



PROGRAM ON
INFORMATION JUSTICE AND
INTELLECTUAL PROPERTY

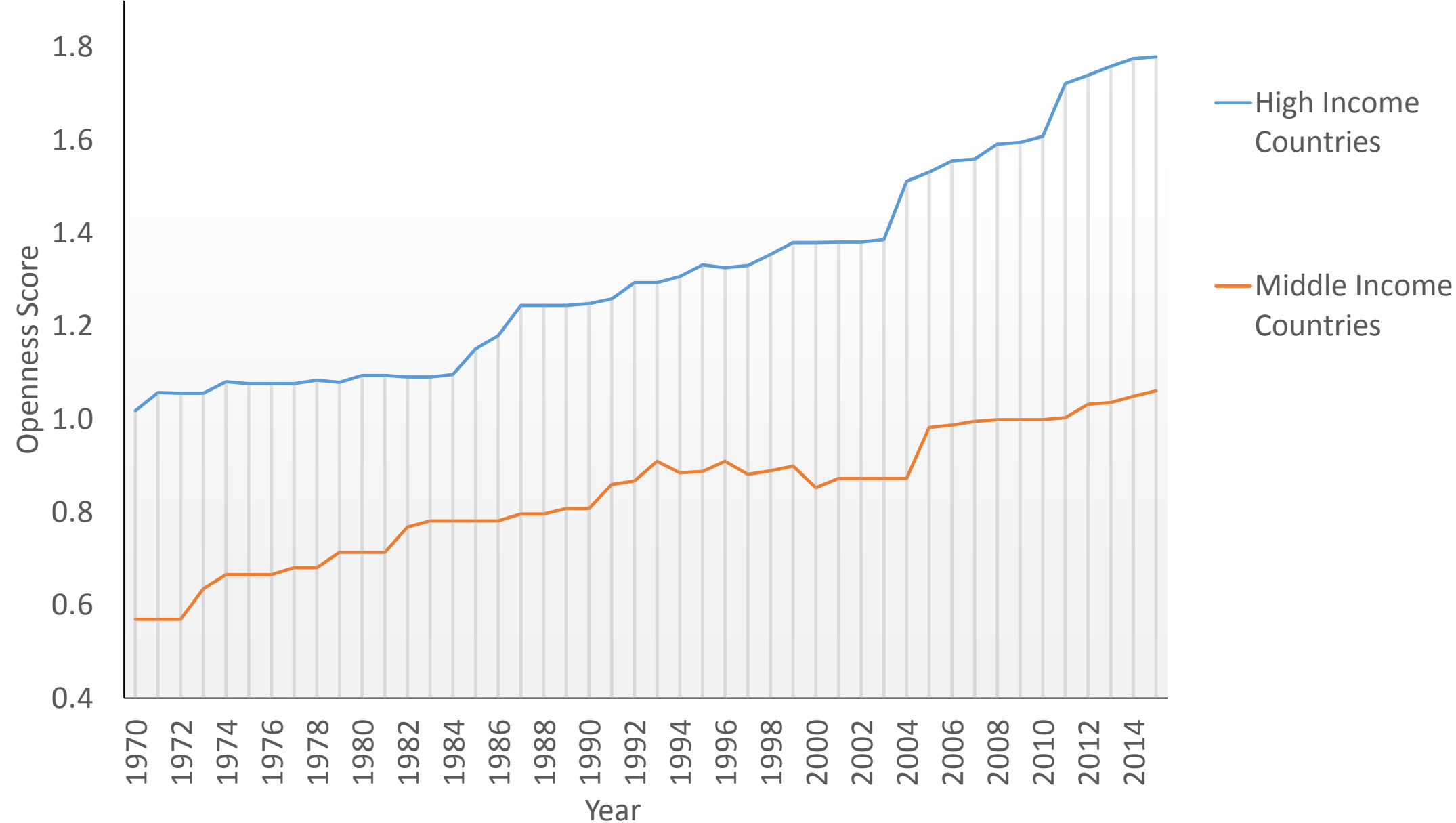
The Impact of Balance

