



PROGRAM ON
INFORMATION JUSTICE AND
INTELLECTUAL PROPERTY

TRIPS and Copyright

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Date	Instrument	Limitations and Exceptions	Forum	Lead Proponents
1886	Berne convention	Education and Research	BIRPI (WIPO)	Germany
1971	Berne Appendix	Compulsory licenses for educational works	WIPO	India
1976	Tunis Model Law	“fair use”	WIPO + UNSECO	African Study Conference on Copyright, WIPO
1980s	Copyright in Computer Programs	Private copying	WIPO	EU?
1994	WTO TRIPS Agreement 1994	Art 9, facts, methods. Art 13, 3-step. Art 14. Broadcasting.	WTO	USA?
1996	WCT and WPPT	Balance (preamble). Agreed statement to Art 10.	WIPO	India
1998	Creation of WIPO SCCR	“viewpoint both of owners ... and of users and the général public”	WIPO	Singapore*
2000	Section 110(5)	“cumulative” 3-step	WTO Panel	EU v. USA
2004	L&E Agenda	Libraries, archives, education, research, disability	WIPO SCCR	Chile, India, Argentina, Paraguay, Uruguay, Iran, Brazil, Egypt, Costa Rica, Dominican Republic, Bangladesh
2007	Development Agenda	“access to knowledge”	WIPO	Argentina and Brazil

Purpose	Treaty	Mandatory *regional	2d Rev Broadcast	L&E Work Program
Quotations	Berne Art 10(1), Brussels Art 4(ii) (permissive)	X ©	Y	
Enabling 3-step	Berne Art 9(2); WCT Art. 10		N	
Confining 3-step	WCT Art. 10; Beijing Art. 13; TRIPS Art 13	X	Y	
Teaching	Berne Art. 10(2); Berne Appendix; Rome Art 10; Brussels art 4(iii)		Y	Y
Scientific research	Rome art 15; Berne 1886; Berne Appendix		Y	Y
Official documents	Berne Art 2		N	
Incidental inclusion	Berne Art 10bis		N	
Private use	Rome Art 15		Y	
Current events, news	Rome Art 15, Berne Art 2, Berne 10bis, Brussels Art 4		Y	
Ephemeral fixation	Rome Art 15; EU Infosoc Directive; EU FTAs		N	
Compulsory licenses	Rome Art 5; Berne Art 17 (necessary), Appendix		N	
Same as copyright	Rome art 15; Beijing Art. 13(1)		Y	
Pricing, abuse	Berne Appendix; Brussels Art 7; TRIPS Art 8		N	
Extend to digital environment	WCT Art 10 Agreed statement; Beijing Art 13 Agreed Statement		N	Y
TPM	Beijing art. 15 Agreed Statement		N	*
Accessible format	Marrakesh Art. 4	X	N	Y
Cross-border	Marrakesh Art 5.	X	N	Y
"Balance"	CTPP, RCEP	X*	N	
Digital research	EU CDSM Directive	X*	N	Y
Digital + cross border teaching	EU CDSM	X*	N	Y
Preservation	EU CDSM	X*	Y	Y
No contract override	EUCDSM	X*	N	*

Developing Country Agendas at WIPO

Users

Limitations and Exceptions. *Standing Committee on Copyright and Related Rights (SCCR)*

