



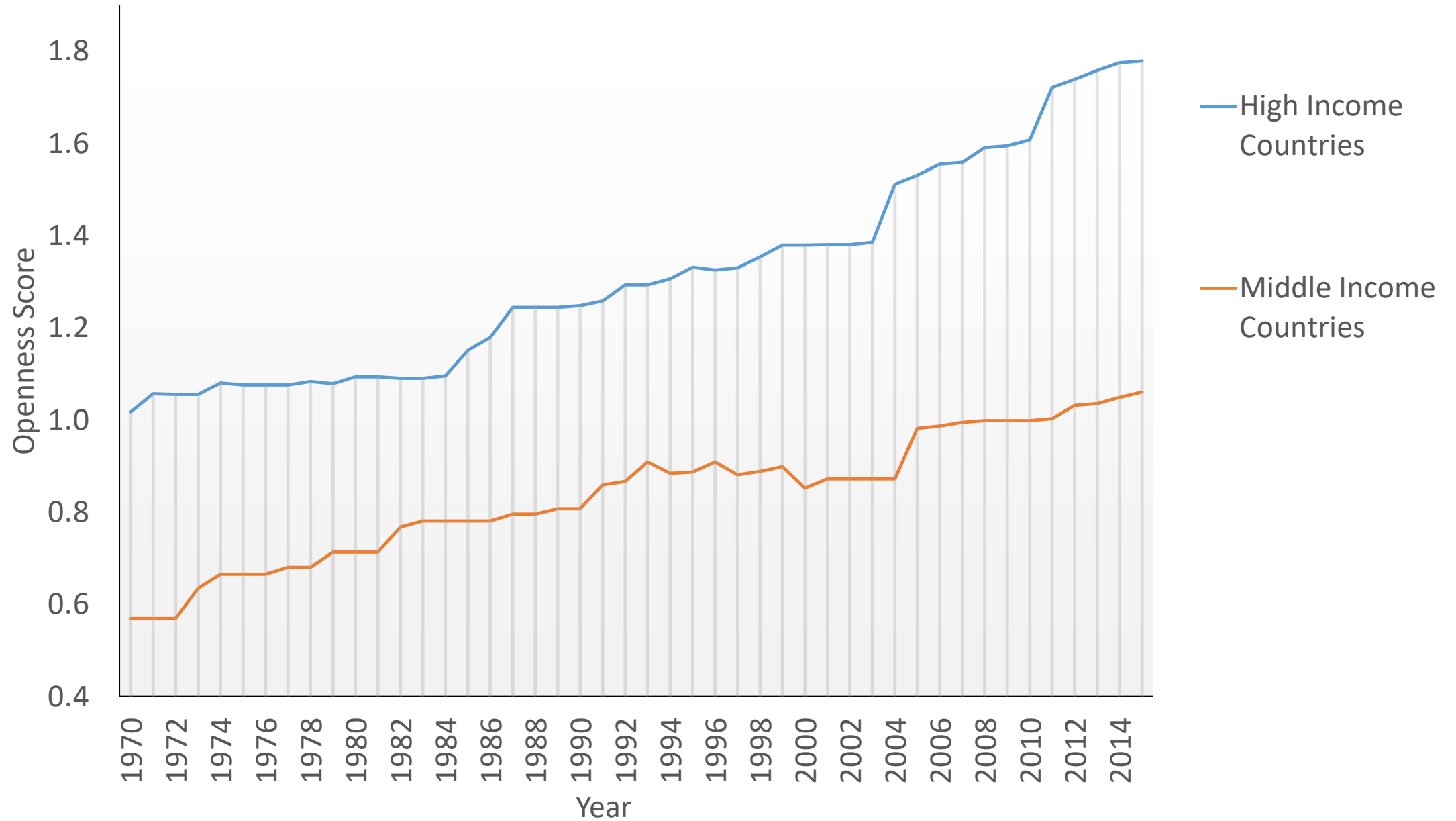
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PROGRAM ON  
INFORMATION JUSTICE AND  
INTELLECTUAL PROPERTY

