

PJ

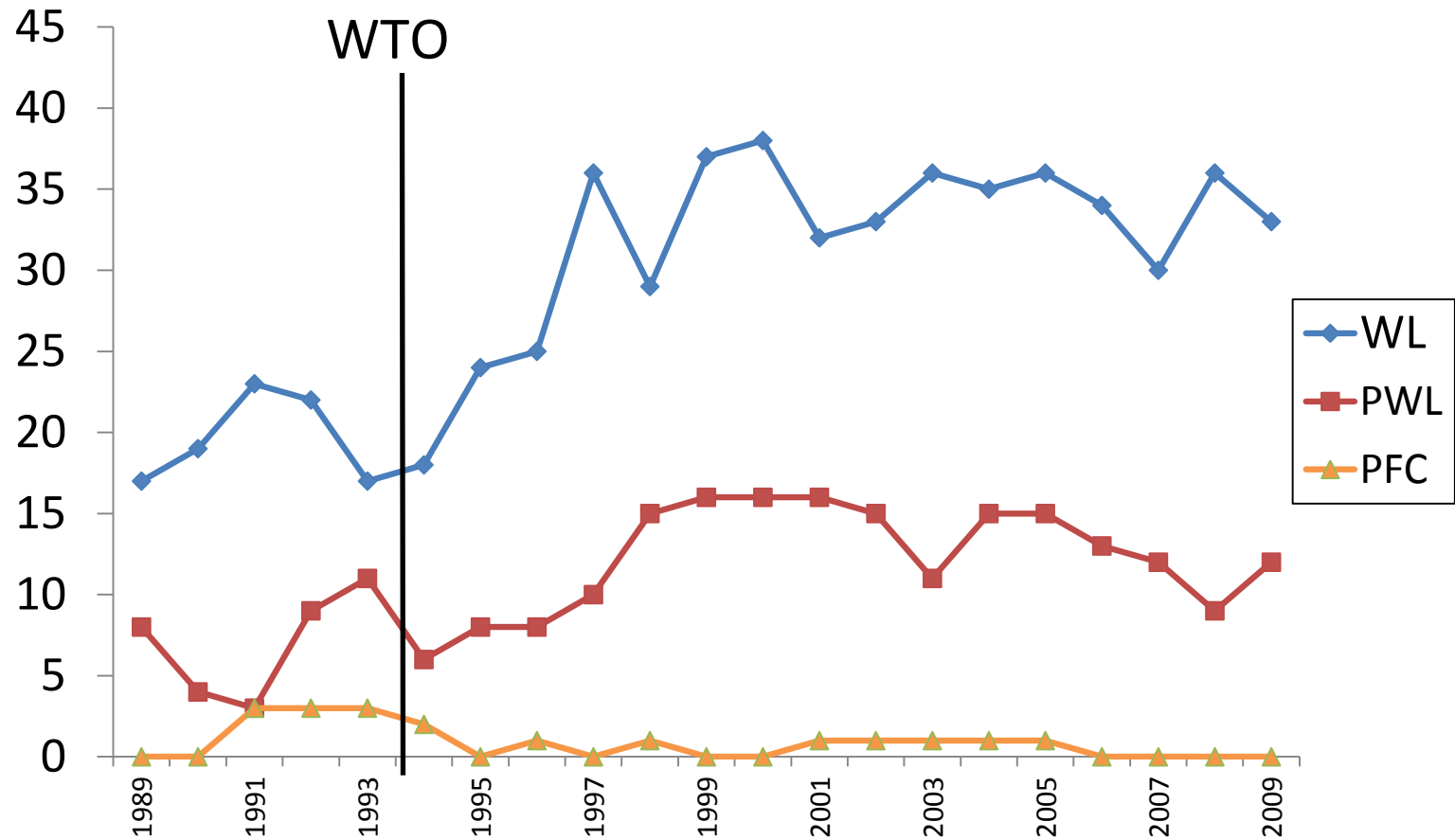
Program on Information Justice  
and Intellectual Property



# New Directions in International IP

Sean Flynn  
American University Washington College of Law

# Special 301 Listings 1989-2009



Source: Flynn, *Special 301 of the Trade Act of 1974 and Global Access to Medicines*, J. Gen. Med. 2010

## **Post-TRIPS FTAs**

- Australia
- Bahrain
- Chile
- Costa Rica
- Columbia
- Dominican Republic
- El Salvador
- Guatemala
- Honduras
- Israel
- Jordan
- Morocco
- Nicaragua
- Oman
- Panama
- Peru
- Singapore

