FIRST SALE RIGHTS AT *SCOTUS*:
REGARDING *KIRTSAENG V. JOHN WILEY & SONS*

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1.INTRODUCTION

In the case of *Kirtsaeng v. John Wiley & Sons, Inc.,*[1] .the U.S. Supreme Court in 2013 heard a matter involving the conflict of importation rights now controlled by a book publisher (John Wiley) and first sale rights controlled by one of its purchasers (Sudip Kirtsaeng). Kirtsaeng was a graduate student studying in the U.S. who opened up a small business importing low cost textbooks from his native Thailand and reselling them at much higher prices in the U.S. Wiley contended that Kirtsaeng's distributions of the book were subject to its exclusive importation rights and not subject to the first sale doctrine

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[1] 133 S. Ct. 1351, 185 L. Ed. 2d 392, 106 U.S.P.Q.2d 1001, 2013 ILRC 1487, 35 ILRD 648, 35 ITRD 1049, 41 Med. L. Rptr. 1441 (2013) [2013 BL 72102].

that presumably applied only to domestic productions. In a hotly contested decision, the Supreme Court reversed the Second Circuit[2] to hold that the first sale doctrine extended to distributions of copyrighted works originally produced outside of U.S. borders. The Court here extended its earlier ruling in *Quality King Distributors Inc., v. L'anza Research International Inc.,*[3] and so eviscerated the publisher's distribution right in relation to the resale of any imported book.

Justice Breyer wrote the majority opinion, with five concurrences. Justice Kagan also filed a concurring opinion in which Justice Alito joined. Justice Ginsburg filed a dissenting opinion in which Justice Kennedy joined, and in which Justice Scalia joined partially.[4] Each opinion largely confined itself to issues of statutory construction and legal reasoning behind the distribution right (§106(3)[5]), the first sale doctrine (§109(a)[6]), and the importation right (§602(a)(1)[7]))

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[2]654 F. 3d 210 (2d. Cir. 2011).

[3]523 U.S. 135 (1998). The Supreme Court found that L'anza Research, a producer of hair salon products, manufactured shampoos that it licensed for export from the U.S; the bottles bore a copyrighted label owned by L'anza. After the store chain Quality King arranged through an overseas distributor to import the bottles that had been exported to Europe, L'anza sought to prevent the use as a violation of its import right under 17 U.S.C. 602. The Supreme Court reversed two lower courts and upheld the first sale doctrine for any good lawfully manufactured in the U.S.

[4]Excepting Parts III and V–B–1.

[5]Section 106(3) sets forth the "exclusive rights" of a copyright owner, including the right "to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending."

The legal summaries can be reviewed on any suitable court reporter. [8] The case also drew over twenty amicus briefs from parties representing a wide range of interests for buyers and content owners.[9] As an economist, I shall confine myself to economic arguments posed in the legal opinions and the related briefs.

To summarize my discussion, Justice Breyer's majority opinion did not mention a critical issue on the table – that of *price discrimination* – an economically beneficial practice in which book and software publishers commonly engage. Rather, the court found noteworthy those concerns voiced by plaintiff's amici broadly favorable to a wide first sale doctrine. In a dissent, Justice Ginsburg vigorously contested the reasoning of the majority [10] Taking each user concern as a valid issue, *arguendo*, I conclude that the matter of import restrictions and first sale rates might now call for a rulemaking to move

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[6]"Notwithstanding the provisions of section 106(3), 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." Section 109(a) codified the "first sale doctrine," a doctrine articulated in *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, 349–351 (1908), which held that a copyright owner could not control the price at which retailers sold lawfully purchased copies of its work.

[7]"Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501."

[8]http://www2.bloomberglaw.com/public/desktop/document/Kirtsaeng_v_John_Wiley__Sons_Inc_No_11697_2013_BL_71417_US_Mar_19/1

[9]All briefs can be founded at http://www.scotusblog.com/case-files/cases/kirtsaeng-v-john-wiley-sons-inc/

[10]Supra note 1, Ginsburg J dissenting.

the matter to a statutory resolution that more accurately reflects the economic context of the issue and more specifically defines the property rights at hand.