Creators

Copyright in the Digital Environment, SCCR

Traditional Resources

Traditional Knowledge, Traditional Cultural Expressions, Genetic Resources

Broadcasters

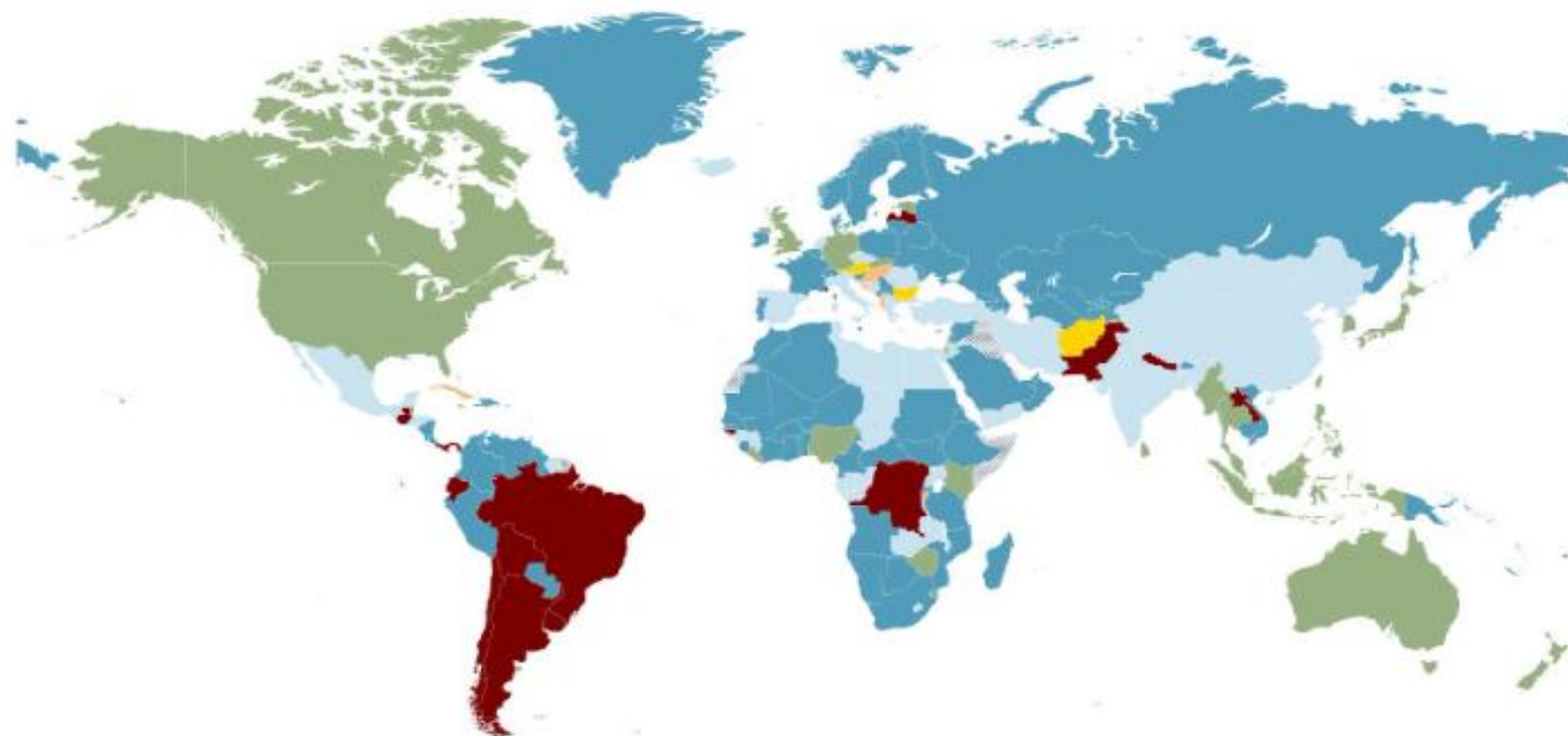
Treaty on the Protections of Broadcast Organizations

Limitations and Exceptions Agenda

WO/GA/41/14, Para. 19

“The Committee agreed to recommend to the WIPO General Assembly that the SCCR continue discussion to work towards an appropriate international legal instrument or instruments (whether model law, joint recommendation, treaty and/or other forms), with the target to submit recommendations on limitations and exceptions for libraries and archives to the General Assembly by the 28th session of the SCCR”

Research exceptions in copyright laws around the world



● **Open research exception:** permits all research uses (including sharing) of all works by all users

● **Restrictions on sharing:** permit reproductions of whole works for research but do not extend to communications with others for purposes such as collaboration or validation

● **Restrictions to private reproduction:** provide a research exception only for use by individuals for a "private" or "personal" use

● **Restrictions to institutional users:** provide a research exception that applies only to institutions, such as nonprofit libraries

● **Restrictions on types of works:** permit research uses of whole works only of certain kinds, often prohibiting uses of whole books and databases

