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Laura Burtle

Georgia State University, lburtle@gsu.edu

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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
Publisher perspectives:

- American Association of Publishers: Statement on Supreme Court Decision

For more on copyright, try these library books:

