You cannot make people pay taxes to you, but the IRS makes exactly that demand on everyone who earns an income. You cannot decide what the speed limit is on the major road closest to your house, but the local government can. The U.S. Constitution and the state constitutions set out the powers of the federal and state governments, respectively, but they also specify the limits to those powers. Except under limited circumstances defined in the laws, the government does not have the right to take or use your personal property without your permission, but what about your intellectual property?

A recent decision by the United States Supreme Court deals with the question of whether state governments are above the law when it comes to copyright infringement, and the law on state sovereign immunity in copyright infringement cases continues to evolve.

Sovereign Immunity and the Copyright Remedy Clarification Act
Sovereign immunity means that the government, either state or federal, is immune from civil lawsuits when it does something that would get a private individual or corporation sued. The Copyright Remedy Clarification Act (CRCA) of 1989 removed the state sovereign immunity protection in copyright infringement cases. In other words, it enabled copyright holders to sue state entities that used their copyrighted material without the copyright owners’ permission.

Blackbeard’s Law and Allen v. Cooper

Since 1998, the media company Nautilus Productions has been documenting the recovery of the shipwrecked vessel Queen Anne’s Revenge, the flagship of the pirate Edward Teach (better known as Blackbeard), which sank off the coast of North Carolina in 1718. In 2015, North Carolina passed “Blackbeard’s Law,” which states that all images and video recordings of shipwrecked vessels that sank in North Carolina waters and the contents of those ships are property of the State of North Carolina. Then the state posted images of the recovery of the shipwreck on its official website without seeking permission from Nautilus.

Representatives of Nautilus sued the governor of North Carolina in Allen v. Cooper, a case Justice Elena Kagan described as concerning a “modern form of piracy,” and the U.S. Supreme Court ruled on the case in March 2020. The Supreme Court held that the federal government does not have the authority to make exceptions to state sovereign immunity in copyright infringement cases, thus declaring CRCA unconstitutional (while upholding Blackbeard’s Law). Meanwhile, the United States Copyright Office continues to study the issue of state sovereign immunity.

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