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High Court Rules in Favor of Book Reseller

By BRENT KENDALL

WASHINGTON—The Supreme Court said consumers and companies can resell books and other goods made abroad, rejecting the arguments of publishers in a case that sparked divisions among U.S. businesses.

The justices, in a 6-3 ruling Tuesday, sided with a Thai man who bought inexpensive English-language textbooks offered in developing countries and resold them on eBay to U.S. students who were looking to pay less than the U.S. sticker price for the same books.

Publisher [John Wiley & Sons](http://JohnWiley.com) Inc. had obtained a \$600,000 judgment against Supap Kirtsaeng, a former University of Southern California Ph.D. student, after alleging he infringed its copyrights on several works, including textbooks on physics, organic chemistry and engineering. The Asian versions of those books were marked with warnings that they were intended for sale only in certain foreign regions.

U.S. law has long held that in principle, once a company sells a copyrighted product, the purchaser has the right to resell it later. Mr. Kirtsaeng argued that this "first sale" rule, which allows the resale of U.S. products, should also protect the resale of foreign-made goods.

The court's majority, in an opinion by Justice Stephen Breyer, agreed.

Justice Breyer's 33-page decision, citing many "friend of the court" briefs filed in the case, said Wiley's proposed restrictions could lead to alarming consequences. He said libraries and museums could have trouble lending or displaying foreign works, while consumers could have trouble reselling cars, computers and other goods that contain foreign-made components.

Such practical problems "are too serious, too extensive and too likely to come about for us to dismiss them as insignificant" he said.

In a lengthy dissent, Justice Ruth Bader Ginsburg called the ruling a departure from Congress's intentions, one that "shrinks to insignificance" publishers' copyright protections against the unauthorized importation of foreign-made copies of their works.

The publishing, entertainment and software industries blasted the decision, saying it ran counter to U.S. trade policy and could curb the willingness of companies to offer lower-priced products abroad in order to compete in global markets, for fear the goods will wind up back in the U.S.

The Association of American Publishers said the decision and would have "significant ramifications" for content producers and suggested it would lobby Congress for a legislative response. Wiley said the ruling was a "loss for the U.S. economy."

The Supreme Court majority responded to industry concerns in its ruling, conceding that its decision would make it harder for businesses to charge different prices for products in different geographic markets. But the court added: "We can find no basic principle of copyright law that suggests that publishers are especially entitled to such rights."

EBay Inc. and [Google](#) Inc. supported Mr. Kirtsaeng, as did the retail industry, which wanted to protect its ability to obtain foreign-made goods more cheaply through unofficial distribution channels.

"The outcome is a terrific victory for the freedom of commerce," said Joel Benoiel, the chief legal officer for [Costco Wholesale](#) Corp., whose company was among the Kirtsaeng supporters.

Mr. Kirtsaeng's lawyer, Joshua Rosenkranz of Orrick, Herrington & Sutcliffe LLP, called the ruling an important consumer win. He said the ruling affirmed the longstanding principle that "if you bought it you own it."

"If manufacturers want to gouge U.S. customers with higher prices, they have to accept the reality that the marketplace will respond—as it always does—by buying the goods where they are cheap and selling them where they are more expensive," he said.

Costco had been a party to a 2010 Supreme Court case on the same legal issue that ended in a 4-4 deadlock. Justice [Elena Kagan](#) was recused in the earlier case, having worked on it while she served as U.S. solicitor general.

Tuesday's 6-3 tally suggested that at least one justice's views on the issue have changed.

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