WIPO SCCR

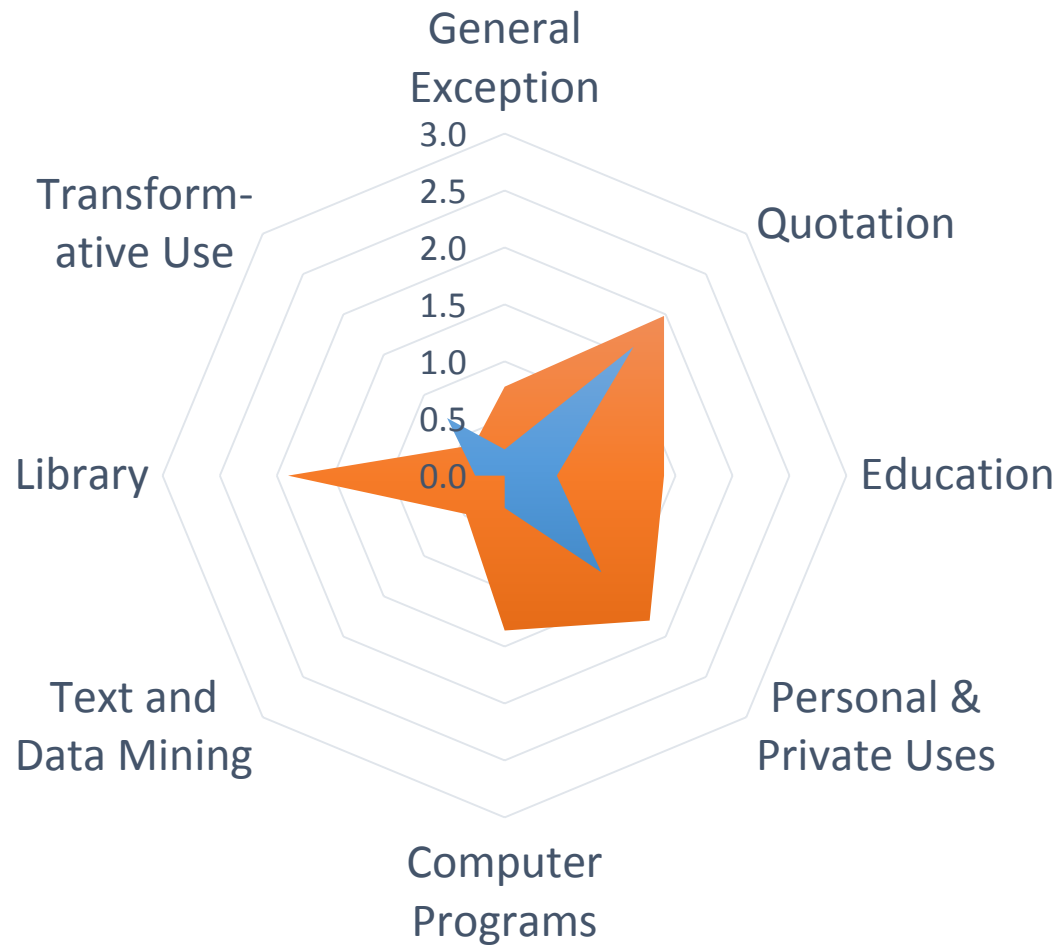
Nov. 14, 2017

Sean Flynn, American University Washington College of Law
