



A2P2 ISSUE BRIEF: ALLEN V. COOPER

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ABOUT ALLEN V. COOPER

Allen v. Cooper is a case recently decided by the U.S. Supreme Court. Frederick Allen, a videographer, created videos and photographs of the wreck of the ship *Queen Anne's Revenge* discovered off the coast of North Carolina in 1996. (The ship belonged to pirate Edward Teach, better known as Blackbeard.) When the state of North Carolina displayed some of Allen's works online without permission, Allen sued the state for copyright infringement. North Carolina asked the court to dismiss the case on the grounds of "sovereign immunity," which restricts the ability of individuals to bring suit against states for violations of federal law. The district court held that under the Copyright Remedy Clarification Act ("CRCA"), the state was not immune from suit. The Court of Appeals for the Fourth Circuit reversed the decision, and the U.S. Supreme Court affirmed the Fourth Circuit's opinion.

Read More: [Aarrgument preview: Copyright and sovereign immunity in Davy Jones' locker](#),
Howard M. Wasserman

WHAT ARE THE PARTIES' ARGUMENTS?

The parties agree that Congress has the authority to abrogate immunity and authorize private lawsuits against states, but they disagree as to whether revoking immunity for copyright infringement under the CRCA is valid. The petitioners argue that Congress' power to secure authors exclusive rights to federal copyright overcomes States' immunity for infringing those copyrights. The respondents argue that the CRCA is invalid because it was not enacted under a constitutional provision that limits state sovereignty either expressly or by "insurmountable implication."

Read More: [Petitioners' Brief](#)
[Respondents' Brief](#)

WHY DOES THE OUTCOME MATTER TO STATE-RUN LIBRARIES?

In a "friend of the court" brief to the Supreme Court, library and archive organizations explain that state-run libraries and archives have understood that sovereign immunity shields them from liability for damages for copyright infringement, enabling them to engage in digital preservation projects. The library brief acknowledges that copyright holders can still pursue injunctive relief against state actors,

providing copyright holders with an effective means of vindicating their rights and ensuring that libraries and archives undertake their preservation projects in a manner that is respectful of copyright.

While preservation exceptions for libraries and archives and fair use provide libraries and archives with a high degree of confidence that preservation of their collections does not run afoul of copyright law, the library brief argues that this confidence is “less than certainty” and that the precise boundaries of the access libraries can provide to preserved works is unclear. As a result, “[b]y eliminating the possibility of devastating damages, sovereign immunity encourages state-run libraries and archives to engage in cutting-edge preservation projects, to the benefit of students, researchers, and the public at large.”

As the library brief explains, the outcome of *Allen v. Cooper* is important to libraries and archives because, without sovereign immunity, state-run libraries might be overly cautious in their preservation efforts, placing important parts of collections at risk and undermining their mission to increase access to knowledge.

Read More: [Brief of Amici Curiae](#) American Library Association, Association of College and Research Libraries, Association of Research Libraries, Society of American Archivists, and Software Preservation Network

WHAT'S NEXT?

In March 2020, the U.S. Supreme court issued an opinion holding that Congress lacked authority to abrogate States’ immunity from copyright infringement suits in the CRCA; therefore, state governments cannot be sued for copyright infringement.

Read More: [U.S. Supreme Court opinion in Allen v. Cooper](#)