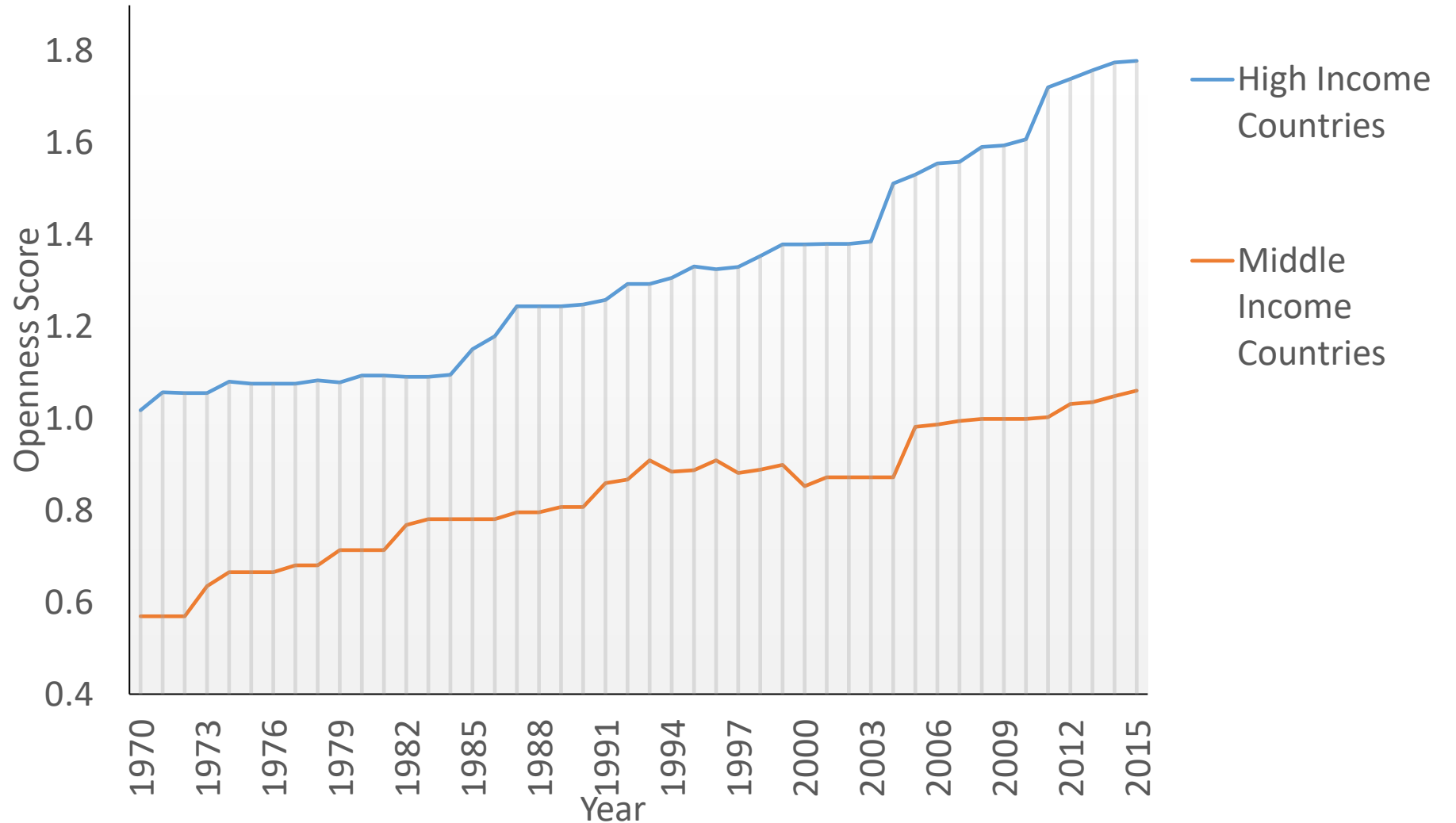
● **TDM restricted:** confine research exceptions to short excerpts, effectively prohibiting TDM uses

