

Zurich IP Retreat 2019

INGRES and ETH Zurich, 13 September 2019

Nationalism vs. Globalization in IP

National IP Policies Between Economic Nationalism and Globalism

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- Economic nationalism in general
 - Various protectionist practices
 - We-group state of mind
 - Self-determination and independence as ends in themselves
 - Globalization is a zero sum game
 - Us first: promote the national economic interest at the expense of foreign interests

- Globalism
 - Networks of connections that span multi-continental distances
 - Global value chains
 - Globalization is a positive-sum game
 - Belief in world-sharing (cooperation) and global welfare as the ultimate end of politics
 - Include benefits to foreigners into your equation

National IP Policies in the Past



National IP Policies in the Past

Catch-up
(weak IP)

- Weak IP catch-up policies
 - No (effective) IP law
 - E.g. CH, NL, Ger 1877, India 1972 regarding patents
 - Belgium, Württemberg, Austria regarding copyright
 - Local working requirements (Prussia, US)
 - Strict examination (Prussia)
 - Limited scope of patents (Japan)

National IP Policies in the Past

Catch-up
(weak IP)

Globalize IPRs

- Globalize IPRs
 - IP provisions in trade agreements “could be viewed as ‘money making machines’ for major exporters of copyright-protected products” (v. Lewinski 2008)
 - Examples
 - Colonial empires in the 1880ies
 - The global north since the late 20th century (TRIPS)

National IP Policies in the Past

Catch-up
(weak IP)

Strong IP for
locals only

Globalize IPRs

National IP
Policies
in the Past

Catch-up
(weak IP)

Strong IP for
locals only

Globalize IPRs



- Strong IP as an inward-looking catch-up policy
 - Patents for the introduction of foreign inventions (eg F, Württemberg)
 - Strict discrimination against foreigners
 - Patents: Prussia 1815, Württemberg, U.S. -1836/1861
 - U.S. © 1790-1891/1976

National IP
Policies
in the Past

Catch-up
(weak IP)

Strong IP for
locals only

Globalize IPRs

- Strong IP as an outward-looking policy
 - French anti-piracy law of 1852
 - Reciprocity requirements
 - UK © 1837 → Treaties with German States and France
 - U.S./EU topographies protection acts 1984/1987 → Washington Treaty, TRIPS
 - EU GI protection 1992-2005 concerning “third country” GIs → WTO panel

National IP Policies Today



National IP Policies Today

Catch-up
(weak IP)

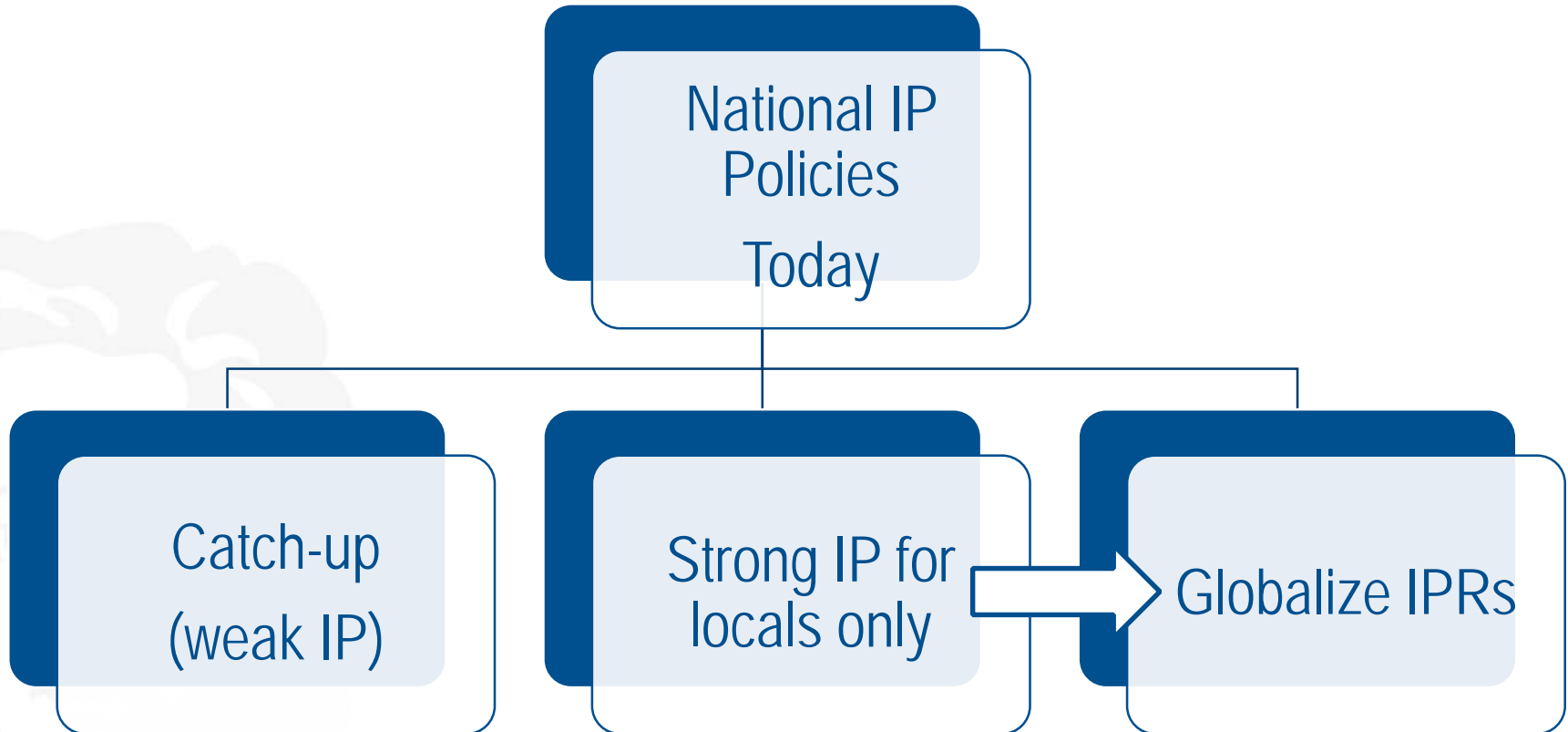
- Weak IP catch-up policies today
 - Limited room to maneuver because of the global IP system
 - Calibration of the scope of protection
 - Undercut global © minimum in the country of origin
 - Art. 8(7) [DSM Directive](#) regarding out-of-commerce-works

