Going Green: Ethical Considerations When Advising Clients About Progress Towards Sustainable Development Goals

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Agenda

- What are United Nations Sustainable Development Goals (aka “SDGs”)?
- Why are corporations interested in the United Nations Sustainable Development Goals?
- Why attorneys should be interested in the United Nations Sustainable Development Goals
- When giving “SDG Advice,” must attorneys comply with their Ethical Rules?
- Ethical Rules (potentially) applicable to attorneys who give “SDG Advice”
- A useable framework to provide “SDG Advice”: Patent Data
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The First Question

What are the United Nations Sustainable Development Goals?
United Nations Sustainable Development Goals

Background

Adopted in 2015, the UN SDGs “provide a powerful aspiration for improving our world – laying out where we collectively need to go and how to get there.”

Source: https://www.unglobalcompact.org/sdgs/about
United Nations Sustainable Development Goals

Background

“Business is a vital partner in achieving the Sustainable Development Goals. Companies can contribute through their core activities, and we ask companies everywhere to assess their impact, set ambitious goals and communicate transparently about the results.”

“In making sure that the SDGs are all implemented in its entirety, it's important that we need to have various systematic and scientific checking and assessment of the situation and (...) information and data can play a very important role. Without knowing how much we are making progress you will not be able to know where we are going.”

Ban Ki-moon, United Nations Secretary-General (2007-2016)
United Nations Sustainable Development Goals
United Nations Sustainable Development Goals

Example: Goal 6 (including Targets)

6.1 By 2030, achieve universal and equitable access to safe and affordable drinking water for all

6.2 By 2030, achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations

6.3 By 2030, improve water quality by reducing pollution, eliminating dumping and minimizing release of hazardous chemicals and materials, halving the proportion of untreated wastewater and substantially increasing recycling and safe reuse globally

6.4 By 2030, substantially increase water-use efficiency across all sectors and ensure sustainable withdrawals and supply of freshwater to address water scarcity and substantially reduce the number of people suffering from water scarcity

6.5 By 2030, implement integrated water resources management at all levels, including through transboundary cooperation as appropriate

6.6 By 2020, protect and restore water-related ecosystems, including mountains, forests, wetlands, rivers, aquifers and lakes

6.7 By 2030, expand international cooperation and capacity-building support to developing countries in water- and sanitation-related activities and programmes, including water harvesting, desalination, water efficiency, wastewater treatment, recycling and reuse technologies

6.8 Support and strengthen the participation of local communities in improving water and sanitation management

Learn More about SDGs

Some Informative Websites (also recommended: do a search on “SDG” via the Internet)

- UN SDGs
  - [sdgs.un.org/goals](sdgs.un.org/goals)

- UN Promotional Video for SDGs: “We The People' for The Global Goals | Global Goals”
  - [youtube.com/watch?v=RpqVmvMCmp0](youtube.com/watch?v=RpqVmvMCmp0)

- Ted Talk: “The global goals we've made progress on -- and the ones we haven’t”
  - [youtube.com/watch?v=N3SQLrmV1cE](youtube.com/watch?v=N3SQLrmV1cE)

- “Analyzing companies' interactions with the Sustainable Development Goals through network analysis: Four corporate sustainability imperatives”
United Nations Sustainable Development Goals

Examples of Sustainability Reporting

[Images of sustainability reports from Progressive, Facebook, and Orbia]

Our contribution to the United Nations Sustainable Development Goals
United Nations Sustainable Development Goals

The Most-Commonly-Used “Frameworks” for Sustainability Reporting

- UN SDG: 75%
- GRI (Global Reporting...): 72%
- ESG: 70%
- CDP (Carbon Disclosure...): 62%
- SASB (Sustainability...): 29%
- MSCI ESG Rating: 25%
- Dow Jones Sustainability...: 24%
- Ecovadis: 19%
- Sustainalytics: 9%
- EU Taxonomy: 9%

Frameworks most often mentioned by Top 100 Corporate Patent Owners
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs in Their Reporting

“Some 40% of the world’s largest companies reference the [UN SDGs] in their corporate reporting.”

Source: “Reporting the SDGs: How to get it right,” KPMG
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs in Their Reports
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs on Their Websites

WM has aligned our goals to the United Nations Sustainable Development Goals (SDGs).

In 2020, WM adopted a targeted approach to the UN SDGs, identifying goals and specific targets where we could have the greatest impact. Our 2025 and 2038 goals align with eight of the SDGs, and over the past year we have made a positive contribution to the SDGs in a number of ways:

Click an SDG to view our progress, aligned goals and target.
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs on Their Websites
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs on Their Websites

Focus on global goals

Sustainable development

Since 2016, BayWa has aligned its sustainability management to selected objectives of the [17 Sustainable Development Goals (SDGs) of the United Nations (UN)](https://www.un.org/sustainabledevelopment/sustainable-development-goals/) to address global opportunities and risks more consistently. The 17 sustainability goals apply to all countries and are aimed at achieving sustainable development worldwide. These goals are to be reached by the year 2030.

In 2019, BayWa renewed its materiality analysis in which the central themes of the SDGs were analysed relating to the contribution the company can make to achieving them. An additional stakeholder survey provided an assessment of potential negative impacts on the environment, employees and society. The results concretise BayWa's options for action and serve as a guideline for operational measures. By 2030, BayWa aims at having made progress in the sustainable safeguarding of food (2), occupational health and safety (3), the creation of equal opportunities (5), the promotion of affordable and clean energy (7), the dissemination of decent work (8), investments in infrastructure (9), responsible production, trade and consumption (12), climate protection (13), the protection of life on land (15) and the strengthening of peace and justice (16).

Read more about the SDGs in practice in the [BayWa Sustainability Report](https://www.baywa.de/unternehmen/reponsability/sustainability).
United Nations Sustainable Development Goals

Corporate Engagement with SDGs

71% of businesses say they are already planning on how they will engage with the SDGs

41% of businesses say they will embed SDGs into their strategies and the way they do business within the next five years

Source: “Make it your business: Engaging with the Sustainable Development Goals,” PwC
Whereas only 33% of citizens worldwide are aware of SDGs, 92% of corporations are aware of them.

Source: "Make it your business: Engaging with the Sustainable Development Goals," PwC
United Nations Sustainable Development Goals

Corporate Awareness Is Very High

Large companies in Germany, France and the UK are significantly more likely to report on the SDGs than companies in other countries²

Sources: Source: "Reporting the SDGs: How to get it right," KPMG
United Nations Sustainable Development Goals
Why Do Corporations Promote Sustainability?

78% of customers are more likely to buy from companies that have aligned themselves with a SDGs agenda.

Source: “Make it your business: Engaging with the Sustainable Development Goals,” PwC
United Nations Sustainable Development Goals

Why Do Corporations Promote Sustainability?

78% of customers are more likely to **buy** from companies that have aligned themselves with a SDGs agenda.

Source: “Make it your business: Engaging with the Sustainable Development Goals,” PwC
Corporate sustainability encompasses a wide range of economic, environmental, and social concerns. As an organization, you may reasonably ask yourself where to start as you endeavor to address this topic. A plan tailored to your business model and industry will help position you for success. Additionally, you should consider widely recognized standards and metrics to enable stakeholders, investors, and existing and prospective customers to evaluate your organization’s sustainability efforts.

The United Nations’ (UN) Sustainable Development Goals (SDGs) are internationally recognized, respected tools worth integrating into your plan. The world’s governments unanimously adopted the SDGs at the United Nations Summit on
United Nations Sustainable Development Goals

Client Relations (and Biz Dev) Opportunity: Offer Advice to Corporations Regarding Progress Towards SDGs
“[I]n a private law firm, all lawyers must familiarize themselves with these goals and the entire movement and understand what it means for . . . their clients[.]. By understanding . . . Sustainable Development Goals, lawyers will be better positioned to advise clients[.]”

Source: "Why should lawyers care about the UN Global Compact and the UN SDGs,” Pamela Cole, Legal Business World (August 15, 2020)
United Nations Sustainable Development Goals

Legal Writers Advise That Attorneys Should Be Knowledgeable About SDGs

“[I]n a private law firm, all lawyers must familiarize themselves with these goals and the entire movement and understand what it means for . . . their clients[.] By understanding . . . Sustainable Development Goals, lawyers will be better positioned to advise clients[.]”

Source: “Why should lawyers care about the UN Global Compact and the UN SDGs,” Pamela Cole, Legal Business World (August 15, 2020)
United Nations Sustainable Development Goals

Law Firms Know That Attorneys Should Be Knowledgeable About SDGs

“Lawyers need to familiarize themselves with their clients’ business and commercial decisions not only in order to deliver more targeted and relevant advice, but also, to ensure that their advice matches their clients’ values.”

United Nations Sustainable Development Goals

Some Law Firms Tout Their Experience with SDGs

Successful implementation of the UN Sustainable Development Goals can be a cornerstone for stability and growth. They can help build just economies and level the playing field for whole communities. Doing so requires deliberate action and a commitment to incorporate the SDGs into the daily conduct of business.

Recognizing the unique and important role that lawyers can play, international law firm Debevoise & Plimpton partners with clients, its own workforce, the legal profession and other stakeholders. The firm believes lawyers can be role models who can make a real difference in implementing the SDGs. As wise counselors, Debevoise lawyers advise clients on a broad range of risks and opportunities and, through their own actions and those of their clients, help them achieve those goals.

This video illustrates examples of Debevoise’s efforts in three key SDGs: gender equality, providing decent work and economic growth and furthering peace, justice and strong institutions.
Corporate legal advice and saving the planet may look like two very separate things. But the global seismic shifts throughout 2020 have convinced us that law firms must respond to the changing environment around them. Given its scale and influence, the global legal services sector is uniquely positioned to drive changes across industries and geographies. If lawyers embed sustainability into their advice, this could rapidly accelerate the uptake of sustainable business practices and help to create a better world for people and planet.
Corporate legal advice and saving the planet may look like two very separate things. But the global seismic shifts throughout 2020 have convinced us that law firms must respond to the changing environment around them. Given its scale and influence, the legal industry could be a crucial player in creating the conditions for a sustainable future.

One blueprint for building a better and more sustainable world for all is The 2030 Agenda for Sustainable Development, which was adopted by all United Nations Member States in 2015. At the heart of this agenda are the United Nations Sustainable Development Goals, or "SDGs", a set of 17 goals which aspire to eradicate poverty, reduce inequalities and tackle climate change. These goals need to be achieved by 2030. Based on the current rate of change, these goals will not be met.
Corporate legal advice and saving the planet may look like two very separate things. But the global seismic shifts throughout 2020 have convinced us that law firms must respond to the changing environment around them. Given its scale and influence, the global legal services sector is uniquely positioned to drive changes across industries and geographies. One blueprint for building a better and more sustainable world for all is The 2030 Agenda for Sustainable Development, which was adopted by all United Nations Member States in 2015. At the heart of this agenda are the United Nations Sustainable Development Goals (SDGs).

Currently, the traditional framework for law firms to engage with the SDGs is through their Pro Bono or Corporate Responsibility teams, and that alone is not enough. At Hogan Lovells, we are building a law firm that integrates the SDGs into all of our legal advice. This goes beyond good business sense. It goes to authenticity, hope and ambition. We want to help achieve all 17 SDGs by 2030, to build a better world.
United Nations Sustainable Development Goals

Some Law Firms Tout Their Experience with SDGs
“Increasingly, law firms are recognizing that [internal] sustainable development initiatives strengthen their reputation on the market and are important to their clients.”

