

**Class 24: Preemption**

**Administrative**

Next Time Handout available on website

Drafting Exercise DUE NOW

Past Final Exams Posted on website  
Save Spring 2008 for just before review session

Review Sessions Saturday, April 24, 2010  
1:00 - 3:30ish PM  
BOTH review sessions will be held in one 2-3 hour block

News Wednesdays GAO Report on Piracy

Q&A (send questions!)  
Reviewing Spring 2008 Exam

**Orphan Works Drafting Exercise**

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Last Time

Software Contracts

ProCD

Facts

P has compiled more than 3000 phone books into computer DB

Copyrightable?

Court says no.

But points out how it's different from Feist

\$10 Million to create

Sweat of the brow doctrine

Sells on CD-ROM

Business model: Price Discrimination

Defined?

General public pays relatively low price (\$150)

Commercial buyers pay much more

Arbitrage

Price Discrimination depends on successful arbitrage

Airplane ticket example: Saturday stay-over to discriminate between buyers

The Contract

Outside box/shrink-wrap: Restrictions inside

License found in three places

1. File on CD-ROM

2. Printed in manual

3. On screen each time software runs. Can't use software until you click "I agree"

D: Bought consumer package and resold it on the Internet for a fee.

District Court: Unenforceable contract

Held:

Reasoning

Class 24: Preemption

Preemption

