

**Application for Promotion and Tenure**  
Eric Goldman  
Fall 2007

**1. INTRODUCTION**

I am pleased to submit this application for promotion to Associate Professor and the conferral of tenure. This is my sixth year of full-time teaching. I spent my first four years at Marquette University Law School in Milwaukee, Wisconsin, and I am now in my second year of full-time teaching at Santa Clara Law School. In addition to my regular duties as a tenure-track professor, I am the Academic Director for the school's High Tech Law Institute. Joining this faculty and this community has been an absolutely terrific experience professionally and personally, and I really appreciate how open and welcoming everyone has been. I feel very lucky to be here.

This application discusses the following topics:

- Teaching (Section 2)
- Scholarship (Section 3)
- Service (Section 4)
- Speaking (Section 5)
- Blogging (Section 6)
- Media Appearances (Section 7)

In addition, I have attached the following Exhibits:

- A Publications
- B HTLI Events 2006-07
- C Speaking Engagements
- D Blog and Website Statistics
- E Media Appearances
- F Curriculum Vita

**2. TEACHING**

**A. Teaching History and Student Enrollments Since Fall 2002**

Course (Units)	F02	SPR 03	SUM 03	F03	S04	F04	S05	F05	S06	F06	S07	F07
Contracts (4)				68				38				
Contract Drafting Workshop (2)							18					
Copyright (3/2) [FN1]		52			10				12			
Cyberspace Law (3) [FN2]		36		20		23		35		22		28
Intellectual Property (3)			12			63					26	
Law & Ethics of Lawyering (3) [FN3]	43				31		29		41			

FN1: Copyright was a 3 unit lecture course in 2003 and a 2 unit seminar in 2004 and 2005.

FN2: Called “Cyberlaw” at Marquette.

FN3: Named changed to “The Law Governing Lawyers” in 2006.

## **B. Teaching Philosophy**

I have three principal goals for my teaching.

First, I want students to learn how to make decisions based on legal doctrine (and the underlying philosophies). For example, after most cases, I explore with students how they might have made different choices than the litigants made. Often, I discuss a wide range of business and technological concepts to show how non-legal considerations can affect the decision-making process.

Second, I want students to think critically. I show students how to recognize their biases, question their assumptions and become discerning consumers of information.

My third goal (and perhaps most important of the three) is to act as a resource to help students achieve their professional and personal objectives. I realize that, for most students, law school is an intermediate step towards some ultimate objective, not the end objective itself. Therefore, I support students in all aspects of trying to achieve their goals. In many cases, these interactions take place outside of the classroom.

To achieve these goals, I constantly evolve my courses—I experiment with new casebooks, administrative procedures, ways to encourage student participation and approaches to evaluating students. My philosophy is to keep doing the things that worked and stop doing the things that did not work.

With respect to classroom participation, I strive to create an atmosphere in which students feel comfortable volunteering when they have something to contribute. I do this using two complementary techniques. First, I ask open-ended and thought-provoking questions, typically prompting students to consider how to make a decision based on the material we have discussed. Open-ended questions reduce student anxiety about participating because they are not likely to provide a “wrong” answer.

Second, I weave each student’s contribution into the lecture by positively reinforcing one or more points they make. In the rare case where a student needs to be corrected, I try to find another student to offer an alternative view or, failing that, gently suggest the alternative myself. Students feel comfortable volunteering because they get personalized feedback about their thinking and, when I validate their comments, they get implicit positive recognition.

## C. Teaching Mechanics

### Evaluation and Feedback

#### *Final Exams*

I use exams as another teaching tool. The exams ask students to apply the course material to fact patterns from real life (i.e., my own personal experience or someone else's), usually by advising or counseling a client. The exam questions both test how well the student can apply the course material and reinforce my goal of helping students realize that they need to make decisions in the real world.

Recently, I have given take-home exams instead of in-class exams to give students control over their test-taking experience. In my Contract Drafting workshop, I gave students the option to do an oral exam instead of a written final project (3 students chose that option).