United Nations Sustainable Development Goals

Some Firms Embrace SDGs Internally – To “Mimic” Their Clients’ Efforts / Initiatives

Our commitment to sustainability

We aim to minimize our impact on the environment – to protect the planet, ensure that resources are available for future generations and create a better quality of life for all living beings. We integrate sustainability best practice into all our decision-making and business activities. We recognize our responsibility to address environmental issues that jeopardize the earth’s ecosystems and the future of our communities and as a firm we work on reducing our environmental footprint and are active on many pro bono projects in the areas of sustainability.

Norton Rose Fulbright supports the Sustainable Development Goals. We have adopted the UN Sustainable Development Goals as our overarching guiding principles. With the goals being the blueprint to achieve a better and more sustainable future for all, we focus on those where we can have the greatest impact.
The Fundamental Question

Is the Advice Attorneys Provide to Clients about SDGs Legal or Non-Legal (i.e. “Business”) Advice?
In a nutshell, legal advice has the following characteristics:

• Requires legal knowledge, skill, education and judgment
• Applies specific law to a particular set of circumstances
• Affects someone’s legal rights or responsibilities
• Creates rights and responsibilities in the advice-giver

Source: Findlaw
In re Anderson

After considering the testimony of Kavanaugh and debtor in light of the *Landlords* and *Sipper* opinions, the conclusion that Kavanaugh is engaged in the unauthorized practice of law is inescapable. Kavanaugh held himself out to be qualified to give advice concerning bankruptcies. He interviewed debtor and solicited information from her, from which he selected and prepared bankruptcy schedules. He advised Anderson of her legal rights vis-a-vis secured collateral and of the differences between a Chapter 13 filing and one under Chapter 7. He further (incorrectly) advised her regarding the necessity to file amendments to her schedules to accurately reflect an increased tax refund. It also appears that he selected her exemptions. All of these acts require the exercise of legal judgment beyond the knowledge and capacity of the lay person. *In re Arthur*, 15 B.R. 541, 8 B.C.D. 459 (Bankr. E.D. Pa. 1981); *O'Connell v. David*, 35 B.R. 141 (Bankr. E.D. Pa. 1983).
“A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services . . . if the law-related services are provided: (1) by the lawyer in circumstances that are not distinct from the lawyer’s provision of legal services to clients[.]”

Source: American Bar Association Model Rule of Professional Conduct 5.7(a)
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Attorneys Providing Advice Regarding UN SDGs
Ethics Rules Applicability for Law-Related or Non-Legal Advice

“With respect to lawyers or law firms providing nonlegal services to clients or other persons: (1) A lawyer or law firm that provides nonlegal services to a person that are not distinct from legal services being provided to that person by the lawyer or law firm is subject to these Rules with respect to the provision of both legal and nonlegal services.”

Source: New York Rule of Professional Conduct 5.7(a)
Attorneys Providing Advice Regarding UN SDGs

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Source: New York Rule of Professional Conduct 5.7(a)
Attorneys Providing Advice regarding UN SDGs

Ethics Rules Applicability for Law-Related or Non-Legal Advice

“As a rule, lawyers can engage in any lawful business, including providing non-legal services to clients. If the lawyer provides non-legal services unconnected to the practice of law, then he is not bound by any specific ethical rules regarding disclosure.”

Source: https://www.sdcba.org/?pg=FTR-Apr-2018-9
“As a rule, lawyers can engage in any lawful business, including providing non-legal services to clients. If the lawyer provides non-legal services unconnected to the practice of law, then he is not bound by any specific ethical rules regarding disclosure.”

Source: https://www.sdcba.org/?pg=FTR-Apr-2018-9
“If the legal and nonlegal services are not distinct, then the RPC always apply.”
“[W]hen a lawyer seeks to provide both legal and nonlegal services[,] the lawyer must determine whether there is a significant risk that the lawyer’s professional judgment will be adversely affected.”
Formal Opinion No. 1995-141

California State Bar Committee on Professional Responsibility and Conduct

In addition, the Supreme Court has directed the application of rule 3-300 and its predecessor, rule 5-101, to transactions in which there exists an actual or potential conflict of interest between the lawyer and the client. (See Rose v. State Bar 4 (1989) 49 Cal.3d 646, 662-663 [262 Cal.Rptr. 702].) In light of the principles on which the rule is founded, it is apparent that the rule is intended to apply to transactions that arise out of the lawyer-client relationship or the trust and confidence reposed by the client in the lawyer as a result of the lawyer-client relationship. (See [*12] Beery v. State Bar, supra, 43 Cal.3d 802, 813; see also L.A. Cty. Bar Assn. Formal Opn. No. 477.)

* Note: effective Nov. 1, 2018, Cal Rule 3-300 (“Avoiding Interests Adverse to Client”) was replaced by 1.8.1 (“Business Transactions with a Client and Pecuniary Interests Adverse to Client”)
Formal Opinion No. 1995-141

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Â² Â Rule 3-300 applies when a lawyer enters into a business transaction with a client. It does not apply when a lawyer-client relationship has not yet arisen; although it does apply to transactions that occur after a lawyer’s representation of the client has concluded. (Beery v. State Bar, supra, 43 Cal.3d at pp. 811-812.) Thus, if a lawyer or the lawyer’s entity is first retained to provide non-legal services and there is no pre-existing lawyer-client or other fiduciary relationship, rule 3-300 does not apply. However, Â* if the lawyer has had a lawyer-client relationship with the client and later proposes to render non-legal services, rule 3-300 may be applicable based on the factors set forth in this opinion.

* Note: effective Nov. 1, 2018, Cal Rule 3-300 ("Avoiding Interests Adverse to Client") was replaced by 1.8.1 ("Business Transactions with a Client and Pecuniary Interests Adverse to Client")
Non-Legal Advice
“Connected”
“Not Distinct”

Non-Legal Advice
“Unconnected”
“Distinct”
Advice Regarding United Nations Sustainable Development Goals

When Do Rules of Professional Responsibility/Conduct Apply?

