

DENNIS S. KARJALA
Jack E. Brown Professor of Law - Arizona State University
Resume

PERMANENT ADDRESS:

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PERSONAL:

Born December 19, 1939, New York, New York. United States citizen.
Married to Katarina Karjala, three children.

EDUCATION:

J.D., 1972, University of California (Berkeley); Order of the Coif;
Editor-in-Chief, University of California Law Review 1971-1972.

Ph.D., 1965, M.S., 1963, University of Illinois (Urbana), in Electrical
Engineering with minors in Physics and Mathematics; thesis entitled "Radiation from
Some Periodic Structures Excited by a Waveguide."

B.S.E., 1961, Princeton University, in Electrical Engineering/Physics; cum
laude.

EMPLOYMENT:

I joined the College of Law at Arizona State University in January 1978 as
Associate Professor and have been a Professor of Law since the fall of 1981. In 2001 I
was designated a Willard H. Pedrick Distinguished Research Scholar, and in 2002 I was
appointed to the College's first endowed chair, the Jack E. Brown Professor of Law.
My primary teaching and research interests are now in the area of intellectual property,
especially copyright law and its application to digital technologies. My primary
specialty courses are copyright, international intellectual property, and intellectual
property in cyberspace. Recently I have begun teaching the basic first-year course in
property law. For many years I also taught and wrote in the areas of corporate and
securities law, federal income taxation (personal and corporate), and business planning.

During the academic year 2001-2002 I was on sabbatical as a visiting research
scholar at the Faculty of Law, University of British Columbia.

For the academic year 1997-1998, I was the Irving Younger Visiting Professor of Law at the University of Minnesota Law School, teaching copyright, advanced copyright (seminar), business associations, and securities law.

For the academic year 1992-1993 I was on sabbatical as Fulbright Senior Research Scholar at the Max Planck Institute in Munich, studying implementation of the EC Directive on the Copyright Protection of Computer Software.

From May through August 1990 I was the Endowed Chair Visiting Professor of Securities Regulation at Tokyo University, conducting classes on advanced topics in securities law.

For the fall semester 1988, I was a Visiting Professor of Law at Washington University, St. Louis, Missouri, offering the basic course in corporations and a seminar in computers and the law.

For the academic year 1985-1986 I was on sabbatical as a Visiting Research Scholar and Japan Foundation Fellow at the Faculty of Law, University of Tokyo, conducting research on problems of computer software protection, especially under Japanese law. I returned to the University of Tokyo as a Visiting Research Scholar for the summer of 1987.

For the calendar year 1984 I was a Visiting Professor of Law at the UCLA Law School, teaching in the tax and securities areas.

From March 1980 until January 1981 I was a Fulbright Lecturer at the Faculties of Law of the University of Hokkaido in Sapporo, Japan, and the Otaru National University of Commerce in Otaru, Japan.

During the summer of 1978 I was an instructor in legal writing and analysis at the Southwest Institute of the Council on Legal Education Opportunity (CLEO), which was held at the University of New Mexico.

From March through October 1977 I was an Independent Research Fellow at the Center for Interdisciplinary Research, University of Bielefeld, Bielefeld, Germany, as part of a project investigating the historical development of large business enterprises in England, France, Germany, and the United States.

From June 1972 through February 1977 I was an attorney with the firm of McCutchen, Doyle, Brown & Enersen in San Francisco, engaged in a general business and corporate practice involving companies of all sizes.

From September 1966 through June 1969 I was an Assistant Professor of Electrical Engineering at Michigan State University, teaching undergraduate and

graduate courses in electromagnetic field theory. For the first 2 years of this appointment, I was an exchange professor at the University of the Ryukyus, Naha, Okinawa.

PUBLICATIONS:

“Harry Potter, Tanya Grotter, and the Copyright Derivative Work,” forthcoming, investiture lecture for the Jack E. Brown Endowed Chair, Arizona State University College of Law, Nov. 9, 2004

“Congestion Externalities as a Basis for Extended Intellectual Property Protection,” forthcoming, paper presented at the 2004 Telecommunications Policy and Research Conference, Arlington, Virginia, Oct. 1-3, 2004

“Biotech Patents and Indigenous Peoples,” forthcoming, paper presented at an international conference on biotechnology and globalization, University of British Columbia, September 19-20, 2003

“Distinguishing Patent and Copyright Subject Matter,” 35 CONN. L. REV. 439 (2003); a shorter version of this article appears as “Functionality” as the *Distinction Between Patent and Copyright Subject Matter*, in RETHINKING RIGHTS AND REGULATIONS (L. Cranor & S. Wildman eds. 2003), at 227

“Legal Rights in Indigenous Cultural Heritage,” with Robert K. Paterson, 11 CARDOZO J. INTERNAT’L & COMP. L. 633 (2003)

“Judicial Review of Copyright Term Extension Legislation,” 36 LOYOLA L.A. L. REV. 199 (2002)

Book Review, Jessica Litman, *Digital Copyright* (2001), 42 JURIMETRICS J. 97 (2001)

Book Review, Computer Science and Telecommunications Board, National Research Council, *The Digital Dilemma* (2000), 41 JURIMETRICS J. 527 (2001)

“Copyright Protection of Operating Software, Copyright Misuse, and Antitrust,” 9 CORNELL J. L. & PUB. POL. 161 (1999)

“Copyright Issues in Cyberspace,” book chapter to be published by UNESCO 1999, submitted in connection with the Expert Meeting on Cyberspace Law, Monte Carlo, September 1998

“Copyright Protection of Computer Program Structure,” 64 BROOKLYN L. REV. 519 (1998)

“The Relative Roles of Patent and Copyright in the Protection of Computer Programs,” 17 John Marshall J. of Computer & Information L. 41 (symposium issue 1998)

“A Coherent Theory for the Copyright Protection of Computer Software and Recent Judicial Interpretations,” 66 U. CINCINNATI L. REV. 53 (symposium issue 1997)

“Federal Preemption of Shrinkwrap and On-Line Licenses,” 22 U. DAYTON L. REV. 511 (symposium issue 1997)

“The Term of Copyright,” in *Growing Pains: Adapting Copyright for Libraries, Education and Society* (Laura N. Gasaway ed. 1997)

“A Framework for Analyzing ‘Cultural Exceptions’”, Proceedings of the XVIIIth Annual Meeting of the ICC Institute of International Business Law and Practice (1998)

“The Future of Copyright in the Digital Age,” in Festschrift to Prof. Dr. Norbert Horn, *Bank und Wirtschaftsrecht im Wandel internationalen Wirtschaftslebens* (H. Herrmann ed., Berlin 1996)

“Thinking Beyond Patents for the Protection of DNA-Sequence-Related Inventions,” II The Human Genome Project: Legal Aspects 185 (Fundacion BBV ed. 1995)(proceedings of workshop held in 1993)

“Applying Fundamental Copyright Principles to *Lotus Development Corp. v. Borland International, Inc.*,” with Peter Menell, 10 High Tech. L.J. 177 (1995)

“Copyright in Electronic Maps,” 35 JURIMETRICS J. 395 (1995)

“Planning Problems in the Limited Liability Company,” 73 WASH. U. L.Q. 455 (1995)

“Interface Protection and the First Circuit's Decision in *Lotus v. Borland*,” 21 COMPUTER L. RPTR. 434 (1995)

“Income Taxation of Academics Studying or Teaching Abroad,” 44 J. LEGAL EDUC. 531 (1994)

“Theoretical Foundations for the Protection of Computer Programs in Developing Countries,” 13 PAC. BASIN L.J. 179 (1994)

“Comment of Copyright Law Professors on Copyright Office Term of Protection Study,” 16 EUR. INTELL. PROP. REV. 531 (December 1994)

“Misappropriation as a Third Intellectual Property Paradigm,” 94 COLUM. L. REV. 2594 (1994)

“Copyright Protection of Computer Software, Reverse Engineering, and Professor Miller,” 19 U. DAYTON L. REV. 975 (symposium issue, 1994)

“Recent United States and International Developments in Software Protection, Parts I & II,” 16 EUR. INTELL. PROP. REV. 13 & 58 (1994)

“Programs and Data Files under Japanese Law,” 15 EUR. INTELL. PROP. REV. 267 (1993)

“Copyright and Misappropriation,” 17 U. DAYTON L. REV. 885 (symposium issue, 1992)

“Recent Developments in the Copyright Protection of Computer Software in the United States and Japan,” in *Wege zum japanischen Recht* (Paths to Japanese Law), at 909, Festschrift for Professor Zentaro Kitagawa, University of Marburg (1992, H.G. Leser & T. Isomura, eds.)