After each exam, I write a lengthy and detailed sample answer (for example, the sample answer for Fall 2004's IP class was about 7,000 words). I post the exam and my sample answer to my personal website and email those documents to the students. The sample answers allow the students to learn from the exam by seeing the range of issues and conclusions they might have discussed. I also provide some commentary about my grading practices in the sample answer, so students can understand why they got their grade. Future classes benefit from these documents because they can take my past exams and self-assess their performance.

#### *Short Papers*

In some courses, I have required students to write short papers that ask for a response to specific material, ask students to do some self-exploration or act as a sample exam question. In all cases, the papers give students an opportunity to practice their writing skills in a lightly-structured and low-stress context.

#### *Seminar Papers and Supervised Thesis Papers*

On long papers, I work with students at every stage of the research and writing process. I spend significant upfront time helping students find a good topic that relates to their substantive interests. Students then submit multiple outlines and drafts; I do not limit the number of times I will look at their drafts. In seminar courses, I also require each student to comment on their peers' papers, so those students get comments both from me and all of their peers.

## Course Materials

In most courses, I prepare a coursepack of materials that may include:

- cases and statutes
- news and commentary articles
- primers/cheat sheets/checklists
- artifacts, such as a sample patent
- form documents/agreements

In some courses, this coursepack supplements a casebook. In other cases, such as Cyberspace Law, Copyright (seminar) and the Contract Drafting workshop, my coursepack is the course's principal reading material. In all cases, I post a hyperlinked syllabus that allows students to access most/all of the coursepack materials electronically if they choose.

### **D. Teaching Evaluations.**

I believe student evaluations of my teaching reinforce the dedication and passion I bring to my teaching. Among other things, students regularly comment positively on my preparedness, my enthusiasm in the classroom, my ability to stimulate critical thinking and the way I treat students with respect.

## **3. SCHOLARSHIP**

### Research Topics

Before becoming a full-time law professor, I worked for a website (Epinions.com) that published content to help consumers make better marketplace choices. This experience inspired me to consider how law and technology can help or hurt consumer decision-making in the marketplace, which is the focus of most of my scholarly work. This work routinely draws on the literature of other disciplines, including studies of consumer behavior and decision-making and the technical literature involving Internet technologies. Although I may pursue various side projects, I expect to continue this line of research for the foreseeable future.

In my first year of full-time teaching, I undertook one such side project to explore criminal copyright infringement, focusing particularly on a group of habitual non-commercial copyright infringers called warez traders.

### Disseminating my Research

Since July 2002, I have written 15 academic works. Five have been (or will be) published in general law reviews (*Washington University Law Review*, *Emory Law Journal*, *Wisconsin Law Review*, *Oregon Law Review* and *St. Louis University Law Review*); five in specialty law reviews; two as book chapters; one in an online complement to a general law review (*Texas Law Review's See Also*); one in a social science journal; and one has not been circulated yet. I circulated four of these works to the "open market" for placement, resulting in placements in the

*Oregon Law Review, Journal of the Copyright Society of the USA, Emory Law Journal and Wisconsin Law Review.* Eight works were solicited for publication; and two works were peer-reviewed (see the notes on Exhibit A).

I have published numerous other works as well. Exhibit A lists all of my publications since July 2002.

In addition to disseminating my work through publications, I present my work extensively at work-in-progress events, faculty workshops and other venues. See Section 5 below. These presentations often lead to valuable feedback that help me improve the paper, and they increase awareness of my work and the scholarly activity at our law school generally.