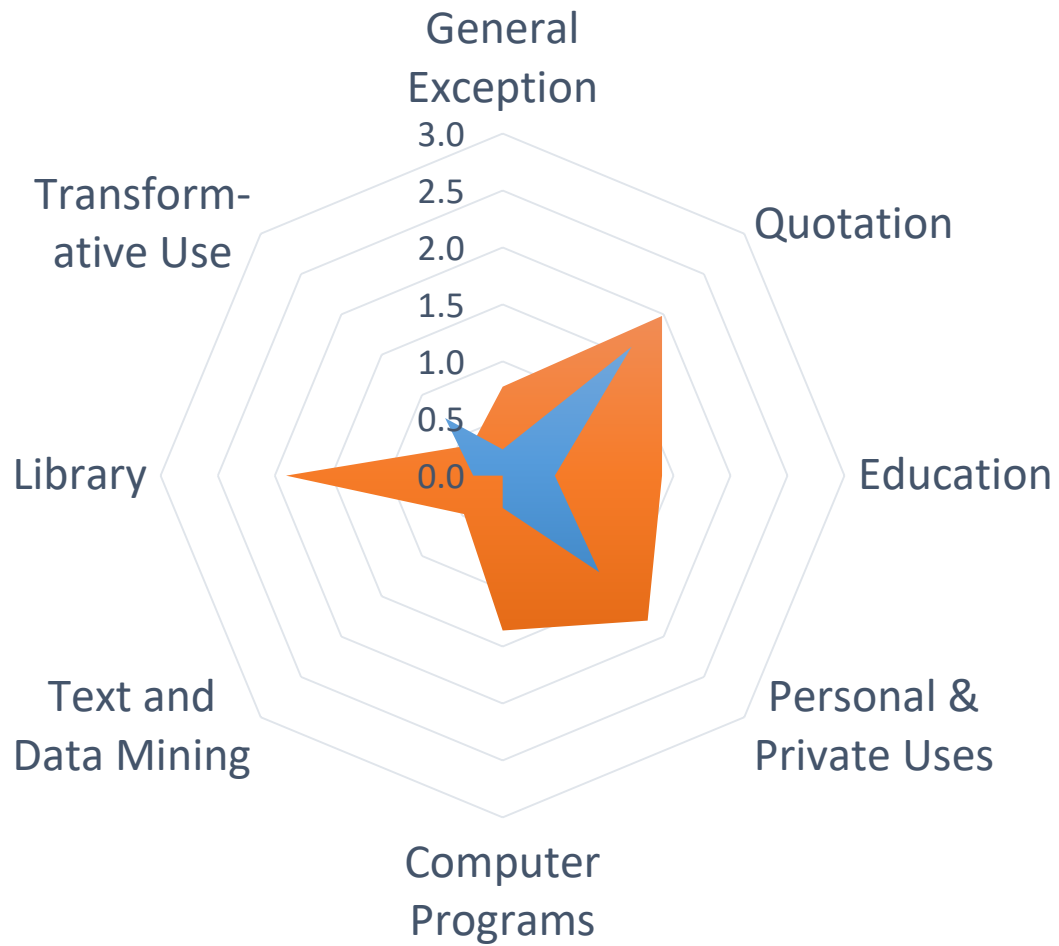
# Treaty on Education and Research Activities

