

## Jason Bloom in The IP Strategist: States Win Some and Lose Some on Copyright Front at Supreme Court This Term

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**PRACTICES** Intellectual Property, Copyright, Intellectual Property Litigation

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The Supreme Court decided two copyright cases this term, both involving states. In the first, *Allen v. Cooper*, 140 S.Ct. 994 (2020), the Court dealt the states a victory by holding that, despite an act of Congress to the contrary, states retain their sovereign immunity from copyright infringement actions — for now, anyway. In the second case, *Georgia v. Public.Resource.Org, Inc.*, 140 S.Ct. 1498 (2020), the Court dealt states a loss by holding that the state of Georgia could not claim copyright ownership in statutory annotations it created. The Court thus expanded the rights of states as copyright infringers but restricts states' rights as copyright owners. This article discusses the cases and their likely impact on copyright law going forward.

In *Allen*, the Supreme Court followed its own precedent to hold that the Copyright Remedy and Clarification Act of 1990 (CRCA) failed to effectively deprive states of sovereign immunity in copyright infringement actions, punting to Congress to try again if it chooses. Unless and until Congress acts, states are therefore free to infringe copyrights with no threat of being held liable for copyright infringement.

The background of *Allen* is just as interesting as its outcome. In 1718, a pirate ship, dubbed Queen Anne's Revenge, sank off the coast of North Carolina after wreaking months of havoc in Atlantic and Caribbean waters. The ship's infamous captain, Edward Teach, also known as Blackbeard, escaped and the ship's remnants remained undiscovered for nearly 300 years. Then, in 1996, Intersal, Inc., a salvage company, discovered the shipwreck and contracted with the state of North Carolina, which owns the shipwreck as a matter of law, to recover the contents. As part of the project, Intersal retained videographer Frederick Allen to document the recovery operation.

Allen spent more than a year creating photos and videos of the wreckage, and Allen indisputably owned the copyright interests in his works, which he timely registered with the U.S. Copyright Office. The dispute arose when, without Allen's permission, North Carolina published Allen's works online.

Excerpted from *The IP Strategist*. To read the full article, click [here](#). (Subscription required)