#### **4. SERVICE**

##### **A. Service to Santa Clara Law School and My Role as Academic Director of the High Tech Law Institute**

I have been Academic Director of the High Tech Law Institute since 2006. This position has five main responsibilities:

###### *1) Academic Programming and Curriculum Administration*

I oversee the High Tech and IP curriculum, which covers about 40 courses, two certificate programs (the High Tech certificate and the International High Tech certificate) and a graduate program (the LLM in IP). About a dozen full-time faculty and two dozen adjuncts regularly teach in the curriculum, and the curriculum serves a couple hundred JD students and a dozen IP LLM students. My responsibilities include (among others) course scheduling/sequencing; the development of new courses; the development of academic policies; adjunct professor relations; and the publication/maintenance of accurate information about our academic offerings and policies. Two examples of the disparate duties associated with academic programming:

- I helped initiate a gathering of interested faculty to discuss ways to develop the healthcare law curriculum and improve its coordination with the high tech curriculum.
- Due to the change in the number of units allocated to the first year Property course, some students interested in IP commented that they did not get any exposure to it in their first year. I met with the LARAW faculty to jointly develop a protocol that would help LARAW faculty create problems using IP topics if they want to do so.

###### *2) Event Planning*

The HTLI puts on over a dozen academic and practitioner events each year. I share the event planning responsibility with the Executive Director. Event planning usually consists of developing a curriculum, recruiting speakers, promoting the event and administrate the event onsite. Exhibit B lists the HTLI academic/practitioner events in 2006-07. As this list illustrates, we have made a concerted effort to collaborate our event planning with numerous other on- and off-campus entities.

### *3) Student Services*

The HTLI serves a variety of student constituencies, including the student body as a whole, students generally interested in High Tech and IP legal matters, students seeking a High Tech Law Certificate, students from the Computer & High Tech Law Journal, students from the Intellectual Property Association, students involved in an IP moot court, IP LLMS and IP Fellows. I advise these students, help with their event planning, supervise student papers (in particular, IP LLM theses), act on student petitions, and provide many other student services.

### *4) Program Marketing*

I promote the school and the HTLI to a variety of external constituencies, such as local practitioners, alumni, advisory boards and prospective students. Many of the speeches and media appearances discussed in Sections 5 and 6 below contribute to raising the school's and the HTLI's local and national profile. I also have a primary role in preparing our physical and electronic marketing material, including our brochures and our website.

### *5) Interact with the University Community*

I regularly interact with the Center for Science, Technology and Society, the Markkula Center for Applied Ethics, the Business School's Center for Innovation & Entrepreneurship and other on-campus entities to coordinate our efforts. For example, I regularly meet with representatives from the Markkula Center and CSTS to facilitate event planning collaboration.

### Other Law School Service

Last year, I was appointed to the Student Affairs Committee and shared faculty secretary duties with David Yosifon. This year, I serve on the Faculty Affairs Committee.

## **B. Service to Marquette University**

Some of my main law school/university service duties while at Marquette University Law School:

*IP Program Supervision* (4 years). Marquette's IP program was not as formally structured as the HTLI, but it was nevertheless large and complex enough to require supervision. My duties were similar to those enumerated in Section 4(A), and I shared the responsibility with my colleague Irene Calboli.

*Curriculum Committee* (4 years). This committee oversaw the law school curriculum and approved all new courses.

*Work Group on Strategic Planning for Admissions* (1 year). I chaired this group, which prepared a 40+ page strategic plans for law school admissions as part of the law school's strategic plan.

*Academic Programs Committee* (1 year). This committee arranged the faculty workshop series and other academic lectures.

*Technology Committee* (a/k/a Web Committee) (3 years). This committee oversaw the launch of a new website and dealt with other technology matters (such as using computers on exams).

*Orientation Ad Hoc Committee* (1 year). This committee revamped the orientation program.

*Faculty Advisor, Marquette Intellectual Property Law Review* (4 years).

*Faculty Advisor, Intellectual Property Law Society* (4 years).

*Faculty Advisor, Jewish Law Students Association* (4 years). I helped reestablish this group after a decade of dormancy.

*Faculty Advisor, Verdict student newspaper* (3 years). I helped reestablish a student newspaper after a decade of dormancy.

*Faculty Advisor to incoming 1Ls* (2 years).