Industry Trade Advisory Committees  
Committee of Chairs of the Industry Trade Advisory Committees  
Aerospace Equipment (ITAC 1)  
Automotive Equipment and Capital Goods (ITAC 2)  
Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3)  
Consumer Goods (ITAC 4)  
Distribution Services (ITAC 5)  
Energy and Energy Services (ITAC 6)  
Forest Products (ITAC 7)  
Information and Communications Technologies, Services, and Electronic Commerce (ITAC 8)  
Non-Ferrous Metals and Building Materials (ITAC 9)  
Services and Finance Industries (ITAC 10)  
Small and Minority Business (ITAC 11)  
Steel (ITAC 12)  
Textiles and Clothing (ITAC 13)  
Customs Matters and Trade Facilitation (ITAC 14)  
Intellectual Property Rights (ITAC 15)  
Standards and Technical Trade Barriers (ITAC 16)

## Intellectual Property Rights ITAC 15

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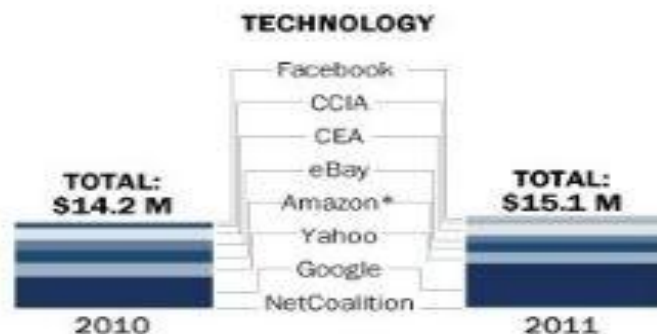
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Mylan Inc.

Mr. Thomas J. Thomson  
Executive Director  
Coalition for Intellectual Property Rights

Neil I. Turkewitz, Esq.  
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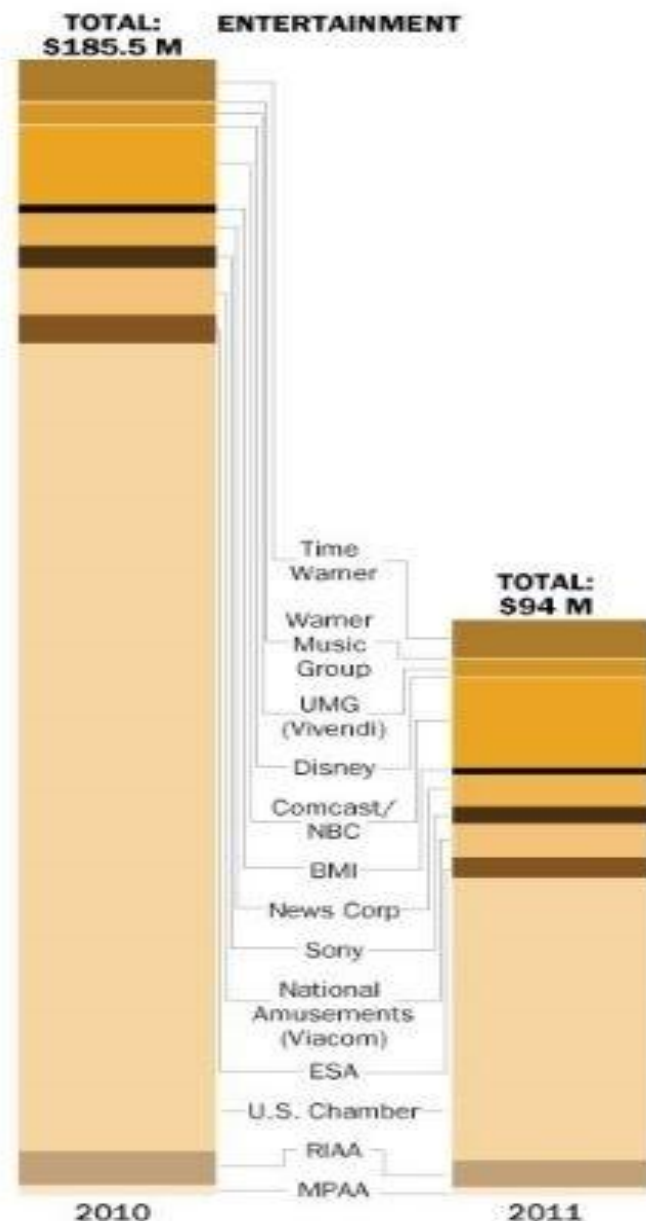
## COPYRIGHT POLITICS : SILICON VALLEY VS. HOLLYWOOD LOBBYING

The debate in Congress over how to crack down on pirated content found online pits tech companies against the entertainment sector.