2. THE ECONOMICS OF PRICE DISCRIMINATION

As an economic matter, the *Kirtsaeng* matter critically involved John Wiley's practice of price discrimination, a business practice where the publisher charged different prices for the sale of textbooks in different geographic markets. Despite its nomenclature, price discrimination actually may be quite beneficial, a point recognized in several prominent law review articles. Indeed, Terry Fisher of the Berkman Center came to state "[J]udges should watch for situations in which unauthorized use of copyrighted material undermines price discrimination schemes and should be chary of holding such uses fair."[11]

Under price discrimination, Wiley charged high prices in the U.S. and lower prices in Thailand. A publisher can profitably discriminate in two or more markets if there are differences in buyer willingness to pay[12] and if

[11] Fisher, W.W., "Reconstructing the Fair Use Doctrine", 101 HARV. L. REV 1661, 1742 (1988); *See also* Meurer, M.J., Copyright Law and Price Discrimination, 23 CARDOZO L. REV.; (June, 2001); Gordon, W.J., "Fair Use as Market Failure: A Structural and Economic Analysis of the Betamax Case and Its Predecessors", 82 COL.L. REV. 1600 (1982). With regard to geographic exhaustion, see Rub, G.A., Rebalancing Copyright Liability, 64 EMORY L. REV., at 741 (2014).

[12] Factors that may affect pricing include income levels, the cost of living, the role of the textbook in the classroom, intellectual property protections, the strength of the local currency, and the prices of competing textbooks sold in that marketplace. GAO, *infra note 22*, at 22.

arbitrage between the two markets is not possible.[13] Kirtsaeng defeated the operation of Wiley's price discrimination by engaging in such arbitrage.

The benefits of price discrimination are known to economists, and more pronounced when new innovation can be introduced.[14] On this point, Bruce Lehman and I argued that international requirements to restrict price discrimination in the sale of AIDS pharmaceuticals might actually harm users in less affluent nations.[15] Without discrimination, a book publisher serving buyers in both markets will foreseeably decrease book prices in the large market (U.S.) slightly, but raise prices in the small market (Thailand) *substantially*.[16] Alternatively, the publisher may maintain the original U.S. price as is, and exit the Thai market entirely. In both instances, buyers in Thailand are made worse off.

As a business practice, price discrimination will increase publisher profits – a critical incentive to recover costs in the textbook industry where considerable upfront

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[13]The practice is common in business; e.g., business travelers typically pay higher fares than leisure travelers, and developing nations pay less for prescription drugs in the pharmaceutical industry. *Infra* note 15

[14]Hausman, J.A., and J. K. MacKie-Mason, "Price Discrimination and Patent Policy", 19 RAND J. OF ECON. 253 (1988).

[15]Lehman, B., and M. Einhorn, "Intellectual Property and Compulsory Licensing: Pharmaceuticals and the Developing World", 23 IPL Newsletter 3 (Spring, 2005).

[16]Because the U.S. market is so much larger, the resultant uniform price without discrimination will expectedly be very near the U.S. price with it.

investments are related to authorship, editing, research, production, and marketing.[17] According to the Association of American Publishers, the preparation period for a new book may span three years. (Brief, infra xx, at 37). Once sunk, these expenses are necessarily recovered through imaginative marketing, and price discrimination is practical to this end. And while more affluent U.S. buyers may wind up paying more for their books, they may benefit nonetheless from additional enhanced services (such as supplemental materials, customized texts, CD-ROMs, online interfaces, and better production materials) that publishers have more incentive to make available.

