

## HOW TO PERFORM A PREEMPTION CHECK

The purpose of a preemption check is to ensure that the author’s note can significantly add to the public discourse on that topic. To do this, you must conduct a comprehensive search to make sure your argument has not already been expressed in the existing literature. Start the preemption check by following the steps on the next page. Keep the following things in mind:

- **Go through each step outlined on the next page.** If your search does not reveal any similar sources, make a note of that in the right hand column. Do NOT simply leave a step off your preemption check (otherwise, we won’t know that you actually checked).
- It is NOT sufficient simply to state that your professor (or someone else) told you that your topic was unique. You must conduct a preemption check yourself.
- When you encounter a source similar to the Note, evaluate how the treatment of the topic in the source compares with the treatment of the topic in the Note.
- **Create a table** giving a cite to the source in one column and in the other column a paragraph explaining the similarities and differences of your Note as compared with all the sources you find that are substantially similar to the Note (see example below).
- In comparing your Note to other sources, state specifically why you think it is similar to your Note and any ways you think your Note is distinguishable itself from the source.

Source	Topic Treatment in Source v. Topic Treatment in Note
48 Syracuse L. Rev. 1365	<p>This article examines the pros and cons of giving patent protection to animals produced by genetic engineering and controlled breeding to determine whether differential treatment of them by the patent law is justified. According to this article: Because of the requirement that the animal be “nonnaturally occurring,” the consensus is that a patent would not be awarded to a particular breed of a species that was improved by classical breeding techniques; a patent will be awarded only for an invention that would never occur naturally.</p> <p>This Note makes some of the same arguments as the article. It argues that differential treatment of the products of genetic engineering and controlled breeding is not justified, and that giving either a competitive advantage over the other does not serve the purposes of the patent law. It discusses the pertinent elements of the Patent Act and concludes that a patent would most likely not be awarded.</p> <p>However, the Note goes beyond the Article by suggesting that patent protection would be denied both because a particular breed would be held ‘naturally occurring’ and for other independent reasons arising from the statutory text. The Note then goes on to suggest other sources of potential protection for a particular breed, including common law property rights and model statutory schemes. It concludes by comparing the relative advantages of extending property rights under common law, patent, and other statutory regimes.</p>
SSRN search: “Grokster”	<p>The SSRN search reveals that there are numerous forthcoming works on the Grokster case. However, none specifically address web modification software. The author must cite to some of these works in his paper. Here is the list of forthcoming articles.</p> <p>The Copyright Paradox: Understanding Grokster Daddy Are We There Yet?—Lost in Grokster Land. Third-Party Copyright Liability after Grokster. (This is the most important one). The Sony Paradox.</p>

## PREEMPTION CHECK GUIDELINES

1. Search Google (or your preferred search engine) for any terms related to your Note that may be in the news.
  - a. For example, if your piece suggests a reform that could be implemented by administrative rule or Congressional legislation, conduct a relevant search to ensure no such rule or legislation has been proposed.
2. Search [Google Scholar](#) with various keyword searches.
  - a. If Google does not have access to a full article that appears to be similar to yours, you will need to search through the UT databases to obtain the article. The easiest way to do this is to go to <http://www.lib.utexas.edu> and search for the title of your article.
3. Search [Google Books](#) with various keyword searches.
  - a. If book previews are incomplete, you may need to obtain a copy from the library to ensure that your topic is not preempted.
4. Search Westlaw full-text law review articles and Lexis full-text law review articles.
  - a. Search both databases because some articles will only appear in one.
  - b. Recommended databases:
    1. Westlaw: Law Reviews, Texts, and Bar Journals (TP-ALL)
    2. Lexis: Law Reviews & Journals
  - c. Covers most articles since 1990.
  - d. Performs a full-text search.
5. Search [Index to Legal Periodicals and Books](#).
  - a. Covers most articles since 1980 and books since 1993.
  - b. This is not a full-text search.
  - c. If articles on your topic may have been published prior to 1981, search [Index to Legal Periodicals and Books Retrospective: 1908-1981](#).
6. Search *Current Index to Legal Periodicals* ([CILP](#)) on Westlaw.
  - a. CILP is an index of sources not yet in print form.
  - b. You only need to search the latest eight issues.
7. Search the *Social Science Research Network* ([SSRN](#)).
  - a. SSRN compiles working papers on your topic.
8. Search the *Online Computer Library Center* ([OCLC WorldCat](#)).
  - a. Accessible through the Research Database link on the Tarlton website.
  - b. This database searches books and other materials in libraries worldwide.