

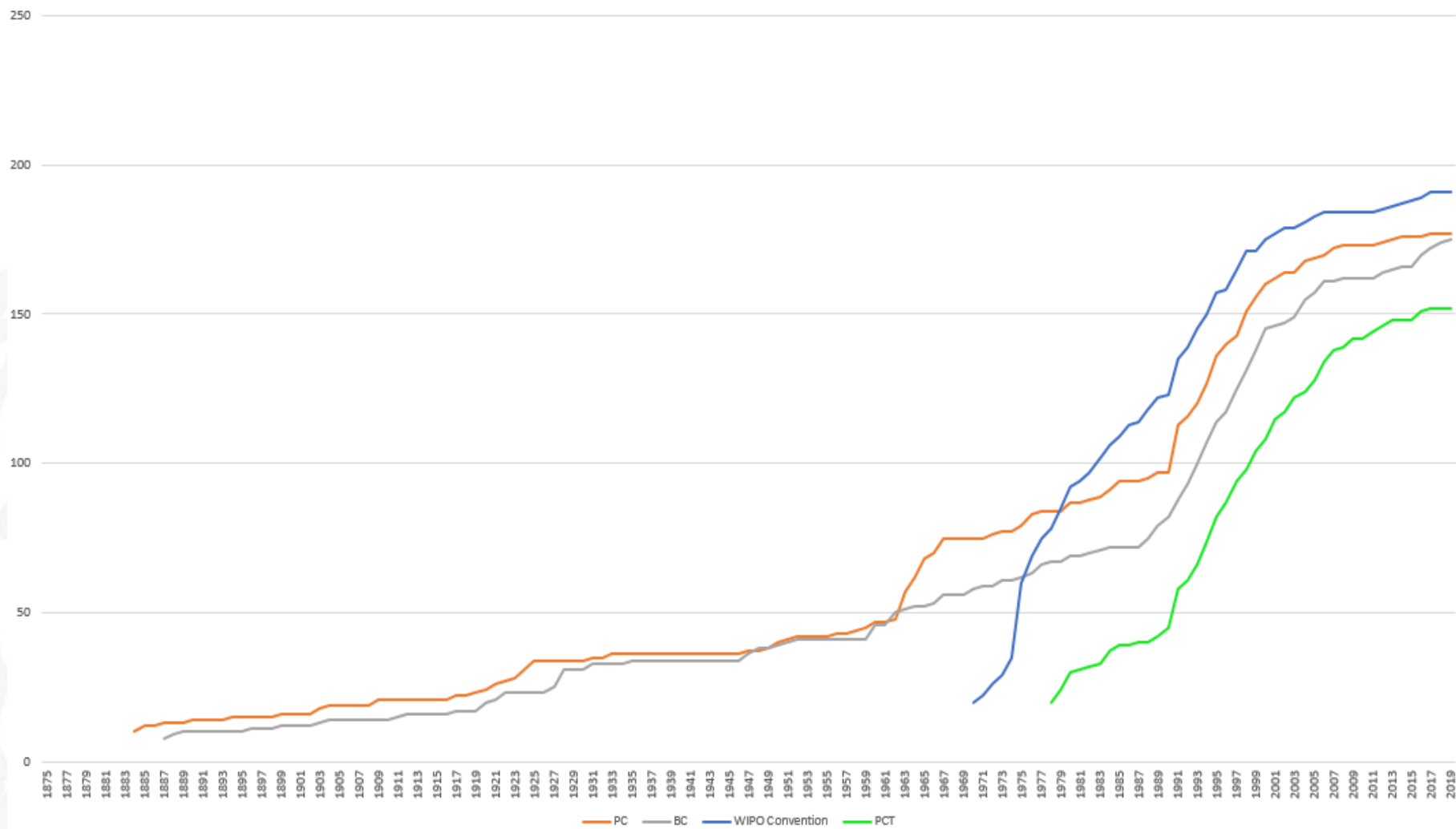
Weizenbaum Institute, Berlin, 24.-25.6.2019
Intellectual Property Ordering Beyond Borders

