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First Sale Victory: *Kirtsaeng v. Wiley*

Posted on [March 20, 2013](#) by [Laura](#)



In United States copyright law, the first sale doctrine is what permits libraries to lend books and other materials. [17 USC § 109\(a\)](#). *Kirtsaeng v. Wiley* is a case challenging the applicability of the first use doctrine to copyrighted material manufactured abroad. Since thousands of books are manufactured overseas, the case raised the possibility of libraries needing to get permission from copyright holders to lend books. The case also threatened used bookstores, and any other retailer that sells used goods. These lenders and sellers all rely on the first use doctrine.

Section 109(a) of copyright law describes the first sale doctrine, which applies to any work “lawfully made under this title.” The question was whether that phrase has a geographic meaning. *Wiley* argued that since “this title” refers to a United States statute, the first sale doctrine only applies to items purchased in the United States. *Kirtsaeng* argued that the phrase means the work was “lawfully” made – not pirated or illegal.

On March 19 the Supreme Court issued its [ruling](#) in the *Kirtsaeng v. Wiley* case. In a 6-3 decision, the Court ruled in favor of *Kirtsaeng*. Writing for the majority, Justice Breyer stated:

Putting section numbers to the side, we ask whether the “first sale” doctrine applies to protect a buyer or other lawful owner of a copy (of a copyrighted work) lawfully manufactured abroad. Can that buyer bring that copy into the United States (and sell it or give it away) without obtaining permission to do so from the copyright owner? Can, for example, someone who purchases, say at a used bookstore, a book printed abroad subsequently resell it without the copyright owner’s permission?

In our view, the answers to these questions are, yes.

There is significant coverage of this decision. Below is a sampling.

Library perspectives:

- Library Copyright Alliance: [Statement on Supreme Court Decision in *Kirtsaeng v. Wiley*—Total Victory for Libraries and Their Users](#)

- Columbia University Libraries Copyright Advisory Office: [The Kirtsaeng Decision: Copyright, Logic, and Libraries](#), Kenny Crews

Publisher perspectives:

- American Association of Publishers: [Statement on Supreme Court Decision](#)
- Publishers Weekly: [Issues in Kirtsaeng 'Significant'](#), by James Grimmelmann

For more on copyright, try these library books:

Crews, Kenneth D. [Copyright Law for Librarians and Educators: Creative Strategies and Practical Solutions](#). 3rd ed. Chicago: American Library Association, 2012.

Nimmer, David. [Copyright Illuminated: Refocusing the Diffuse US Statute](#). Austin : Alphen Aan Den Rijn, Netherlands : Frederick, MD: Wolters Kluwer Law & Business, 2008.

Bently, Lionel, Uma Suthersanen, and Paul Torremans. [Global Copyright: Three Hundred Years Since the Statute of Anne, From 1709 to Cyberspace](#). Cheltenham, UK ; Northampton, MA: Edward Elgar, 2010