

Henry J. Casey Professor of Law

*Lewis & Clark Law School*, 10015 S.W. Terwilliger Blvd, Portland, OR 97219

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ACADEMIC EMPLOYMENT

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NORTHWESTERN SCHOOL OF LAW OF LEWIS & CLARK COLLEGE

*Professor of Law*, 2007 – present

*Interim Dean*, 2006 – 2007

*Professor of Law*, 2004-2006

*Associate Professor of Law*, 1998-2004

*Assistant Professor of Law*, 1996-1998

SUBJECTS: Intellectual Property, Copyright, Copyright in Advancing Technologies, International Intellectual Property, Cyberlaw, Art Law, Civil Procedure, Federal Courts, Property Law

SPECIAL ACKNOWLEDGEMENTS:

Appointed Associate Reporter, RESTATEMENT OF LAW, COPYRIGHT  
November 2014

Elected to membership in the American Law Institute, 2014

Appointed the *Henry J. Casey Professor of Law*, June 2016

Appointed *Robert E. Jones Professor of Advocacy and Ethics* September  
2013

Appointed *Kay Kitagawa and Andy Johnson-Laird IP Faculty Scholar*,  
November 2010

Appointed *Jeffrey Bain Faculty Scholar*, May 2008

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ADDITIONAL ACADEMIC EMPLOYMENT

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*Guest Professor*, University of San Diego School of Law, Summer Abroad,  
Florence, Italy 2006  
Course: *International Intellectual Property*

*Guest Professor*, Sun Yat-Sen University School of Law /Whittier Law School  
ZhuHai, China 2004  
Course: *International Intellectual Property*

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PREVIOUS EMPLOYMENT

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*Attorney*, Bodman, Longley, & Dahling, Detroit, Michigan, 1993-1996  
*Judicial Law Clerk*, Chambers of Honorable Ralph B. Guy, Jr., United  
States Court of Appeals for the Sixth Circuit, 1992-1993

## EDUCATION

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Juris Doctorate, University of Michigan Law School, 1992  
*Magna Cum Laude*  
Order of the Coif; *Member* Michigan Law Review

Bachelor of Arts, University of Michigan, 1987,  
*with High Distinction*

## BOOKS AND BOOK CONTRIBUTIONS

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COPYRIGHT IN A GLOBAL INFORMATION ECONOMY (5th Ed. Aspen 2019) (*with* Julie Cohen, Ruth Okediji, and Maureen O'Rourke) (forthcoming)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, (Ver. 6.0 Semaphore Press 2018) (*with* Joseph Scott Miller)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, (Ver. 5.0 Semaphore Press 2017) (*with* Joseph Scott Miller)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY (4th Ed. Aspen 2015) (*with* Julie Cohen, Ruth Okediji, and Maureen O'Rourke)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, (Ver. 4.0 Semaphore Press 2015) (*with* Joseph Scott Miller)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, (Ver. 3.0 Semaphore Press 2014) (*with* Joseph Scott Miller)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY (3d Ed. Aspen 2010) (*with* Julie Cohen, Ruth Okediji, and Maureen O'Rourke)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY: CASE AND STATUTORY SUPPLEMENT (Aspen, separate editions published in 2003, 2004, 2005, 2007, 2008, 2009, 2011, 2012, and 2013, 2014, 2016, 2017, 2018) (*with* Julie Cohen, Ruth Okediji, and Maureen O'Rourke)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY: STATUTORY SUPPLEMENT (Aspen) 2002, 2006, 2010, 2015 (*with* Julie Cohen, Ruth Okediji, and Maureen O'Rourke)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, Semaphore Press (Ver. 2.0 Semaphore Press 2010) (*with* Joseph Scott Miller)

INTELLECTUAL PROPERTY LAW: CASES & MATERIALS, Semaphore Press (2008) (*with* Joseph Scott Miller)