1. Legal Advice (if deemed to be), or
2. Non-Legal Advice that is not distinct from (i.e. is connected to) Legal Advice
Rules of Professional Responsibility

The ABA’s Rules of Professional Conduct*

* Adopted by 49 states (see: https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/ (as of March 28, 2018); California modified its Rules of Professional Conduct, effective November 1, 2018 (see https://www.calbar.ca.gov/About-Us/News/News-Releases/new-rules-of-professional-conduct-effective-november-1) – and though they are not identical to the ABA’s rules, they are very similar).
United Nations Sustainable Development Goals

(Possibly)-Applicable Ethical Rules When Attorneys Provide “SDG Advice”

1.3 / 1.4 / 2.1

ABA Model Rule of Professional Conduct 1.3

Diligence

“A lawyer shall act with reasonable diligence and promptness in representing a client.”
Definitions of “Diligence”

Context (As Discussed by the Courts)

**Expedite Litigation**

**Keep a Client Informed in a Timely Manner**
Definitions of “Diligence”

Context (As Discussed by the Courts)
ABA Model Rule of Professional Conduct 1.3

Commentary 1 to Rule 1.3

“[1] . . . A lawyer must also act with commitment and dedication to the interests of the client.”
Definitions of “Diligence”
From Legal and Non-Legal Dictionaries

“1. A continual effort to accomplish something. 2. Care; caution; the attention and care required from a person in a given situation.”

“[C]areful and persistent work or effort.”
462 Md. 642, 699 (Ct. of App. Feb. 26, 2019) (Failure to investigate a client's matter)

[*699] MLRPC 1.3: Diligence

MLRPC 1.3 requires an attorney to "act with reasonable diligence and promptness in representing a client." MLRPC 1.3 can be violated by failing to "advance the client's cause or endeavor," Attorney Grievance Comm’n v. Smith, 457 Md. 159, 216, 177 A.3d 640 (2018); failing "to investigate a client's matter," Attorney Grievance Comm’n v. McLaughlin, 456 Md. 172, 192, 171 A.3d 1205 (2017); and repeatedly failing "to return phone calls, respond to letters, or provide an accounting for earned fees," Moore, 451 Md. at 80. The same rationale that supports a Rule 1.1 violation can support a Rule 1.3 violation. Attorney Grievance Comm’n v. Mooney, 359 Md. 56, 94, 753 A.2d 17 (2000).
Atty. Griev. Comm’n v. Monfried

368 Md. 373, 385 (Ct. of App. March 22, 2002) (Failure to ascertain hearing date)

Rule 1.3 Diligence

2. Respondent violated Rule 1.3 when respondent failed to act with reasonable diligence and promptness when he failed to interview his client or undertake any investigation from the date respondent entered his appearance, July 2 or 3, 1999, until the date of Terrell's second hearing, September 17, 1999.

3. Respondent violated Rule 1.3 when respondent failed to act with reasonable diligence and promptness when he failed to make any effort to ascertain the date of Terrelle Hartley's hearing from the date respondent entered his appearance, July 2 or 3, 1999, until the date of Terrelle's second hearing, September 17, 1999.
In re Ault

728 N.E.2d 869 (Ind. Supreme Ct. May 26, 2000) (Failure to arrange for continue or the like before trial)

interests in the first lawsuit, and by failing to answer the employer's counterclaim or otherwise defend the second lawsuit, the respondent violated HN3 Ind. Professional Conduct Rule 1.3, which requires lawyers to act with reasonable diligence and promptness while representing clients.

The respondent argues that he made a prompt and diligent effort to make arrangements regarding the January 10 trial of the first lawsuit. However, those arrangements consisted primarily of a hasty last-minute phone call to the court advising that he would not be present. Had the respondent truly been diligent, he would have sought a continuance or other judicial relief before the time the trial was to begin. As for his failure to defend the second lawsuit, the
In re McCann

752 So.2d 155 (La. Supreme Ct. Feb. 11, 2000) (Failure to seek reimbursement/repayment of client’s lost money)

25,000 default judgment against respondent. Respondent failed to pay the judgment. As of the date of the filing of [Pg 2] the formal charges, respondent had made no effort to reimburse or repay the amounts his client has lost.

The ODC alleges that respondent's conduct violates Rules 1.3 (failure to act with diligence and promptness in representing a client), 1.4 (failure to communicate with a client), 1.15(b) (failure to account for and promptly deliver funds of a client or third person), 1.16(d) (termination of the representation), and 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal) of the Rules of Professional Conduct.
In the Matter of the Appeal of Basic American

P20021112012 (Id. Bd. of Tax Appeals, Nov. 14, 2000) (Collecting Information) (Not an Attorney Discipline Opinion)

take into consideration the earning power and all other factors known or available to his knowledge in arriving at the value of the property assessed. "The assessor made diligent efforts to collect the necessary information to process the three approaches and to arrive at an informed opinion of market value. Even absent the Board's concerns regarding the taxpayer's appraisal, in the case at bar, it appears simply to be another individual's opinion of value. Where taxpayer's case mainly presented a cost approach, little new information is available for review.
ABA Model Rule of Professional Conduct 1.4
Communications

“(a) A lawyer shall . . . (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished.”
ABA Model Rule of Professional Conduct 1.4
Commentary 5 to Rule 1.4

“The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance that is involved.”
ABA Model Rule of Professional Conduct 2.1
Attorney as Advisor

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client’s situation.”
“[A] lawyer may initiate advice to a client when doing so appears to be in the client's interest.”
Sustainable Development in Law Practice: A Lens for Addressing All Legal Problems
ABA Model Rule of Professional Conduct 2.1

Law Review Commentary on Rule 2.1 (in the context of Sustainability Advice)

“[T]he ABA Model Rules of Professional Conduct also provide: ‘In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.’ As a result, lawyers may raise sustainability issues even when they are not grounded in specific legal rules. At the same time, a lawyer is generally required to abide by a client’s decision about how to proceed in any matter.”
Be Diligent
(Make a Suitable Effort)

Provide Information to Help Make Intelligent Decisions

Give Candid Advice Relevant to the Client’s Interests
United Nations Sustainable Development Goals

Providing Sustainability Advice Ethically

Use an Effective & Appropriate Framework
“[W]ithout an appropriate framework, it [is] hard to measure and manage material performance and demonstrate impact.

