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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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KIRTSAENG, DBA BLUECHRISTINE99 *v.* JOHN WILEY & SONS, INC.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 11–697. Argued October 29, 2012—Decided March 19, 2013

The "exclusive rights" that a copyright owner has "to distribute copies . . . of [a] copyrighted work," 17 U. S. C. §106(3), are qualified by the application of several limitations set out in §§107 through 122, including the "first sale" doctrine, which provides that "the owner of a particular copy or phonorecord lawfully made under this title . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or phonorecord," §109(a). Importing a copy made abroad without the copyright owner's permission is an infringement of §106(3). See §602(a)(1). In *Quality King Distributors, Inc.* v. *L'anza Research Int'l, Inc.,* 523 U. S. 135, 145, this Court held that §602(a)(1)'s reference to §106(3) incorporates the §§107 through 122 limitations, including §109's "first sale" doctrine. However, the copy in *Quality King* was initially manufactured in the United States and then sent abroad and sold.

Respondent, John Wiley & Sons, Inc., an academic textbook publisher, often assigns to its wholly owned foreign subsidiary (Wiley Asia) rights to publish, print, and sell foreign editions of Wiley's English language textbooks abroad. Wiley Asia's books state that they are not to be taken (without permission) into the United States. When petitioner Kirtsaeng moved from Thailand to the United States to study mathematics, he asked friends and family to buy foreign edition English-language textbooks in Thai book shops, where they sold at low prices, and to mail them to him in the United States. He then sold the books, reimbursed his family and friends, and kept the profit.

Wiley filed suit, claiming that Kirtsaeng's unauthorized importation and resale of its books was an infringement of Wiley's §106(3)

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exclusive right to distribute and §602's import prohibition. Kirtsaeng replied that because his books were "lawfully made" and acquired legitimately, §109(a)'s "first sale" doctrine permitted importation and resale without Wiley's further permission. The District Court held that Kirtsaeng could not assert this defense because the doctrine does not apply to goods manufactured abroad. The jury then found that Kirtsaeng had willfully infringed Wiley's American copyrights and assessed damages. The Second Circuit affirmed, concluding that §109(a)'s "lawfully made under this title" language indicated that the "first sale" doctrine does not apply to copies of American copyrighted works manufactured abroad.

Held: The "first sale" doctrine applies to copies of a copyrighted work lawfully made abroad. Pp. 7–33.

(a) Wiley reads "lawfully made under this title" to impose a *geographical* limitation that prevents §109(a)'s doctrine from applying to Wiley Asia's books. Kirtsaeng, however, reads the phrase as imposing the *non*-geographical limitation made "in accordance with" or "in compliance with" the Copyright Act, which would permit the doctrine to apply to copies manufactured abroad with the copyright owner's permission. Pp. 7–8.

(b) Section 109(a)'s language, its context, and the "first sale" doctrine's common-law history favor Kirtsaeng's reading. Pp. 8–24.

(1) Section 109(a) says nothing about geography. "Under" can logically mean "in accordance with." And a nongeographical interpretation provides each word in the phrase "lawfully made under this title" with a distinct purpose: "lawfully made" suggests an effort to distinguish copies that were made lawfully from those that were not, and "under this title" sets forth the standard of "lawful[ness]" (*i.e.,* the U. S. Copyright Act). This simple reading promotes the traditional copyright objective of combatting piracy and makes word-by-word linguistic sense.

In contrast, the geographical interpretation bristles with linguistic difficulties. Wiley first reads "under" to mean "in conformance with the Copyright Act *where the Copyright Act is applicable*." Wiley then argues that the Act "is applicable" only in the United States. However, neither "under" nor any other word in "lawfully made under this title" means "where." Nor can a geographical limitation be read into the word "applicable." The fact that the Act does not instantly protect an American copyright holder from unauthorized piracy taking place abroad does not mean the Act is inapplicable to copies made abroad. Indeed, §602(a)(2) makes foreign-printed pirated copies subject to the Copyright Act. And §104 says that works "subject to protection" include unpublished works "without regard to the [author's] nationality or domicile," and works "first published" in any of the

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nearly 180 nations that have signed a copyright treaty with the United States. Pp. 8–12.