“A Legal Research Agenda for the Human Genome Initiative,” 32 JURIMETRICS J. 121 (1992 Special Issue)

Foreword, *Special Issue: Japanese Intellectual Property*, 9 PAC. BAS. L.J., Nos. 1 & 2, at i (1991)

Seminar on American Securities Law, Shoji Homu (Tokyo) pub. (1991)(in Japanese, 158 pages)

Book Review, *International Copyright Law and Practice* (M. Nimmer & P. Geller eds. 1988), 39 AM J. COMP. L. 192 (1991)

“Copyright Protection of Computer Software in the United States and Japan,” 13 EUR. INTELL. PROP. REV., Nos. 6 & 7, (June & July 1991)(two parts)

“Federal Tax Aspects of Separation and Divorce,” chapter in Ellman, Kurtz & Bartlett, *Family Law, Cases, Text, Problems* (3rd ed. Michie 1998). This is a second update of the tax chapter I did for the first (1986) edition of this text. Due to the length of the book, this chapter has now been relegated to the teacher’s manual.

“Japanese Courts Interpret the ‘Algorithm’ Limitation on the Copyright

Protection of Programs,” 31 JURIMETRICS J. 233 (Winter 1991) and 12 EUR. INTELL. PROP. REV. 235 (July 1990)

“Intellectual Property Rights in Japan and the Protection of Computer Software,” in *Intellectual Property Rights in Science, Technology, and Economic Performance* 277-89 (F.W. Rushing & C.G. Brown eds. 1990)

Japan U.S. Computer Copyright Law, with K. Sugiyama, Nihon Hyoronsha pub. 1989 (in Japanese, 365 pages). This book was awarded the Telecommunication Society Science Prize (Tokyo), March 1991. A second printing, with some very short additional footnotes written by Mr. Sugiyama, came out in 1992.

“The Closely Held Enterprise under Japanese Law,” 7 BOSTON U. INTERNAT'L L.J. 229 (1989), originally prepared for the Symposium on Dualism in Corporation Law, Bregenz, Austria, April 1989

“An Analysis of Close Corporation Legislation in the United States,” 21 ARIZ. ST. L.J. 663 (Fall 1989), originally prepared for the Symposium on Dualism in Corporation Law, Bregenz, Austria, April 1989

“Recent Developments in the Legal Protection of Software in America,” 7 Software Review (Tokyo) 31 (April 1989)(Part 1) and Special Supplement (July 1989)(Part 2)(in Japanese)

“Intellectual Property Rights and the Protection of Software,” Proceedings of the 38th National Convention of the Japanese Information Processing Society, Tokyo, March 1989 (in Japanese)

“A Coherent Approach to Misleading Corporate Announcements, Fraud, and Rule 10b-5,” Symposium on Securities Law, 52 ALBANY L. REV. 957 (1988)

“Fundamental Concepts in Japanese and American Copyright Law,” with K. Sugiyama, 36 AM. J. COMP. L. 613 (1988)

“The Protection of Operating Software under Japanese Copyright Law,” 29 JURIMETRICS J. 43 (Fall 1988) and 10 EUR. INTELL. PROP. REV. 359 (December 1988)

“The First Case on Protection of Operating Systems and Reverse Engineering of Programs in Japan,” 10 EUR. INTELL. PROP. REV. 172 (June 1988). This article has been translated into Japanese and published in Vol. 35-2, No. 101 of Studies on Intellectual Property Rights Law.

“United States Adherence to the Berne Convention and Copyright Protection of Information-Based Technologies,” 28 JURIMETRICS J. 147 (Winter 1988)

“Copyright, Computer Software and the New Protectionism,” 28 *Jurimetrics* 33 (Fall 1987). The portions of this article dealing with user interface protection have been translated into Japanese and published as a separate article in 157 *Nikkei Computer* 153 (Sept. 28, 1987). The entire article has also been independently translated into Japanese, appearing in six installments beginning at 38 *Tokkyo Kanri* (Patent Management), No. 8, at 1067 (1988).