United Nations Sustainable Development Goals

The Most-Commonly-Used “Frameworks” for Sustainability Reporting

<table>
<thead>
<tr>
<th>Framework</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>UN SDG</td>
<td>75%</td>
</tr>
<tr>
<td>GRI (Global Reporting)</td>
<td>72%</td>
</tr>
<tr>
<td>ESG</td>
<td>70%</td>
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<tr>
<td>CDP (Carbon Disclosure)</td>
<td>62%</td>
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<tr>
<td>SASB (Sustainability...)</td>
<td>29%</td>
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<tr>
<td>MSCI ESG Rating</td>
<td>25%</td>
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<tr>
<td>Dow Jones Sustainability...</td>
<td>24%</td>
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<tr>
<td>Ecovadis</td>
<td>19%</td>
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<tr>
<td>Sustainalytics</td>
<td>9%</td>
</tr>
<tr>
<td>EU Taxonomy</td>
<td>1%</td>
</tr>
</tbody>
</table>

Frameworks most often mentioned by Top 100 Corporate Patent Owners

ESG

Environmental, Social, and Corporate Governance (ESG) refers to the three central factors in measuring the sustainability and societal impact of an investment in a company or business.
United Nations Sustainable Development Goals

Some Firms Tout Their ESG Experience
United Nations Sustainable Development Goals

Some Firms Tout Their ESG Experience

As business issues involving climate change, sustainability, human rights, and shareholder activism continue to affect the global marketplace, corporations, investors, and board directors need to understand how these factors may impact their business and how they are driving regulatory and market change. Environmental, Social, and Governance (ESG) are the main factors in determining whether a company, investment, or country is sustainable, responsible, and ethical, and they extend beyond purely financial measures as influencers of long-term investments. Our insights cover a variety of issues related to matters commonly grouped under ESG, including climate change and related litigation, sustainable finance transactions, impact investing, supply chain and human rights issues such as human trafficking, corporate governance, and shareholder activism.

FEATURED INSIGHTS

NOVEMBER 2021 | NEWSLETTERS
The Climate Report | Fourth Quarter 2021

SEPTEMBER 2021 | ALERTS
Landmark Proceedings Challenge Veracity of Climate Change Commitments by

AUGUST 2021 | COMMENTARIES
The Impact of French and German ESG Due Diligence Laws on Business
ESG refers to the three central factors in measuring the sustainability and societal impact of an investment in a company or business:

- No global definition or framework for ESG
- Not target-oriented, focused on processes
- No standardized metrics to calculation or presentation of ESG metrics
United Nations Sustainable Development Goals
The ESG Challenge

“Without a consensus on the metrics to be used when disclosing ESG information . . . ”

“In the annual ranking of top U.S. companies on ESG metrics conducted by research nonprofit Just Capital . . . Meta Platforms dropped 691 spots due to concerns about spread of misinformation on Facebook and Instagram’s negative social influence[.]

United Nations Sustainable Development Goals

The ESG Challenge: “Greenwashing”
United Nations Sustainable Development Goals

The ESG Challenge: “Greenwashing”

Figure 1. When do CP companies lose consumer trust?
Percentage of executives who agree consumer trust is lost in CP companies when . . .

- Brands are not open and transparent: 90%
- Brands don’t meet consumer environmental, social, and governance (ESG) expectations: 84%
- Brands engage in “greenwashing”: 82%
- Labor shortages affect quality: 79%
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- Brands fail to engage consumers in a personalized manner: 51%
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United Nations Sustainable Development Goals

The ESG Challenge: “Greenwashing”
United Nations Sustainable Development Goals
The Need for a Standardized Measurement of Sustainability

“[W]ithout an appropriate framework, it [is] hard to measure and manage material performance and demonstrate impact. Fortunately, there is light through the materiality and metrics jungle.

The UN Sustainable Development [G]oals act as a universally adopted standard, providing common language and material priorities around which to organize.”

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Tracking SDG compliance based on measurable, objective data enables corporations to counter claims of greenwashing
ESG

Environmental, Social, and Corporate Governance (ESG) refers to the three central factors in measuring the sustainability and societal impact of an investment in a company or business.

SDG

The United Nations Sustainable Development Goals collection of 17 interlinked global goals designed to be a "blueprint to achieve a better and more sustainable future for all". The SDGs were set up in 2015 by the United Nations General Assembly and are intended to be achieved by the year 2030.
United Nations Sustainable Development Goals

Sustainable Innovation “Frameworks”

**ESG**
- No global definition and framework for ESG
- Not target-oriented, focused on processes
- No standardized metrics to calculation or presentation of ESG metrics

**SDG**
- Globally accepted and acknowledged framework
- Goals defined in the agenda 2030
- Clearly defined by 17 global goals 169 targets, 231 detailed indicators and accompanying metadata
United Nations Sustainable Development Goals

SDGs Provide an Objective Finish Line
Corporate sustainability encompasses a wide range of economic, environmental, and social concerns. As an organization, you may reasonably ask yourself where to start as you endeavor to address this topic. A plan tailored to your business model and industry will help position you for success. Additionally, you should consider widely recognized standards and metrics to enable stakeholders, investors, and existing and prospective customers to evaluate your organization's sustainability efforts.

The United Nations' (UN) Sustainable Development Goals (SDGs) are internationally recognized, respected tools worth integrating into your plan. The world's governments unanimously adopted the SDGs at the United Nations Summit on
United Nations Sustainable Development Goals

The Most-Commonly-Used “Framework” for Sustainability Reporting – Why?