The benefits of price discrimination become even more evident once we consider the long-run consequences for Thailand. Textbooks and computer software (particularly in science, technology, engineering, and math) are critical instruments needed to enhance the skills of a national workforce now moving to participate in globalized markets. These artifacts of information complement existing technologies and enable knowledge spillovers to other workers. The investment in technical capital and enhanced human ability creates jobs, widens the middle class, and permits greater compatibility and interconnection in international research networks; growth overseas expands the market

[17]"Publishers typically incur substantial costs in order to develop textbooks, but once these development costs have been undertaken, the additional cost of producing more copies is quite low. As a result, a publisher may be able to profitably sell textbooks in one country at prices that are closer to actual costs of printing and distributing additional copies while charging higher prices in the United States that reflect the substantial development costs undertaken." GAO, *infra note 22,* at 21.

for American high-tech producers that seek wider import markets. This virtuous cycle will not be helped if foreign workers lack access to the basic means of their education.

Justice Ginsburg recognized this point in her dissenting opinion

> "Because economic conditions and demand for particular goods vary across the globe, copyright owners have a financial incentive to charge different prices for copies of their works in different geographic regions. Their ability to engage in such price discrimination, however, is undermined if arbitrageurs are permitted to import copies from low-price regions and sell them in high-price regions. The question in this case is whether the unauthorized importation of foreign-made copies constitutes copyright infringement under U. S. law." (Ginsburg, J., dissent at 1374)[18]

3. THE PARADE OF HORRIBLES

In a 6-3 opinion, Justice Breyer (*supra* note 1) wrote the majority opinion of the court Citing common law and legislative intent, Justice Breyer upheld the primacy of first sale rights of book buyers over publisher rights to restrict the domestic resale of imports to the U.S. The court here found convincing the briefs by plaintiff and his amici -- libraries, museums, technology companies, consumer-goods retailers, and used book dealers -- who set forth a "parade of

[18]GAO, *infra note 22*, at 21. "Two factors are typically cited as enabling a seller, such as a publisher, to profitably charge different prices to different buyers, such as textbook buyers in different countries. The seller must be able to distinguish among groups with differences in their willingness and ability to pay a given price, and the ability for these groups to buy and sell among one another must be restricted."

horribles" that would result if first sale rights of imports were limited (Opinion, xx)

Libraries and Museums

The American Library Association *et al.* (Brief at 19-20) contended that present library protections would suffer for three reasons if first sale rights of imports were limited. First, while the import exception of 17 U.S.C. §602(a)(3)(C) now allows library *ownership* of five copies for lending or archival purposes,[19] it does not now *explicitly* permit any library to *lend* those copies.[20] Second, the same exception only protects the first sale right regarding direct importation, but not purchases from import distributors -- a common library practice. Finally, the exception now allows a library to import no more than one copy of an audiovisual work solely for archival purposes, but makes no provision for lending. The Association of Art Museum Directors et al. (Brief, at 10–11) presented similar concerns regarding purchases or loans of artwork that could be created in other countries and imported into the U.S.

[19]Section 602(a)(3)(C) permits "an organization operated for scholarly, educational, or religious purposes" to import, without the copyright owner's authorization, up to five foreign-made copies of a non-audiovisual work— notably, a book—for library lending or archival purposes."

[20]I find it remarkable that ALA would make such a distinction. ALA actually admitted that the necessary exception to the distribution right is implied and that it would be senseless for Congress to have allowed

Justice Ginsburg contended that each of these problems is now resolved by an *implied license* related to the purchase of the work and the immediate rights granted. (Dissent, at xx) While I suspect that Justice Ginsburg is correct, Congress could handle any real ambiguity with a narrow statutory modification of §602(a)(3), as I will discuss below.