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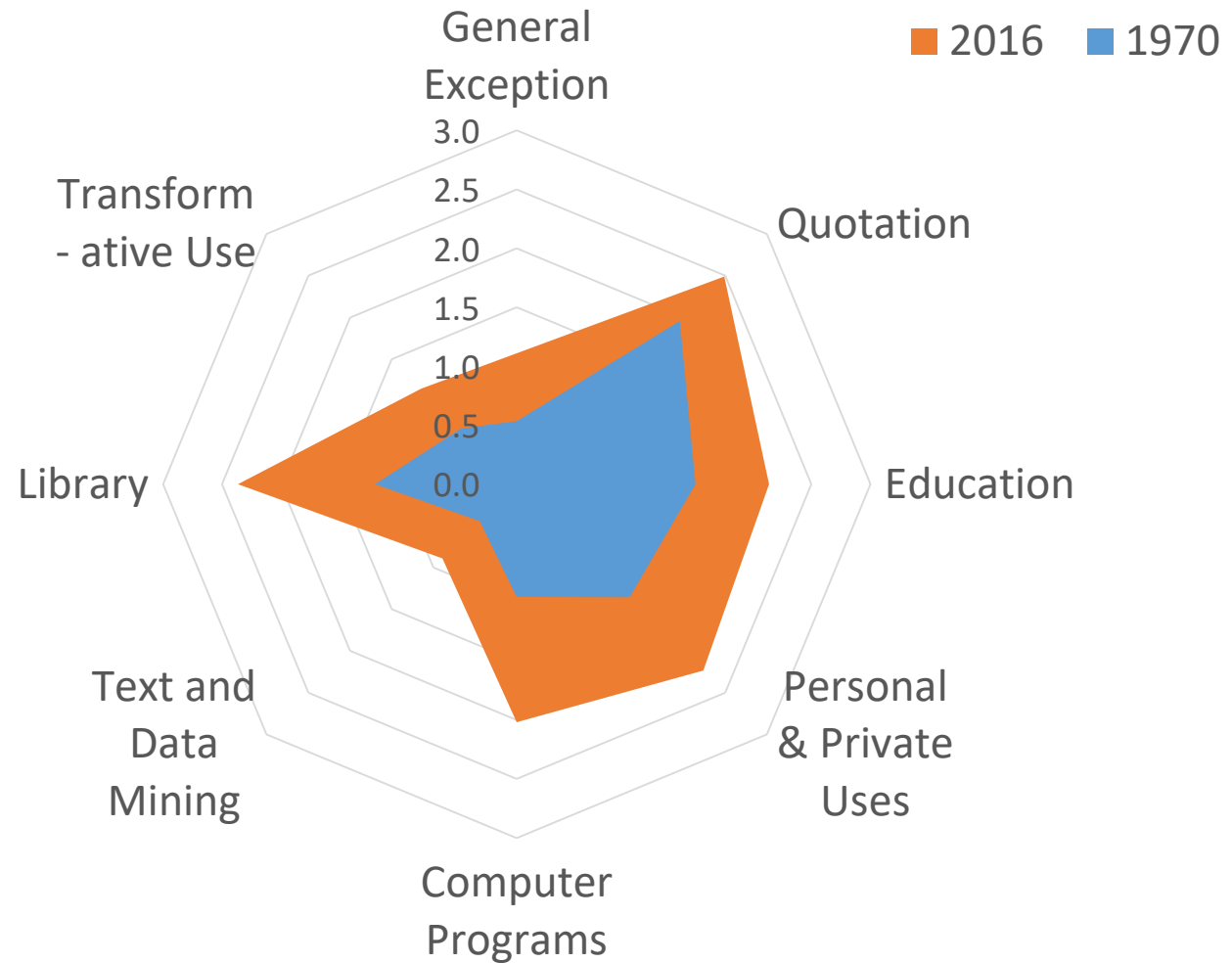
# Disparities in Openness to Digital Uses



# Disparities in Openness of Specific Exceptions



Middle Income Countries



High Income Countries

# Objectives of L&E provisions in Int'l Law

- Protecting
- Promoting
- Requiring
- Safeguarding cross border access

# **Article 1**

## **Relationship with Other International Instruments**

1. Nothing in this Treaty reduces the limitations and exceptions permitted, where appropriate, by international instruments, including in particular

## **WCT Agreed Statements**

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.

## **Article 2**

### **Beneficiaries and Scope of Protection**

Under this Treaty:

1. Contracting Parties shall accord the protection provided under this Treaty to any natural or legal person engaged in an educational or research activity within the territory of any Contracting Party.

## **Article 3**

### **Adoption of National Exceptions**

1. Contracting Parties shall take all appropriate measures to respect, protect and fulfill the right to receive education and conduct research through appropriate exceptions and limitations in their national laws, consistent with their international obligations, maintaining the balance between the rights of authors and the larger public interest, as specified in Article 5.



## **TPP Art. 18.66**

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions . . . including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to . . .

2. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for educational and research purposes; other limitations or exceptions; or a combination thereof, within their national legal systems and practice. These may include judicial, administrative, or regulatory determinations as to fair practices, uses, or dealings to meet their needs consistent with the Contracting Parties' rights and obligations under the Berne Convention, and other international treaties.