1. The UN SDGs are globally-accepted and acknowledged

2. The UN SDGs provide clear goals and targets with detailed indicators (and even offer additional metadata and policy guidance)

3. The UN SDGs cover not only climate change but also other requirements for sustainability, such as socioeconomic factors and resource stewardship

Frameworks most often mentioned by Top 100 Corporate Patent Owners
United Nations Sustainable Development Goals

The SDG Framework and the ESG Pillars Are Not Mutually Exclusive

Different Attempts At Trying To Show Overlaps & Gaps Between SDGs & ESGs

Source: Berenberg, Understanding the SDGs in sustainable investing
Source: Foresight Analytics, ESG & Sustainability Analytics
Source: DiligenceVault, DV Looks at ESG
Although the SDG framework provides necessary definitions and metrics, “quantifying the SDG impact of a business and its decisions is not always easy.”

Source: https://boardclic.com/esg/csr-esg-sdgs/
United Nations Sustainable Development Goals

SDG Quantification
United Nations Sustainable Development Goals

SDG Quantification

“Enabling technology is critical to tracking our progress against each of the SDGs[.]”

ABA Model Rule of Professional Conduct 1.1
Client-Lawyer Relationship

“A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”
ABA Model Rule of Professional Conduct 1.1

Commentary 8 to Rule 1.1 (with emphasis added)

“To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes and the law and its practice, including the benefits and risks associated with relevant technology.”
States with a Duty of Tech Competence = 39

as of March 18, 2022
ABA Model Rule of Professional Conduct 1.1

Example: Video-Conferencing Technology
44. In the instant case, Jacobson stated at the May 20, 2020, creditor meeting that he did not know how to electronically file his client’s documents. His failure to operate this most basic technology is a breach of his duty to provide competent representation to his client.
ABA Model Rule of Professional Conduct 1.1

Article in The Business Lawyer (Winter 2019-20) – written by a former Chief Justice of the Supreme Court of DE

Protection of Client Confidential Information from Cyberattacks Is a Compelling Business and Ethical Priority for Inside and Outside Corporate Counsel

By E. Norman Veasey*
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs in Their Reporting

“Some 40% of the world’s largest companies reference the [UN SDGs] in their corporate reporting.”

Source: “Reporting the SDGs: How to get it right,” KPMG
United Nations Sustainable Development Goals

Many Corporations Specifically Reference SDGs in Their Reporting – But . . .

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“Some 40% of the world’s largest companies reference the [UN SDGs] in their corporate reporting.”

Source: "Reporting the SDGs: How to get it right," KPMG
Source: "Creating a Strategy for a Better World," PwC (Survey of 1,100 corporations)
Some SDG “Measuring” Platforms

(Not a Comprehensive List)

- LexisNexis® PatentSight® (for corporations with patent portfolios)
  - SDG patent mapping, in combination with the industry-proven and validated patent value indicator Patent Asset Index™, enables a corporation to measure its progress towards SDGs while avoiding “greenwashing”
  - www.patentsight.com/en/

- SDG Monitor
  - “[A] cloud-based tool that helps to pair your sustainability actions with the United Nations Sustainable Development Goals (SDGs) and use the SDG indicators for measurement. With SDG Monitor you can easily follow where your company is making progress and where you are falling behind”
  - www.sdgmonitor.co

- SDG Action Manager (from B Lab)
  - “[A] unique impact management solution can help every business set goals, track progress, and stay motivated on specific actions to support the SDGs”
# Measuring SDGs Through Types of Data

## Analysis of Data Types

<table>
<thead>
<tr>
<th>Data Type</th>
<th>Forward Looking</th>
<th>Output Metric</th>
<th>Objectively Measurable</th>
<th>Third Party Assessment</th>
<th>Commonly Accepted Definition</th>
<th>Publicly Available Data</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy consumption</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Waste &amp; pollution (CO2, ..)</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Water management</td>
<td>X</td>
<td>✓</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>Employee metrics (wellbeing, diversity, ..)</td>
<td>X</td>
<td>✓</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Sales</td>
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<td>X</td>
<td>✓</td>
<td>X</td>
</tr>
<tr>
<td>R&amp;D Spending</td>
<td>✓</td>
<td>X</td>
<td>✓</td>
<td>X</td>
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<td>X</td>
</tr>
<tr>
<td>Patents</td>
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<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
</tbody>
</table>
Measuring SDGs Through Patent Portfolios

Tracking Objective Data
Mapping Patent Portfolios to SDGs

Provides Corporations . . .

Measurability

Most sustainability metrics include subjective and qualitative sources, such as "expert" interviews, conversely patent data is factual comparable data source.

Transparency

Patent data provides a unique objective windows into a company, their investments and developments, free of spin or "greenwashing".
United Nations Sustainable Development Goals

Corporations Need To Be Transparent

Figure 1. When do CP companies lose consumer trust?

Percentage of executives who agree consumer trust is lost in CP companies when...

- Brands are not open and transparent: 90%
- Brands don't meet consumer environmental, social, and governance (ESG) expectations: 84%
- Brands engage in "greenwashing": 82%
- Labor shortages affect quality: 79%
- Prices increase higher than consumers feel was justified: 76%
- Last-mile shipping to the home is delayed: 59%
- Their products are out of stock with preferred retailers: 55%
- Brands fail to engage consumers in a personalized manner: 51%
- Preferred variety of a given product is not available: 48%
United Nations Sustainable Development Goals

Corporations Need To Be Transparent

Becoming more transparent isn’t just a matter of changing a company’s overall approach or attitude toward openness. Transparency requires an underlying infrastructure. Data needs to be sensed and captured in the first place. Sensing the data can come in the form of manual reports from suppliers or more sophisticated IoT instrumentation. The data won’t do any good if it stays in its own silo. It also should be interconnected and shared in a common standard with other systems inside and out. Finally, providing a sea of raw data is unlikely to have the intended effect. Companies should understand and communicate the meaningful data, in context. Intelligence, artificial or otherwise, is needed to help with sensemaking for those who need to consume the data.
Measuring SDGs Through Patent Portfolios

Using Patents to Measure SDG Progress -- A Sampling of Corporate Reaction

Intends to use mapping of its patent portfolio to SDGs to implement a “sustainability-related patent KPI for performance monitoring.”