*Understanding the Complexities of Music Copyrights in the United States*, in 1 INTELLECTUAL PROPERTY AND INFORMATION WEALTH, VOLUME 1 (Peter Yu, ed.), Praeger Publishing (2007)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY (2d Ed. Aspen 2006) (*with Julie Cohen, Ruth Okediji, and Maureen O'Rourke*)

COPYRIGHT IN A GLOBAL INFORMATION ECONOMY (Aspen 2002) (*with Julie Cohen, Ruth Okediji, and Maureen O'Rourke*)

*Injunctions*, in MICHIGAN CAUSES OF ACTION FORMBOOK, 67-1 (The Institute of Continuing Legal Education 1996) (*with Stephen K. Postema*)

#### LAW REVIEW ARTICLES

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*Proving Infringement: Burdens of Proof in Copyright Infringement Litigation*, 23 LEWIS & CLARK L. REV. (2019) (*with R. Anthony Reese*) (forthcoming)

*Law, Visual Art, and Money*, 22 LEWIS & CLARK L. REV. 1335 (2018)

*Fixation as Notice in Copyright Law*, 96 BOSTON UNIV. L. REV. 939 (2016)

*Fair Use: An Affirmative Defense?* 90 WASHINGTON LAW REV. 685 (2015)

Selected for inclusion in DEFENSE LAW JOURNAL Vol. 65 No. 3 (2016) (Lexis/Nexis Publishing)

*The Idea of the Casebook: Pedagogy, Prestige, and Trusty Platforms*, WASHINGTON JOURNAL OF LAW, TECHNOLOGY AND THE ARTS VOL. 12 (2015) (*with Joseph Scott Miller*)

*The Dual Narratives in the Landscape of Music Copyright*, 52 HOUSTON L. REV. 537 (2014)

*The Viability of the \$30 Casebook: Intellectual Property, Voluntary Payment, Open Distribution, and Author Incentives*, 21 JOURNAL OF INTELLECTUAL PROPERTY LAW 71 (2014)

*Abandoning the Orphans: An Open Access Approach to Hostage Works*, 27 BERKELEY TECH. L. J. 1431 (2012)

*Computer Software-Related Litigation: Discovery and The Overly-Protective Order (co-authored with Andy Johnson-Laird)*, 6 FEDERAL COURTS L. REV. 1 (2012)

*The Bridge and Playful Thunder of Keith Aoki*, 91 OREGON L. REV. (2012)

*Deterring Abuse of the Copyright Takedown Regime by Taking Misrepresentation Claims Seriously*, 46 WAKE FOREST L. REV. 745 (2011)

*Renegotiating the Copyright Deal in the Shadow of the “Inalienable” Right to Terminate*, 62 FLORIDA L. REV. 1329 (2010)

*The Evolving Role of “For Profit” Use in Copyright Law: Lessons from the 1909 Act*, 26 SANTA CLARA COMP. & HIGH TECH. L. 255 (2010)

Selected for inclusion in COPYRIGHT LAW VOLUME II: APPLICATION TO CREATIVE INDUSTRIES IN THE 20TH CENTURY (2011) (Brian Fitzgerald and Benedict Atkinson Eds.), published in the Ashgate Library of Essays on Copyright Law

*The Pope’s Copyright? Aligning Incentives with Reality by Using Creative Motivation to Shape Copyright Protection*, 69 LA. L. REV. 1 (2008)

Selected for inclusion in COPYRIGHT LAW ANTHOLOGY 2009-2010 (Dean Rod Smolla, Ed.)

*Building a Reliable Semicommons of Creative Works: Enforcement of Creative Commons Licenses and Limited Abandonment of Copyright*, 14 GEORGE MASON L. REV. 271 (2007)

*Slaying the Leather-Winged Demons in the Night: Copyright Misuse as a Tool for Reforming Copyright Owner Contracting Behavior*, 30 OHIO N.U.L. REV. 495 (2004)

*Untangling the Web of Music Copyrights*, 53 CASE WESTERN RESERVE LAW REVIEW 673 (2003)

*Technological Protections in Copyright Law – Is More Legal Protection Needed?* in INTERNATIONAL REVIEW OF LAW, COMPUTERS AND TECHNOLOGY (Kenneth V. Russell Ed.) (2002)

