



ASSOCIATION OF
RESEARCH LIBRARIES



First Sale Fast Facts for Libraries

- **What is the first sale doctrine?**

The first sale doctrine is the fundamental principle that books, records, movies, and other copyrighted works should be treated like all other property—when you buy a copy, you own that copy, and you can give it away, resell it, or (as is vital for libraries) lend it. You don't have to ask anyone's permission or pay a license to do these things with a copy you own.

- **Why is first sale threatened?**

In a lawsuit involving textbooks, the publisher Wiley & Sons, Inc., has argued that the first sale doctrine does not apply to copies printed abroad, even when the copies are legitimate, non-pirated copies purchased lawfully at ordinary bookstores. Because of some unclear language in the U.S. Copyright Act, the courts have so far agreed with Wiley. Now the Supreme Court is considering the question, and the Court may well agree with lower courts, which would mean all owners of foreign-made copies of copyrighted works, including libraries, would lose their first sale protection.

- **What does it mean for libraries to lose their first sale rights for foreign-made copies?**

Losing these well-established rights would create significant uncertainty for libraries, calling into question whether foreign-made materials may be lawfully lent. There are legal arguments available that might protect libraries that circulate foreign-made materials—the fair use doctrine, an "implied license," other, more obscure parts of the Copyright Act—but none of these arguments provides the level of clarity and certainty that the first sale doctrine has given to libraries for over 100 years. Librarians shouldn't have to study law to do their jobs, or worry that they are taking a legal "risk," however moderate, in lending a book. And they certainly shouldn't have to comb through their collections to determine which materials were manufactured abroad.

- **What happens next?**

We are currently waiting to hear the Supreme Court's decision in the case of *Kirtsaeng v. Wiley*, but experts believe that this issue will have to be clarified in Congress no matter what the Court decides. It is unlikely the Court will hand down a decisive victory for first sale rights, and even if it does, Wiley and others who want to exercise greater control over copyrighted works will go to Congress and demand that the law change to favor them. So, libraries and their allies need to let members of Congress know that we require free and fair access to library collections.