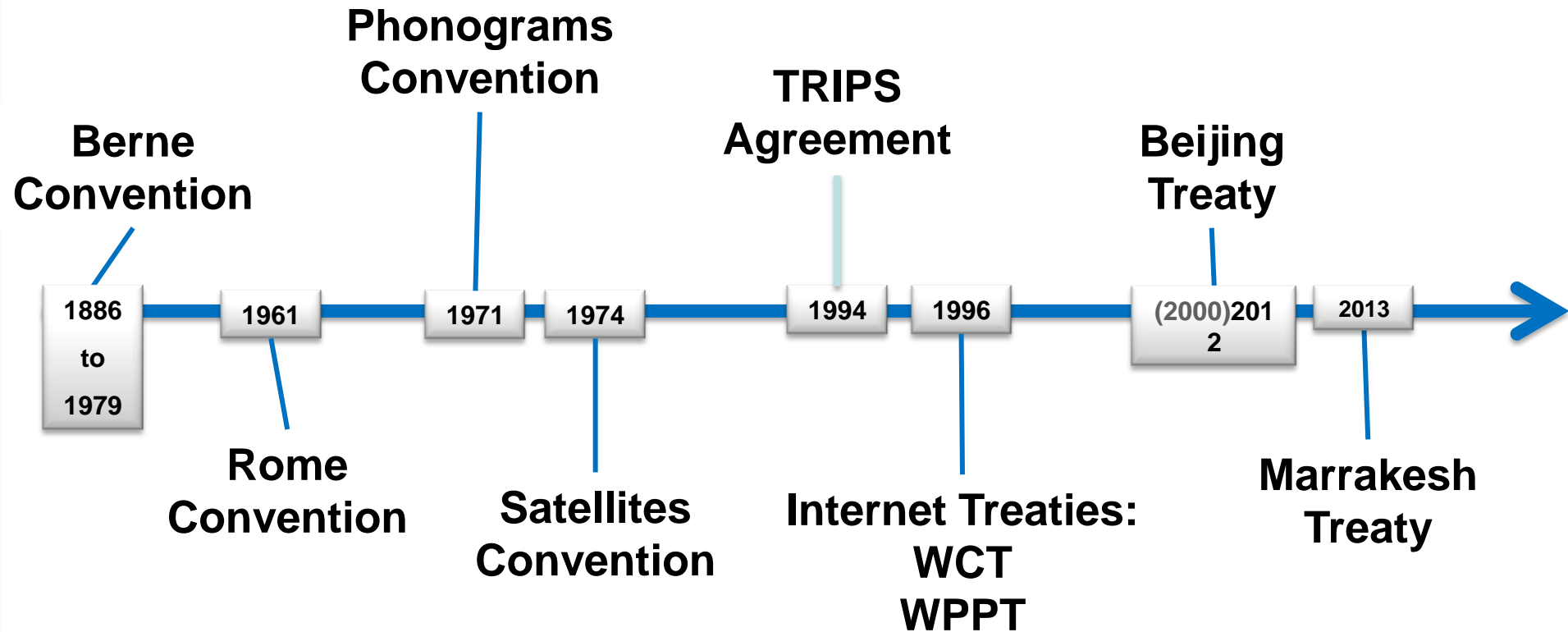


Audiovisual works in the International Legal Framework

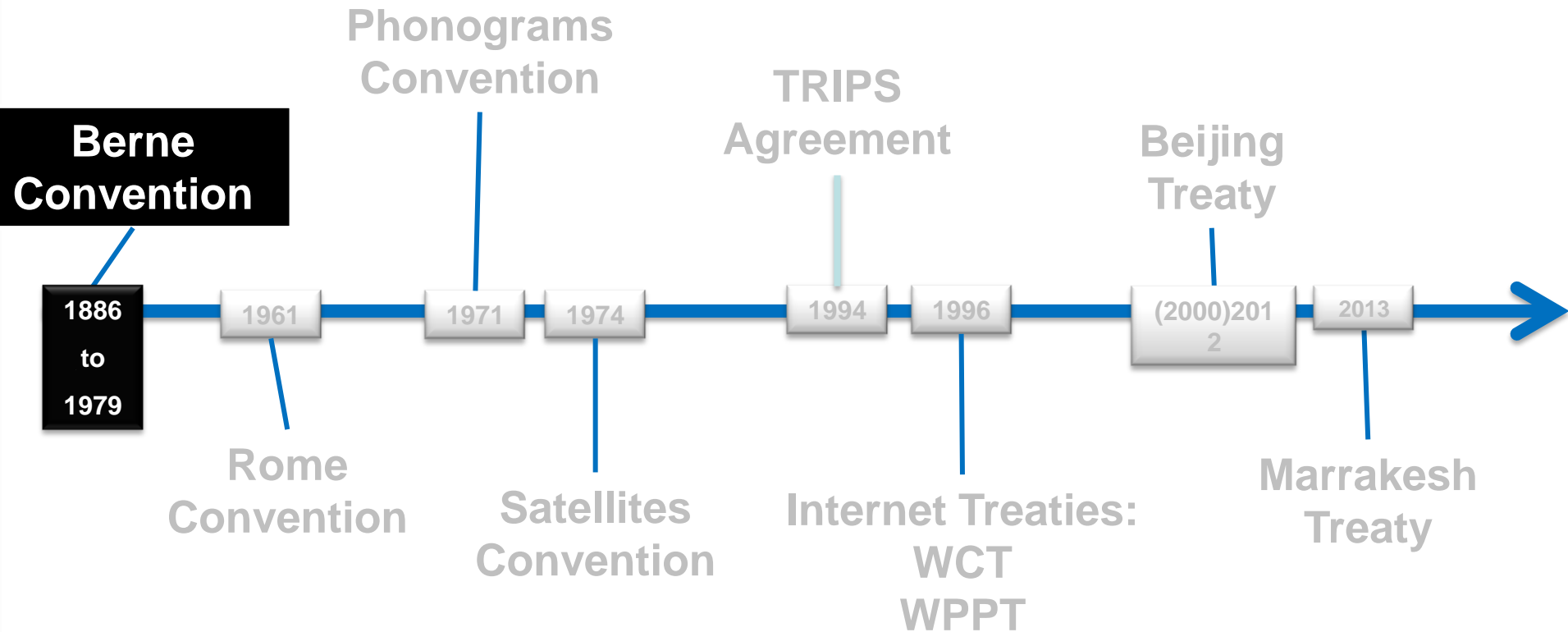
**Sofia
November 27
2017**

Rafael Ferraz Vazquez
Associate Legal Officer, Copyright Law Division

International Framework in Copyright



International Framework in Copyright



Audiovisual works

PROTECTION

Protection **against** Audiovisual works

- Protection for authors against use in audiovisual works
- Article 14, Berne Convention

(1) Authors of literary or artistic works shall have the exclusive right of authorizing:

(i) the **cinematographic adaptation and reproduction** of these works, and the distribution of the works thus adapted or reproduced;

Protection to Audiovisual Works

■ Article 2- protected works

(1) The expression “literary and artistic works” shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as ...

cinematographic works to which are assimilated works expressed by a process analogous to cinematography;

photographic works to which are assimilated works expressed by a **process analogous to photography**

Protection to Audiovisual Works

■ Article 14bis

(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work **shall be protected as an original work**. The owner of copyright in a cinematographic work shall enjoy the **same rights as the author of an original work**, including the rights referred to in the preceding Article.

Audiovisual works

AUTHORSHIP

Authorship of Audiovisual works

■ Article 14bis, Berne Convention

(2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed.

Authors of Audiovisual Works

■ *Berne Convention Article 14*

(b) However, in the countries of the Union which, by legislation, include among the owners of copyright in a cinematographic work **authors who have brought contributions to the making of the work**, such authors, if they have undertaken to bring such contributions, may not, in the absence of any contrary or special stipulation, object to the reproduction, distribution, public performance, communication to the public by wire, broadcasting or any other communication to the public, or to the subtitling or dubbing of texts, of the work.