*The Changing Nature of Derivative Works in the Face of New Technologies*, 4 JOURNAL OF SMALL AND EMERGING BUSINESS LAW 57 (2000)

*Digitization, Commodification, Criminalization: The Evolution of Criminal Copyright Infringement and the Importance of the Willfulness Requirement*, 77 WASHINGTON UNIVERSITY LAW QUARTERLY 835 (1999)

*Paying the Piper*, 3 JOURNAL OF SMALL AND EMERGING BUSINESS LAW 231 (1999)

*Redefining the Market Failure Approach to Fair Use in an Era of Copyright Permission Systems*, 5 JOURNAL OF INTELLECTUAL PROPERTY LAW 1 (1997)

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#### OTHER PUBLICATIONS

*What Did I Just Buy?* Issues in Science and Technology Winter 2018 p. 91 (reviewing Aaron Perzanowski and Jason Schultz, THE END OF OWNERSHIP: PERSONAL PROPERTY IN THE DIGITAL ECONOMY (2017))

*Contractually Prohibiting Bad Reviews? Copyright Misuse to the Rescue, Maybe,* OREGON INTELLECTUAL PROPERTY NEWSLETTER, Vol. 4 No. 2 (2003)

*Copyright Year in Review 2002,* Published on CD-ROM by American Intellectual Property Lawyers Association (2002)

*The Complicated World of Music Copyrights and Webcasting,* OREGON INTELLECTUAL PROPERTY NEWSLETTER, Vol. 2 No. 2 (2001)

*Labeling for Generic: No Infringement,* NATIONAL LAW JOURNAL, May 22, 2000 (with Dr. Lawrence Sung)

*Safe Harbors From the Stormy Seas of Copyright Infringement Litigation,* OREGON INTELLECTUAL PROPERTY NEWSLETTER, Vol.1 No. 1 (2000)

*Collaborative Web-based Course Materials: Bypassing Publishers and Benefitting Students,* in LESSONS FROM THE WEB (Jurist Nov. 1999)

*Regulation in Cyberspace: A Case Study in SPAM,* in LEARNING CYBERLAW IN CYBERSPACE (Aug. 1999)

*The Purpose of Copyright,* OPEN SPACES (Feb. 1999)

*Trademark Basics* (1998), Multimedia Lesson distributed by CALI (Winner of the 1997-98 Trautman CALI Lesson Writing Competition)

*State Licensing of Out-of-State Wholesale Distributors: An Undue Burden on Interstate Commerce,* FOOD, DRUG, COSMETIC, AND MEDICAL DEVICE LAW DIGEST (January 1995) (with Thomas A. Roach)

#### SELECTED LECTURES AND PRESENTATIONS

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*Simple Questions and the Complicated Answers of the Music Modernization Act,* Internet Law Scholars Works in Progress, Santa Clara University Law School March 2019

*Art and the Law,* Lewis & Clark Law School Reunion, Portland Oregon, June 2018

*Art and the Law,* University Club, Portland Oregon, June 2018

*Law, Visual Art, and Money*, Chicago-Kent and Loyola Intellectual Property Colloquium, Chicago, February 2018

*Law, Money, and Art*, Lewis & Clark Law School, Henry J. Casey Endowed Chair Installation Lecture, Portland, Oregon November 2017

*Beware of the Art: Property Owner Obligations Under the Visual Artists Rights Act*, Oregon State Bar, Real Estate Law Section Luncheon, Portland, Oregon November 2017

*The ALI Restatement of Copyright Law – How is it Being Made*, Oregon State Bar, IP Section Luncheon, Portland, Oregon September 2017

*Destruction, Mutilation, and Attribution: Works of Visual Art and Federal Law*, Oregon State Bar, IP Section Luncheon, Portland, Oregon, May 2016

*Fixation as Notice in Copyright Law*, Notice and Notice Failure in Intellectual Property Law, Boston University School of Law, September, 2015

