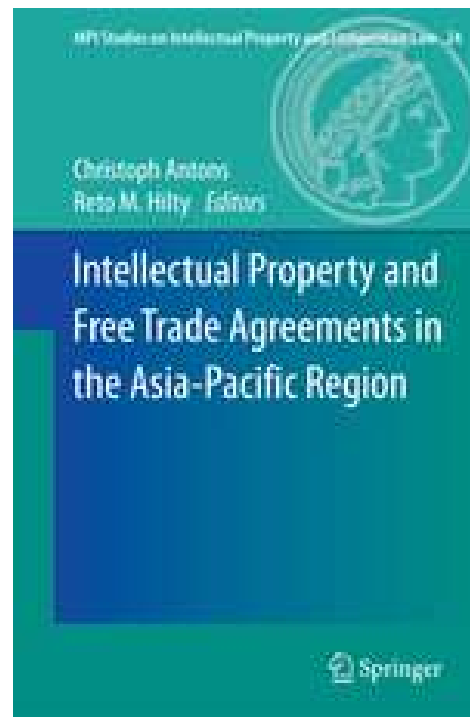


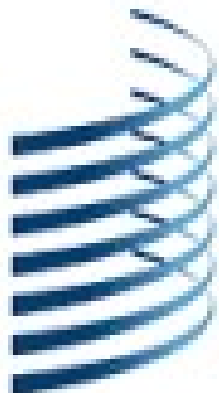


Treaties and International Agreements on Copyright and Related Rights

Paolo Lanteri
Copyright Law Division

September 8, 2020





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WIPO multilateral system

- United Nations specialized agency with 193 Member States (different levels of development; different political positions);
- Rule (unwritten) of consensus;
- Minimum standards and long-term harmonization;
- Public International Law (Vienna Convention on the Law of Treaties; interpretation; enforcement).

Copyright and Related Rights Multilateral Treaties

- Berne Convention (1886-1971)
- Rome Convention (1961)
- Phonograms Convention (1971)
- Satellites Convention (1974)
- TRIPS Agreement (1994)
- WIPO Copyright Treaty (1996)
- WIPO Performances and Phonogram Treaty (1996)
- Beijing Treaty on Audiovisual Performances (2012)
- The Marrakesh Treaty to facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (2013)



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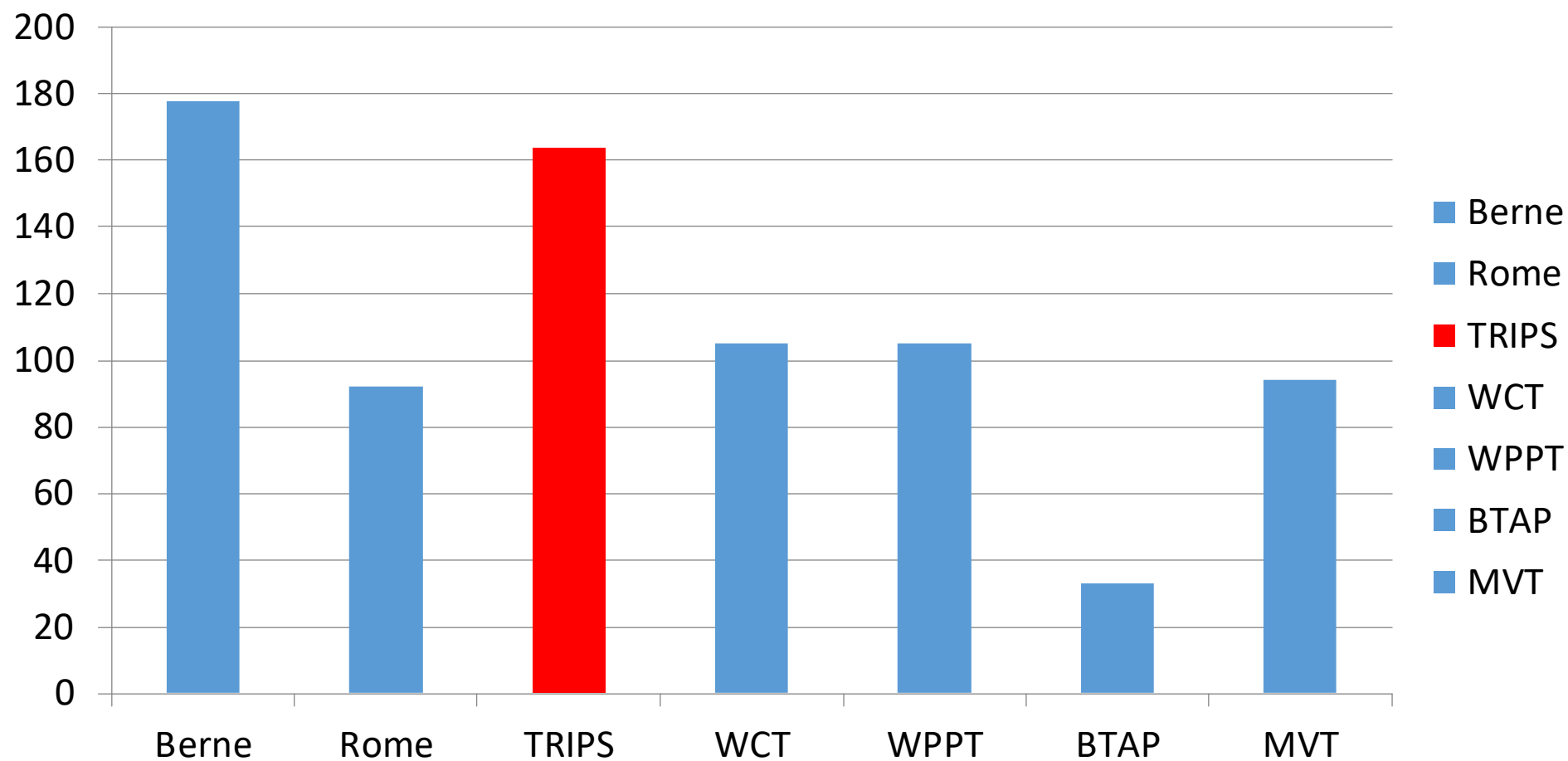
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Related Rights Multilateral Treaties

