



LCA STATEMENT ON COPYRIGHT OFFICE SOVEREIGN IMMUNITY STUDY

The Library Copyright Alliance (“LCA”) welcomes the [report](#) on copyright and state sovereign immunity issued on August 31, 2021, by the U.S. Copyright Office. Last year, Senators Leahy and Tillis asked the Copyright Office to undertake a study to determine whether, consistent with the Supreme Court’s analysis in *Allen v. Cooper*, Congress could legislatively abrogate state sovereign immunity to suits in federal court for damages for copyright infringement.

Through an inclusive process, the Copyright Office gathered evidence from a wide range of stakeholders, including rights holders, libraries, universities, and other state actors. After considering the evidence and the relevant legal precedents, the Copyright Office found that it was “unable to conclude with certainty that the evidence provided in this study would be held sufficient to establish a pattern of unconstitutional conduct” necessary to justify abrogation of state sovereign immunity. Accordingly, the Copyright Office stated that should Congress decide to proceed with abrogation legislation, “there is a material risk that a court could find even this more robust record insufficient to meet the constitutional abrogation standard.”

LCA is grateful for the Copyright Office’s acknowledgment of libraries and universities’ “implementation of policies and educational programs to ensure respect for copyright.” Further, the Office correctly recognized that “these entities will generally be able to invoke protection from non-meritorious infringement suits under the Copyright Act’s exceptions and limitations, including fair use, exceptions for reproduction by libraries and archives, and limitations on remedies.”

At the same time, LCA does not support consideration of legislation under which a state’s ability to recover damages for infringement of its own intellectual property rights would be conditioned on its waiving sovereign immunity from infringement suits.

LCA consists of the American Library Association, the Association of College and Research Libraries, and the Association of Research Libraries.

For questions, please contact LCA’s counsel, Jonathan Band, jband@policybandwidth.com.