*Fair Use: An Affirmative Defense?* Campbell at 21, University of Washington, February 2015

*Moral Rights and the Visual Artist* (co-presentation with Jim Pallas), Oregon Volunteer Lawyers for the Arts, Portland, Oregon, August 2014

*The New Age of New Media Music Licensing*, Leveraging Creativity: Arts, Entrepreneurship, and Intellectual Property Law, Indiana University Maurer School of Law, May, 2014

*The Shifting Landscape of Music Licensing*, ReCalibrating Copyright: Continuity, Contemporary Culture, and Change, University of Houston, May, 2014

*Copyright Litigation Reform Through the Plausibility Standard for Pleadings*, Works-in-Progress in Intellectual Property, Santa Clara University Law School, February 2014

*Altai@21*, (roundtable participant) University of California, Berkeley Law School, November 2014

*Exhausted by Exhaustion*, Oregon State Bar Intellectual Property Section, Portland, Oregon August 2014

*Tools Against Trolls (the Patent and Copyright Kind)*, Navigating the Pitfalls of an Online Business Presence—What Your Clients Need to Know, Portland, Oregon September, 2014

*The Viability of the \$30 (or less) Casebook*, Intellectual Property in the Snow, Whistler, B.C., April 2013

*Open Access Publishing: Your Content, Your Copyright –Use Them Wisely*, Lewis and Clark College, April, 2013

*The Viability of the \$30 Casebook*, Internet Law Scholars Works-in-Progress Conference, Santa Clara University Law School, March 2013

*Teaching with Technology*, Intellectual Property/Internet and Computer Law Sections AALS Mid-year meeting, San Francisco June, 2012

*Alternative Models of Creating and Distributing Educational Materials: Any Role for Copyright Limitations and Exceptions?*, The International Copyright System and Access To Education: Challenges, New Access Models and Prospects for New Principles, Max Planck Institute For Intellectual Property and Competition Law, Munich, Germany, May, 2012

*Abandoning the Orphans: An Open Access Approach to Hostage Works*, Orphan Works & mass Digitization: Obstacles and Opportunities, Univ. California at Berkeley, April, 2012

*Orphan Works and Open Access*, Works-in-Progress in Intellectual Property, University of Houston, Texas, February 2012

*The Future of Higher Education: Myth vs. Reality*, panelist, Lewis & Clark College, Portland, Oregon April 2011

*Curbing Copyright Owner Abuse of Internet Takedown Notices*, University of Oregon Faculty Colloquium, Eugene, Oregon, April 2011

*Copyright Principles – Law Reform Project*, Conference: 300 Years of Copyright— From the Statute of Anne to Digital Copyright 2010, East China University of Political Science and Law, Shanghai, China November, 2010

*Copyright Notice & Takedowns*, Conference: Online Smear and Infringement Campaigns: Detecting, Responding, and Brand Protection, Oregon State Bar, Portland, Oregon September, 2010

*Digital Distribution: Batteries Not Included*, Conference: 36th Annual Intellectual Property Law Summer Institute, Mackinack Island, Michigan July 2010

*The Brewing Storm on the Horizon: Terminations of Transfers Under the Copyright Act*, The Scholarly Symposia Series, Current Issues in Intellectual Property Law, University of Dayton School of Law, March, 2010

*Limiting the Exclusive Rights of Copyright Owners: The 1909 Act's example of Public Performance For Profit*, Conference on the 100th Anniversary of the 1909 Copyright Act" hosted jointly by University of California Berkeley School of Law and Santa Clara University School of Law, April, 2009

*2008 Update: International Copyright & Trademark Law*, conference: Technology Law, Law Seminars International, Seattle, Washington December, 2008

*Ten Years Under the Digital Millennium Copyright Act*, Conference: The Continuing Evolution of Computer and Internet Law, Oregon State Bar, Portland, Oregon, September, 2008

*The Pope's Copyright?* Hoiser Distinguished Intellectual Property Visitor, DePaul University School of Law, January 2008

*Remedies Revolution*, Symposium: The Future of Copyright, University of South Carolina College of Law, October, 2007