- Berne Convention (1886-1971)
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Member States



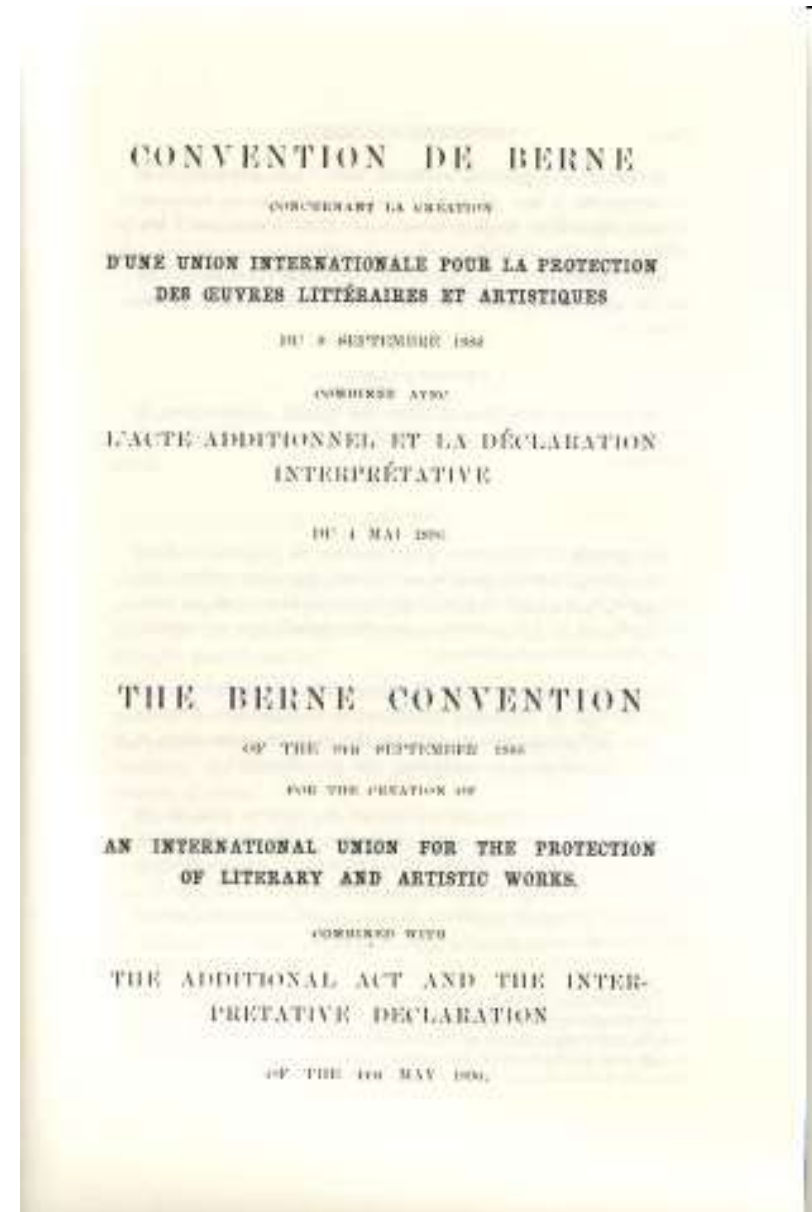
Membership

- Indonesia: Berne, TRIPS, WCT, WPPT, BTAP, MVT
- Malaysia: Berne, TRIPS, WCT, WPPT
- Philippines: Berne, Rome, Phonogram, TRIPS, WCT, WPPT, MVT
- Singapore: Berne, Brussels, TRIPS, WCT, WPPT, MVT
- Thailand: Berne, Rome, TRIPS, MVT
- Viet Nam: Berne, Rome, Phonogram, Brussels, TRIPS