“Being able to classify patents by SDG categories is very useful to easily promote the strengths of our technology or complement its weaknesses from a different perspective.”

“It is not easy for us to create and analyze the search query for 17 [SDG] goals by ourselves, so we feel that it is very useful for us to understand our own patent strength and to compare with other companies by providing it as a new function. We immediately compared our company with our competitors.”

“Having just been asked by top management to check our portfolio in relation to SDGs, this is very useful. The objective criteria of SDGs is very important because we tend to create results that fit our own good image.”
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Measuring SDGs Through Patent Portfolios

Using Patents to Measure SDG Progress

1. **End Poverty in all its forms everywhere**
   - Blockchain and Electronic payment systems

2. **Food Security, improved nutrition, and sustainable agriculture**
   - Food management, biotech in agriculture

3. **Ensure healthy lives and promote well-being for all at all ages**
   - Disease, Tobacco control, Disaster management, Health care

4. **Inclusive, equitable quality education, lifelong learning, and promotion of lifelong learning**
   - Natural language processing (NLP), Digital learning

5. **Ensure availability and sustainable management of water and sanitation**
   - Water harvesting and extraction, Water purification, Sanitation, Water management

6. **Achieve gender equality and empower all women and girls**
   - Sex-disaggregated data, Gender based violence prevention

7. **Ensure access to affordable, reliable, sustainable and modern energy for all**
   - Renewable energy, Energy efficiency, Improvements in fossil fuel technology, Energy infrastructure

8. **Decent work and economic growth**
   - Reduce inequality within and among countries

9. **Build resilient infrastructure, promote inclusive and sustainable industrialization**
   - GHG reduction, smart factory, Cybersecurity

10. **Make cities and human settlements inclusive, resilient and sustainable**
    - Information Systems and Earth Observation technology

11. **Ensure sustained consumption and production patterns**
    - Waste management, Pollution

12. **Take urgent action to combat climate change and its impact**
    - Land ecosystem conservation, marine ecosystem conservation, SDG 11, 12, 7, 3, prevention of climate related risks

13. **Protect, restore and promote sustainable use of terrestrial and marine ecosystems**
    - Silviculture & Afforestation, Reafforestation and Deforestation, Geographic Information Systems and Earth Observation technology

14. **Conserve and sustainably use the oceans, seas, and marine resources**
    - Plastic treatment, Fresh water ecosystem preservation, Marine ecosystem conservation, Pollution monitoring technology

15. **Partnerships for the goals**
    - Not currently included:

---

**SDGs by Patent Organization**

- SDG 01: No Poverty
- SDG 02: Zero hunger
- SDG 03: Good health and well-being
- SDG 04: Quality education
- SDG 05: Gender equality
- SDG 06: Clean water and sanitation
- SDG 07: Affordable and clean energy
- SDG 08: Decent work and economic growth
- SDG 09: Industry, innovation, and infrastructure
- SDG 10: Reduced inequalities
- SDG 11: Sustainable cities and communities
- SDG 12: Responsible consumption and production
- SDG 13: Climate action
- SDG 14: Life below water
- SDG 15: Life on land
- SDG 16: Peace, justice, and strong institutions
- SDG 17: Partnerships for the goals

---

**SDG 01: No Poverty**

- Blockchain and Electronic payment systems

---

**SDG 02: Zero hunger**

- Food management, biotech in agriculture

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**SDG 03: Good health and well-being**

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**SDG 08: Decent work and economic growth**

- Reduce inequality within and among countries

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**SDG 09: Industry, innovation, and infrastructure**

- GHG reduction, smart factory, Cybersecurity

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**SDG 10: Reduced inequalities**

- Information Systems and Earth Observation technology

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**SDG 11: Sustainable cities and communities**

- Waste management, Pollution

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**SDG 12: Responsible consumption and production**

- Land ecosystem conservation, marine ecosystem conservation, SDG 11, 12, 7, 3, prevention of climate related risks

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**SDG 13: Climate action**

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**SDG 14: Life below water**

- Plastic treatment, Fresh water ecosystem preservation, Marine ecosystem conservation, Pollution monitoring technology

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**SDG 15: Life on land**

- Not currently included:

---

**SDG 16: Peace, justice, and strong institutions**

- Partnerships for the goals

---

**SDG 17: Partnerships for the goals**

- No Poverty, Zero hunger, Good health and well-being, Quality education, Gender equality, Clean water and sanitation, Affordable and clean energy, Decent work and economic growth, Industry, innovation, and infrastructure, Reduced inequalities, Sustainable cities and communities, Responsible consumption and production, Climate action, Life below water, Life on land, Peace, justice, and strong institutions, Partnerships for the goals
Measuring SDGs Through Patent Portfolios

Using Patents to Measure SDG Progress
United Nations Sustainable Development Goal #13 (Climate Action)

Patent Data Reveals the True (Objective) Effort Corporations Put into Sustainability

Share of Patent Asset Index™ in entire company portfolio belonging to Climate-friendly Technologies
(Top 10 Companies in SDG 13 related inventions)

- Vestas Wind: 88.7%
- Samsung SDI: 74.5%
- LG Chem: 48.2%
- Merck KGaA: 26.8%
- Toyota Motor: 23.9%
- GE: 19.9%
- GM: 16.4%
- Panasonic: 13.1%
- Bosch: 12.2%
- Samsung: 3.6%
The Patent Asset Index (used in LexisNexis® PatentSight®)

The Only Scientifically-Developed, Peer-Reviewed, and Industry-Wide-Adopted Patent Indicator

Technology Relevance
Worldwide citations received from later patents, adjusted for age, patent office practices and technology field
Average value: 1

Market Coverage
Market size protected by active patents and pending patent applications on a certain invention
Value of granted US patent: 1

Competitive Impact
(Individual patent strength)
The relative business value of a patent family

Individual Patent Family

Patent Asset Index™
Innovative strength of a company or portfolio (ability to achieve competitive advantage)!

