

Supreme Court case could halt resale market



If an appellate court ruling is upheld, it would challenge the first-sale doctrine, which gives copyright holders control over only the first sale.

BY JENNIFER PALMER | October 18, 2012

If you've ever sold an old iPhone or made money off outgrown children's clothes, you're not alone. It's legal, and quite common, because of the first-sale doctrine in copyright law, which gives the copyright holder control of the first sale only.

But there's concern that a Supreme Court case under consideration later this month challenges that doctrine. If the court upholds an appellate court ruling in *Kirtsaeng v. John Wiley & Sons Inc.*, it could end consumers' ability to sell items made overseas without the original copyright holder's permission. In the case of the iPhone, that means first asking Apple if you can sell your old phone. And the company would probably want a cut from the sale.

A few publications have written about the case, including The Wall Street Journal, but it's not widely known. However, the impact of the ruling would be far-reaching and has the potential to put a dent in the business of reselling sites such as Craigslist and eBay.

Legal experts say it's not likely the Supreme Court will agree with the lower court's ruling, but it does raise issues.

Museums and libraries have taken interest in the case because of the implications it could have on foreign books and art.

Sarah Burstein, associate professor of law at the University of Oklahoma, says she'd be surprised if the Supreme Court upholds the ruling in its entirety.

David Sullivan, director with Crowe & Dunlevy, agreed, adding that the scope of the ruling is limited.

"The outcome of the case may impact the ability to import and resell books, music and other products that are protected under copyright law," he said. "Although many other products incorporate copyrighted material, the case is not likely to have significant ramifications on the importation and resale of products that are not somehow protected by copyright."

The case, according to The Wall Street Journal, stems from Thailand native Supap Kirtsaeng's experience in college.

He came to America in 1997 to attend Cornell University and discovered his textbooks were much cheaper to buy in Thailand than in New York. So he had his relatives buy the books, ship to him and he resold them on eBay, making upward of \$1.2 million.

Textbook maker John Wiley & Sons sued for copyright infringement and Kirtsaeng countered with the first-sale doctrine. Arguments in the case are scheduled for Oct. 29.

[Martin Ozinga](#), a patent attorney at the firm Phillips Murrah, says the issue the Supreme Court is more likely to examine is whether the textbooks were purchased legally in Thailand. If they were, Ozinga argues he should have the right to sell the books and make a profit.

The case raises questions like these, according to the American Bar Association: can a foreign-made product never be resold in the U.S. without copyright owner's permission? Can a

foreign-made product sometimes be resold in the U.S. without permission, but only after the owner approves an earlier sale in this country? Or can a foreign-made product always be resold without permission in the U.S., as long as the copyright owner authorized the first sale abroad? We'll see.