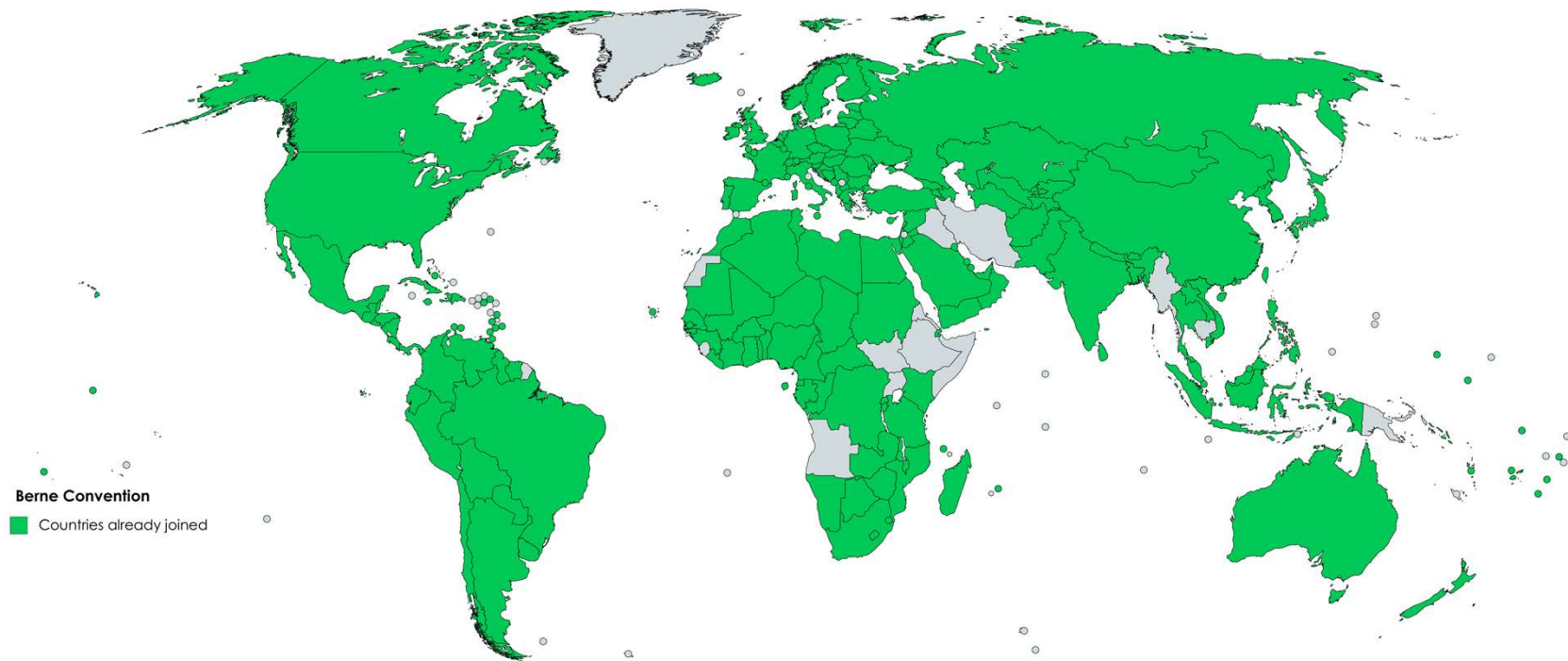
Berne Convention for the Protection of Literary and Artistic Works

Revised:

- Paris – 1896
- Berlin – 1908
- Rome – 1928
- Brussels – 1948
 - Stockholm 1967
- Paris – 1971



Berne Convention



Created with mapchart.net ©

Copyright

```
graph TD; Copyright[Copyright] --> MoralRights[Moral Rights]; Copyright --> EconomicRights[Economic Rights]; MoralRights --> MRBox["• Paternity<br>• Integrity"]; EconomicRights --> ERBox["▪ Reproduction (Art 9 BC)<br>▪ Translation (Art 8 BC)<br>▪ Adaptation, Alterations (Art 12 BC)<br>▪ Public Performance and Public Communication (Art 11 BC)<br>▪ Public Recitation (Art 11ter BC)<br>▪ Broadcasting (Art 11bis BC)<br>▪ Droite de Suite (Art 14ter BC)"]
```

Moral Rights

- Paternity
- Integrity

Economic Rights

- Reproduction (Art 9 BC)
- Translation (Art 8 BC)
- Adaptation, Alterations (Art 12 BC)
- Public Performance and Public Communication (Art 11 BC)
- Public Recitation (Art 11ter BC)
- Broadcasting (Art 11bis BC)
- Droite de Suite (Art 14ter BC)

Basic Principles in International Law

- National treatment
- Minimum level of protection (with flexibility)
- Formality-free protection (\neq voluntary registration system)
- Principle of territoriality
- Bundle of rights

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) World Trade Organization (WTO)

- Copyright = Berne except for moral rights; plus few updates
- Related Rights = Performers, Phonogram Producers, Broadcasting Organizations (important differences with Rome Convention)
- “Enforcement of IPRs” (Part III): Sole comprehensive set of enforcement provisions at multilateral level (Border measures, Provisional measures, Civil. Administrative and criminal procedures and remedies/penalties)
- Dispute resolution among Countries

WIPO Internet Treaties

- Clarify existing standards / norms for authors (WIPO Copyright Treaty-WCT), performers (aural) and phonogram producers (WIPO Performances and Phonogram Treaty-WPPT);
- Provide some answers to technological developments which have fundamentally affected ways in which works may be created, disseminated & utilized



Member States recognized the need “to provide adequate solutions to the questions raised by the new economic, social, cultural and technological developments”;

and to address “the profound impact of the development and convergence of information and communication technologies on the creation and use of literary and artistic works”.

WIPO Internet Treaties



<http://www.thousandtyone.com/blog/default,month,2007-01.aspx>

Digital Agenda to ensure that copyright applies in the digital environment facilitating access to and use of creative content. They introduced:

- Right of making available;
- Limitations and exceptions for the digital age;
- Technological protection measures;
- Rights management information;
- General updates: software and databases; distribution and rental rights; economic and moral rights for performers; economic rights for producers of phonograms; photos.

Updates for the Internet

Interactive transmission of Content

- Neutral description of the act of transmission over interactive network: “...*the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them*”
- *Exclusive right;*
- *Flexibility on legal characterization*



The Internet offers users the ability to easily copy material; however, by doing so we may be breaking the law. Keep in mind that being able to copy others work does not give us the right to.

<http://www.state.sc.us/newsletter/ciocs/200712636403028.3416.jpg>

Beijing Treaty on Audiovisual Performances

**Diplomatic Conference
on the Protection
of Audiovisual Performances**
June 20 to 26, 2012
Beijing, China

保护音像表演外交会议
2012年6月20日至26日
中国北京

Organized by
the World Intellectual Property Organization (WIPO)

Hosted by
the National Copyright Administration of China
and the People's Government of Beijing Municipality
the People's Republic of China

主办方：世界知识产权组织
承办方：中华人民共和国国家版权局
中华人民共和国北京市人民政府

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2012
BEIJING

WIPO's Beijing Treaty on Audiovisual Performances Set to Enter into Force with Indonesia's Ratification; Aims to Improve Livelihoods of Actors and other Audiovisual Performers

Geneva, January 28, 2020

PR/2020/845

The [Beijing Treaty on Audiovisual Performances](#) gained a key 30th member, allowing entry into force of the international agreement designed ultimately to improve earning conditions for actors and other audiovisual performers vital to the films and television shows beloved by viewing publics worldwide.