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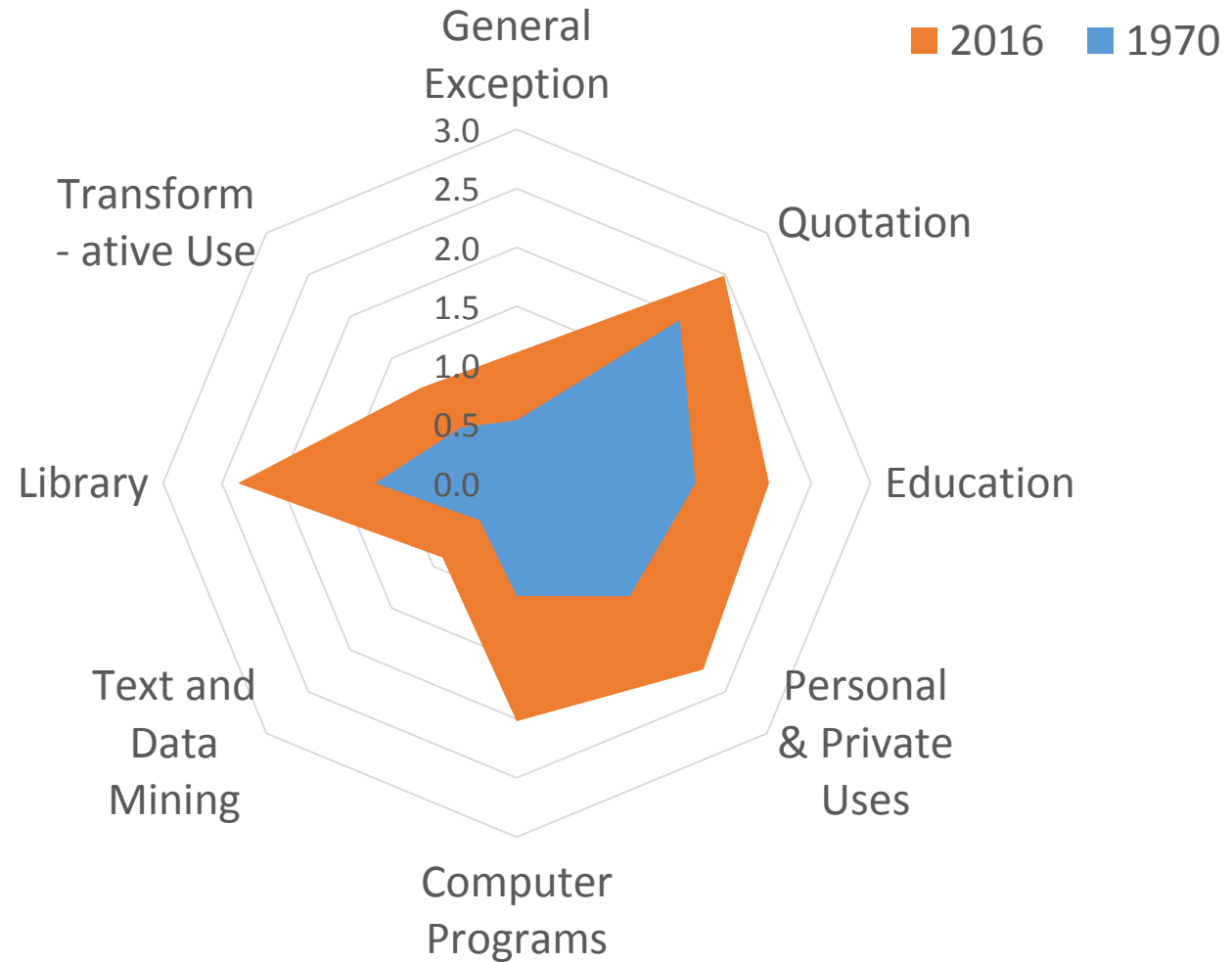
Growth of Openness, 1970-Present