Consumer Goods

Justice Breyer then turns to automobiles, microwaves, calculators, mobile phones, tablets, and personal computers that may contain copyrightable software programs or packaging. (Brief for Public Knowledge et al. at 10; Brief for Association of Service and Computer Dealers International, Inc., et al. at 2). These items are now made abroad with the American copyright holder's permission and then sold and imported *(with that permission*) to the United States. The Court here fails to explain why all necessary resale rights cannot be joined in the same buyout contract.[21] The absence of such rights, which are apparently convenient, could be a market detriment to buyer

importation but not the act of lending itself. Yet the ALA stated that a careless Court may erroneously miss the apparent implication. (Brief, at 20)

[21]For example, movie studios now buy out in their synchronization contracts with film composers the necessary reproduction and distribution rights that are required to cover music imprinted on later DVDs, as well as the public performance rights for theater use. Periodicals such as the *New York Times* and *National*

(particularly of cars) seeking resale value. The same buyout provisions would reasonably hold for copyrighted art or text in imprinted in the logos, labels, and text inserts that appear in the packaging of everyday goods.

4. BOOK DEALERS

In an amicus brief for the plaintiff, four major book resellers (Powell's Books, Portland, Oregon; The Strand Book Store, New York; Half Price Books, Dallas; Harvard Book Store, Cambridge) informed the court that resellers continue to buy used works printed abroad. Book resellers provide a useful service by finding and restoring old books and allowing book owners who have no further use for their book, CD, or DVD to resell it at some salvage value. The book dealers are now concerned lest they lose protection of the first sale doctrine regarding imported books. (Brief, at 7-10)

That said, book resale – particularly on college campuses -- now harms publishers. For books needed for the upcoming academic term, a study in 2005 from the GAO (U.S. Government Accountability Office)[22] found that campus book stores buy used books from students and wholesalers at *purchase prices* that are 50 percent of the *retail*

Geographic make similar buyouts for digital use of textual and photographic material imprinted in newspapers and magazines.

[22] U.S. Government Accountability Office, COLLEGE TEXTBOOKS:
Enhanced Offerings Appear to Drive Recent Price Increases, GAO-05-806: Published: Jul 29, 2005. Publicly Released: Aug 16, 2005.

price of a new book, and resell their purchases at 75 percent of retail. (At 5-7). The store *markup* is then 50 percent above purchase price,[23] or a profit margin from its shelf price of 33 percent[24]. This profit margin of 33 percent compares favorably to a 23 percent profit margin that stores commonly earn from textbooks purchased directly from the publisher.[25] Stores do not accept for resale older editions if a newer edition is forthcoming.

With that calculus, campus book stores first meet prospective needs for the upcoming academic term by outfitting themselves with used books purchased from students or wholesalers. Resale now accounts for roughly 25 to 30 percent of all campus book sales, with book publishers serving the residual demand. (At 5-7) *Creamskimming* from current editions or volumes may then erode publisher profits by the lost market share.

The problem of market erosion from resale becomes worse for later years of an edition, as more copies of the most recent edition become available for circulation. (At 12). Due to recirculation, publishers now estimate that the second year of an edition

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[23]Markup = (Sale Price – Purchase Price)/Purchase Price

[24]Margin = (Sale Price – Purchase Price)/Sale Price.

[25]For other books, book stores may pay students anywhere from 5 to 35 percent of the retail price, which is comparable to what wholesalers pay.

might sell anywhere from 25 percent to 70 percent of copies sold in the first year, although the size of the student population is presumably the same year after year. This attrition of buyers is problematic, as many new editions may not break even after the first year of publication and thus depend on subsequent sales volume to put production in the black.[1] Stores do not accept for resale older editions if a newer edition is forthcoming.

In any calculus of net price, the publisher presumably takes into implicit account the anticipated later sales attrition when setting the price of a new edition; this is imperfectly comparable to recoupment for the costs of lost inventory. As I calculated it, Wiley could recover lost profits from a sales reduction of twenty five percent by increasing net price by ten percent.[26] This

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[26]This is based on an assumed contribution margin -- (revenues less direct cost)/revenues -- of 40 percent, which amounts to 40 cents on the publisher's sales dollar. Howey, H., Two Important Publishing Facts Everyone Gets Wrong, October 27, 2014, at http://www.hughhowey.com/two-important-publishing-facts-everyone-gets-wrong/ (retrieved June 27, 2015). It is possible to raise profits to 50 cents on the dollar by increasing the publisher's net price by ten percent. By so increasing its net price by ten percent, the publisher would enjoy a 25 percent increase in contribution (profits) that would compensate for the lost sales