With the ratification of Indonesia on January 28, 2020, the Beijing Treaty will enter into force for its 30 contracting parties on April 28, 2020. [WIPO member states](#) in 2012 approved the Treaty at a Diplomatic Conference hosted by the Chinese Government in Beijing, from where the Treaty takes its name.

“Many audiovisual performers – television and film actors, musicians, dancers, choreographers and others – never reap great fortunes and could in fact use some support in ensuring the sustainability of their livelihoods.”

— *WIPO Director General Francis Gurry*





Movies > Philippines

All



BuyBust
2018



My Ex and
Whys
2017



Heneral Luna
2015



Starting Over
Again
2014



Beauty and
the Bestie
2015



Never Not
Love You
2018

Beijing Treaty on Audiovisual Performances

- Updates the rights of audiovisual performers rights, making them fit for the digital environment and solving an historical unbalance;
- Largely follows the model of the “Internet Treaties”;
- Promotes **cultural diversity** and protection of **traditional cultural expressions** and **national folklore**;
- Fosters the standing of performers in the audiovisual industry as cultural workers, facilitating the creation or consolidation of performers’ organizations;

The Beijing Treaty on Audiovisual Performances (BTAP)

Follows the WPPT model:

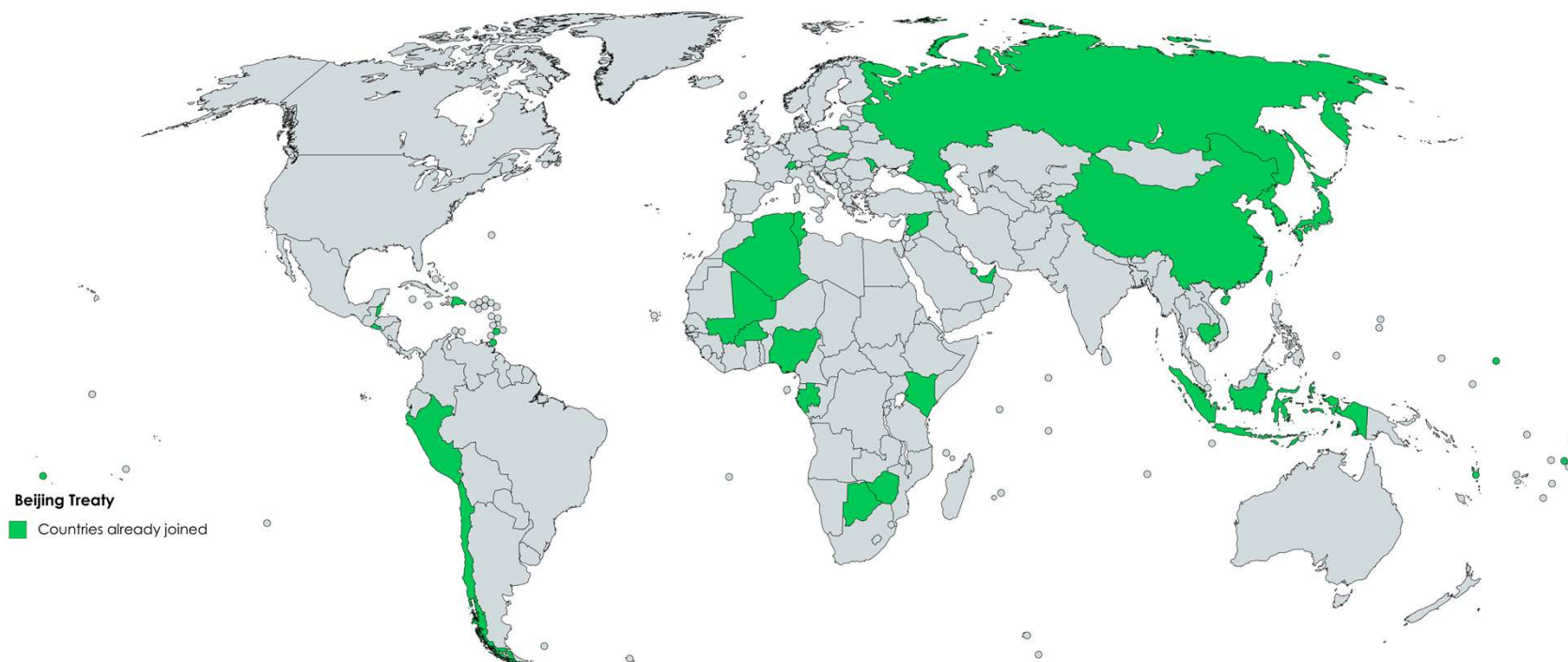
- Right of Reproduction (7)
- Right of Distribution (8)
- Right of Rental (9) (more similar to TRIPS model)
- Right of Making Available (10)
- Limitations and Exceptions (13)
- Term of Protection (14)
- Technological Protection Measures (15)
- Rights Management Information (16)
- Enforcement Provisions (20)

The Beijing Treaty on Audiovisual Performances (BTAP)

Specific solutions:

- Beneficiaries of protection (3)
- Moral rights (5)
- Broadcasting and communication to the public (11)
- Transfer of rights (12)
- Relation between TPM and limitations and exceptions (Agreed statement-15)
- Application in time (19)

Beijing Treaty



International protection of related rights

- TRIPS Agreement (164 members) Vs WPPT (106 members) (+ Rome and BTAP)
- Different regulation of communication to the public in WPPT (Article 15) and BTAP (Article 11);
- Right of making available is an exclusive right in both treaties (Articles 10 y 14 WPPT; article 10 BTAP); however BTAP article 12.3 *“Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.”*