⊗ Not mapped

THE USER RIGHTS DATABASE:
MEASURING THE IMPACT OF
OPENING COPYRIGHT EXCEPTIONS

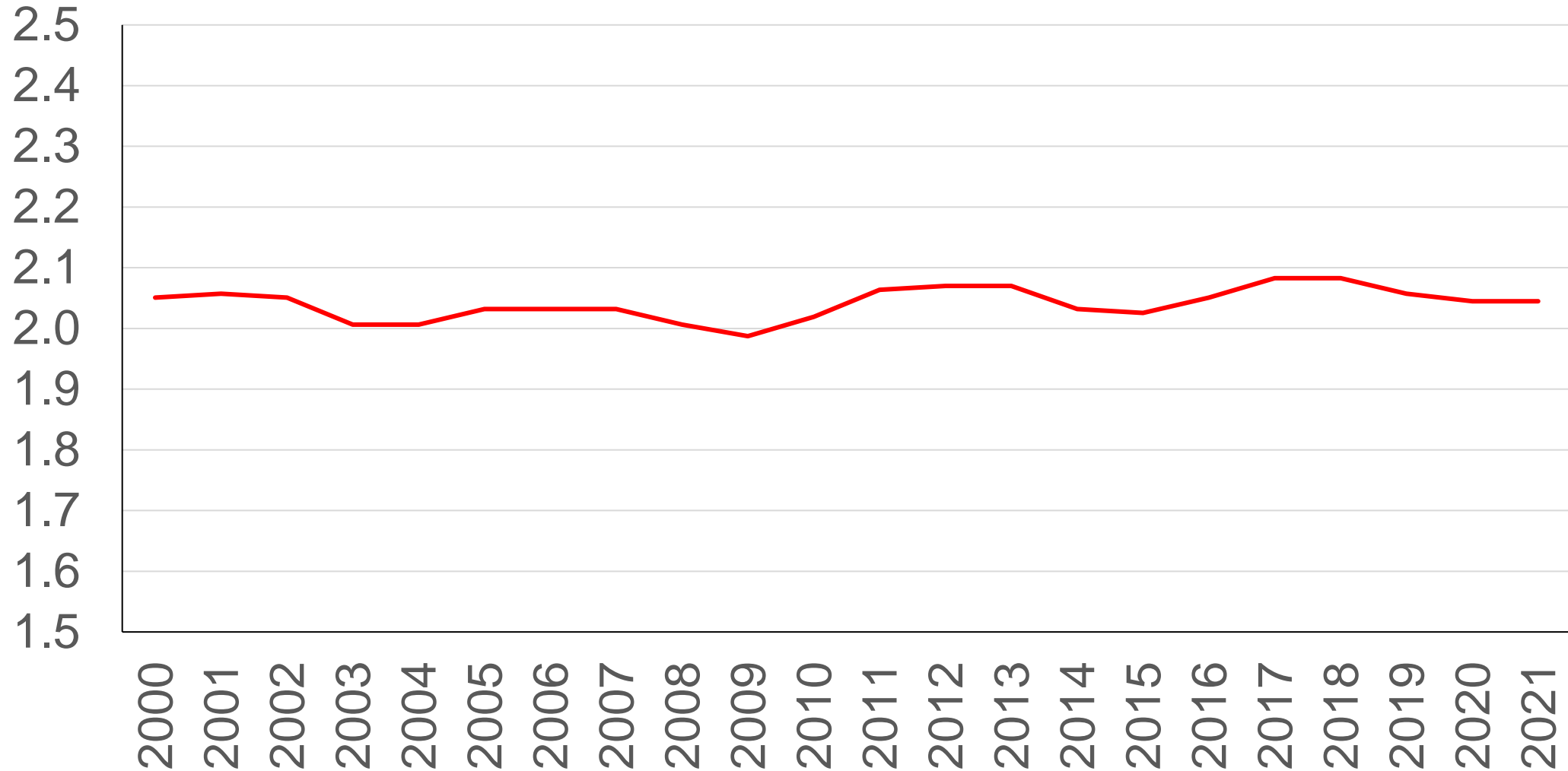
Sean Flynn and Michael Palmedo¹

Disparities in Openness to Digital Uses



Research Exceptions 2000-2021

Change in The Average Score



Income from IP royalties globally

Figure 2a: Global leaders in IP exports by Europe, Northern America, and South East Asia, East Asia and Oceania in 2022, in billion USD