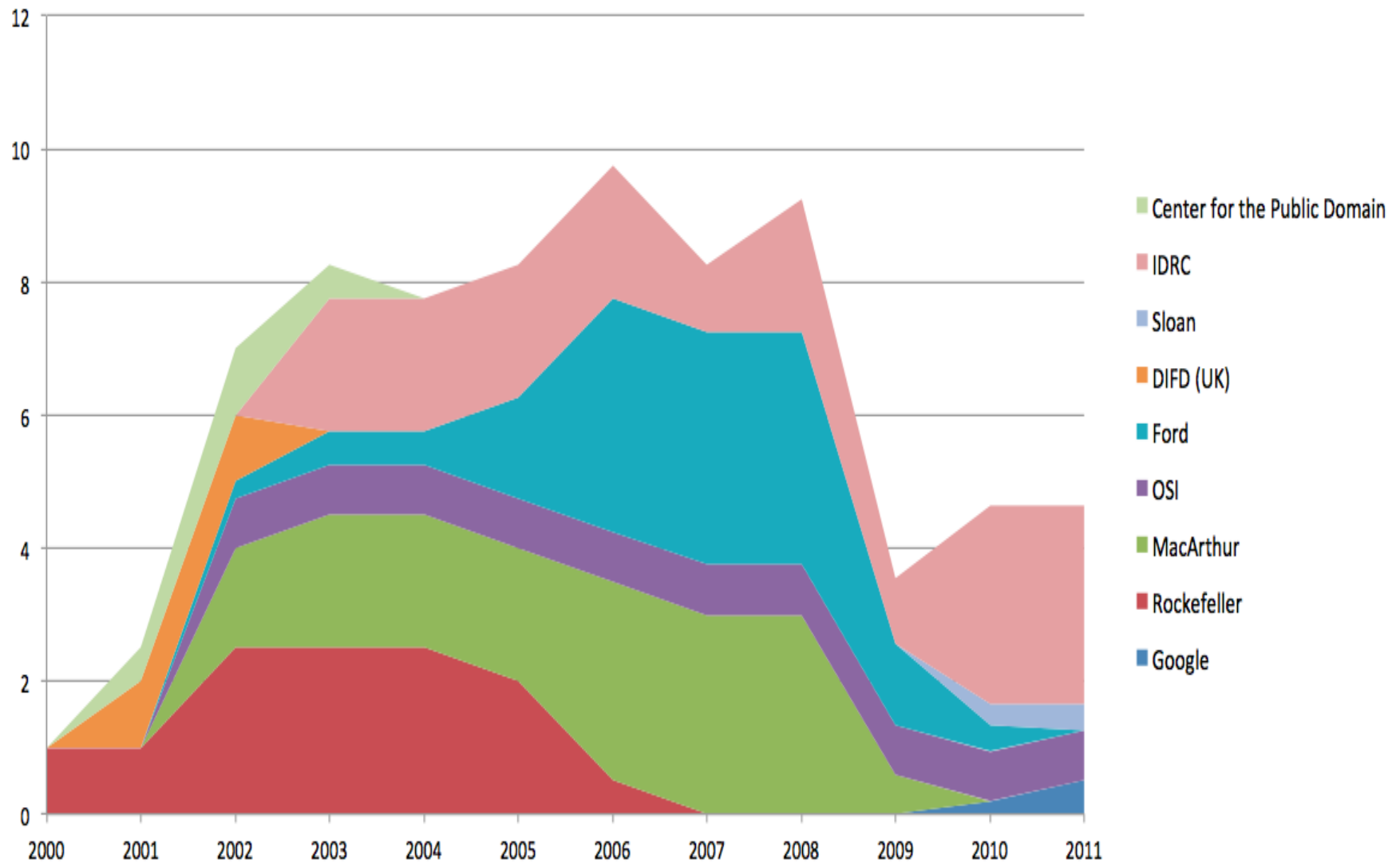
\*A member of NetCoalition, which opposes the copyright bills, but has not spoken out against the legislation.

SOURCE: CENTER FOR RESPONSIVE POLITICS



SARAH LAUREN BELL — POLITICO

## Major IP Research and Advocacy Funding in the 2000s (Excluding Biodiversity)



-Figure by Joe Karaganis 2011

# ACTA

- Japan
- United States
- Canada
- European Union (27 countries)
- Switzerland
- Australia
- New Zealand
- Republic of Korea
- Singapore
- Mexico
- Morocco

# TPP

- United States
- New Zealand
- Singapore
- Australia
- Brunei
- Chile
- Malaysia
- Peru
- Vietnam