*Why are the “Internet Treaties”
and the Beijing Treaty so
relevant and important?*

Online music service

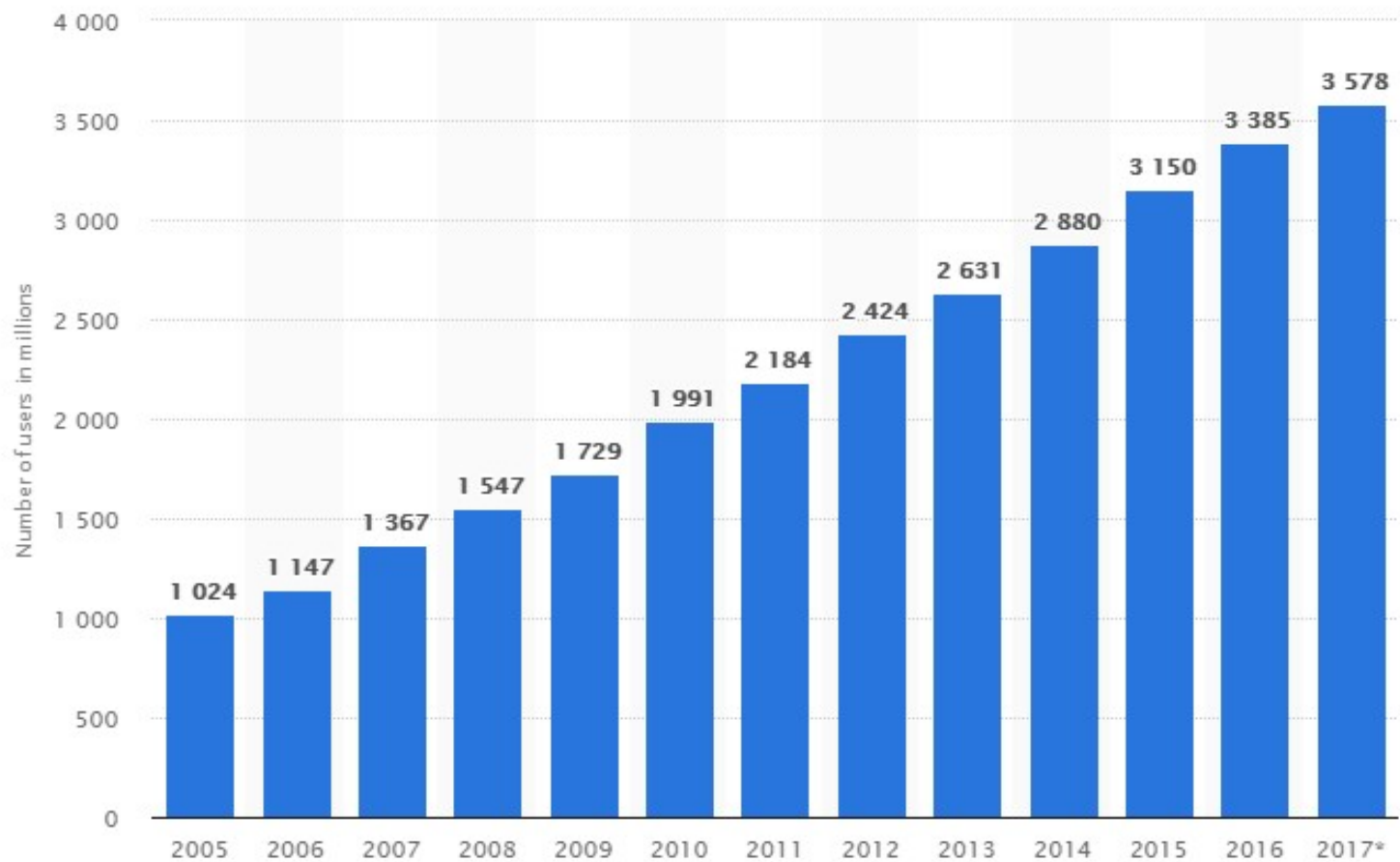
2011: 28 countries

2012: 58 countries

2013: 100+ countries

2015: 150+ countries

Number of internet users worldwide from 2005 to 2017



**JAN
2020**

OVERVIEW: DIGITAL IN ASIA-PACIFIC IN 2020

THE ESSENTIAL HEADLINE DATA YOU NEED TO UNDERSTAND THE STATE OF MOBILE, INTERNET, AND SOCIAL MEDIA USE

TOTAL
POPULATION



**4.30
BILLION**

URBANISATION:

48%

MOBILE PHONE
CONNECTIONS



**4.43
BILLION**

vs. POPULATION:

103%

INTERNET
USERS



**2.42
BILLION**

PENETRATION:

56%

ACTIVE SOCIAL
MEDIA USERS



**2.14
BILLION**

PENETRATION:

50%

17

SOURCES: POPULATION: UNITED NATIONS LOCAL GOVERNMENT BODIES, WEBSITE: COMA INTELLIGENCE; INTERNET: THE GLOBAL WEB INDEX CLIMATE THROUGHOUT LOCAL BUSINESS REGULATORY AUTHORITIES WITH GOVERNMENT BODIES AND KIDDO ANALYSIS; SOCIAL MEDIA: PLATFORM: WEBSITE: AUMETTING TO OUR COMPANY AFFILIATIONS WITH INVENTORIES CATEGORY: SERVICES AND ALL OTHER AVAILABLE DATA JANUARY 2020. → COMPASSIBILITY ADVISORY: SOURCE AND SOURCEING IS