“The Limitations on Protection as Program Works under Japanese Copyright Law,” 8 *Mich. Yearbook of Internat'l Legal Studies* 25 (1987). A Japanese version of this article was presented at the annual meeting of the Copyright Law Association of Japan on May 30, 1986, and has appeared in 14 *Copyright Law Journal* (*Chosakuken Kenkyu*) 1 (1987).

“Federalism, Full Disclosure, and the National Markets in the Interpretation of Federal Securities Law,” 80 *NW. U. L. REV.* 1473 (1986)

“Protection of Computer Databases Under Japanese Copyright Law,” 8 *EUR. INTELL. PROP. REV.* 267-274 (Sept. 1986). This article has been translated into Japanese by K. Sugiyama and appears, together with an introduction by Professor N. Nakayama, at 59 *Horitsu Jiho* (*Legal Times*) 52 (Feb. 1987).

“Recent Problems in American Corporation Law--Shareholder Protection, Corporate Takeovers, and Delaware Corporation Law,” 156 *Securities Economics* (*Shoken Keizai*) 139-153 (June 1986)(in Japanese). This paper was presented to a special meeting of the Japanese Securities Economics Society (Osaka Division) on April 26, 1986. A slightly modified version has also appeared in 3 *Sapporo Gakuin U. L. Rev.*, No. 1, at 65 (July 1986).

“Protection of Computer Programs Under Japanese Copyright Law,” 8 *EUR. INTELL. PROP. REV.* 105-111 (April 1986)

“The Scope of Copyright Protection in a Computer Program,” 4 *Law & Computers* (*Hoo to Konpyuuta*) 92-106 (April 1986)(in Japanese)

“Sales of Property Outside Section 453,” 64 *TAXES* 153-165 (1986)

“Lessons from the Computer Software Protection Debate in Japan,” 1984 *ARIZ. ST. L.J.* 53-82

“Realigning Federal and State Roles in Securities Regulation Through the Definition of a Security,” 1982 *U. ILL. L. REV.* 413-440

“Statutory Regulation of Insider Trading in Impersonal Markets,” 1982 *DUKE L.J.* 627-649

“Deferred Compensation and the Supreme Court,” 60 TAXES 684-694 (1982)

“Recent American Thinking Concerning the Social Responsibility of Large Business Enterprises,” 1 Management Review 140-154 (1981)(Journal of the University of the Ryukyus School of Management)(in Japanese)

“A Second Look at Special Close Corporation Legislation,” 58 TEXAS L. REV. 1207-1268 (1980)

“The Exaggerated Conflict of Interest between Shareholders and Management -- Doubts Concerning the Movement toward Federal Standards in America,” Jurist, No. 726 (Oct. 15, 1980), pp. 105-109 (in Japanese)

“Taxing the Sale of Property,” 1980 DUKE L.J. 417-520

“The Board of Directors in English and American Companies through 1920,” in *Law and the Formation of the Big Enterprises in the 19th and Early 20th Centuries* (N. Horn & J. Kocka eds., Göttingen 1979), pp. 204-226

Note, “Equitable Mortgages and the Homestead Exemption: Tahoe National Bank v. Phillips,” 60 CALIF. L. REV. 968 (1972)

Comment, “The Evidentiary Uses of Neutron Activation Analysis,” 59 CALIF. L. REV. 997-1080 (1971)

“Radiation from a Modulated Corrugated Surface Excited by a Waveguide,” with R. Mittra, Proc. I.E.E. (London), 113, No. 7 (1966)

“Scattering at the Junction of Two Semi-Infinite Parallel Impedance Plane Waveguides,” with R. Mittra, Canadian Journal of Physics, 43 (1965)

“Scattering by a Semi-Infinite Impedance Strip in a Waveguide,” with R. Mittra, Applied Scientific Research, Sect. B, 12 (1965)

SYMPOSIUM AND WORKSHOP PARTICIPATIONS:

Panel Discussant, "Fair or Foul? Using the Intellectual Property, Identity, and Images of Others Without Consent or Liability," State Bar of Arizona Annual Convention 2003, Intellectual Property Law Section.