Audiovisual work

- Difference between **authorship** and **original ownership**
- Lack of harmonization in international instruments lead to different national approaches:
 - EC Rental Directive, Art. 2(2)

The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors

Audiovisual work

- Difference between **authorship** and **original ownership**
- Common national solutions (in combination or not):
 - The principal director
 - All/some of the directors involved
 - The producer
 - Authors of underlying works
 - Those participating in the creative contribution

Audiovisual work

Transfer of rights

- Relevant for practical means of exploitation of works
 - Transferred to the producer by law at the moment of creation
 - Rebuttable presumption of transfer of rights
 - Co-ownership
 - No transfer of rights by law

Transfer of Rights

■ Berne Convention, Article 14 bis

(c) The question whether or not the form of the undertaking referred to above should, for the application of the preceding subparagraph (b), be in a **written agreement** or a written act of the same effect shall be a matter for the legislation of the country where the maker of the cinematographic work has his headquarters or habitual residence. However, it shall be a matter for the legislation of the country of the Union where protection is claimed to provide that the said undertaking shall be in a written agreement or a written act of the same effect. (...)

Audiovisual works

Others Right
Owners

Other Right Owners

■ Performers

- The Beijing Treaty, 2012
- *Example*: Directive 2001/29/EC

■ Producers of films

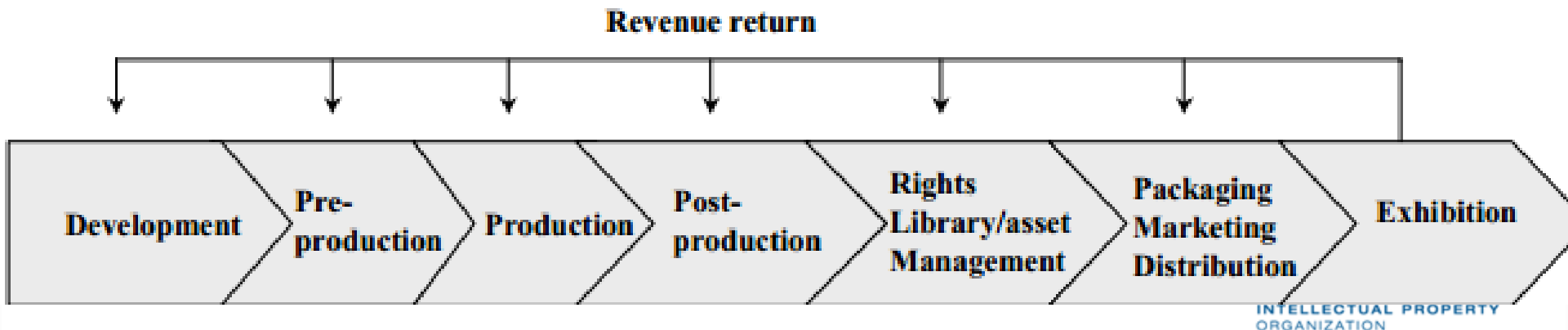
- No protection at the international level
- *Example*: Directive 2001/29/EC

■ Broadcasting Organizations

- Rome Convention
- *Example*: Directive 2001/29/EC

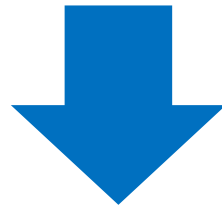
Ownership in a complex environment

- Industry characterized by:
 - International nature of the audiovisual production
 - Complex ownership models
 - Complex financial relationships
 - Global convergence of media ownership
 - Complicated distribution chains



Audiovisual work: Copyright and Related Rights

- Commonly right owners involved in audiovisual works



Common interest:

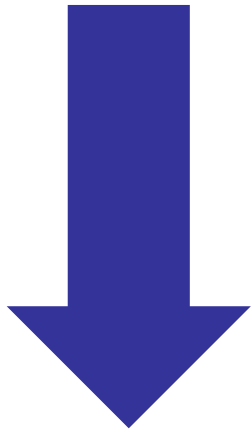
Obtain the maximum profit by all possible commercial means

Audiovisual Works

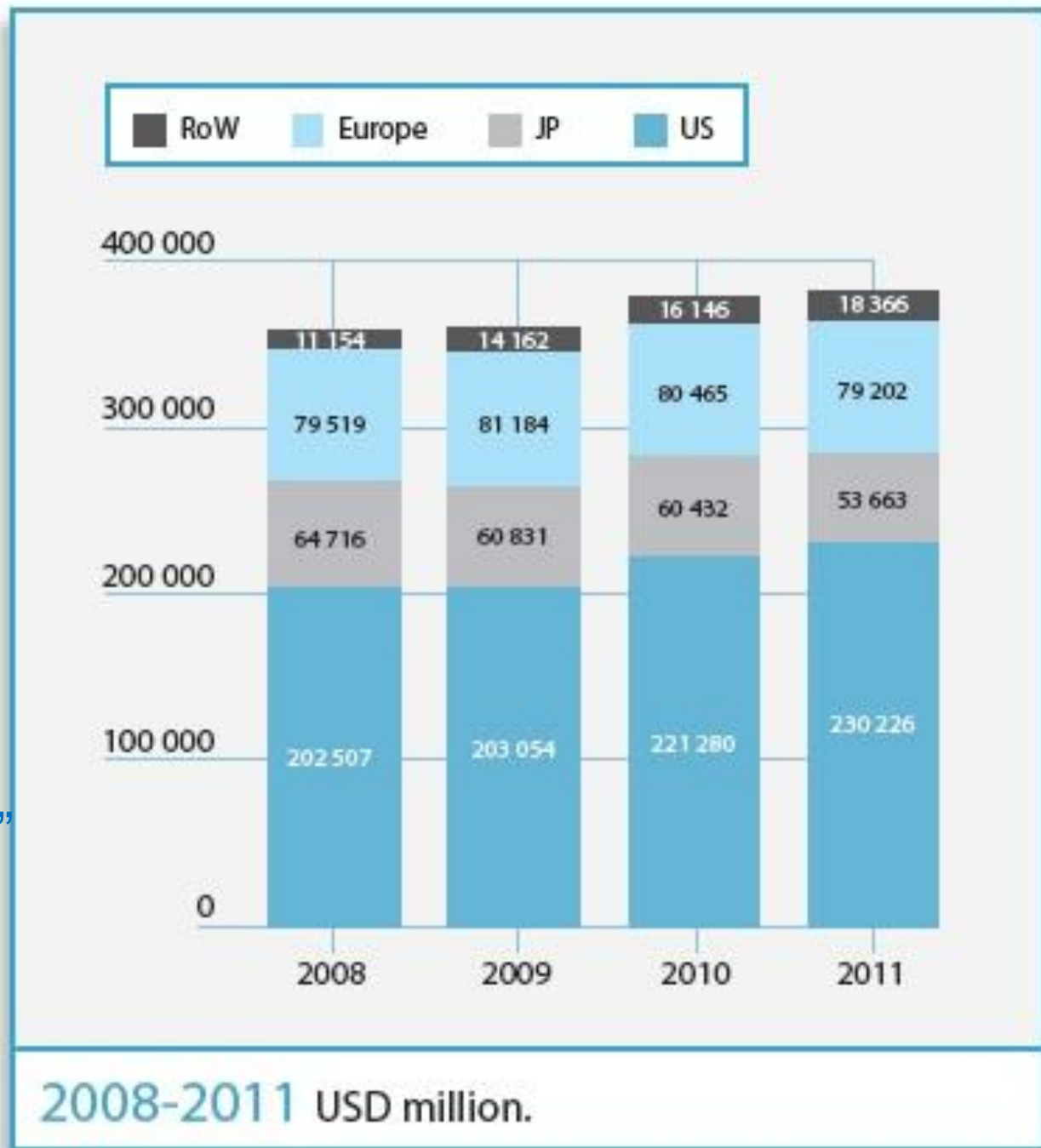
*“Transaction costs faced by audiovisual service providers are alleviated by the fact that, unlike in the music industry, the exclusive exploitation rights in an audiovisual work are typically aggregated in the hands of a single licensing entity, **the producer.**”*