**we
are
social**



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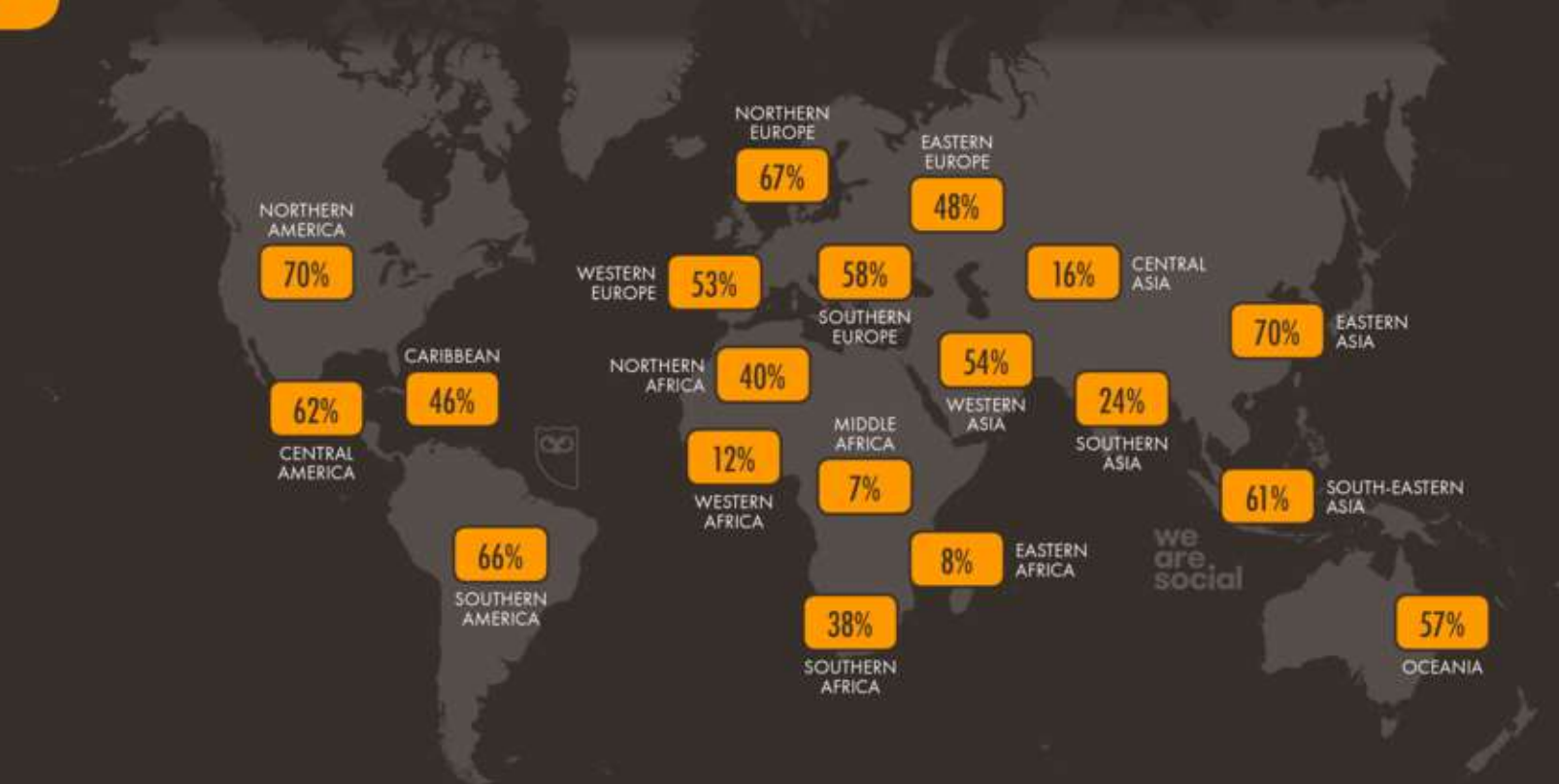
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**JAN
2019**

SOCIAL MEDIA PENETRATION BY REGION

BASED ON MONTHLY ACTIVE USERS OF THE MOST ACTIVE PLATFORMS IN EACH COUNTRY / TERRITORY, COMPARED TO TOTAL POPULATION



64

SOURCES: LATEST DATA PUBLISHED BY SOCIAL MEDIA PLATFORMS VIA PRESS RELEASES, INVESTOR EARNINGS ANNOUNCEMENTS, AND IN SELF-SERVE ADVERTISING TOOLS; ARAB SOCIAL MEDIA REPORT; TECHRASA; NIKU AGHAEL; ROSE RU; KEPIOS ANALYSIS. **NOTE:** PENETRATION FIGURES ARE BASED ON TOTAL POPULATION, REGARDLESS OF AGE. REGIONS AS DEFINED BY THE UNITED NATIONS GEOScheme.

Hootsuite™ we are social

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“Digital” is here to stay and grow...

- The Internet makes works and traditional cultural expressions immediately accessible everywhere creating a truly global market; a regulation providing a level playing field for national creators and industry is a key incentive;
- Modern national legislation is essential, however Treaties are the only way to protect your Local Content abroad;
- Treaties provide your Nationals with economic rights to monetize their creativity in the global market.

Folklore and Traditional Cultural Expressions (TCEs)

- New versions (adaptations/derivative works) of TCEs can be protected by copyright (under Berne and WCT);
- Performances and fixations of TCEs can be protected by related rights (under WPPT and Beijing);
- Additional/parallel systems of protection of TCE can apply to address gaps under copyright and related rights (e.g. individual creator Vs community; duration of protection; limitations and exceptions..)