National IP
Policies
Today

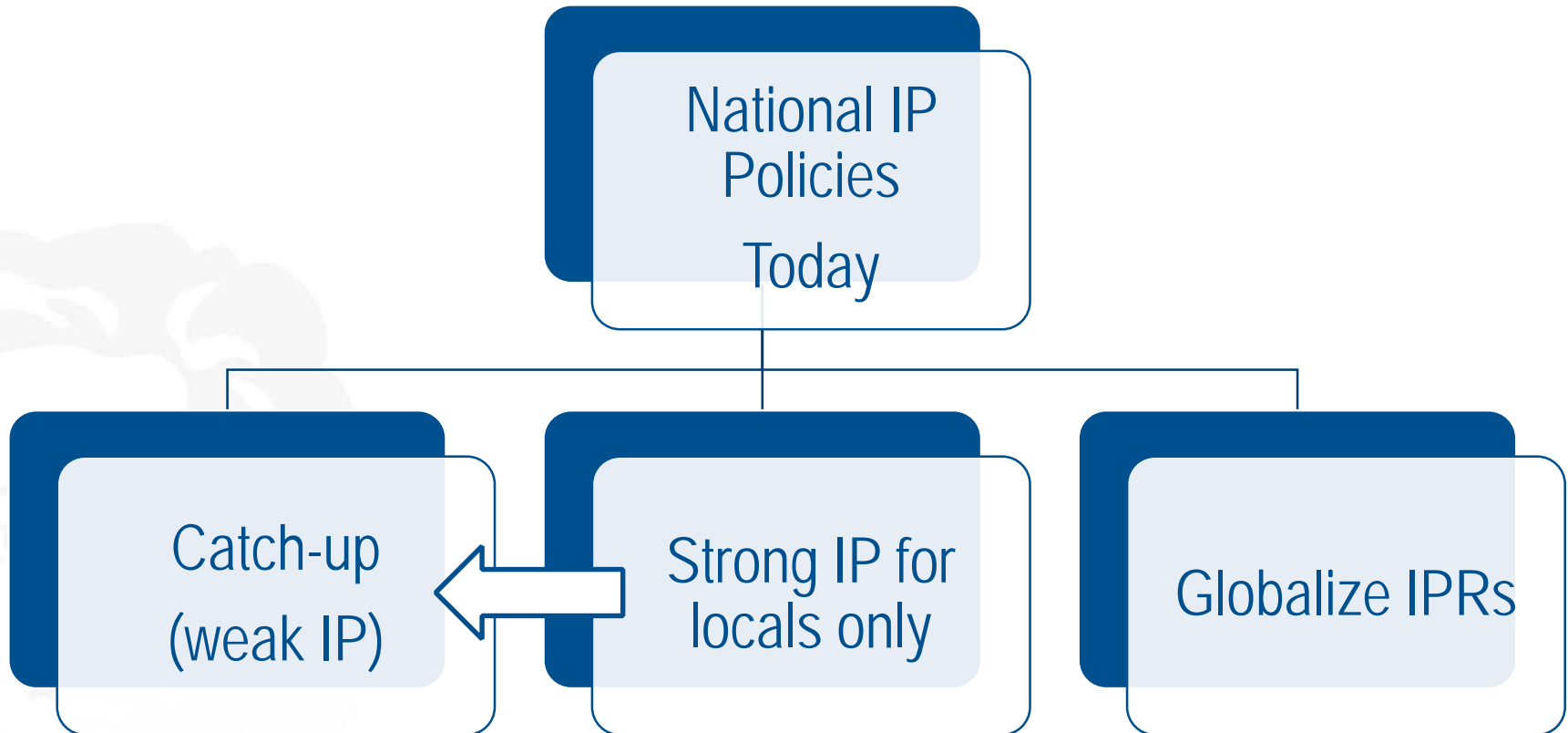
Catch-up
(weak IP)

Globalize IPRs

- Globalize IPRs today
 - U.S./EU bilaterals
 - Country club adoption of the 2015 Geneva Act of the Lisbon Agreement



- Strong IP as an outward-looking policy
 - Within the global acquis
 - Exclusion of outsiders of the global IP system (“non-ressortissants”) from German © law
 - Beyond the global acquis
 - Protection of third country rightholders under condition of reciprocity: EU sui generis right in databases



- Strong IP as an inward-looking policy
 - Protection of press publishers under art. 15 DSM Dir.
 - Beyond the acquis
 - Only for publishers “established” in an MS: registered office, central administration or principal place of business within the Union
 - No reciprocity requirement/option
 - Background: EU mainstream press publishers (Springer et al) v. Google News et al

- Concluding remark