(2) Both historical and contemporary statutory context indicate that Congress did not have geography in mind when writing the present version of §109(a). A comparison of the language in §109(a)'s predecessor and the present provision supports this conclusion. The former version referred to those who are not owners of a copy, but mere possessors who "lawfully obtained" a copy, while the present version covers only owners of a "lawfully made" copy. This new language, including the five words at issue, makes clear that a lessee of a copy will not receive "first sale" protection but one who owns a copy will be protected, provided that the copy was "lawfully made." A nongeographical interpretation is also supported by other provisions of the present statute. For example, the "manufacturing clause," which limited importation of many copies printed outside the United States, was phased out in an effort to equalize treatment of copies made in America and copies made abroad. But that "equal treatment" principle is difficult to square with a geographical interpretation that would grant an American copyright holder permanent control over the American distribution chain in respect to copies printed abroad but not those printed in America. Finally, the Court normally presumes that the words "lawfully made under this title" carry the same meaning when they appear in different but related sections, and it is unlikely that Congress would have intended the consequences produced by a geographical interpretation. Pp. 12–16.

(3) A nongeographical reading is also supported by the canon of statutory interpretation that "when a statute covers an issue previously governed by the common law," it is presumed that "Congress intended to retain the substance of the common law." *Samantar* v. *Yousuf*, 560 U. S. ___, ___. The common-law "first sale" doctrine, which has an impeccable historic pedigree, makes no geographical distinctions. Nor can such distinctions be found in *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, where this Court first applied the "first sale" doctrine, or in §109(a)'s predecessor provision, which Congress enacted a year later. Pp. 17–19.

(4) Library associations, used-book dealers, technology companies, consumer-goods retailers, and museums point to various ways in which a geographical interpretation would fail to further basic constitutional copyright objectives, in particular "promot[ing] the Progress of Science and useful Arts," Art. I, §8, cl. 8. For example, a geographical interpretation of the first-sale doctrine would likely require libraries to obtain permission before circulating the many books in their collections that were printed overseas. Wiley counters that such problems have not occurred in the 30 years since a federal court

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first adopted a geographical interpretation. But the law has not been settled for so long in Wiley's favor. The Second Circuit in this case was the first Court of Appeals to adopt a purely geographical interpretation. Reliance on the "first sale" doctrine is also deeply embedded in the practices of booksellers, libraries, museums, and retailers, who have long relied on its protection. And the fact that harm has proved limited so far may simply reflect the reluctance of copyright holders to assert geographically based resale rights. Thus, the practical problems described by petitioner and his *amici* are too serious, extensive, and likely to come about to be dismissed as insignificant—particularly in light of the ever-growing importance of foreign trade to America. Pp. 19–24.

(c) Several additional arguments that Wiley and the dissent make in support of a geographical interpretation are unpersuasive. Pp. 24–33.

654 F. 3d 210, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, ALITO, SOTOMAYOR, and KAGAN, JJ., joined. KAGAN, J., filed a concurring opinion, in which ALITO, J., joined. GINSBURG, J., filed a dissenting opinion, in which KENNEDY, J., joined, and in which SCALIA, J., joined except as to Parts III and V–B–1.

SUPREME COURT OF THE UNITED STATES

No. 11–697

SUPAP KIRTSAENG, DBA BLUECHRISTINE99, PETITIONER *v.* JOHN WILEY & SONS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March 19, 2013]

JUSTICE BREYER delivered the opinion of the Court.

Section 106 of the Copyright Act grants "the owner of copyright under this title" certain "exclusive rights," including the right "to distribute copies . . . of the copyrighted work to the public by sale or other transfer of ownership." 17 U. S. C. §106(3). These rights are qualified, however, by the application of various limitations set forth in the next several sections of the Act, §§107 through 122. Those sections, typically entitled "Limitations on exclusive rights," include, for example, the principle of "fair use" (§107), permission for limited library archival reproduction, (§108), and the doctrine at issue here, the "first sale" doctrine (§109).

Section 109(a) sets forth the "first sale" doctrine as follows:

> "Notwithstanding the provisions of section 106(3) [the section that grants the owner exclusive distribution rights], the owner of a particular copy or phonorecord *lawfully made under this title* . . . is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy or

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