International
IP Policy News



15 PhD positions
IP in innovation
Applications

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PATENTS

TRADEMARKS

OPINIONS

PEOPLE NEWS

PUBLIC HEALTH

VENI

Vibrant Lauding Of “Historic” Marrakesh Treaty For The Blind At WIPO

06/10/2016 BY CATHERINE SAEZ, INTELLECTUAL PROPERTY WATCH — 1 COMMENT

Share this Story:



“Great victory”, “life-changing”, “historic milestone” – no adjectives were strong enough yesterday to celebrate the entry into force of the Marrakesh treaty at the World Intellectual Property Organization. The treaty, which went into effect on 30 September, “opens the door to the world’s knowledge,” to visually impaired people, but will need many more countries to join,

The Facts



The infographic features a central teal circle with the text '253 million VIPs in the world'. This circle is surrounded by a larger, light teal ring. A small teal circle is positioned on the right side of the ring, acting as a connector to three rectangular boxes stacked vertically on the right. Each box contains a fact related to the central statistic.

**253
million
VIPs in
the world**

A vast number of
national laws with
exceptions

Around 1% to 10%
of printed materials
in accessible
formats

90% of VIPs in
developing
countries

The Marrakesh Treaty

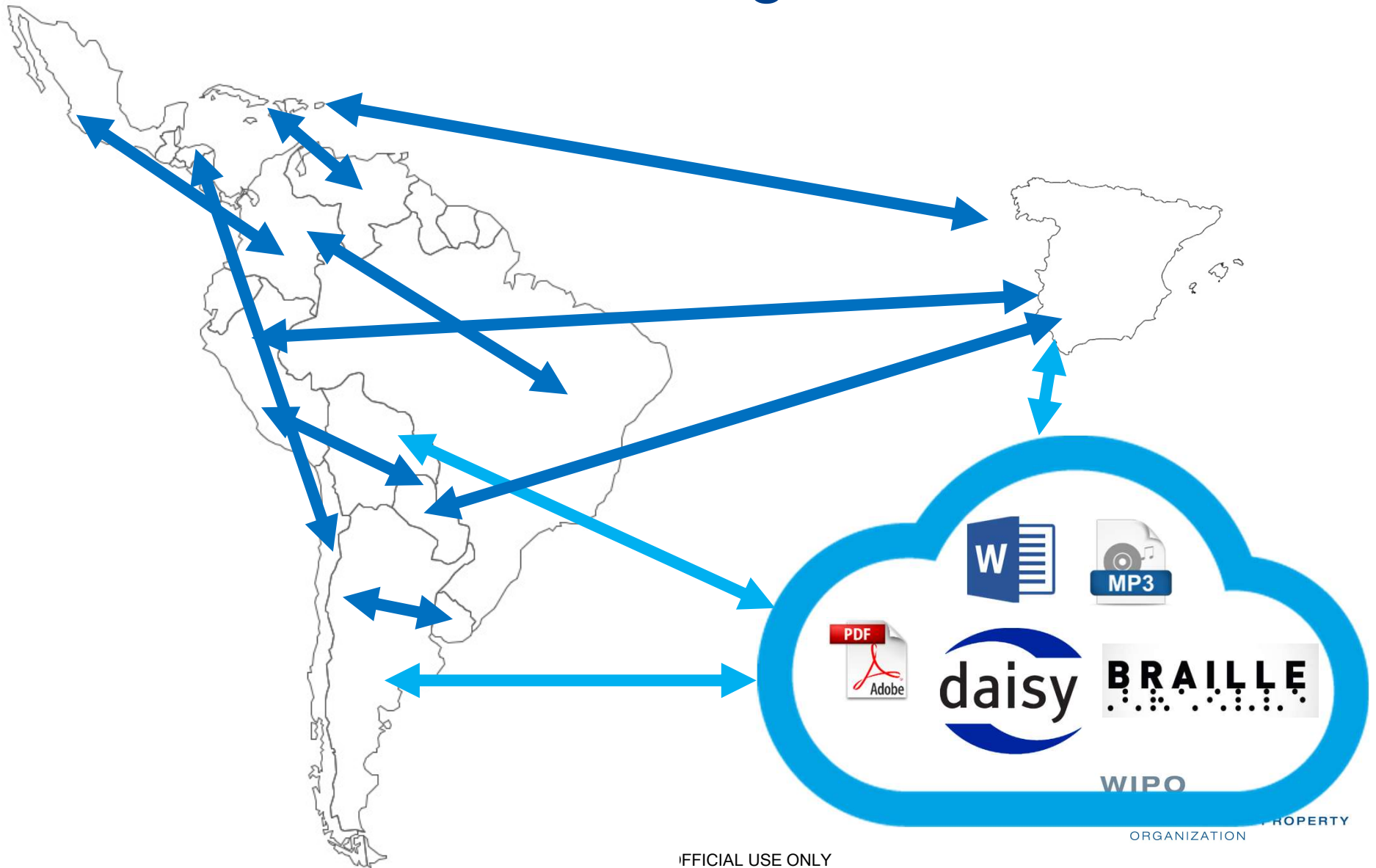
- Increases the reach of reading material to blind and visually impaired people;
- Furthers the goals of the UN Convention on the Rights of Persons with Disabilities (CRPD);
- Provides for a cost-saving mechanism of cross-borders exchange of books;
- Facilitates the inclusion of visually impaired in the society from social, cultural, and economic standpoints.

