



# EXCLUSIVE RIGHTS AND THE PENUMBRA OF THE MARKET

BEN ATKINSON





# **PUBLIC DOMAIN**

**C19th**

## **COPYRIGHT**

### **BOOKS –**

**Right to control printing and  
distribution**

### **PERFORMING RIGHT –**

**Dramatic pieces, musical  
compositions**

# **COPYRIGHT DOMAIN**

## **c20th**

**EXCEPTIONS**

**STATUTORY  
LICENCES**

**FAIR USE**

**FAIR DEALING**



# Copyright

IN HISTORICAL PERSPECTIVE

Lyman Ray Patterson



# **BERNE 3-STEP TEST**

**Members shall confine limitations and exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the rights holder.**

WTO PANEL RULING 15/06/00

WT/DS160/R

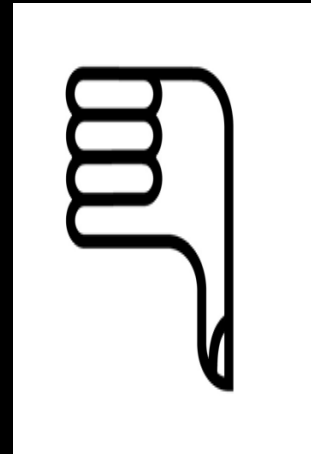
**remuneration right**

**market penumbra**

**sterile copyright**

# EXCLUSIVE RIGHTS:

A right to remuneration



Bargain for reward



# SCORE





**EXCLUSIVE  
RIGHTS**

**MARKET  
PENUMBRA**

NO MARKET  
+

NO HARM  
+

PUBLIC OR PRIVATE USE  
=

STERILE COPYRIGHT