Application for Promotion to Full Professor
Eric Goldman
June 2011

1. INTRODUCTION.

I am pleased to submit this application for promotion to Professor of Law. I have completed 9 years as a full-time professor. I spent my first four years as an Assistant Professor at Marquette University Law School in Milwaukee, Wisconsin. I joined this law school’s faculty in 2006 as an Assistant Professor. I received tenure and was promoted to Associate Professor in 2008. In addition to my regular duties as a tenure-line professor, I direct the school’s High Tech Law Institute.

This application describes my overall activities as a full-time professor but concentrates on my activities since January 1, 2008, i.e., just after the date of my application for tenure and associate professor. My curriculum vita (attached) provides a more comprehensive view of my professional career.

2. TEACHING.

A. Teaching History and Frequency.

My teaching history since Fall 2002:

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Notes:
* Copyright was a 3 unit lecture course in 2003 and a 2 unit seminar in 2004 and 2005
* Internet Law was also called “Cyberlaw” and “Cyberspace Law”
* Professional Responsibility was called “The Law & Ethics of Lawyering” and “The Law Governing Lawyers”
* I was on sabbatical Spring 2010

Teaching Frequency Since July 1, 2002

<table>
<thead>
<tr>
<th>Course</th>
<th>Frequency</th>
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<tbody>
<tr>
<td>Internet Law</td>
<td>9 times</td>
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<tr>
<td>Intellectual Property</td>
<td>6 times</td>
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<tr>
<td>Professional Responsibility</td>
<td>4 times</td>
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<tr>
<td>Copyright</td>
<td>3 times</td>
</tr>
<tr>
<td>Contracts</td>
<td>2 times</td>
</tr>
<tr>
<td>Advertising &amp; Marketing Law</td>
<td>1 time</td>
</tr>
<tr>
<td>Contract Drafting Workshop</td>
<td>1 time</td>
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</tbody>
</table>
In addition, before I became a full-time professor, I taught Internet Law seven times (Spring 1996-2002) and Copyright Law one time (Spring 2002) as an adjunct instructor.

B.  **Teaching Approach.**

In class, I usually lecture on a concept or case, ask the students if they have any questions or comments, and then open up class discussion on implications of the material. I treat most judicial opinions as “case studies” of business decision-making. For example, I ask students to brainstorm why a litigant made certain choices or what the students might do differently based on the case’s results. In the discussion portion, I pose questions that do not have a right or wrong answer. I usually validate at least one aspect of each student’s comments so that they get some positive feedback from participating. As a result, I often get widespread student participation even when I don’t require or grade it.

In each course, I bring in at least one practitioner guest lecturer to talk about their practice and the issues they see in the field.

C.  **Teaching Materials.**

I use PowerPoint slides in my courses for three main purposes:

- Present “black letter” law, such as the statutory text or a statement of the rule.
- Graphically present doctrinal material when that might aid student comprehension.
- Display case “artifacts,” such as visual depictions of the material giving rise to the litigation. I also use physical props, music and video for this purpose.

In Intellectual Property, I use a traditional published casebook plus a small supplement that I prepare. In Internet Law and Advertising & Marketing Law, I prepare my own materials. For Internet Law, I use an electronic reader that I update every year. For Advertising & Marketing Law, I am co-authoring a new casebook.

D.  **Evaluation Methods.**

My exams generally emphasize issue-spotting and doctrinal accuracy. All of my Intellectual Property and Internet Law exams at SCU have been open-book essay exams. With limited exceptions, these have been take-home exams. I gave students in my Advertising & Marketing Law course the option to take an oral exam, but none chose to do so. After the exam is over, I publicly post my exams with lengthy sample answers (3,000 to 5,000 words) to my website.

I require attendance in my courses and reduce student grades for excessive absences. I do not grade participation in lecture courses, but I did grade it in Advertising & Marketing Law.

In Internet Law (Fall 2009) and Advertising & Marketing Law (Spring 2011), students could prepare a wiki entry for part of their grade. In the latter case, students also commented on each others’ entries and wrote a reflection paper about the experience. In Advertising & Marketing...
Law, I also gave students the option to write a Supervised Analytical Writing requirement paper or a shorter practitioner-oriented paper.

E. **Student Responses.**

My student evaluations have been consistently strong. Students appreciate my preparation for class, my availability in person and by email, and my efforts to keep students engaged during classtime. My course offerings are frequently over-subscribed by students.

3. **SCHOLARSHIP.**

A. *Academic Works Since January 1, 2008.*

**INTERNET LAW CASES AND MATERIALS** (in draft form)

*Notes:* This is my Internet Law course reader. Last year, I posted it online as a paid download (from Scribd) and as a print-on-demand book (from CaféPress). Over the next couple of years, I plan to expand the reader and make it available to other professors for adoption.