Structure

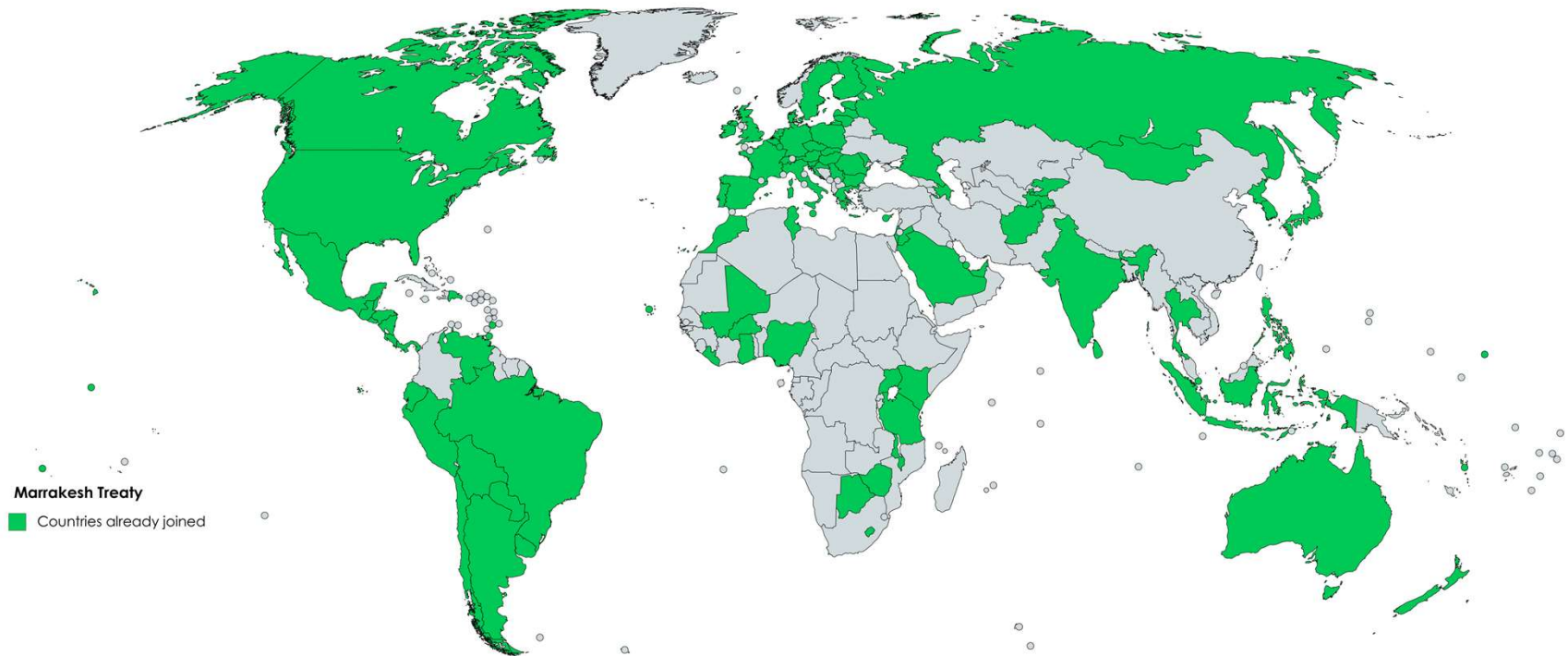
Preamble

- 1.Relation to other Conventions and Treaty
- 2.Definitions (works; accessible format copy; authorized entity)
- 3.Beneficiary Persons
- 4.National level
- 5.Cross-border exchange
- 6.Importation
- 7.Technological Protection Measures
- 8.Respect for Privacy
- 9.Cooperation to facilitate exchange
- 10.Implementation provisions
- 11.Respect for Copyright provisions
- 12.Other Limitations and Exceptions

Cross-border exchange



Marrakesh Treaty





Court of Justice of the European Union

PRESS RELEASE No 13/17

Luxembourg, 14 February 2017

Opinion 3/15

Press and Information

The EU, acting on its own, may conclude the Marrakesh Treaty on access to published works for persons who are visually impaired

The Treaty may affect common EU rules relating to copyright protection

The Marrakesh Treaty¹ requires the contracting States to provide in their national law that certain entities (government institutions and non-profit organisations which provide services relating to education, instructional training, adaptive reading or information access) may, without the authorisation of the rightholder, reproduce or distribute copies of published works in a format which gives access to the works for persons who are blind, visually impaired or otherwise print disabled (referred to in the treaty as 'beneficiary persons'). The contracting States must also promote the cross-border exchange of accessible format copies by permitting certain imports and exports of those copies.

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Relation among treaties

- Rome Convention is a closed convention (Berne or Universal Copyright Convention are needed);
- TRIPS includes provisions of Berne Convention by reference;
- WCT is a special agreement of the Berne Convention (ex Art.20);
- Beijing Treaty and Marrakesh Treaty are independent and stand-alone conventions.

ABC's main activities:

- 1.ABC Global Book Service**
- 2.Training and technical assistance
in developing countries**
- 3.Inclusive publishing with
commercial publishers**

FAQs

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Is there only one way to implement WIPO-Administered Treaties?

Is there only one way to implement WIPO-Administered Treaties?

Not at all, there is a great deal of flexibility allowed under WIPO treaties, that provide various options and possible reservations.

Each Country can find its own best way to implement WIPO treaties taking into account its economic and cultural interests.

How do you become a member?

How do you become a member?

To become member of a treaty, a country needs to deposit an instrument declaring its intention to join. This instrument must be signed alternatively by: the Head of State, the Head of Government or the Minister of Foreign Affairs.

WIPO can provide model instrument and information on process upon request

Is it necessary to change national legislation prior to adhering to a treaty?

Is it necessary to change national legislation prior to adhering to a treaty?

Changing national legislation to ensure (in advance) compliance with treaty provisions is not a requirement to become member; as WIPO does not conduct a review of the legislation for this purpose.

It is a matter of national regulation; however it is clear that ratifying/acceding to a treaty creates an international obligation to comply with its provisions.

Can WIPO assist in the review of the national legislation?

Can WIPO assist in the review of the national legislation?

As part of its mission, WIPO is always ready to review national legislation in light of treaty provisions, and to propose draft language on a confidential and non-binding basis.

WIPO's technical assistance is demand-driven. WIPO acts on the basis of official requests received by Member States.



<http://www.wipo.int/copyright>

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