## **Marrakesh Treaty, Art 10**

3. Contracting Parties may fulfill their rights and obligations under this Treaty through limitations or exceptions specifically for the benefit of beneficiary persons, other limitations or exceptions, or a combination thereof, within their national legal system and practice. These may include judicial, administrative or regulatory determinations for the benefit of beneficiary persons as to fair practices, dealings or uses

## **Article 4**

### **Guiding Principles**

In fulfilling their rights and obligations under this Treaty, Contracting Parties shall recognize that:

- a) Both affirmative protections for authors and exceptions and limitations, including those for educational and research activities, are vital to achieving the copyright system's goals of encouraging creativity, innovation, and learning.

## **Article 5**

### **Permitted Uses**

1. It shall be permissible to use a work for educational or research purposes to the extent justified by the purpose and provided such utilization is compatible with fair practice.
  
2. Uses within the scope of paragraph 1 shall include, but not be limited to:
  - a) Uses in the course of teaching activities, such as:
    - i. making private copies, including in preparation of a course of instruction

## **Article 6**

### **Cross – Border Uses**

Limitations and exceptions adopted pursuant to Articles 3 and 5 shall permit cross-border uses.

Contracting Parties shall provide that if an educational or research material is made under a limitation or exception or pursuant to operation of law, that material may be distributed or made available in another Contracting Party.

# **Marrakesh Treaty**

## **Article 5**

### **Cross-Border Exchange of Accessible Format Copies**

1. Contracting Parties shall provide that if an accessible format copy is made under a limitation or exception or pursuant to operation of law, that accessible format copy may be distributed or made available by an authorized entity to a beneficiary person or an authorized entity in another Contracting Party

## **Article 7**

### **Uses Subject to Remuneration**

A Contracting Party may authorize uses for educational or research purposes beyond those permitted under Articles 4 and 5 where such uses are subject to adequate remuneration, such as through statutory licenses or limitations of remedies for infringement.



## **Article 8**

### **Respecting Exceptions to Copyright**

Any contractual provisions that prohibit or restrict the exercise or enjoyment of the limitations and exceptions provided by the Contracting Parties consistent with Articles 3 or 5 shall be unenforceable.

## **Article 9**

### **Obligations Concerning Technological Protection Measures**

Parties shall ensure that legal remedies against the circumvention of effective technological protection measures do not prohibit or prevent the educational and research uses enabled by the limitations and exceptions provided by the Contracting Parties consistent with Articles 3 or 5.

## **Beijing Treaty**

### **Art. 15**

It is understood that nothing in this Article prevents a Contracting Party from adopting effective and necessary measures to ensure that a beneficiary may enjoy limitations and exceptions provided in that Contracting Party's national law, in accordance with Article 13, where technological measures have been applied to an audiovisual performance

## **Article 10**

### **Limitation on Liability**

1. Any person using a work for an educational or research purpose shall be protected from claims for damages and from criminal liability when the action is performed in good faith:

## **Article 11**

### **Interpretation of Three Step Test**

. . . nothing prevents Contracting Parties interpreting the three-step test in a manner that respects the legitimate interests, including of third parties, deriving from educational and research needs, and other human rights and fundamental freedoms; and other public interests, such as the need to achieve scientific progress and cultural, educational, social, or economic development, and the protection of competition and secondary markets.

## **Article 12**

### **Updating Exceptions**

Contracting Parties shall update, 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, especially under article 10(1) and 10(2), and devise new exceptions and limitations that are appropriate in the digital environment to protect educational and research activities.

## **WCT Agreed Statements**

Concerning Article 10: 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.

## TERA COALITION MEMBERS





## TREATY ON EDUCATIONAL AND RESEARCH ACTIVITIES

*"Contracting Parties shall take all appropriate measures to respect, protect and fulfill the right to receive education and conduct research through appropriate exceptions and limitations in their national law."*

[COMPLETE TREATY TEXT](#)

[SECTION-BY-SECTION ANALYSIS](#)

[ENDORSE THE TREATY!](#)



### NOVEMBER 28 - SCCR 37 WORKSHOP

#### ***TOWARD ACTION WITH RESPECT TO THE LIMITATIONS AND EXCEPTIONS REGIME***

At WIPO SCCR 37, a group of regional experts, beneficiaries, and practitioners affected by copyright limitations and exceptions will join representatives of government delegations to discuss "how best to ensure that the activities of the next year can deliver on the objective of the action plan and the 2012 mandate of the WIPO Assemblies." The session will feature