Class 26: Contract

- Administrative
  - Next Time: Send me questions for the review session.
  - Review Sessions
    - Wednesday: Normal Class Time
    - Friday: 1pm, Room 306
  - New to the websites
    - Discussion Group on TWEN
    - Last year's final deconstructed
  - Youtube Monday
- Shrinkwrap Contracts
  - ProCD
    - Basic Facts
      - Feist in the 21st Century
      - CD-ROM with information (Feist + zip codes and census codes)
      - Price Discrimination
      - Term of the Contract
        - Use only for non-commercial purposes (850)
      - Mechanics of the Contract
        - Outside of box: See enclosed license for additional restrictions.
        - License printed in manual.
        - License contained on CD-ROM.
        - License displayed to user on every use.
        - "Click yes if you accept the terms"
          - If they clicked no, program halted.
        - Express right to return software if unhappy with terms.
    - Review: Was this protected under copyright?
      - Copyright in compilations of facts
        - Selection
        - Coordination
        - Arrangement
    - District Court
    - Held
    - Reasoning
- Clickwrap Contracts
  - Specht
    - Basic Facts
      - Two software programs made by AOL/Netscape
        - Navigator/Communicator (a browser)
        - SmartDownload
          - Key Innovation: If your connection is broken, it allows you to resume the download.
          - Case also suggests it speeds up the download.
          - Problem: Also (allegedly) tracked downloads and reported back to Netscape.
            - Class Action Lawsuit
        - Free Software
      - Contract Terms
        - Mandatory, binding arbitration.
      - Agreement Facts
        - Button labeled "Download" at the bottom of the "screen facing plaintiffs"
        - But, if user scrolled down
          - "Please review and agree to the terms of the [license] before downloading and using the software."
          - Even then: just taken to another page full of links to contracts!
    - Held
    - Reasoning
      - Rules
        - Manifestation of Assent
        - Scroll bar argument
  - Should they be enforceable?
  - Versus Shrinkwrap (Note 1)