*Terms of Use and Liabilities for User Generated Content*, Computer and Internet Law: Changes and Challenges to an Evolving Practice, Oregon State Bar, Portland, Oregon September, 2007

*Aligning Incentives with Reality: Using Motivation for Creation to Shape the Scope of Copyright Protection*, Seventh Annual Intellectual Property Scholars Conference, DePaul Law School, August, 2007

*Factoring in Motivation for Creation to Shape the Scope of Copyright Protection*, University of Michigan Intellectual Property Symposium Series, January 2007

*Creative Commons: Licenses, Abandonments and a Semicommons of Creative Works*, 33rd annual Research Conference on Communication, Information and Internet policy, George Mason University School of Law, September, 2005

*The Past, Present, and Future of Intellectual Property Licensing*, Oregon State Bar conference, Portland, Oregon, October, 2005



*The Role of Collective Rights Organizations in the Information Age, W(h)ither the Middleman: The Role and Future of Intermediaries in the Information Age*, Michigan State University, April 2005.

*Protecting Privacy on the Internet: Part I Federal Causes of Action*, Computer and Internet Law Section, Oregon State Bar, January 2005

*Intellectual Property and the WTO*, ZhuHai, China, June 2004

*Making Copyright Law Work for You*, Visual Resource Association Annual Meeting, March, 2004

*Who Owns What? Structuring Title to Employee-Generated Intellectual Property*, Lewis & Clark Business Law Institute, Portland, Oregon, March, 2004

*Slaying the Leather-Winged Demons in the Night: The Copyright Misuse Doctrine as the Appropriate Response to Overreaching Licensing Agreements in the Digital Age*, Dean's Lecture Series, Ohio Northern University College of Law, Ada, Ohio, February, 2004

*Balancing Anonymity and Responsibility in Cyberspace when Speech and Property Collide*, Pacific Intellectual Property Scholars (PIPS) Roundtable, Newport, Oregon, October 2003

*Copyright in the Digital World*, Intellectual Property Today, Oregon State Bar conference, Portland, Oregon, March, 2003

*Copyright and Common Law*, Models of Regulation for the New Economy, University of Colorado, Boulder, Colorado, February 2003 (commentator)

*Market Failure in the Music Industry*, Faculty Colloquium, University of Colorado, Boulder, Colorado, January 2003

*Untangling the Web of Music Copyrights, Copyright in the Digital Age: Reflections on Tasini and Beyond*. Case Western Reserve University School of Law, Cleveland, Ohio, November 2002

*Identifying Common Trends, Rights and Responsibilities over Genetic Resources: The Role of the Public Domain in Producing International Public Goods*, Lewis & Clark Law School, Portland, Oregon, November, 2002

*Copyright Year in Review*, American Intellectual Property Lawyers Association Annual Meeting, Washington, D.C. October 2002.

*The Tangled Web of Music Copyrights*, Annual Computer Law Conference, Oregon State Bar, October 2002

*Deciding ICANN Domain Name Dispute Resolution: Questioning Delegation, Fairness, and Consent*, Seventh Annual Business Law Forum, Lewis and Clark Law School, October 2001 (moderator)

*Copyright and the First Amendment*, Oregon State Bar Annual Convention, Seaside, Oregon September, 2001

*Domain Names and Trademarks, A Dangerous Brew*, Oregon Women Lawyers, Annual Conference, Portland, Oregon, May 2001

*A Path of Less Progress? International Intellectual Property Protection in the Technological Age*, Corporate Counsel Section and International Law Section of Oregon State Bar, Portland, Oregon, May 2001

*Technological Protections in Copyright Law – Is More Legal Protection Needed?* British and Irish Law, Education and Technology Association (BILETA), Sixteenth Annual Conference, University of Edinburgh, Scotland, April 2001

*Copyright and Trademark Basics for the Cyberlawyer*, Cyberlawyering Phi Delta Phi Conference, Portland, Oregon, March 2001

*Domain Name Litigation and Arbitration*, Fourth Annual Intellectual Property Conference, Portland Oregon, February 2001

*Anonymity, Intellectual Property and the Internet*, Arizona State University College of Law, Faculty Seminar, January 2001

*Convergence in the Digital Delivery of Audio and Video*, Commerce in the Digital Age, Portland Oregon, November 2000.