Source: Audiovisual Sector Analysis European Commission’s Impact Assessment on The Proposed Regulation on Country of Origin for Online Transmissions

Global Audiovisual Industry



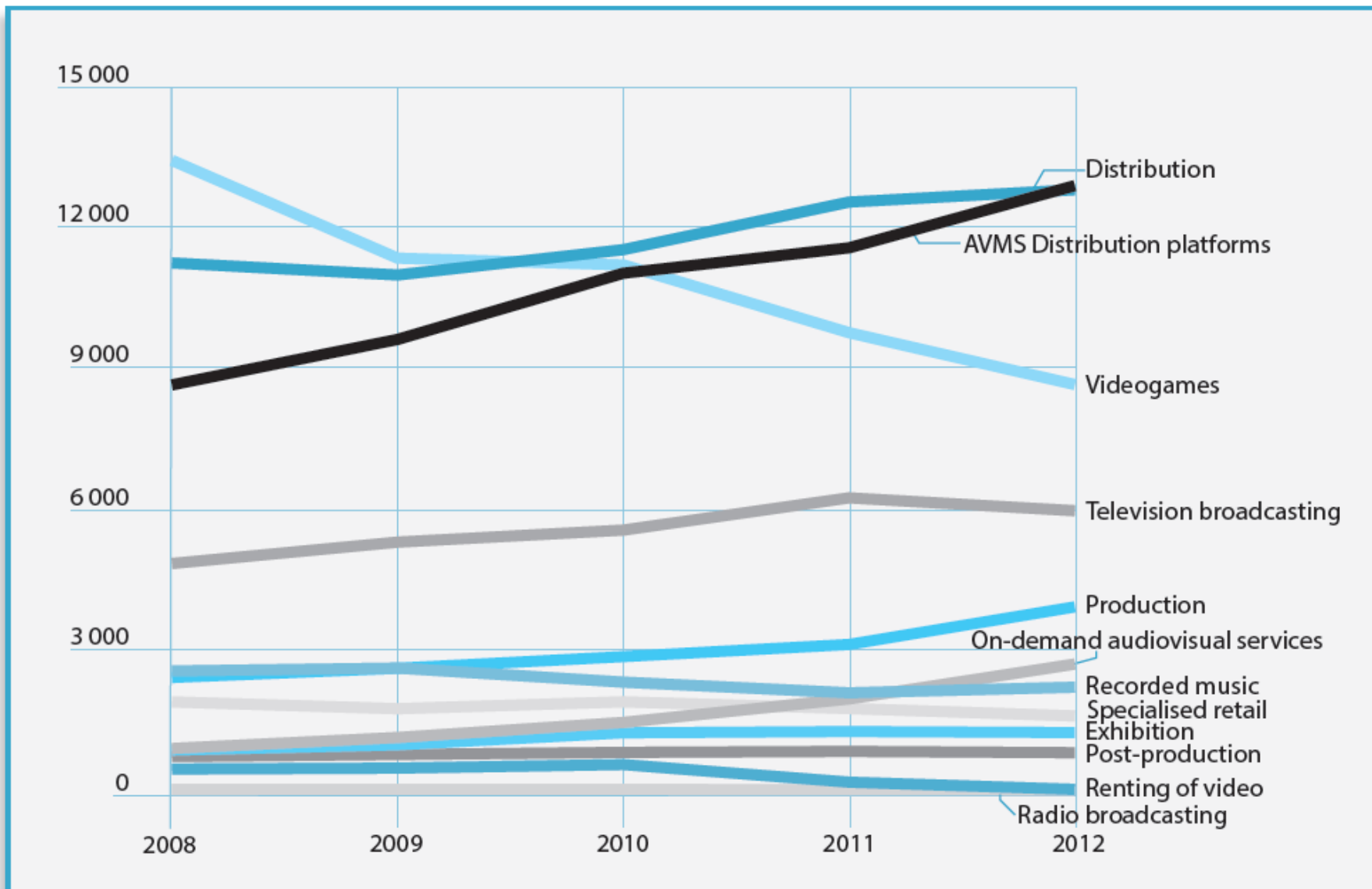
“the audiovisual work”