**ADVERTISING AND MARKETING LAW: CASES AND MATERIALS** (with Rebecca Tushnet) (in progress)

*Notes:* This casebook will be the first to support Advertising & Marketing Law courses in law schools. About a dozen law schools offered that (or a similar) course in 2010-11. More courses are likely to come online when the casebook is available. I anticipate several adoptions in 2011-12.

The casebook was my main Spring 2010 sabbatical project. The final casebook will be 14 chapters. 11 are mostly complete. I used a draft version of the casebook for my Spring 2011 course. In September 2011, the University of Tulsa Law School will host a conference to celebrate the casebook’s launch.

My co-author and I have not decided how to publish the materials. We have had some interest from traditional casebook publishers, but we are not sure if we want to go that route. We are also considering electronic publication alternatives. We will revisit the publication choice in 2012.


*Notes:* This is a symposium essay of about 6,000-7,500 words. It is about half-written.

Notes: This will be a full-length academic article that I will circulate to the law reviews for publications. I anticipate it will be about 15,000-20,000 words when complete. It is about half-written.

Revisiting Search Engine Bias (in progress)

Notes: This essay is complete and posted to SSRN. I am still mulling my publication options. The essay is an approximately 5,000 word update to my 2006 search engine bias article, discussing changes in the intervening 5 years. This essay was featured in a San Francisco Chronicle article: James Temple, Eric Goldman Says Google Does Not Act Unfairly, S.F. CHRONICLE, Mar. 21, 2011.

Regulating Reputation, in THE REPUTATION SOCIETY: HOW ONLINE OPINIONS ARE RESHAPING THE OFFLINE WORLD (Hassan Masum and Mark Tovey eds.) (MIT Press, 2011)

Edited version republished as The Regulation of Reputational Information in THE NEXT DIGITAL DECADE: ESSAYS ON THE FUTURE OF THE INTERNET 193 (Berin Szoka & Adam Marcus eds.) (2010)

Notes: This essay “previews” my ongoing research project on reputation regulation (discussed below).

Republished in InformIT.com, July 8 and July 15, 2010

Notes: This was a symposium essay. It generated substantial media attention, including coverage in Ars Technica (twice), CNET News.com and NPR’s Future Tense.

Unregulating Online Harassment, 87 DENV. U. L. REV. ONLINE 59 (2010)

Notes: This is a short symposium essay.

Brand Spillovers, 22 HARVARD J. L. & TECH. 381 (2009)

Teaching Cyberlaw, 52 ST. LOUIS U. L.J. 749 (2008)

Online Word of Mouth and Its Implications for Trademark Law, in TRADEMARK LAW AND THEORY: A HANDBOOK OF CONTEMPORARY RESEARCH 404 (Graeme B. Dinwoodie and Mark D. Janis eds.) (Edward Elgar Press, 2008)
Republished in TRADEMARKS: ONLINE PROTECTION (P. Solomon Vinay Kumar ed.) (Amicus Books 2008)

I’m Not Sure I Want to Be Ethan Leib’s Friend Any More, A Comment on Ethan Leib’s Friends as Fiduciaries article as part of the Fourth Annual Conglomerate Junior Scholars Workshop, The Conglomerate, July 30, 2008
B. Other Publications Since January 1, 2008 (also see the blogging section below).


Republished in Gizmodo, p2pnet and Business Insider on Aug. 23, 2010.

Notes: In addition to multiple replications, this article sparked substantial news coverage, including writeups in CNET News.com, MediaPost, The Register and others.

The Third Wave of Internet Exceptionalism, SANTA CLARA MAGAZINE, Winter 2008
Republished in InformIT.com, Feb. 23, 2009

Republished as Affiliate Liability Extravaganza, E-COMMERCE L. REP., Aug. 2008, at 1

Top Cyberlaw Developments of 2007, InformIT.com, Jan. 11, 2008

C. Citations.

Judicial Citations. I know of five judicial citations to my works:

- Deregulating Relevancy, Emory Law Journal 2005, cited in:
- A blog post cited in Wiesmueller v. Kosobucki, 571 F. 3d 699 (7th Cir. 2009). A 2010 study posted to Concurring Opinions found less than 40 judicial citations to law professor blogs, so appellate court citations are very rare. Judge Richard Posner authored this opinion.