[26]523 U.S. 135 (1998). The Supreme Court found that L'anza Research, a producer of hair salon products, manufactured shampoos that it licensed for export from the U.S; the bottles bore a copyrighted label owned by L'anza. After the store chain Quality King arranged through a distributor to import the bottles that had been exported to Europe, L'anza sought to prevent the use as a violation of tis import right under 17 U.S.C. 602. The Supreme Court reversed two lower courts and upheld the first sale doctrine for any good lawfully manufactured in the U.S.

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[26]"Notwithstanding the provisions of section 106(3), 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." Section 109(a) codified the "first sale doctrine," a doctrine articulated in *Bobbs-Merrill Co.* v. *Straus*, 210 U. S. 339, 349–351 (1908), which held that a copyright owner could not control the price at which retailers sold lawfully purchased copies of its work.

[26]"Importation into the United States, without the authority of the owner of copyright under this title, of copies or phonorecords of a work that have been acquired outside the United States is an infringement of the exclusive right to distribute copies or phonorecords under section 106, actionable under section 501."

[26]http://www2.bloomberglaw.com/public/desktop/document/Kirtsaeng_v_John_Wiley__Sons_Inc_No_11697_2013_BL_71417_US_Mar_19/1

[26]All briefs can be founded at http://www.scotusblog.com/case-files/cases/kirtsaeng-v-john-wiley-sons-inc/

[26] Supra note 1, Ginsburg J dissenting.

[26]Fisher, W.W., "Reconstructing the Fair Use Doctrine", 101 HARV. L. REV 1661, 1742 (1988); *See also* Meurer, M.J., Copyright Law and Price Discrimination, 23 CARDOZO L. REV.; (June, 2001); Gordon, W.J., "Fair Use as Market Failure: A Structural and Economic Analysis of the Betamax Case and Its Predecessors", 82 COL.L. REV. 1600 (1982). With regard to geographic exhaustion, see Rub, G.A., Rebalancing Copyright Liability, 64 EMORY L. REV., at 741 (2014).

[26]Factors include income levels, the cost of living, the role of the textbook in the classroom, intellectual property protections, the strength of the local currency, and the prices of competing textbooks sold in that marketplace. GAO, *infra note 22*, at 22.

[26]The practice is common in business; e.g., business travelers typically pay higher fares than leisure travelers, and developing nations pay less for prescription drugs in the pharmaceutical industry. *Infra* note 15

[26]Hausman, J.A., and J. K. MacKie-Mason, "Price Discrimination and Patent Policy", 19 RAND J. OF ECON. 253 (1988).

[26]Lehman, B., and M. Einhorn, Pharmaceuticals and Compulsory Licensing: Pharmaceutical and the Developing, 23 IPL Newsletter 3, (Spring, 2005).

[26]Because the U.S. market is so much larger, the resultant price without discrimination will expectedly be very near the U.S. price with it.

[26]"Publishers typically incur substantial costs in order to develop textbooks, but once these development costs have been undertaken, the additional cost of producing more copies is quite low. As a result, a publisher may be able to profitably sell textbooks in one country at prices that are closer to actual costs of printing and distributing additional copies while charging higher prices in the United States that reflect the substantial development costs undertaken." GAO, *infra note 22*.

increment reflects the market value of the implicit resale license that a buyer would pay regardless of whether he/she actually exercises a first sale right to dispose of the book.