Speaker, "Functionality as the Distinction between Patent and Copyright Subject Matter," Telecommunications Policy & Research Conference, Washington, D.C., September 2002.

Invited primary speaker, "Data Protection Statutes and Bioinformatic Databases," Symposium on Bioinformatics and Intellectual Property Law, Boston University School of Law, April 2001.

Participant, Meeting of Experts on Cyberspace Law, convened by the Director General of UNESCO, Monte Carlo, Monaco, September 1998.

Invited paper, "Database Protection in the United States," Sixth SOFTIC International Symposium, Tokyo, November 13-14, 1997.

Invited paper, "A Framework for Analyzing 'Cultural Exceptions,'" XVIIIth Annual Meeting of the ICC Institute of International Business Law and Practice, Paris, December 1996, program entitled "Cultural Aspects of International Trade of Goods and Services: Is there an Exception?"

Invited paper, "Preliminary Thoughts on Copyright in Electronic Maps," Conference on Law and Information Policy for Spatial Databases, sponsored by Arizona State University Center for the Study of Law, Science, and Technology and the National Center for Geographic Information and Analysis, Tempe, Arizona, October 28-29, 1994.

Invited paper, "Reverse Engineering of Computer Programs and the Challenge to the Patent/Copyright Boundary," Stockholm Congress, International Association for the Advancement of Teaching and Research in Intellectual Property, Stockholm, Sweden, August 17-19, 1993.

Invited paper, "Theoretical Foundations for the Protection of Computer Programs in Developing Countries," International Conference on Intellectual Property Rights in Computer Software and their Impact on Developing Countries, sponsored by the Indian Institute of Science, Bangalore, India, August 19-21, 1993

Invited panelist in symposium entitled "Human Genome Project: Legal Aspects", sponsored by the Fundacion BBV, Bilbao, Spain, May 24-26, 1993, presentation entitled "Thinking Beyond Patents for the Protection of DNA-Sequence-Related Inventions"

Invited Primary Speaker in symposium entitled "An Emerging World-Wide Consensus on Software Protection?", sponsored by the European Committee for Interoperable Software, Brussels, Belgium, April 27, 1993

Invited Primary Speaker and Participant in symposium entitled "The Uses of Biology in the Study of Law," sponsored by the Gruter Institute for Law and Behavioral Research, Squaw Valley, California, June 18-25, 1992.

Invited Primary Speaker and Participant in symposium entitled "Copyright Protection for Computer Databases, CD-ROMS, & Factual Compilations," sponsored by the Program in Law & Technology, University of Dayton School of Law, November 8-9, 1991.

Invited Participant in workshop on "The Present Copyright/Patent/Trade Secret System" as part of the Office of Technology Assessment's Telecommunication and Computing Technologies Program on "Computer Software and Intellectual Property: Meeting the Challenges of Technological Change and Global Competition," Washington, D.C., June 20, 1991

Invited Panelist (reverse engineering of programs), Annual Meeting of the Computer Law Association, Newport Beach, California, February 14-15, 1991

Invited Panelist (interfaces) and Session Moderator (communication protocols), Second International Symposium on Legal Protection of Computer Software, Tokyo, November 7-8, 1989

Invited Presenter (program protection in Japan) and Participant, Intellectual Property Challenges in Software, Computer Science and Technology Board of the National Academy of Sciences, Washington, D.C., September 12-13 and November 30-December 1, 1989

Invited Presenter (intellectual property rights in Japan), Symposium on Protection of Intellectual Property Rights in Science, Technology and Economic Performance: International Comparisons, National Science Foundation/Brazil-U.S. Business Council, U.S. Chamber of Commerce, Washington, D.C. on May 7-9, 1989

Invited Presentation (software protection and intellectual property rights), Plenary Session of the 38th National Convention of the Japanese Information Processing Society, Tokyo, on March 15, 1989

Invited Speaker (private company law in the United States and Japan) and Panelist, International Symposium on Dualism in Corporation Law, Bregenz, Austria, on April 13-15, 1989

Paper Presenter, "Japanese Private Company Law," Japan Law Teacher's Workshop, UCLA, Jan.19-21, 1989

Paper Presenter, "Japanese Copyright Law," Japan Law Colloquium, UCLA, January 31, 1989

INVITED PUBLIC LECTURES:

“The State of Copyright in the United States,” keynote address at CDV-J annual meeting, Tokyo, September 14, 2000.