Source: European Audiovisual Observatory

Operating revenues of FATS established in the EU by main audiovisual activity

2008-2012 EUR million.

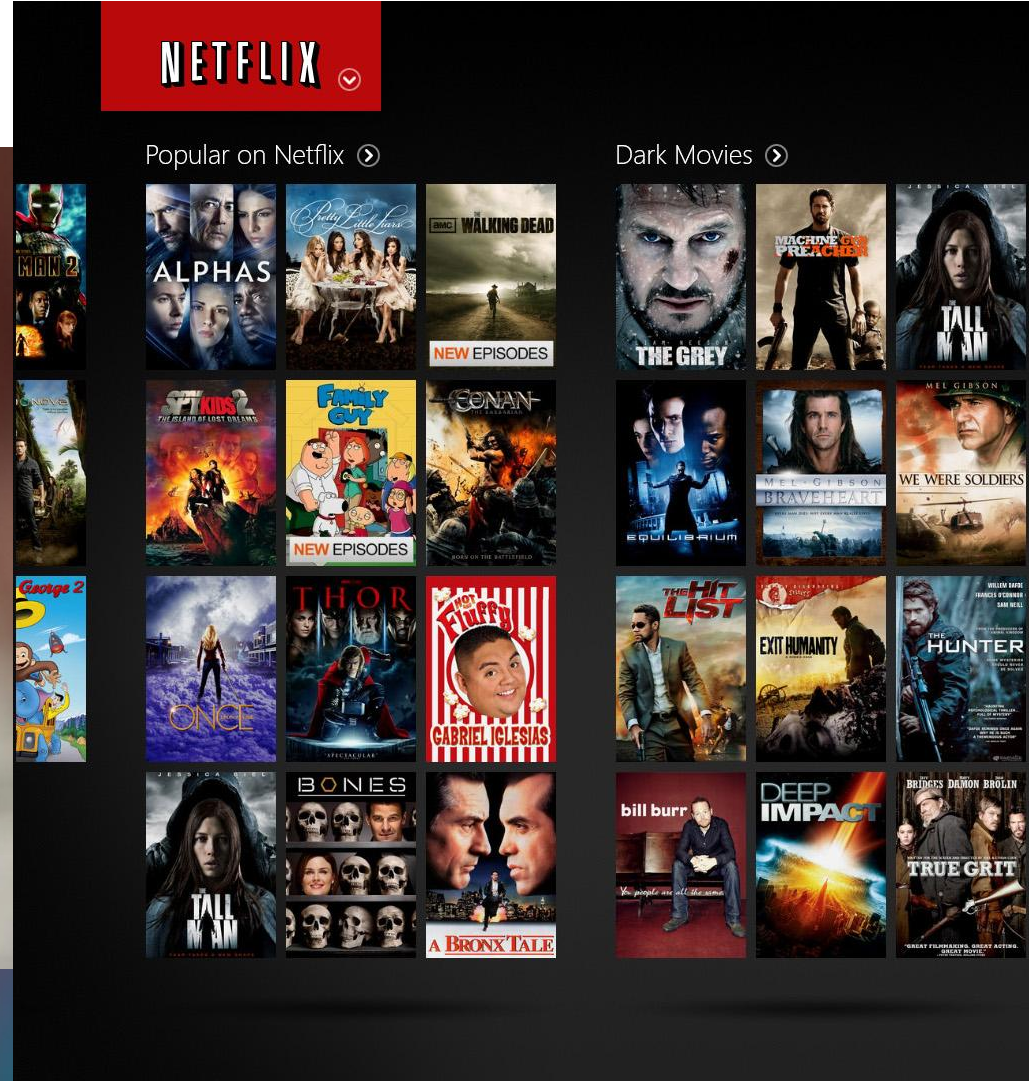


2008-2012 EUR million.

