

# USA: Allen v. Cooper, United States Court of Appeals, Fourth Circuit, No. 17-1522, 10 July 2018

**Kluwer Copyright Blog**

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North Carolina, the North Carolina Department of Natural and Cultural Resources, and various state officials acting in their official capacities—who were sued in a copyright infringement action brought by a videographer and his affiliate who produced photos and videos depicting a salvaged ship of Blackbeard the pirate—were entitled to Eleventh Amendment immunity from suit in federal court, the U.S. Court of Appeals in Richmond has decided. The defendants did not waive their immunity in a settlement agreement with the plaintiffs; the federal Copyright Remedy Clarification Act did not abrogate their immunity; and Ex parte Young did not suffice to provide the plaintiffs with a valid exception to their immunity. Further, the plaintiffs' claims against the state officials in their individual capacities were precluded by qualified immunity and by legislative immunity for their alleged involvement in enacting an allegedly unconstitutional state statute relating to shipwrecks. The federal district court in Raleigh erred in finding to the contrary on each of the above issues; its rulings were reversed, and the dispute was remanded with instructions to dismiss without prejudice the plaintiffs' claims against North Carolina, the Department, and the public officials acting in their official capacities and to dismiss with prejudice the remaining claims against the officials in their individual capacities (Allen v. Cooper, July 10, 2018, Niemeyer, P.).

A full summary of this case has been published on [Kluwer IP Law](#).