Network Effects of the International IP System

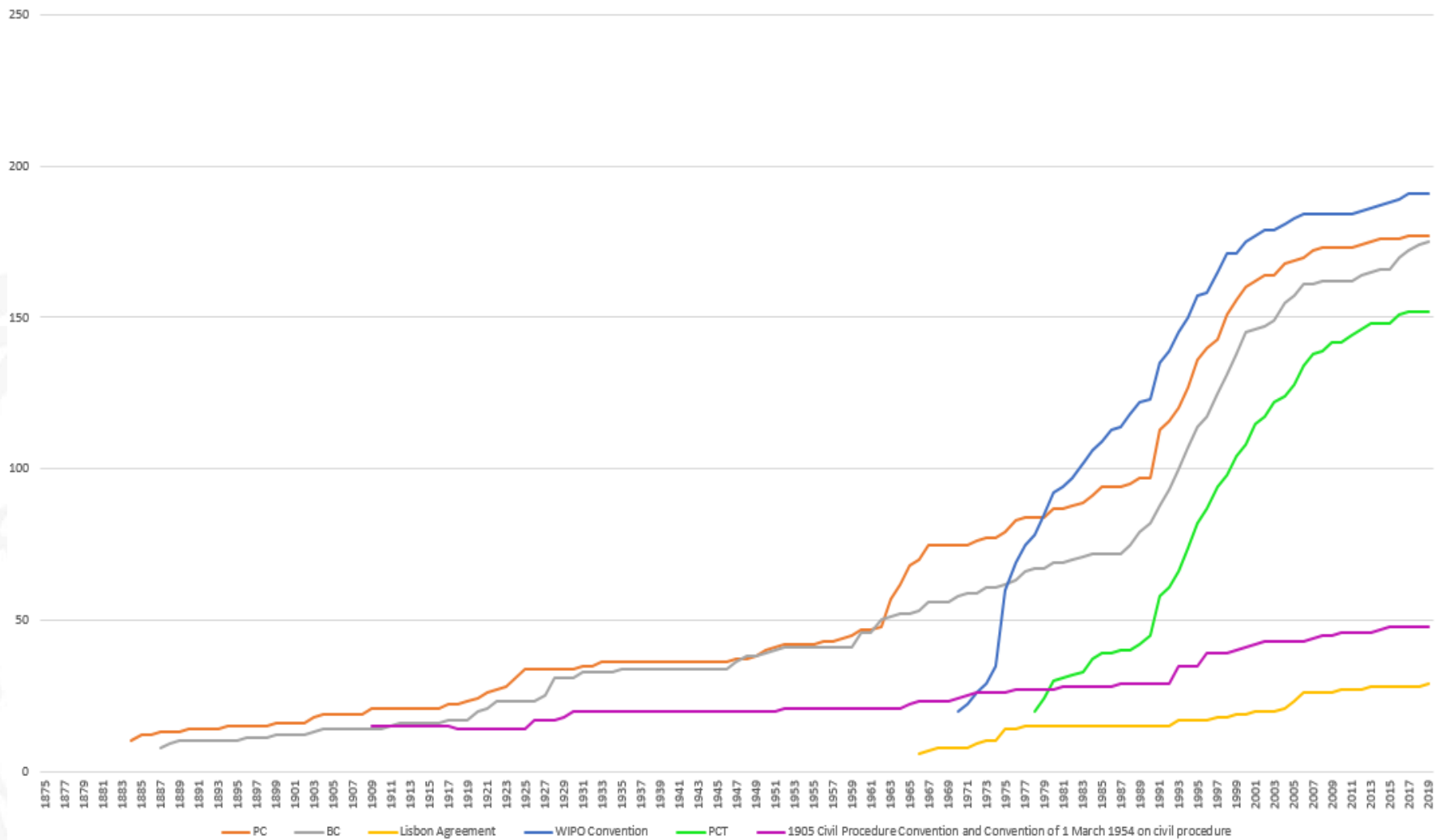
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- Research questions
 - What does IP “system” mean?
 - Explain the resilience and growth of that “system”