*University-wide Advisory Committee on External Scanning* (2 years). This committee was part of the University-wide strategic planning initiative.

*Law school delegate to Committee on Faculty Nominating Convention* (1 year).

### **C. Service to the Profession and the Community**

#### Bar Associations

*American Bar Association.* I was actively involved in the American Bar Association Business Law Section for 4 years (2002-06), during which time I held three leadership positions:

- co-chair, Intellectual Property Subcommittee, Cyberspace Law Committee. My responsibilities included attending leadership meetings, organizing committee meetings, communicating with members, organizing conference sessions, and publishing an e-newsletter.
- editorial board member of the *Business Law Today* magazine, an official publication of the Business Law Section with a readership of about 55,000 lawyers.
- member of the Publications Board, which was responsible for a line of business law books with \$2 million annual revenues.

Although I had a good experience in the ABA, I stepped down because of heavy travel demands (my ABA duties required 6 trips/year) plus my concern that my ABA obligations would conflict with my duties as Academic Director of the HTLI.

*Computer Law Association (a/k/a ITechLaw)*. I held a leadership role in the Computer Law Association for 4 years (2002-06), running their global writing competition on information technology law topics. My obligations included restructuring the competition, marketing the competition, and selecting winners. I stepped down due to my concern that my obligations would conflict with my duties as Academic Director of the HTLI.

*California State Bar, Business Law Section, Cyberspace Law Committee*. Since 2006, I serve as one of 18 appointed members to this committee, which provides various services to its members.

*American Law Institute*. I was elected as a member of ALI in 2007.

*Wisconsin State Bar, Intellectual Property Section*. I served as Marquette's faculty representative to this group for 4 years (2002-06).

#### Other Service

I have served as an Executive Committee member of the AALS Law and Computers section since 2006.

I served as a mentor to entrants in the Wisconsin Governor's Business Plan Contest, 2004-06.

#### Editorial/Advisory Boards

In addition to my editorial board activities for the ABA, I have served on the following editorial and advisory boards:

- Board of Editors, *Journal of the Copyright Society of the U.S.A.*, 2004-
- External Board of Advisors, *Shidler Journal of Law, Commerce & Technology*, 2006-
- CCH Computer Law Advisory Council, 2007-
- Editorial Board, *Intellectual Property News* (publication of the IP Section of the Wisconsin State Bar), 2002-06
- Board of Advisors, Wisconsin Innovation Network (WIN) Foundation-Milwaukee Chapter, 2004-06
- Board of Editors, *E-Commerce Law Report*, 1998- (honorary)
- Board of Editors, *Internet Law & Business*, 1999- (honorary)

On an ad hoc basis, I have also performed various peer review/editorial review work, such as:

- Reviewed paper proposals for IADIS e-Commerce 2006 Conference
- Reviewed article for *Jurimetrics Journal*, 2006
- Reviewed book chapter for *The Handbook of Information Security* (John Wiley & Sons)
- Reviewed book chapter for *Internet Encyclopedia* (John Wiley & Sons)

#### Amicus Briefs and Other Advocacy Filings

I have written the following amicus briefs and advocacy filings:

