densed Reports of Cases in the Supreme Court of the United States'"; [1433] Wheaton based his claim on both common law and a 1790 act of Congress. On the statutory claim, the Court remanded to the trial court for a determination of whether Wheaton had complied with all the requirements of the act.[1434] On the common law claim, the Court held for Peters, finding that, under common law, publication divests an author of copyright protection.[1435] Wheaton argued that the Constitution should be held to protect his common law copyright, because "the word *secure* . . . clearly indicates an intention, not to originate a right, but to protect one already in existence." [1436] The Court found, however, that "the word *secure*, as used in the constitution, could not mean the protection of an acknowledged legal right," but was used "in reference to a future right." [1437] Thus, the exclusive right that the Constitution authorizes Congress to "secure" to authors and inventors owes its existence solely to acts of Congress that secure it, from which it follows that the rights granted by a patent or copyright are subject to such qualifications and limitations as Congress sees fit to impose. The Court's "reluctance to expand [copyright] protection without explicit legislative guidance" controlled its decision in *Sony Corp. v. Universal City Studios*,[1438] which held that the manufacture and sale of video tape (or cassette) recorders for home use do not constitute "contributory" infringement of the copyright in television programs. Copyright protection, the Court reiterated, is "wholly statutory," and courts should be "circumspect" in extending protections to new technology. The Court refused to hold that contributory infringement could occur simply through the supplying of the devices with which someone else could infringe, especially in view of the fact that VCRs are capable of substantial noninfringing "fair use," *e.g.*, time-shifting of television viewing.

[1433] 33 U.S. (8 Pet.) at 595.

[1434] 33 U.S. (8 Pet.) at 657–58. The Court noted that the same principle applies to "an individual who has invented a most useful and valuable machine. . . . [I]t has never been pretended that the latter could hold, by the common law, any property in his invention, after he shall have sold it publicly." Id.

[1435] 33 U.S. (8 Pet.) at 667.

[1436] 33 U.S. (8 Pet.) at 661; Holmes v. Hurst, 174 U.S. 82 (1899). The doctrine of common-law copyright was long statutorily preserved for unpublished works, but the 1976 revision of the federal copyright law abrogated the distinction between published and unpublished works, substituting a single federal system for that existing since the first copyright law in 1790. 17 U.S.C. § 301.

[1437] 33 U.S. (8 Pet.) at 661.

[1438] 464 U.S. 417, 431 (1984). Cf. Metro-Goldwin-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913 (2005) (active encouragement of infringement by distribution of software for sharing of copyrighted music and video files can constitute infringement).