### **Sec. 3d, India Patent Act 2011**

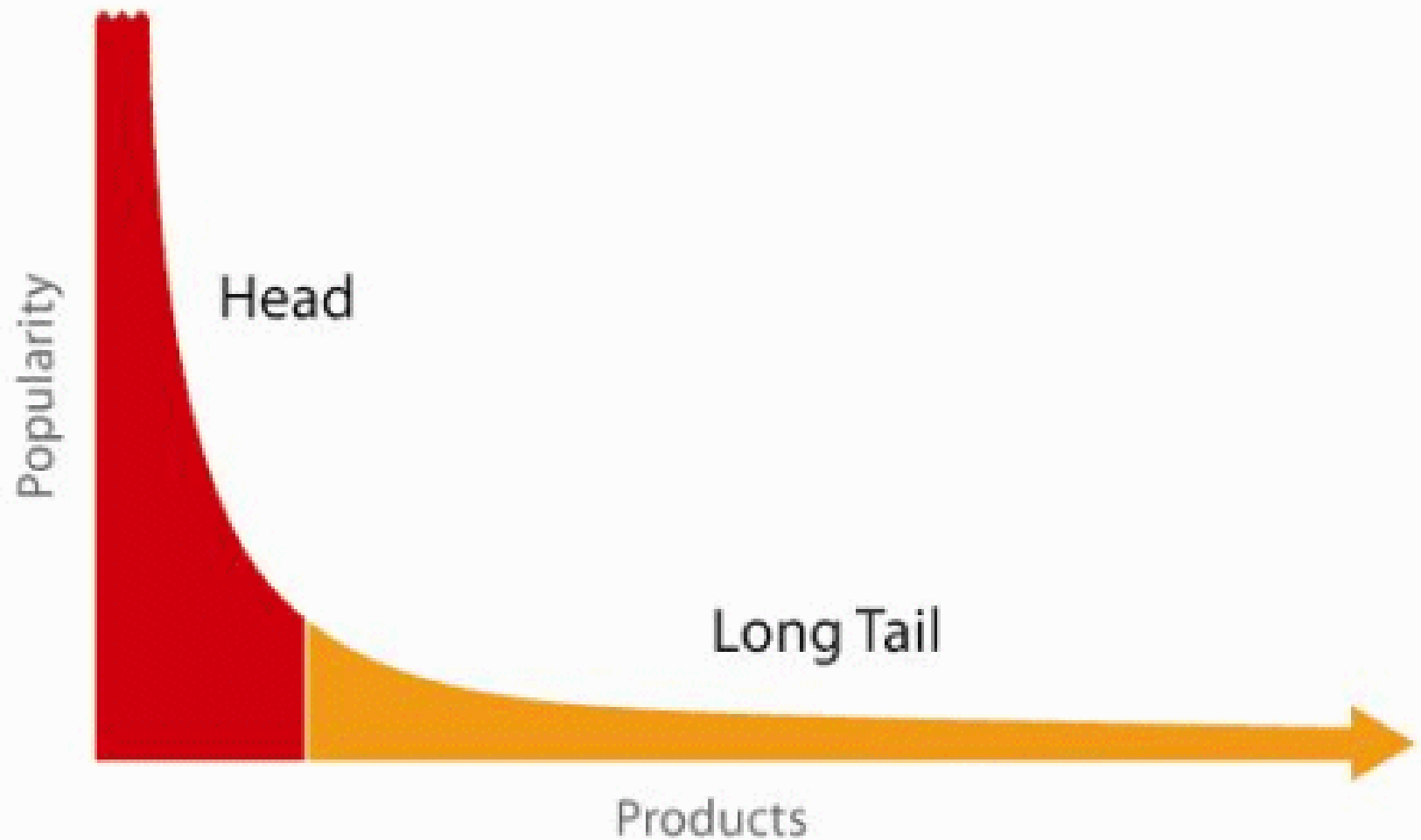
“The following are not inventions . . .

the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance”

### **US TPP Proposal Art. 8.1**

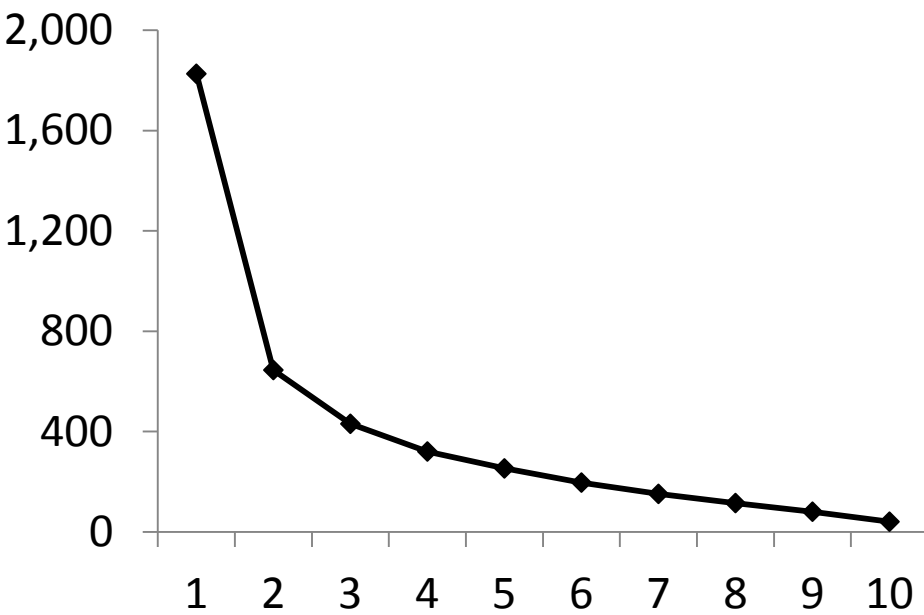
“patents shall be available for any new forms, uses, or methods of using a known product; and a new form, use, or method of using a known product may satisfy the criteria for patentability, even if such invention does not result in the enhancement of the known efficacy of that product.”