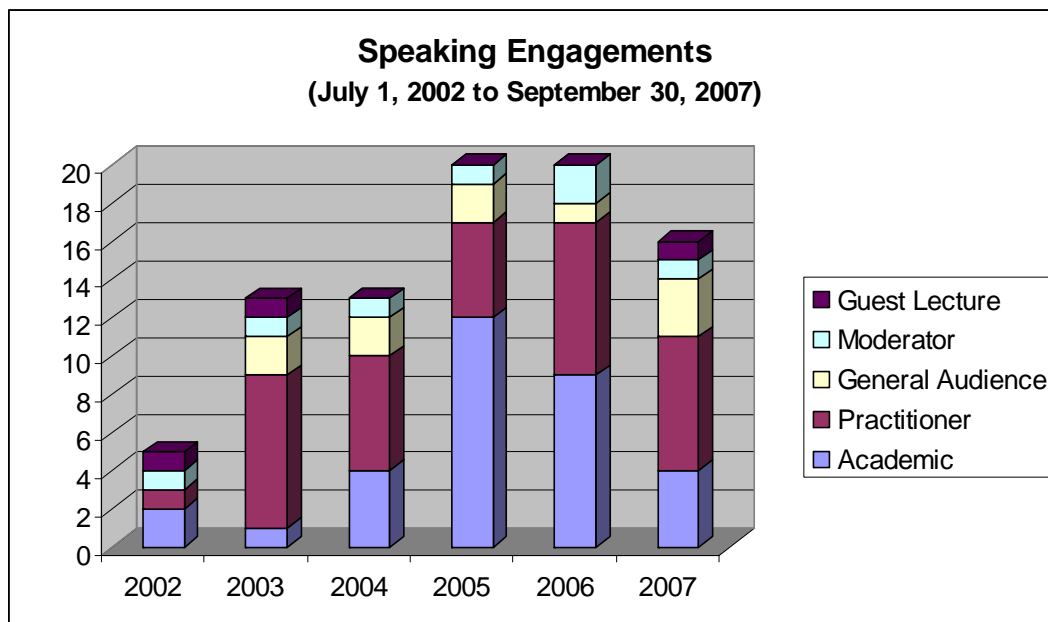


- *Rescuecom, Inc. v. Google, Inc.*, appeal to the Second Circuit (amicus brief on behalf of 18 intellectual property law professors), Feb. 2007 (with Stacey Dogan)
- *WhenU.com, Inc. v. Utah*, motion for preliminary injunction filed with the Utah State District Court (amicus brief on behalf of FindWhat.com), May 2004
- Comments on sentencing guidelines for spam filed with the United States Sentencing Commission, March 2004 (with Michael O’Hear)
- *1-800 Contacts, Inc. v. WhenU.com, Inc.*, appeal to the Second Circuit (amicus brief on behalf of Electronic Frontier Foundation), Feb. 2004 (with Cindy Cohn and Fred von Lohmann)

## 5. SPEAKING

I have had approximately 100 speaking engagements since I became a full-time professor. Exhibit C lists all of my speaking engagements. I speak at conferences that cater to a variety of audiences, including academics, practitioners, technologists and others. I believe these talks play an important role in increasing public awareness of the HTLI and the law school.

The following chart summarizes my speaking engagements (the chart excludes in-house law firm or miscellaneous on-campus presentations enumerated in Exhibit C).



Highlights include invited academic presentations at about half of the top 10ish law schools, including Yale, Harvard, Stanford, Boalt and Northwestern. The leveling-off of my speaking engagements partially reflects the longer travel time needed to reach events east of the Mississippi from California instead of Wisconsin.

## 6. BLOGGING

Since February 2005, I have operated two blogs:

- Technology & Marketing Law Blog ([blog.ericgoldman.org](http://blog.ericgoldman.org)). This blog focuses principally on Cyberlaw and intellectual property law topics. The blog allows readers to look over my shoulders as a researcher—I see a lot of material during my normal research efforts, and I cull the most interesting material for my readers. Typically, I blog about new legal developments; research projects I’m working on; interesting scholarly articles I have read; conferences I attended; and my published articles and talks. Although I have made about 90% of the posts to this blog, several law professors and lawyers have been guest-bloggers.
- Goldman’s Observations ([blog.ericgoldman.org/personal](http://blog.ericgoldman.org/personal)). I use this blog as an outlet for interesting material that does not fit within the other blog, such as my thoughts about the legal industry, legal education and matters of personal interest.

I also occasionally post to ContractsProf blog, the official blog of the AALS Section on Contracts, and I had a guest blogging stint at Concurring Opinions in January 2007. In total, I made approximately 1,100 blog posts between February 2005 and September 2007.