Audiovisual and the Internet

■ Globally, IP **video** traffic will be 82 percent of all consumer Internet traffic by 2021, up from 73 percent in 2016.

New stakeholders, uses and business models

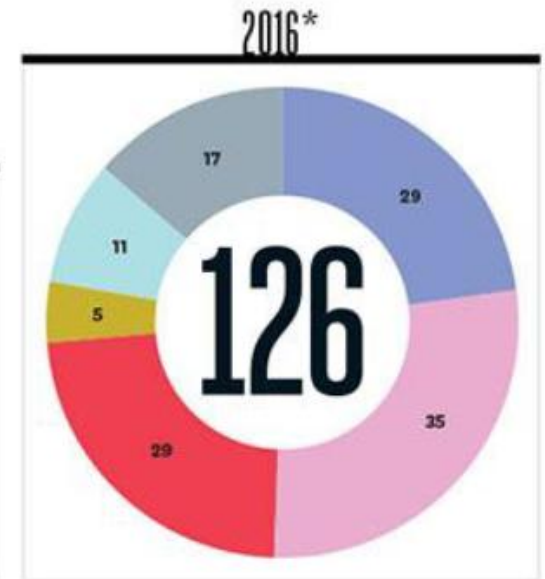
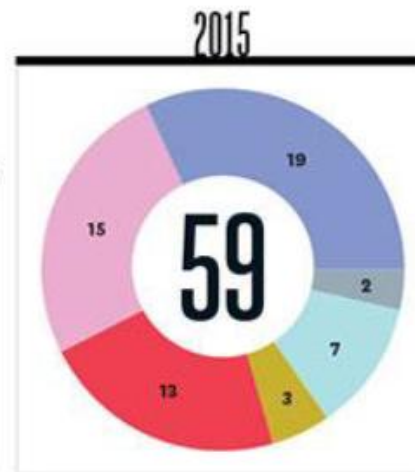
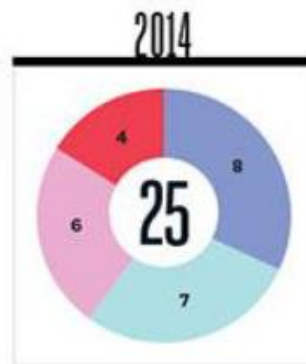
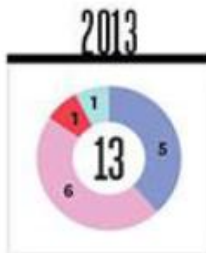
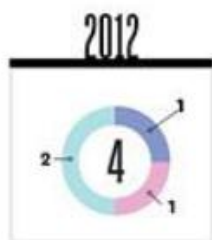


ORIGINAL CONTENT UP 3,050% IN 4 YEARS

NETFLIX

Yep, there were just a quartet of shows in 2012, and now Netflix has more than any one network or cable channel in existence

Source: THR research; *projected numbers



“New” audiovisual Works



Audiovisual in the new environment

Commission and its priorities

Policies, information and services



European Commission > Strategy > Digital Single Market > Policies >

Digital Single Market

POLICIES

Copyright

Digital technologies have radically changed the way creative content is produced, distributed and accessed. We are adapting the EU copyright rules to new consumer behaviours in a Europe which values its cultural diversity.

Audiovisual works



WIPO

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ORGANIZATION

WWW.WIPO.INT/COPYRIGHT

WIPO

WORLD
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ORGANIZATION