent-solutions/
jj https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Legal/dttl-legal-technology-in-legal-department.pdf
kk https://www.bighand.com/en-us/resources/whitepapers/progressive-firms-use-of-technology-to-implement-and-optimize-efficient-back-office/
ll https://www.mckinsey.com/capabilities/mckinsey-digital/our-insights/delivering-large-scale-it-projects-on-time-on-budget-and-on-value
mm https://www.hyland.com/en/resources/articles/seventy-percent-not-successful

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