# The New Marketplace

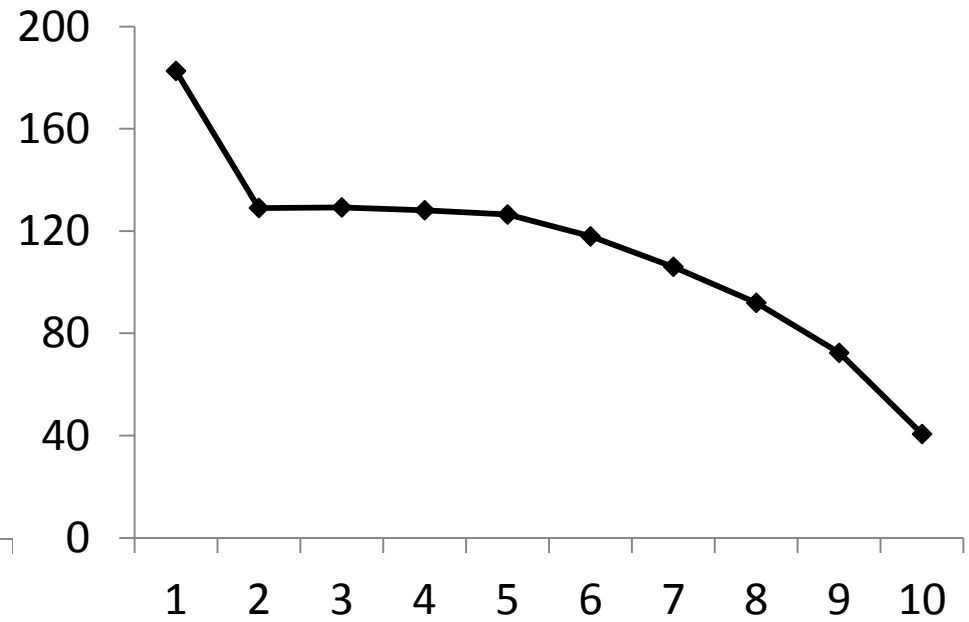


# Brazil

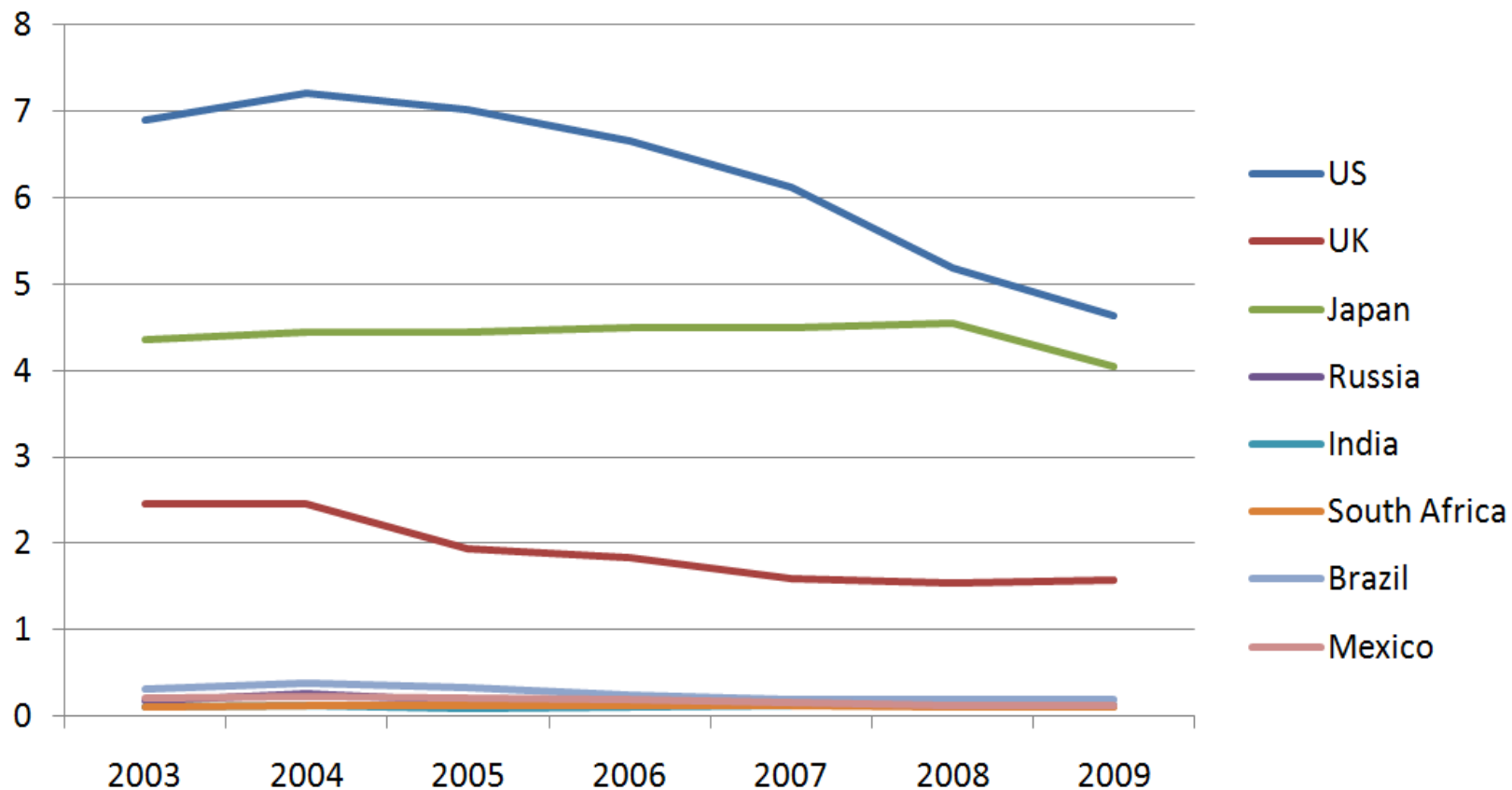
Price as equal to 5% of income by decile