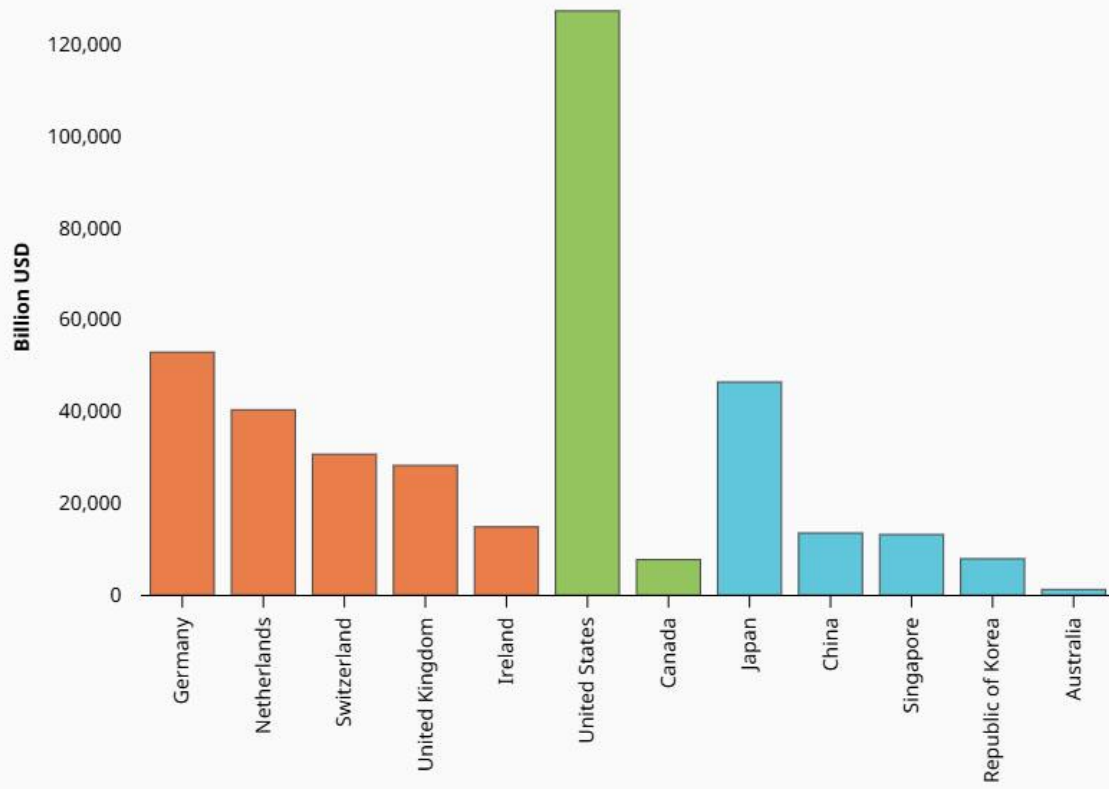
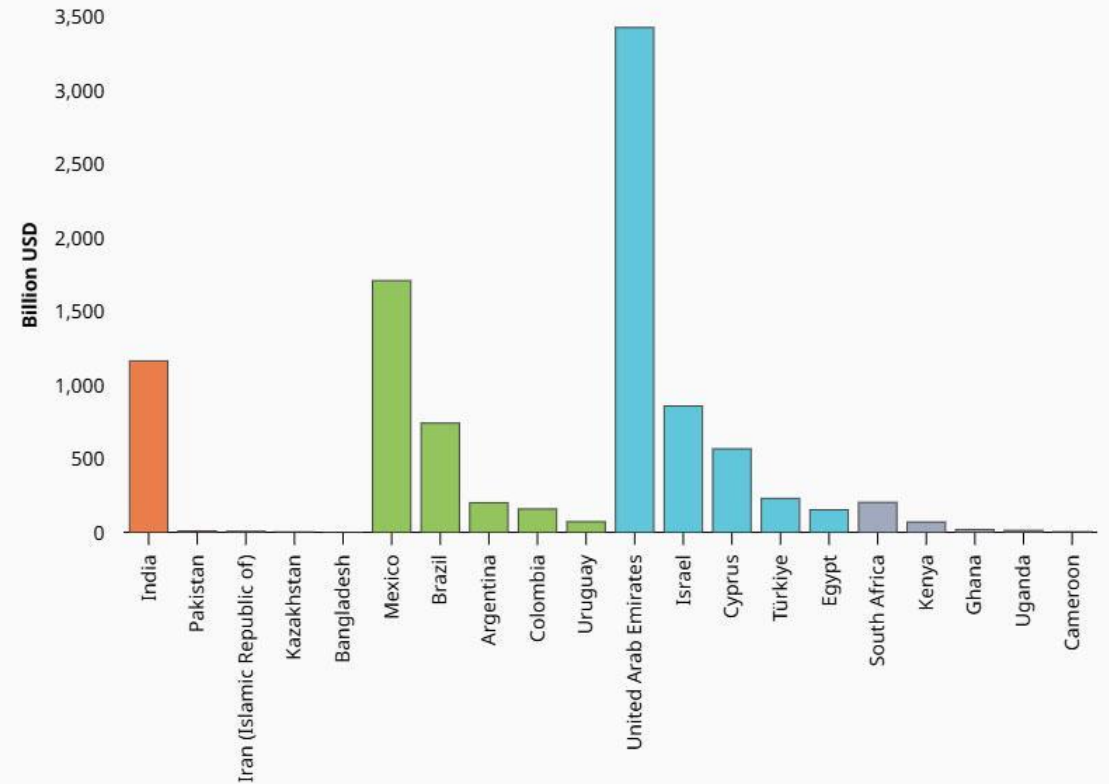