My blogs routinely get over 3,000 unique visitors each day (over 25,000 unique visitors each month), and thus far in 2007, I have had unique visitors from at least 177 countries. Since February 2005, my blogs collectively have had about 4.5 million page views. These numbers strongly suggest that substantially more people are exposed to my work via my blogs than other channels I use as a researcher. To further leverage my efforts, I republish selected blog posts in a monthly column for the *Cyberspace Lawyer* magazine.

The Technology & Marketing Law Blog focuses more on “breaking news” than on topics being debated on other blogs. As a result, this blog has attracted numerous mainstream media reporters looking for new story ideas, and a blog post often leads to mainstream media coverage on its topic.

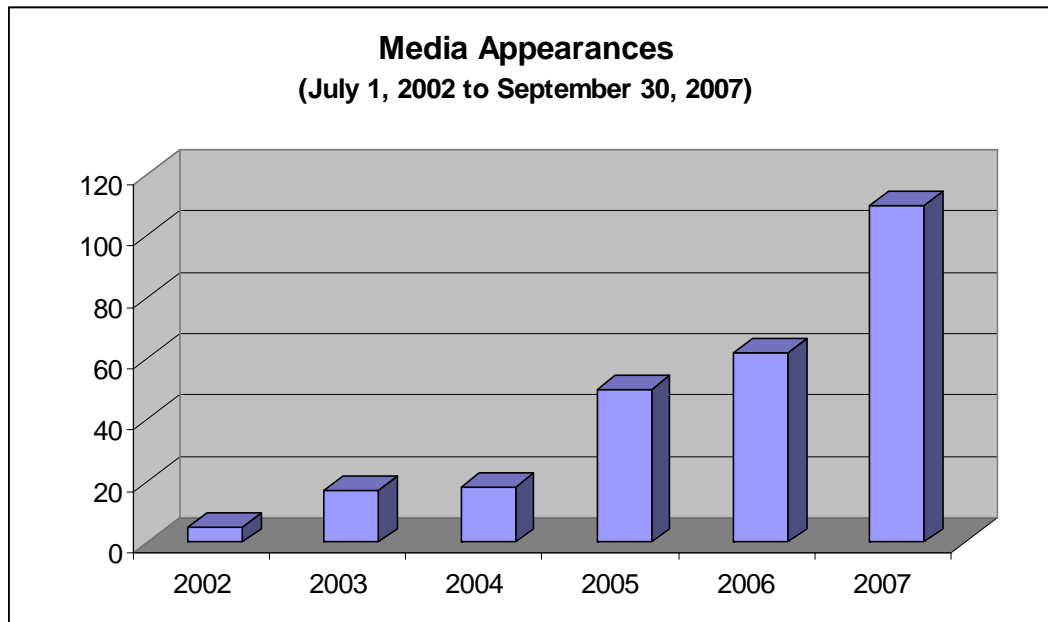
In addition to my blogs, I operate a personal website ([www.ericgoldman.org](http://www.ericgoldman.org)) where I post archival copies of my articles and speeches as well as course materials. Though the website gets significantly less traffic than the blogs, it is an important resource for my students and the community at large. In 2007 (as of September 30), the website had over 100,000 page views and visitors from over 130 countries.

Complete statistics for my blogs and my website are included as Exhibit D.

## 7. MEDIA APPEARANCES

I believe that being quoted in the mainstream media highlights the school’s expertise in high tech legal matters and improves our public image. As a result, I work extensively with the press. In total, as enumerated in Exhibit E, I made over 250 media appearances between July 2002 and September 2007, including quotes in the *Wall Street Journal* (4 times), the *New York Times* (9

times), the *Los Angeles Times*, the *Chicago Tribune*, the *San Jose Mercury News* (7 times), the Associated Press (7 times), Reuters (2 times), National Public Radio (2 times) and many others. The following chart shows the trajectory of my media appearances:



The increase from 2004 to 2005 reflects the launch of my blogs. The increase from 2006 to 2007 reflects growth in the number of mainstream media journalists reading the blogs.