Total revenue in millions



## Recorded Music Sales (trade value, \$ billions)



**Media Piracy in Emerging Economies (SSRC 2011)**

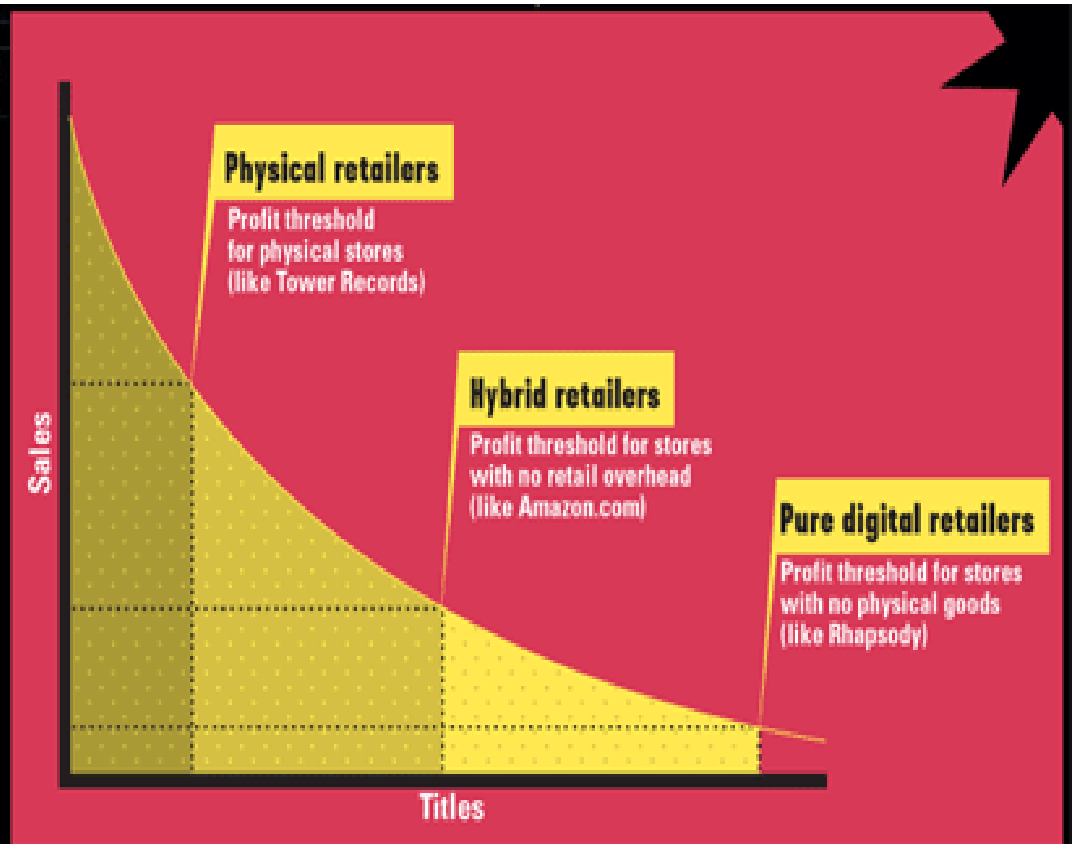
## Coldplay: Viva la Vida (CD)