Growth of Openness, 1970 - Present

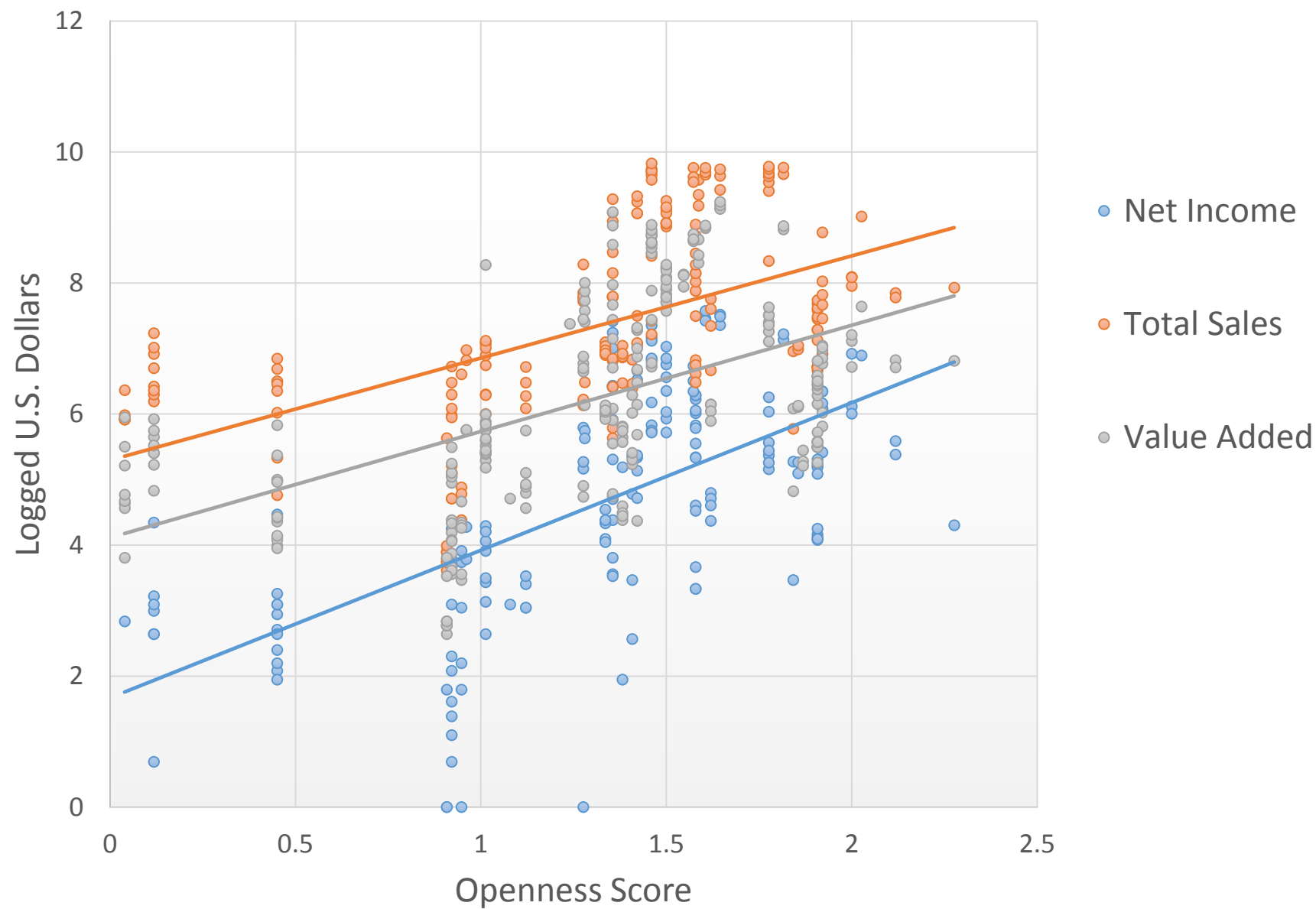


Middle Income Countries

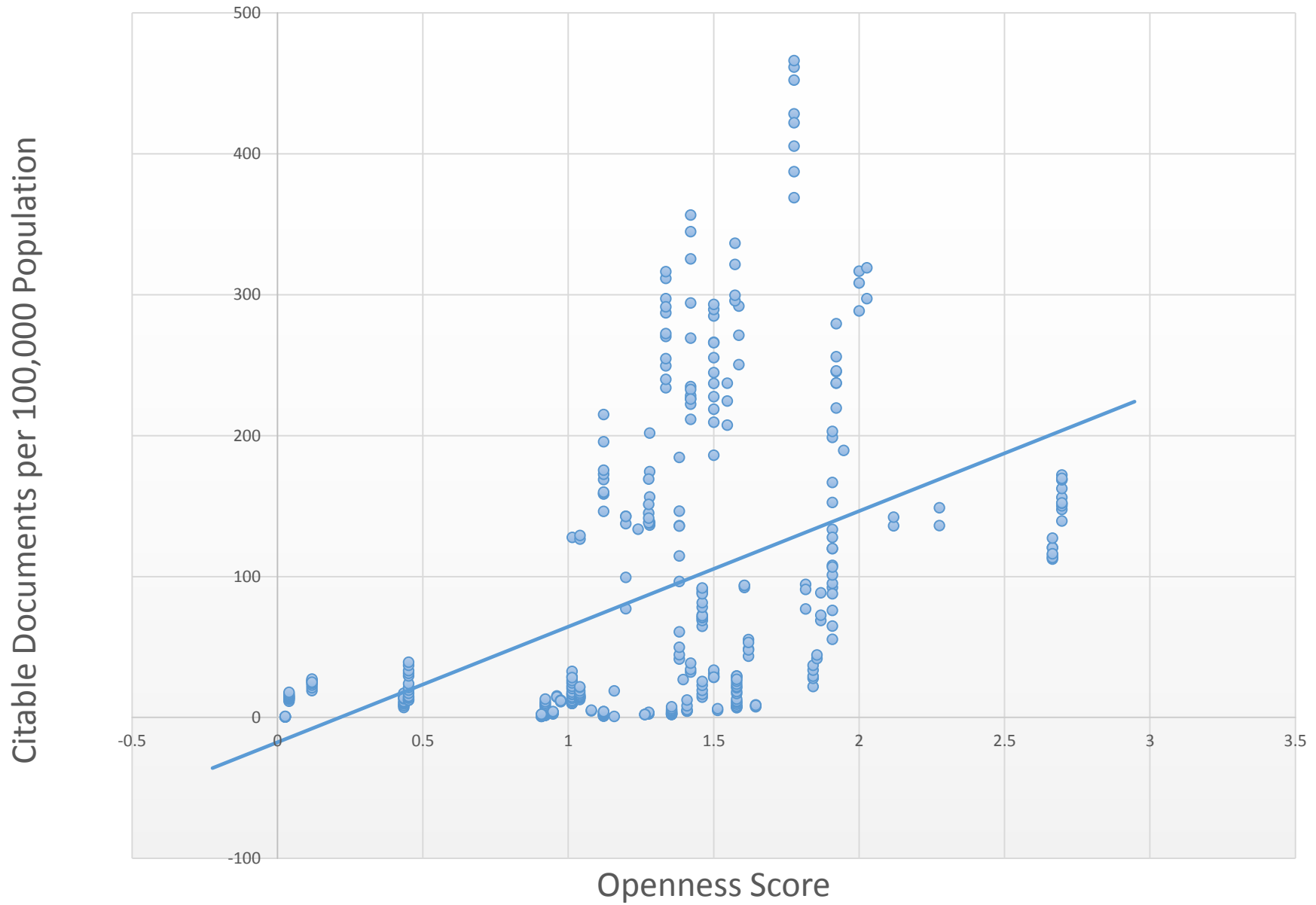


High Income Countries

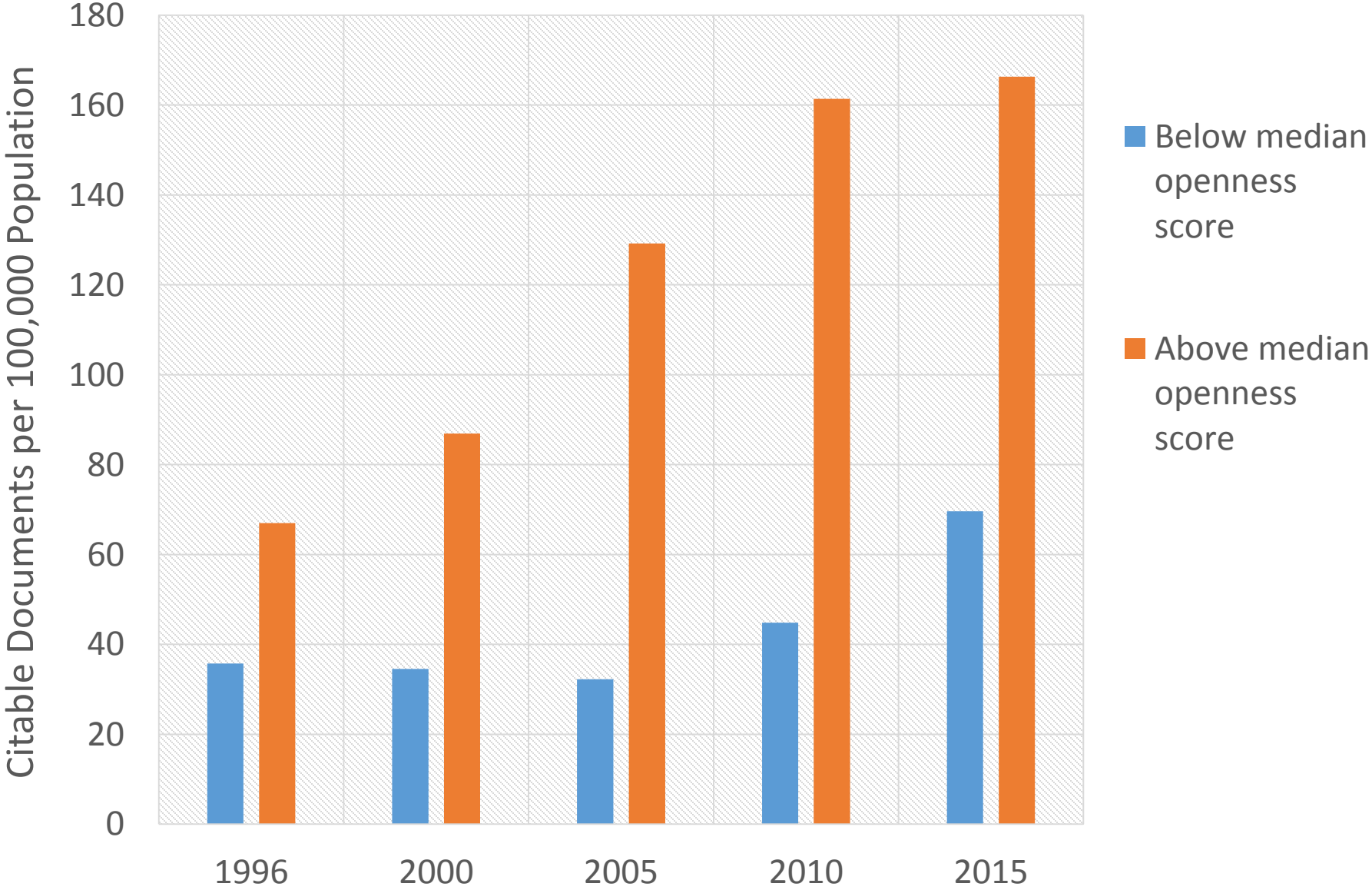
Openness Score and Performance of Firms Receiving Investment by U.S. Multinationals



Openness and Scholarly Output



Openness and Scholarly Output



Washington Principles on Copyright Balance	Treaty Provision Examples
Protect Open, Flexible, General Exceptions	WIPO Copyright Treaty art. 10 footnote 9 Agreed Statement ("may extend"); US-Korea Free Trade Agreement art.18.4 footnote 11 ("may adopt . . . fair use"); Marrakesh Treaty, art. 10 ("may " implement through "fair practices, dealings or uses")