Proliferation of International Treaties



Proliferation of International Treaties



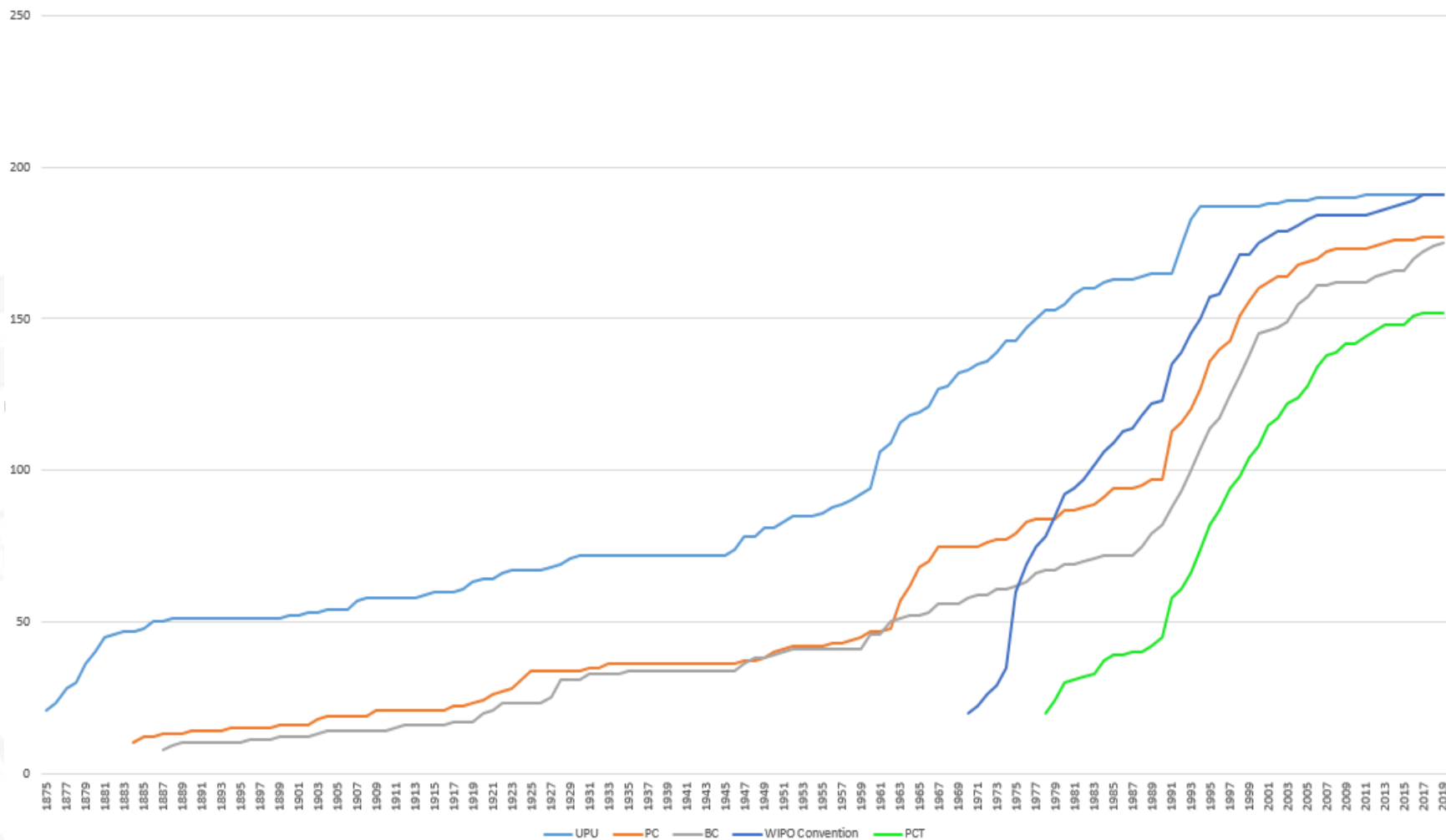
- Hypotheses
 - “System” = virtual network resembling a telephone network or social media platform
 - Growth is caused in part by a network effect that attracts outsiders and stabilizes the system
 - Natural-monopoly-type result: global coverage

- The economic theory of network effects
 - Individual products with intrinsic value \neq networked products with synchronization value
 - “Network effects arise whenever the value that consumers place on a product ... depends upon the number of other consumers ... purchasing that product As the number of adopters ... of a platform grows, the benefits of being part of that platform increase. For example, consumers generally prefer telephone networks or protocols offering the largest user bases.” (Menell 2018)

- Application to the international IP system
 - The networked product: IP laws
 - The network nodes: territorially limited IP jurisdictions
 - Complementarity of territorial IP laws
 - Connect the nodes and exclude outsiders

- Creation of the network
 - Bilateral treaties between contracting states
 - Multilateral IP Unions of member states
 - International Telegraph Convention 1865 and General Postal Union 1874 as models
 - From real networks to virtual networks

Proliferation of International Treaties



- Connecting the nodes
 - National treatment
 - Improving internal connectivity
 - Prohibition of formalities in © law
 - Standardized and centralized application/registration procedures

- External closure
 - Union countries/territories
 - Beneficiaries: Union rightholders only

- Internal connectivity + external closure bring about a (demand-side) network effect and synchronization value for all participating states:
 - The benefit a state derives from joining an IP network depends on the number of other states being members.
 - The value/utility of an IP law connected to the network increases with an additional networked IP law.