	Actual Price (US\$)	Comparative Purchasing Power
US	\$17	-----
Brazil	\$14	\$80
South Africa	\$20.5	\$164
India	\$8.5	\$378

# THE BIT PLAYER ADVANTAGE

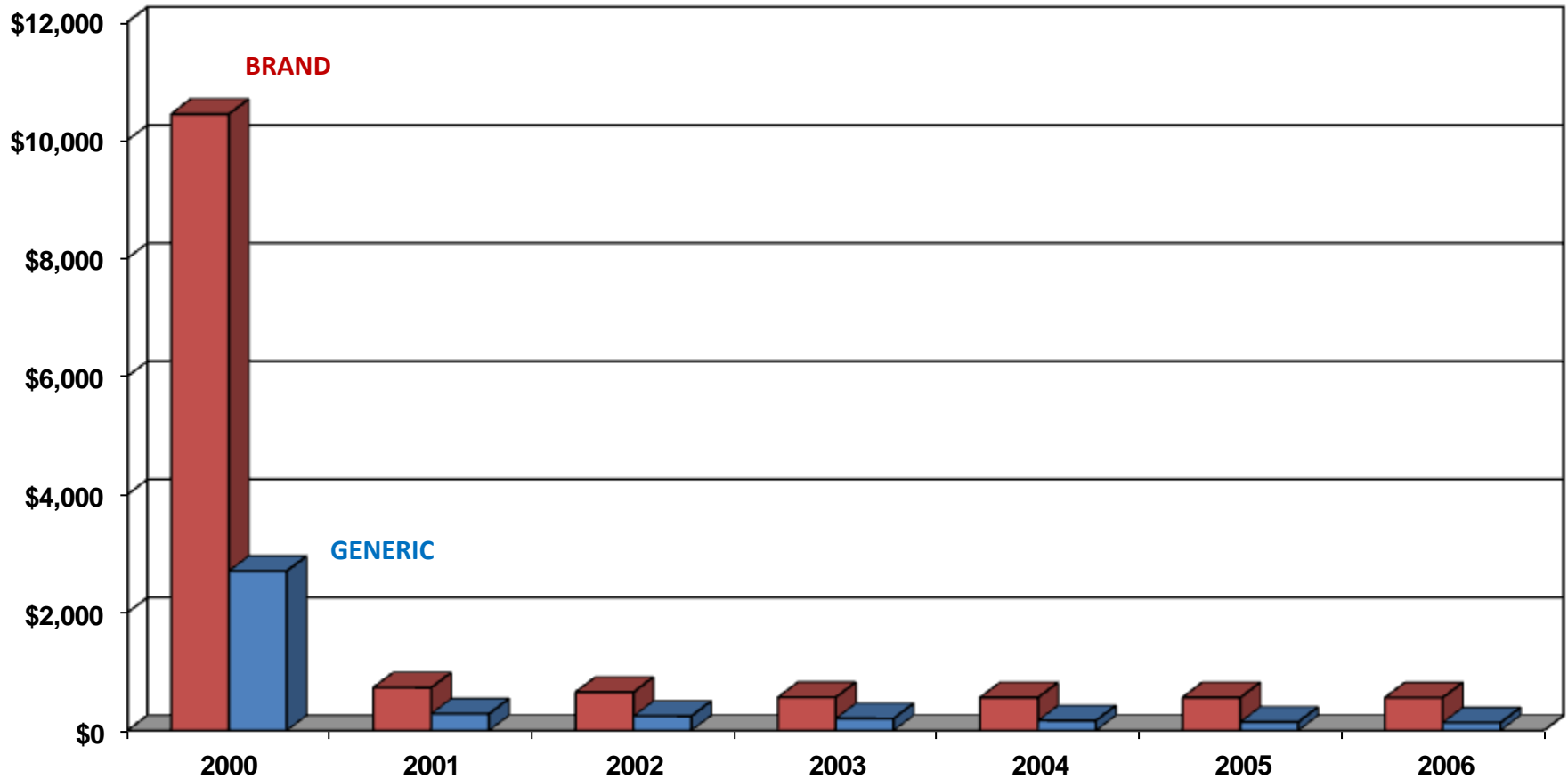
Beyond bricks and mortar there are two main retail models – one that gets halfway down the Long Tail and another that goes all the way. The first is the familiar hybrid model of Amazon and Netflix, companies that sell physical goods online. Digital catalogs allow them to offer unlimited selection along with search, reviews, and recommendations, while the cost savings of massive warehouses and no walk-in customers greatly expands the number of products they can sell profitably.

Pushing this even further are pure digital services, such as iTunes, which offer the additional savings of delivering their digital goods online at virtually no marginal cost. Since an extra database entry and a few megabytes of storage on a server cost effectively nothing, these retailers have no economic reason not to carry *everything* available.