The Patent Asset Index (used in LexisNexis® PatentSight®)
The Only Scientifically-Developed, Peer-Reviewed, and Industry-Wide-Adopted Patent Indicator

“In this paper, we develop a new benchmarking methodology that overcomes limitations of existing approaches [of benchmarking patent portfolios] and offers a more accurate assessment of a firm’s patent portfolio vis-à-vis its competitors.”

United Nations Sustainable Development Goals

“Harmonization” Work

Systems and methods for profiled and focused searching of litigation information allow a user to access specific legal information for use during litigation. The user can connect to a web site and access particular information from multiple sources based on the litigation task the user wishes to accomplish. One litigation task is to create a litigation profile for a target, such as a particular litigant, attorney, judge, court, or firm. In this way, the user can perform focused and task-based searching to receive information about particular filings in particular locations, made by particular entities without knowing which sources contain certain pieces of the litigation information. For example, the user can receive all documents relating to summary judgment for patent infringement filed by a particular attorney in a particular court without specifying the source of information. In one aspect, the user can also access the source(s) upon receiving the results.
United Nations Sustainable Development Goals

“Harmonization” Work
United Nations Sustainable Development Goals

“Harmonization” Work
The Patent Asset Index (used in LexisNexis® PatentSight®)

Example of Top 100 Most-Innovative Corporations (in the past 2 years)

---

**Innovation Momentum**

To demonstrate their Innovation Momentum, the patent portfolios have to increase their Technology Relevance over a two-year period. As this is easier to achieve for small portfolios than it is for the large portfolios, the Technology Relevance increase for small portfolios has to be significantly higher than for larger portfolios; and for large and growing portfolios, maintaining Technology Relevance can be sufficient. On top of that, a change in Technology Relevance has to outperform all other patent families in the same technology field.

Thus, the Innovation Momentum reflects the dynamics of technology development, and this year’s contenders have to work to maintain their Top 100 status.

**Calculation of the Innovation Momentum**

\[
\text{Innovation Momentum}_{t_2} = \text{PS}_{t_2} \cdot \text{MC}_{t_2} \cdot \frac{\text{TR}_{\text{sep}, t_2} - \frac{\text{TR}_{\text{sep}, f_1}}{\text{PS}_{t_2} - \text{PS}_{t_1}} \cdot \text{PS}_{t_1}}{\text{PS}_{t_2}}
\]

**Variables**

- PS\(_{t_1}\) - Portfolio Size of the Reporting Date 2019-12-31
- PS\(_{t_2}\) - Portfolio Size as of today’s Reporting Date 2021-12-31
- MC\(_{t_2}\) - Average Market Coverage of the Reporting Date 2021-12-31
The Patent Asset Index (used in LexisNexis® PatentSight®)

Example of Top 100 Most-Innovative Corporations (in the past 2 years): Samsung & Huawei
The Patent Asset Index (used in LexisNexis® PatentSight®)

Example of Top 100 Most-Innovative Corporations (in the past 2 years)

<table>
<thead>
<tr>
<th>#</th>
<th>Owner</th>
<th>Patent Assets</th>
<th>Portfolio Size</th>
<th>Technology Relevance</th>
<th>Market Coverage</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Samsung</td>
<td>239,968</td>
<td>10,083</td>
<td>1.5</td>
<td>1.2</td>
</tr>
<tr>
<td>3</td>
<td>Bosch</td>
<td>55,294</td>
<td>53,247</td>
<td>1.0</td>
<td>0.8</td>
</tr>
<tr>
<td>4</td>
<td>LG Electronics</td>
<td>97,071</td>
<td>51,590</td>
<td>1.3</td>
<td>0.9</td>
</tr>
</tbody>
</table>

**Methodology and Top 100**

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\[
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\]

**Variables**

- \(P_{S_{t_1}}\): Portfolio Size of the Reporting Date 2019-12-31
- \(P_{S_{t_2}}\): Portfolio Size as of today’s Reporting Date 2021-12-31
- \(M_{C_{t_2}}\): Average Market Coverage of the Reporting Date 2021-12-31
- \(TR_{sep,t_1}\): The average Technology Relevance of the Reporting Date 2019-12-31
The Patent Asset Index (used in LexisNexis® PatentSight®)

Example of Top 100 Most-Innovative Corporations (in the past 2 years): Toyota, Ford & Hyundai

- **Toyota Motor**
  - Patent Asset Index™: 70,697
  - Portfolio Size: 74,619
  - Reporting date: 2/16/2022

- **Ford**
  - Patent Asset Index™: 39,999
  - Portfolio Size: 19,229
  - Reporting date: 2/16/2022

- **Hyundai Motor**
  - Patent Asset Index™: 29,860
  - Portfolio Size: 32,198
  - Reporting date: 2/16/2022
Using Objective Data (e.g. Patents) to Assist with Providing SDG Advice

Benefits

- Ensures Compliance with Rules of Professional Responsibility
- Enables Advice Based on More-Effective (and Accurate) Reporting on Sustainability Efforts
  - Esp. when the Patent Asset Index is utilized
- Can Help Inform / Guide a Client’s Research & Development Efforts
- Provides a Client with Proof Points When Seeking External Investment
- Supports a Client’s Corporate Communication – with its Employees, Customers and Shareholders
Thank You

David V. Dilenschneider, Esq.

www.LexisNexisIP.com/sdg