Promote Balance	WIPO Copyright Treaty preamble (objective of promoting "balance"); Beijing Treaty on Audiovisual Performances preamble (same); TPP Article 18.66: Balance In Copyright And Related Rights Systems ("Each Party shall <u>endeavour</u> to achieve an appropriate balance")
Provide Digital Exceptions	EU <u>Infosoc</u> Directive Art 5 (requiring exceptions for "temporary" to enable "transmission in a network")
Require <u>Safeharbors</u> (<u>flexibility</u> to notice and notice)	TPP? Communication Decency Act 47 U.S.C. § 230 (1996).
Ensure Legitimate Exceptions for Anti-circumvention	Marrakesh Treaty art. 7 (requiring appropriate measures to ensure that prohibitions against circumvention do not prevent limitations and exceptions); Beijing Treaty, footnote 10, agreed statement concerning art. 15 ("nothing . . . prevents . . . measures to ensure . . . limitations and exceptions").
Guarantee Proportionality in Enforcement (<u>criminal</u> and liability safeguards for educational non-commercial use)	TPP art. 18.17 ("shall take into account the need for proportionality"); TPP art. 18.68 ("A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public noncommercial broadcasting entity")

Copyright & Education in the Digital Environment: Challenges & Opportunities

Posted by PIJIP on November 13, 2017

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Tuesday, November 14, 13:00 Luncheon; 13:20 Panel Discussion
@World Intellectual Property Organization, Room A, AB Building
Sponsored by: The Brazilian Delegation to WIPO,
and the American University Washington College of Law Program on
Information Justice and Intellectual Property