*Recreating the Line Through Technology*, Rethinking the Line: The Canada-U.S. Border, Vancouver, British Columbia, October, 2000

*Commencing Infringement Litigation in Cyberspace and Leaving the Constitution Behind*, Constitutional Law Conference, Portland, Oregon September, 2000

*Using Technology in Teaching*, AALS New Law Teachers Conference, Washington D.C., July, 2000

*U.S. Copyright Law on a World Stage*, Computer and Internet Law Meeting, Portland, Oregon, March, 2000

*The New Age of Cybersquatting*, Portland, Oregon, March, 2000

*Who Controls Data in the 21<sup>st</sup> Century?* AALS Annual Meeting, Washington D.C., January, 2000 (moderator)

*Congressional Responses to Technological Challenges in Copyright Law*, Annual Computer Law Conference, Oregon State Bar, Portland Oregon, November, 1999.

*The Changing Nature of Derivative Works in the Face of New Technologies*, Business Law Forum: Intellectual Property in the New Millennium -- Keeping Pace With Change, Lewis and Clark Law School, October, 1999.

*Copyright in Cyberspace*, Annual CALI conference, July, 1999.

*Copyright Law in the Digital Age*, Lewis and Clark Alumni Day, April, 1999.

*What the Future Holds*, Lawyering in the Electronic Age, Oregon Women's Lawyers Association, September, 1998

*The Purpose of Copyright*, Lewis and Clark Board of Trustees, May, 1998

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LEWIS & CLARK LAW SCHOOL COMMITTEE SERVICE

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Admissions Strategy Committee, *Co-Chair* 2012-2013

Budget Committee, *Chair* 2017-2018, 2015-2016, 2014-2015, 2008-2009, 2007-2008, 2005-2006, 2004-2005 and 2003-2004 academic years, *Member* 1997-1998, 1998-1999, 2009-2011, 2013-2014 academic years

Clinic Committee, *Member* 2012-2013

Lewis & Clark College of Arts and Sciences, Dean Search Committee, *Member* 2010-2011

Faculty Recruiting, *Co-Chair* 2011-2012; *Chair* 2001-2002, *Member* 1999-2001

Judicial Clerkship Committee, *Chair* 2007-2009, *Member* 2009-2011

Faculty Scholarship Committee, *Member* 2004-2005, 2003-2004

Business Law Committee, *Member* 1999-present

Faculty Representative to Board of Trustees, 2007-2008

Lewis & Clark College Vice President and CFO search committee,  
*Member* 2005

Lewis & Clark College Planning Task Force, *Member* 2005-2006

NATIONAL AND STATE ORGANIZATION APPOINTMENTS

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*Associate Reporter*, RESTATEMENT OF LAW, COPYRIGHT, American Law  
Institute, November 2014-Present

*President*, Oregon Volunteer Lawyers for the Arts, June 2013-present

*Chair*, Association of American Law Schools (AALS) Internet and  
Computer Law Section, Jan. 2011 – Jan. 2012

*Project Participant*, Copyright Principles Project, Berkeley Center for  
Law and Technology, 2007-2010

*Editorial Board*, JOURNAL OF THE COPYRIGHT SOCIETY OF THE UNITED  
STATES, 2009- present

*Board Member*, ECourts Task Force, Oregon State Bar, 2008 – 2017

*Board Member*, Citizens Crime Commission – Portland Oregon, 2006 –  
2008

*Board Member*, Association of American Law Schools (AALS), Law and  
Computers Section, 2005

*Executive Committee Member*, Computer & Internet Law Section, Oregon  
State Bar, 2003-2009

*Executive Committee Member*, Intellectual Property Section, Oregon State  
Bar, 1999-2003, 2011-2013