Figure 2b: Global leaders in IP exports by Central and Southern Asia, Latin America and the Caribbean, Northern Africa and Western Asia, and Sub-Saharan Africa in 2022, in billion USD



Excerpts and Quotations

Article 14(3). Broadcasting

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

Article 13: Limitations and Exceptions

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

TRIPS Section 2, Trademarks

Article 17

Exceptions

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

1996 Internet Treaties

Recognizing the need to maintain a balance between the rights of authors and the larger public interest, particularly education, research and access to information, as reflected in the Berne Convention

It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws, which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention.

Creation of WIPO Standing Committee on Copyright and Related Rights, 1998

To monitor the methods of individual exercise and centralized management of copyright and related rights in the digital environment, and promote the optimal application of methods which are efficient and appropriate from the viewpoint both of owners and managers of rights, and of users and the général public.

**WORLD TRADE
ORGANIZATION**

WT/DS160/R
15 June 2000

(00-2284)

Original: English

**UNITED STATES – SECTION 110(5)
OF THE US COPYRIGHT ACT**

Report of the Panel

6.74 Apart from the difference in the use of the terms "permit" and "confine",⁹⁷ the main difference between Article 9(2) of the Berne Convention (1971) and Article 13 of the TRIPS Agreement is that the former applies only to the reproduction right. The wording of Article 13 does not contain an express limitation in terms of the categories of rights under copyright to which it may apply. It states that limitations or exceptions to exclusive rights can only be made if three conditions are met: (1) the limitations or exceptions are confined to certain special cases; (2) they do not conflict with a normal exploitation of the work; and (3) they do not unreasonably prejudice the legitimate interests of the right holder. As both parties agree, these three conditions apply cumulatively; a limitation or an exception is consistent with Article 13 only if it fulfils each of the three conditions.

6.112 In our view, the first condition of Article 13 requires that a limitation or exception in national legislation should be clearly defined and should be narrow in its scope and reach. On the other hand, a limitation or exception may be compatible with the first condition even if it pursues a special purpose whose underlying legitimacy in a normative sense cannot be discerned. The wording of Article 13's first condition does not imply passing a judgment on the legitimacy of the exceptions in dispute. However, public policy purposes stated by law-makers when enacting a limitation or exception may be useful from a factual perspective for making inferences about the scope of a limitation or exception or the clarity of its definition.

factories, shops and offices.¹³³ We fail to see how a law that exempts a major part of the users that were specifically intended to be covered by the provisions of Article 11*bis*(1)(iii) could be considered as a *special* case in the sense of the first condition of Article 13 of the TRIPS Agreement.

DECLARATION

A BALANCED INTERPRETATION OF THE “THREE-STEP TEST” IN COPYRIGHT LAW

1. The Three-Step Test constitutes an indivisible entirety.

The three steps are to be considered together and as a whole in a comprehensive overall assessment.

6. The Three-Step Test should be interpreted in a manner that respects the legitimate interests of third parties, including
 - interests deriving from human rights and fundamental freedoms;
 - interests in competition, notably on secondary markets; and
 - other public interests, notably in scientific progress and cultural, social, or economic development.

From a development perspective, it is common to all forms of copyright that enhanced protection may in the long term stimulate the establishment of local cultural industries in developing countries, provided that other obstacles to such development are avoided. However, in the short and medium term, stronger copyright protection does give rise to some concern. Since copyrights are exclusive, they create access barriers to the protected subject matter, such as books, computer software and scientific information.⁹ It is thus essential to developing country policy makers to strike the right balance between incentives for creativity on the one hand and ways to enable their societies to close the knowledge gap vis-à-vis developed countries, on the other hand. For this purpose, the copyright provisions of TRIPS provide for some flexibility, which will be analysed in detail in the subsequent chapters.