The second response for a publisher is to bundle enhanced services to the latest book edition in a manner that would not immediately convey to the resale, or to make sales of new copies more attractive nontransferable service or product enhancements offered at economic prices.[27] Bundling of service is an application of the concept of "versioning", where rights owners monetize investments by providing a number of simultaneous options that implicitly discriminate on buyer tastes.[28] Nonetheless, product enhancements can be quite costly and are sometimes questioned. Moreover, this pricing tactic may be further called into question if it can be demonstrated that the publisher is "unfairly" pricing a low-price bundled option to the detriment of unbundled alternatives that the Higher Education Opportunity Act[29] sought to protect.[30]

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[27]The GAO now characterizes present enhancements (e.g., such as supplemental materials, customized texts, CD-ROMs, online interfaces, and better production materials, as leading causes of the increase in textbook prices. United States Government Accountability Office (GAO). U.S. Government Accountability Office, COLLEGE TEXTBOOKS: Students Have Greater Information to Textbook Information, GAO-13-368: Published: Jun 6, 2013. Publicly Released: Jun 6, 2013, at 4-5

[28]Shapiro, C., and H. R. Varian, INFORMATION RULES, (Boston: Harvard Business School Press, 1999), 53-82.

The final publisher response to resale would involve reducing the incentive for importation of inexpensive books by eliminating price discrimination in overseas markets such as Thailand.[31] While historically limited by geographic separation and lack of information, resellers have benefitted from recent technological developments in electronic commerce that make it easier for students and retailers to purchase lower-priced textbooks from international markets. (At 24-25). Apparently, some U.S. retailers have engaged in reimportation on a large scale by ordering textbooks for entire courses at lower prices from international distribution channels. (At 25) This practice may become more prevalent, as international revenues make up from 5 to 15 percent of total publisher revenues, but the international share of units produced will be something higher. (At 23). Publishers could eliminate the incentive for importing by terminating price

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[29] According to the Higher Education Opportunity Act of 2008, a publisher that sells a college textbook as a single bundle must make all supplemental materials available in any unbundled form; practices that reduce the attractiveness of the unbundled option may then face political criticism. 20 U.S.C. 1015(C)(133)(c)(2).

[30]The GAO also alluded to critics who contend that publishers now shorten the cycle time for a new edition to three to four years -- down from four to five years some time ago -- in order to reduce the market for resale. (At 17). I am unconvinced of the usefulness of this strategy, as it requires a book publisher to spend considerably more money to publish newer editions at a faster pace. More believably, other reasons for faster publishing of new editions would evolve apparently around the increasing pace of knowledge that authors and publishers must come to accommodate in a content market that is increasingly competitive.

discrimination. From a wider economic perspective, this resolution is not an attractive option.

5. CONCLUSION

Hearkening back to the "parade of horribles", each of Justice Breyer's presumed deficiencies in the import right can be resolved immediately in the market or with a statutory adjustment crafted by Congress. There is no compelling economic argument from these matters to abrogate entirely the importation right of 17 U.S.C. 602 as it relates to a distribution right for imported content.

The most tidy way for Congress to resolve the immediate matter of *Kirtsaeng* would be to enforce a primary import right – at least on textbook and software materials where market erosion will be most problematic -- that a first sale right would not override. If not already implicit in existing law, statutory exemptions can be carved out for libraries, museums, and other demonstrable merit uses that involve the legitimate use of imported content. An additional exemption would carve out rights for personal buyers and *de*

[31]From an economic perspective, a partial retraction of the general first sale doctrine would have the presumptive effect of reducing the number of resales but lowering the net prices of new books sold to a bookstore.

minimus acquisitions for private individuals who would import books for gifting or the provision of personal libraries.

Restrictions on first sale are not novel; e.g, Congress passed the Record Rental Amendment of 1984[32] and the Computer Software Rental Amendments Act of 1990[33] in order to disallow rentals of records and software that might otherwise harm content markets. This turns the Copyright Act into a *rule of reason* that considers facts and contexts, rather than a *per se license* that admits anything that sounds "fair" to consumers.