- Strategies to fortify the pull-effect I
 - Improve the IP quality of the network
 - Minimum rights
 - Built-in dynamic: national treatment regarding future rights
 - A modular system promoted by IP IOs
 - Revisions of existing agreements “to improve the system of the Union” (Art. 27(1) Berne)
 - Special agreements not contravening the *acquis* (Berne, Paris)
 - Prerequisites of accession (Berne+/Paris+/WIPO+)
 - Integration of obligations (TRIPS, WCT)

- Strategies to fortify the pull-effect II
 - Attach to other networks
 - WIPO + UN
 - IP + WTO

- Strategies to fortify the pull-effect III
 - Prevent network competition
 - BIRPI-Berne and UNESCO-UCC “package deal” 1969-1971
 - WIPO and WTO complementarity

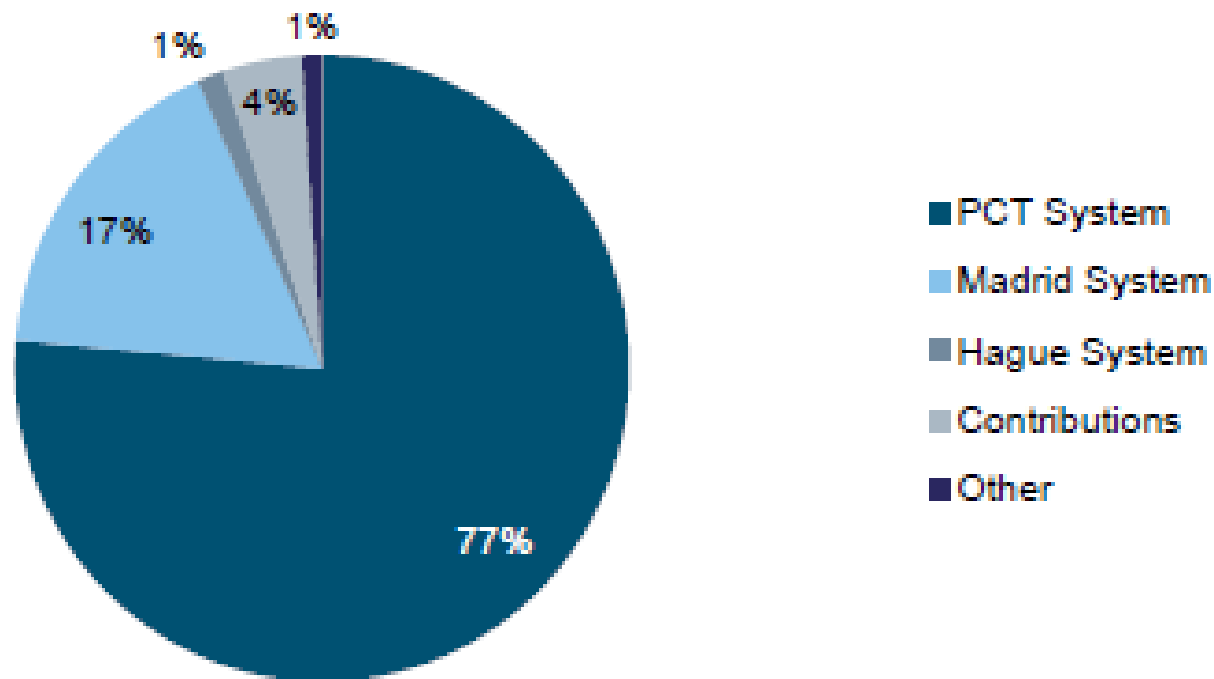
- Strategies to fortify the pull-effect IV
 - Prohibit overspill and free-riding
 - Limitations to and exceptions from MFN under Art. 4, 5 TRIPS

- Strategies to fortify the pull-effect V
 - Prevent roll-back
 - No international roll-back within WIPO
 - Accession only to the most recent act
 - Transition period for LDCs must not lead to a lesser degree of consistency with TRIPS

- Who owns the network and internalizes the synchronization value?
 - In theory: member states
 - In practice:
 - WIPO
 - “Users” of the system (i.e. private IPR holders)

- Owning the network: WIPO's budget

Chart 1: 2018/19 Income Share by Source



- Overall effects
 - Increasing returns to scale for the owners of the IP network
 - Lock-in
 - Natural monopoly: world coverage

- Normative implications
 - In principle: TINA
 - IPexit = Exiting World Society
 - Fine-tuning at the margin
 - If IP protection becomes truly universal, it loses its relevance as a regulatory tool.
 - Focus on non-IP innovation incentives (Hemel/Ouellette 2016/2019)