Chris Anderson, *Wired*

## Lowest Price for d4T+3TC+NVP



Data: MSF, *Untangling the Web of Price Reductions*; Table by Sean Fiil Flynn and Mike Palmedo, PIJIP 2008

## **Maximalist/ Enforcement Agenda**

## **Development Agenda**

**LAWMAKING  
PROCESS**

**Plurilateral, unilateral, closed**

**Multilateral, open**

**SCOPE**

**One-size-fits-all protection,  
permissive L&E**

**Flexibility in protection, mandatory  
L&E**

**ENFORCEMENT**

**Public, consumer level, summary  
processes**

**Private, commercial scale,  
judicial process**

**PENALTIES**

**“Deterrent”**

**“Adequate to compensate”**



## **Enforcement Agenda**

## **Development Agenda**

## **Human Rights**

LAWMAKING  
PROCESS

**Plurilateral, unilateral,  
closed**

**Multilateral, open**

Free expression  
Just admin action  
Separation of powers

SCOPE

**One size fits all  
protection, permissive  
L&E**

**Flexibility in protection,  
mandatory L&E**

Soc & econ rights  
Hum rts L&E (Yu)

ENFORCEMENT

**Socialized enforcement,  
summary process**

**Private enforcement,  
judicial process**

Due process  
Right to property

PENALTIES

**“Deterrent,”  
criminalization**

**TRIPS: “adequate to  
compensate”**

Due process

# The Washington Declaration on Intellectual Property and the Public Interest

*The Global Congress on Intellectual Property and the Public Interest, August 25-27, 2011, convened over 180 experts from 32 countries and six continents to help re-articulate the public interest dimension in intellectual property law and policy.*

*The Washington Declaration on Intellectual Property and the Public Interest records the conclusions from the Congress. It has received more than 755 signatures to this day (26th September, 2011). To view the Declaration and the signatures or to add your support: <http://infojustice.org/washington-declaration>*

## Preamble

Time is of the essence. The last 25 years have seen an unprecedented expansion of the concentrated legal authority exercised by intellectual property rights holders. This expansion has been driven by governments in the developed world and by international organizations that have adopted the maximization of intellectual property control as a fundamental policy tenet. Increasingly, this vision has been exported to



# UNTOLD STORIES IN SOUTH AFRICA:

## Creative Consequences of the Rights Clearance Culture for Documentary Filmmakers

Sean Flynn and Peter Jaszi

A project of:

Black Filmmakers Network & Documentary Filmmakers'  
Association, South Africa

Program on Information Justice and Intellectual Property &  
Center for Social Media, American University

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## Canada Seeks Comments on Its Possible Participation in the TPP Negotiations

JANUARY 5, 2012 BY [MIKE PALMEDO](#) [LEAVE A COMMENT](#)



The Canadian Department of Foreign Affairs and International Trade is seeking comments on whether it should join the Trans Pacific Partnership negotiations. Its notice asks for input on a range of topics, including "Views and experiences with the protection of intellectual property rights." The deadline for submissions is February 14, 2012. [Click here for the official government notice.](#)



FILED UNDER: [BLOG](#)

## White House – Extended Deadline for Public Access and Digital Data Requests for Information

JANUARY 3, 2012 BY [REPOST](#) [LEAVE A COMMENT](#)



[Repost of a [blog on whitehouse.gov](#) by Rick Weiss.]

In November, OSTP issued two [Requests for Information](#) (RFI), one on open access to scientific publications and the other on the management of digital data. Yesterday, responding to numerous requests, we submitted to the Federal Register an extension of the deadlines for those RFIs to January 12, 2012. [\[Read More...\]](#)



FILED UNDER: [POSITIVE AGENDA](#) TAGGED WITH: [GOVERNMENT](#), [OPEN ACCESS](#)

## USTR requests comments for the 2012 Special 301 Report

JANUARY 3, 2012 BY [MIKE PALMEDO](#) [LEAVE A COMMENT](#)



On December 28, USTR published a request comments in the Federal Register for the 2012 Special 301 Report, its annual report which identifies countries that "deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection." The deadline for submissions from interested parties is February 10, and the deadline for submissions from foreign governments is February 17. [\[Read More...\]](#)



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### Highlights

[Washington Declaration on Intellectual Property and the Public Interest - Open for Signatures](#)

[Global Congress on Intellectual Property and the Public Interest Washington DC, August 25-27](#)

[SSRC Releases Media Piracy in Emerging Economies](#)

### IP Enforcement Roundup Archives

[November 28, 2011](#)

[November 21, 2011](#)

[November 14, 2011](#)

[November 7, 2011](#)

[October 31, 2011](#)

[October 24, 2011](#)

[October 10, 2011](#)

[October 3, 2011](#)

[September 26, 2011](#)

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