Before Congress or the Copyright Office get engaged in resolving the matter, publishers and book dealers should be given a chance for self-organization and negotiation. Prior to *Kirtsaeng*, book publishers actually strengthened agreements with foreign wholesalers to restrict large-scale importation. Alternatively, publisher and wholesalers could negotiate and enforce a license fee for the transfer of the import right. The presumed ground any such market accommodation are now entirely vacated now that the Supreme

[32] Pub. L. No. 98-450, 98 Stat. 1727 (Oct. 4, 1984), *amending* 17 U.S.C. §§109, 115. The Act amended Section 109 of the Copyright Act of 1976 to state "unless authorized by the owners of a copyright in the sound recording . . . and . . . in the musical works embodied therein, . . ." a phonorecord owner may not rent out, lease, or lend the phonorecord for commercial advantage.

[33] Judicial Improvements Act of 1990, Pub. L. No. 101-650, §§ 801-805, 104 Stat. 5089, 5134 (1990) (codified at 17 U.S.C.A. § 109(b)-(d) (West Supp. 1991)).

Court has eliminated the import right in so far as it relates to the first sale doctrine.

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Trademarks and Advertising: *Trademark* (Dish Network, The Weather Channel, Madonna/Material Girl, Oprah Winfrey/Harpo Productions, PML Clubs, Avon Cosmetics, Miller International, *The New York Observer*, the Kardashians/BOLDFACE Licensing + Branding), and *advertisers* (J. Walter Thompson, Kia Motors, Coca Cola, General Automobile Insurance Company)

Music: *Recording artists* (U2, Madonna, 50 Cent, Usher, Rascal Flatts, LMFAO, Aimee Mann, Nappy Roots, Justin Moore, Xzibit, Nelly Furtado, George Clinton, Notorious B.I.G., D.L. Byron), *record labels* (Sony Music Holdings, Universal Music Group, Disney Music, Atlantic Records), *producers* (P. Diddy, Timbaland), *publishers* (Major Bob Publishing, Universal Music Publishing, Bridgeport Music, Hamstein Music, Chrysalis Music, Kobalt Music), *performing rights organizations* (SESAC), *radio stations* (WPNT in Pittsburgh), and *live venues* (World Wrestling Entertainment, Usher, LMFAO).

Video: *Movies* (Paramount/Dreamworks), *cable programs* (NBCUniversal), *product placement* (Paxson Productions), *treatments* (Burnett Productions), *soundtrack* (Warner Bros. Entertainment), *TV programs* (Televicentro of Puerto Rico), *satellite programming* (Golden Channels Company of Israel), and *cable operations* (AT&T).

Design and Textiles: *Apparel* (Target Stores, Carol Anderson,, Forever 21, Crew Knitwear, Joyce Leslie, Anthropologie), *architecture* (Sprint PCS, Home Design LLC, Murray Engineering, Turnkey Associates), *medical illustrations* (Pearson Education Services), *photography* (Harris Publications), *sculpture* (Marco Domo), *cartoons* (A.V. Phibes, Melissa Flock), and c*ommercial marketing* (Kaufman Global).

Publicity Rights and Estate Valuations: *Names and likenesses* (Woody Allen, Rosa Parks, Arnold Schwarzenegger, Sandra Bullock, Cameron Diaz, Diane Keaton, Zooey Deschanel, Yogi Berra), *estate valuations* (Tasha Tudor, Marlon Brando, Bernard Lewis).

Cyberspace: *Music services* (Apple iTunes, Napster, MP3.com), *proprietary software* (Centrifugal Force, Frogsware), *open source software* (Jacobsen v. Katzer), *electronic publishing* (Pearson), *video games* (Activision), *search engines* (eUniverse), and *domain names* (eCommerce).

Patents and Technology: *Semiconductors* (General Electric v. Kodak, Great Lakes v. Sakar, *cellular* (Cellebrite v. Micro Systemation), *software* (Jacobsen v. Katzer, Centrifugal Force v. Softnet), *medical technology* (Lemper v. Legacy, Graston v. Graham), and *general patents* (DeCordova v. MCG)

Antitrust and Commercial Losses: *Antitrust, breach of contract,* and *commercial injury* in actions involving AT&T, California Scents, Safmor, Inc., Golden Channels Company of Israel, and St. Joseph's Regional Hospital (College Station, Texas).

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