“Copyright, Computer Software, and the Information Age,” presented to regional sections of the German-American Lawyers Association in Hamburg, Munich, Stuttgart, Dusseldorf, and Berlin, February-June 1993

“Software Protection: An American and Japanese Perspective” sponsored by the Intellectual Property Law Unit (Gerald Dworkin, head), Queen Mary & Westfield College, University of London, December 4, 1990

“Copyright Protection for Information-Based Technologies” and “U.S./Japanese Relations--Friendship or Friction?” as 1990 Guest Scholar, Colorado State University, April 14, 1990

“Recent Developments in Software Protection in the United States,” Software Information Center, Tokyo, March 13, 1989, and Information Processing Development Association, Tokyo, March 17, 1989

“Copyright Protection of Computer Software,” Special Presentation, 20th Annual Workshop on Microprogramming, Association for Computing Machinery and the Computer Society of the Institute of Electrical and Electronics Engineers, Plenary Session, December 1987

“Recent Developments in United States Intellectual Property Law,” Joint Presentation with Keiji Sugiyama, Research Group on Corporate Law and Taxation (Tokyo) August 1987

“Protection of Computer User Interfaces,” Law and Computer Society of Japan (Tokyo), July 1987

“The Limitations on Protection as Program Works under Japanese Copyright Law,” Annual Meeting of the Copyright Law Association of Japan, Plenary Session, May 30, 1986

OTHER PUBLIC SERVICE:

I continue to maintain the “Opposing Copyright Protection” web site, which I started in a futile effort to derail what became the Sonny Bono Copyright Term Extension Act of 1998 and to support the (also futile) challenge to that Act’s constitutionality:

<http://www.law.asu.edu/HomePages/Karjala/OpposingCopyrightExtension/>

Principal draftsman, *Statement of Copyright and Intellectual Property Law Professors in Opposition to H.R. 604, H.R. 2589, and S. 505*, submitted to the Committees on the Judiciary of the United States House of Representatives and the United States Senate, 105th Congress, January 28, 1998.

Principal draftsman, Written Testimony before the House Judiciary Subcommittee on Courts and Intellectual Property on H.R. 989, 104th Cong., 1st Sess., July 1995 (opposing on behalf of about 50 intellectual property law professors legislation to extend the copyright term of protection).

Codraftsman (With Peter S. Menell), Brief *Amicus Curiae*, Lotus Development Corp. v. Borland International, Inc., filed with the United States Supreme Court, December 1995 (arguing that a “menu command hierarchy” is not copyright subject matter, that a program copyright does not cover its user interface, and that copyright protection of functional user interfaces is precluded by the doctrine of *Baker v. Selden*).

Codraftsman (with Peter S. Menell), Brief *Amicus Curiae*, Lotus Development Corp. v. Borland International, Inc., filed with the First Circuit Court of Appeal, December 1993 (arguing that a program copyright does not cover its user interface and that copyright protection of functional user interfaces is precluded by the doctrine of *Baker v. Selden*).

Principal draftsman, “Comment of Copyright Law Professors on Copyright Office Term of Protection Study,” filed October 27, 1993, with the Copyright Office (arguing against lengthening the term of protection to life plus 70 years, signed by 35 copyright law professors)

Principal draftsman, Brief *Amicus Curiae* of Copyright Law Professors, Sega Enterprises, Ltd. v. Accolade, Inc., *Sega Enterprises Ltd. v. Accolade, Inc.*, 977 F.2d 1510 (9th Cir. 1992), *amended by Order and Amended Opinion*, D.C. No. CV-91-3871-BAC, Jan. 6, 1993 (arguing in favor of a fair use right to decompile computer programs for the purpose of extracting unprotected elements, signed by eleven copyright law professors)

Member, Law Screening Committee, Council for the International Exchange of Scholars (Fulbright), 1981-1984

MISCELLANEOUS:

I speak, read, and write Japanese, have reading and moderate conversational skills in German, and flail around a bit in French and Slovak.

(November 2004)