Academic Citations. My works are frequently cited in the academic literature. Academic citation counts for my academic works with 10 or more citations (rank-ordered by citation count):

2 All citation counts are from Westlaw’s “citing references” link and include only “secondary sources” citations. This excludes, for example, citations in legal briefs. The citation counts are further under- and over-inclusive in a variety of ways. They can be over-inclusive because the cite lists may include non-academic citations, double-
1) *Deregulating Relevancy*, Emory Law Journal 2005: 79 citations
3) *Cyberspace, the Free Market, and the Free Marketplace of Ideas*, Hastings COMM/ENT 1993: 43 citations
4) *Online Word of Mouth*, book chapter 2008: 21 citations
5) *Search Engine Bias*, Yale Journal of Law & Technology 2006: 16 citations
6) *A Road to No Warez*, Oregon Law Review 2003: 13 citations

My blog and website also are cited frequently. The search term “blog.ericgoldman.org” in Westlaw’s “JLR” database on May 12, 2011 yielded 101 citations, and a search for “www.ericgoldman.org” in Westlaw’s “JLR” database on May 23, 2011 yielded 22 citations. A 2010 Concurring Opinion blog post4 ranked my blog as one of the 20 most-cited law blogs in the academic literature.

My academic works are also well-read. I have been one of the top 1,000 most downloaded authors on SSRN for the past several years.

D. Future Research Directions.

I have three main research projects for the next several years:

*Advertising Law*. It will take another year or two to complete the casebook and related materials. After that, my co-author and I might decide to extend the materials for other audiences, such as students in non-law disciplines or legal practitioners. We will also try to pull together the Advertising Law academic community, such as creating an email list for the group and a new AALS section. In addition to the book, I expect to write more scholarship in the advertising law area, which has received surprisingly inconsistent academic attention.


*Reputation Regulation*. For the past couple of years, I have been thinking about reputation information and how we regulate it. Reputation information plays a crucial role in the counted citations and my subsequent citations to my own works. They can be under-inclusive because (among other defects) not all legal academic works are indexed in Westlaw, subsequent authors may have made citation errors (a surprisingly common phenomenon), and Westlaw’s “citing references” link occasionally excludes even accurate citations in its index due to apparent bugs. A word search in the database for the article’s title will often yield higher numbers of hits than the “citing references” link. As a result, these citation counts are more useful directionally than as numerically precise counts. I conducted these searches on May 12, 2011.

3 Because this work isn’t indexed in Westlaw, the citation count is based on the keyword search “Online Word of Mouth and Its Implications for Trademark Law” in the Westlaw “JLR” database. Search conducted May 12, 2011.

marketplace’s invisible hand, and yet we have very heterogeneous regulatory approaches to different reputation systems. I plan to develop these observations into a book. My book chapter on reputation regulation previews the project, and my in-process article, *47 U.S.C. §230 as Economic Policy*, will become a book chapter. The DoctoredReviews.com website (discussed below) is an advocacy project spun out of this research.

4. **SPEAKING ENGAGEMENTS.**

Since July 1, 2002, I have given nearly 200 public talks, over half of which have been since January 1, 2008. I speak to many types of audiences: academics, practitioners, the general public and students (e.g., as a guest lecturer). A summary of my public speaking engagements, broken down by type:

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<thead>
<tr>
<th>Year</th>
<th>Academic</th>
<th>Practitioner</th>
<th>Other Moderator</th>
<th>Guest Lecture</th>
<th>All</th>
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My complete list of talks is in my CV.

5. **SERVICE.**

A. **High Tech Law Institute.**

I have been Director of the High Tech Law Institute since July 2006. Some of the HTLI’s major changes over the past 5 years:

- revised the High Tech Law Certificate to increase student eligibility.
- restructured the IP curriculum to make the IP Survey course the curriculum’s gateway course. In AY 2010-11, approximately 280 students took the course.
- consolidated our sprawling high tech course offerings and freshened up the high tech curriculum with some new offerings (e.g., E-Discovery, Virtual World Law, IP Theory).
- reorganized the HTLI staffing so that both staff members report to the director.
- developed new methods of disseminating HTLI news, including social media outlets (Twitter, Facebook and LinkedIn).
- reorganized our advisory boards.
• provided greater support for our biotech community, including helping to launch a new student group and increasing marketing for that area.
• restructured our sponsorship programs for local law firms who financially support the HTLI.
• put a new joint degree, the JD/MSIS, in place.
• created a new academic honor for students (the “High Tech Excellence Award”).
• launched a successful annual conference series, the “State of the Net West,” co-sponsored with the Advisory Committee to the Congressional Internet Caucus.
• launched a new academic works-in-progress series in Internet Law.
• expanded our joint speaker series on “IT, Ethics and Law” with the Markkula Center for Applied Ethics and the Center for Science, Technology & Society.
• organized numerous high-profile academic events on campus over the years, including:
  - Trademark Dilution: Theoretical and Empirical Inquiries (2007) [symposium issue published]
  - Carterfone and Open Access in the Digital Era (2008)
  - Oral arguments before a panel from the Federal Circuit Court of Appeals with a follow-on lunch talk with the judges (2008)
  - 100th Anniversary of the 1909 Copyright Act (2009) [symposium issue published]
  - Sources of Uncertainty in Patent Litigation (2009)
  - Patent Scholars Colloquium (2009)
  - Exhaustion and First Sale in IP (2010) [symposium issue published]

B. Other Law School/University Service.

My other on-campus service since January 1, 2008 includes:

• Kyle Graham Mentoring Committee, 2009-
• Law School Strategic Planning Committee, 2009
• Law School Faculty Affairs Committee, 2007-08
• Member, Center for Science, Technology & Society Steering Committee, 2006-
• Faculty Scholar, Markkula Center for Applied Ethics at Santa Clara University, 2009-

I have given a number of talks on campus to both student groups (e.g., SIPLA) and the faculty.

C. Bar Associations

My bar association participation since January 1, 2008:

• Elected Member, American Law Institute, 2007-
• Member (chosen for a 4 year term), Cyberspace Law Committee, Business Law Section, State Bar of California, 2006-10
• ALI-ABA’s Technology Law Advisory Panel, 2009-
D. **Editorial Boards and Scholarship Reviews.**

My editorial boards since January 1, 2008:

- Board of Editors, Journal of the Copyright Society of the U.S.A., 2004-
- External Board of Advisors, Washington Journal of Law, Technology + Arts, 2006-
- CCH Computer Law Advisory Council, 2007-
- Koncision NDA Editorial Board, 2010-
- Board of Editors, E-Commerce Law Report, 1998- (titular only)
- Board of Editors, Internet Law & Business, 1999- (titular only)

I am on the PhD dissertation committee for a Monash University (Australia) student. He is writing about keyword advertising regulation in Australia.

Since January 1, 2008, I have:

- refereed articles for Internet & Policy, New Media & Society, Jurimetrics Journal, and First Monday
- reviewed two book proposals for publishers
- done scholarship tenure reviews for Paul Ohm (University of Colorado), Lisa Ramsey (University of San Diego) and Tal Zarsky (Haifa University in Israel)

I served on the Programme Committee for the Second International Conference on Business, Law and Technology (IBLT) at Touro Law Center in 2008.

E. **AALS Section Chair.**

I was Chair-Elect (2008) and then Chair (2009) for the AALS Law and Computers section, which we renamed the Section on Internet and Computer Law. At the AALS Annual Meeting in January 2010, we sponsored a program entitled “Law and Wikis.”

F. **Advocacy Work.**

*DoctoredReviews.com.* In 2010-11, a professor at UC Berkeley (Jason Schultz), two UC Berkeley law students and I developed an advocacy site entitled “DoctoredReviews.com,” containing about 20 pages and 6,500 words of content. The site criticizes doctors for using contracts that restrict patients from reviewing the doctors online and explains to patients, doctors and review websites why they should reject these contracts. This project is an example of taking my research on reputation regulation and turning it into action in the field. We launched the website in April 2011, and the site generated substantial press coverage, including (among many others) Time, MediaPost, Ars Technica, paidContent, Bnet, BNA (two different publications) and KNTV.

*Federal Anti-SLAPP Law.* I publicly support the proposed federal anti-SLAPP legislation, and I helped with legislative drafting and assisted with securing legislative sponsors. I am planning to
join the board of directors of a new 501(c)(4) organization, the Public Participation Project, which will advocate for federal anti-SLAPP legislation.

**Joint Appendix Unsealing in Rosetta Stone v. Google.** Rosetta Stone v. Google is a keyword advertising lawsuit. Google won at the district court level, and Rosetta Stone appealed. The parties filed a joint appendix of about 7,000 pages and designated the entire appendix as confidential. Working with Paul Levy of Public Citizen, we contacted the litigants about this. Through our efforts, we were able to unseal about 90% of the joint appendix. We are now reviewing the newly unsealed material.

**Other Advocacy Work Since January 1, 2008.** I have signed onto numerous amicus briefs and advocacy letters. In November 2008, I filed comments with the Securities and Exchange Commission regarding their Guidance on the Use of Company Web Sites.

6. **MEDIA RELATIONS.**

Since July 1, 2002, I have made nearly 1,000 media appearances. About 2/3 of those appearances have occurred since January 1, 2008. I currently average nearly 20 appearances per month. A chart of my media appearances from July 1, 2002 to April 30, 2011:

![Media Appearances Chart]

Between January 1, 2008 and May 14, 2011, I have appeared in the following publications:

- *Wall Street Journal* and its blogs (18 times)
- *New York Times* and its blogs (17 times)
- Associated Press (7 times)
- Reuters (9 times)
- National Public Radio (at least twice)
I have a 50+ page detailed list of my media appearances which I’m happy to provide on request.

7. **SOCIAL MEDIA.**

   A. **Blogging.**

Since February 2005, I have run two blogs—the Technology & Marketing Law Blog (a professional oriented blog and my “main” blog) and Goldman’s Observations (a personal blog). In that time, I have published over 2,000 blog posts, of which I’ve written over 1,800 (the remainder are guest blog posts). I currently average about 3-4 posts per week.

My typical blog post is fairly lengthy. My posts are rarely less than 300 words, and some posts can be up to 5,000 words. Assuming an average post length of 700 words, I have blogged over 1.2 million words since 2005. For comparison purposes, this would be equivalent to writing over 60 law review articles of 20,000 words each.

Through a syndicator, my blog posts are incorporated into Westlaw’s and Lexis’ searchable databases. Two monthly periodicals (*Cyberspace Lawyer* and *Internet Law & Business*) also republish some selected blog posts each month.

My blogging has garnered numerous accolades, including designation as one of the top 100 law blogs by the *ABA Journal* (the “ABA Blawg 100”) for the last two years in a row. I detail the accolades below.

I do not have an exact count of blog readers, but it has clearly grown in the past few years. At Google Reader, I have about 1,600 RSS subscribers (as of May 14, 2011). The blogs often get over 4,000 visits/day, and the most popular post so far of 2011 (as of May 14, 2011) has been read approximately 25,000 times.

   B. **Twitter and Other Social Media.**

I have been posting to Twitter since summer 2008. In the past 3 years, I have made over 1,800 posts (of 140 characters or less) and attracted over 2,600 subscribers at Twitter—including academics, practitioners, students, journalists, technologists and many others. I automatically repost my tweets to my LinkedIn account (with approximately 500 connections) and Facebook status report (with approximately 700 friends). Even assuming some double- or triple-counting among the three different services, each tweet immediately reaches over 3,000 people. In practice, this means I can instantly reach a large audience of like-minded individuals and share topically relevant information with them about my scholarship, my speaking engagements, HTLI activities and other items.

   C. **Accolades for Blogging and Tweeting Since January 1, 2008.**

In the legal field generally:

- Named to the Third and Fourth Annual ABA Journal Blawg 100 (2009 and 2010)
- Ranked as one of the top 20 law blogs by Cision (2011)
- Ranked as one of the top 20 law blogs by BlogRank (2011)
- Ranked as one of the top 20 law blogs by Wikio (2010)
- Top 100 Law Blogs, The Daily Reviewer (2009-now)
- Weblog Award finalist for Best Law Blog (2008)

As a law professor:
- Dennis Kennedy’s Blawggies, runner up, Best Law Professor Blog (2008 and 2010)
- Top 100 Graduate Blogs by University Personnel, Master Degree Online.com (2010)
- 100 Best Blogs for Law School Students, Online Schools (2009)
- 100 Best Professors Who Blog, Online College.org (2009)
- 100 Blogs That Will Make You Smarter, Online Universities.com (2008)
- Top 100 Academic Law Twitter Feeds, Rasmussen.edu (2010)
- Top 100 Twitter Feeds for Law Students, Online Best Colleges.com (2009)

In the field of IP/Internet Law:
- Ranked as one of the top 10 IP Law blogs of all time by Justia Blawgsearch (2011)
- Top 50 Internet Law Blogs, Justice City USA (2009)
- Top 5 Internet Defamation Law Blogs, California Defamation Law Blog (2008)
- Six People All E-Commerce Lawyers Should Follow on Twitter, E-Commerce Law Blog (2008)

As a business-oriented blog:
- Named as a Top Entrepreneur, IP, Innovation and Micro Enterprise Blog by The Entrepreneur’s Advisor (2011)
- 50 Best Business Professor Blogs, BSchool.com (2010)
- Top 50 Blogs by Business Professors, Dr. Management, PhD (2010)
- 100 Awesome Blogs for Your Business Education, Bachelors Degree Online (2009)
- 100 Ethics Blogs Every Business Student Should Read, Online Courses.org (2009)
- Top 50 Business Professor Blogs, Biz.edu (2008)

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