Perspectives from FSF Scholars
October 16, 2019
Vol. 14, No. 32

States Have No Right to Infringe Copyrights: The Supreme Court Should Enforce the Copyright Remedy Clarification Act

by

Seth L. Cooper *

Introduction and Summary

In its 2019-2020 term, the U.S. Supreme Court will be deciding an important case about whether states can infringe a person's copyright. At issue in *Allen v. Cooper* is the effect of the Copyright Remedy Clarification Act of 1990 (CRCA) when state officials infringe copyrights. The Supreme Court should enforce the Copyright Remedy Clarification Act's abrogation of Eleventh Amendment state sovereign immunity.

States do not have rights to infringe copyrights. When state institutions or officials infringe copyrights, they ought to be held liable just like other infringers. The CRCA is a valid exercise of congressional power, both as a matter of constitutional principle and under case law. The Act addresses a genuine and growing problem of states infringing copyrights and inflicting financial losses on copyright owners. Securing copyrights is a federal responsibility, and states should not be permitted to undermine those protections or the integrity of the law.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

According to Supreme Court jurisprudence, the Eleventh Amendment generally bars states from being sued in federal court without their consent. *Allen v. Cooper* poses the question of whether the CRCA established an exception when states or state officials infringe copyrights.

The Copyright Remedy Clarification Act was plainly intended to hold state institutions and officials accountable for copyright infringements. The Act provides that "[a]ny State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person… for a violation of any of the exclusive rights of a copyright owner." The CRCA provides that monetary awards, including statutory damages and attorneys' fees, are available to copyright owners whose copyrights are infringed by states, just as they are available in cases involving only private parties.

In *Allen v. Cooper*, North Carolina argues that it is immune from being sued in federal court over claims that some of its officials infringed the copyrights of videos and photos, created for commercial purposes, of an underwater vessel sailed by the English pirate Blackbeard. North Carolina argues that Congress did not validly abrogate states' Eleventh Amendment immunity in accord with the Supreme Court's precedents, partly because the CRCA doesn't address an existing substantial problem and it doesn't contain an appropriately targeted remedy. The U.S. Court of Appeals for the Fourth Circuit sided with North Carolina. However, good reason exists for why the Supreme Court should uphold the CRCA's abrogation of states' sovereign immunity.

The CRCA rests on solid constitutional foundations. First and foremost, the Act is a valid exercise of Congress's authority under the Article I, Section 8 Copyright Clause "To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Moreover, the CRCA is defensible under Supreme Court jurisprudence. In *Central Virginia Community College v. Katz* (2006), the Court concluded that Congress could abrogate states' Eleventh Amendment immunity pursuant to the Bankruptcy Clause in Article I, Section 8 because federal jurisdiction over bankruptcy is exclusive and there is a corresponding lack of available remedies for bankruptcy claims in state law.

The Court's reasoning in *Katz* regarding bankruptcy applies with at least equal force to copyright. Federal protection for exclusive rights in creative works dates back to the Copyright Act of 1790. Abrogation of states sovereign immunity is necessary because of exclusive federal jurisdiction over copyright protections. If barred from raising infringement claims against states in federal courts, copyright owners would have no reliable legal basis for pursuing recovery in state courts.

The Copyright Remedy Clarification Act also is a valid exercise of congressional power under Section 5 of the Fourteenth Amendment. That section grants Congress "the power to enforce, by appropriate legislation, the provisions of this article," including the Fourteenth Amendment's requirement that "No state shall… deprive any person of life, liberty, or property, without due process of law." Copyrights are indisputably property rights. Supreme Court jurisprudence recognizes this. Indeed, Free State Foundation President Randolph May and I traced the property

rights' view of copyrights back to the drafting of the Constitution and its antecedents in our book, *The Constitutional Foundations of Intellectual Property*.

Additionally, the CRCA is a valid exercise of Congress's powers under Section 5 to enforce the Fourteenth Amendment's Privilege or Immunities Clause, which states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." According to Supreme Court decisions such as *The Slaughter-House Cases* (1873), the Clause protects rights that "owe their existence to the Federal government, its National Character, its Constitution, or its laws." Indeed, exclusive rights in creative works owe their existence to the Copyright Clause and federal law. Moreover, jurists from the -18th and early 19th centuries, including Justices Joseph Story and Smith Thompson, referred to copyrights as "privileges" interchangeably with "rights," including exclusive rights secured by federal copyright law.

The CRCA is backed by a solid factual record. Prior to passing the CRCA in 1990, Congress received a report by the U.S. Copyright Office that identified several instances of state officials infringing copyrights. Congress conducted hearings, took testimony, and amassed a record showing that state officials infringing copyrights is a serious problem. Then-Register of Copyrights Ralph Oman supported the legislation as a needed measure for securing copyrights, pointing out that States are "major users of copyright material" that they would not "pay for something they can get for free." Mr. Oman filed a friend-of-the-court brief in *Allen v. Cooper*, in which he pointed out that Congress's predictive judgment had proven correct.

The problem of state officials infringing copyrights appears to have grown since 1990. A report by the Government Accountability Office identified about two dozen copyright lawsuits against states between 1985 and 2001. Plaintiff copyright owners in the U.S. District Court case *Canada Hockey v. Texas A&M University Athletic Department* (2019) cited over 170 copyright cases filed against states between 2000 and 2019. In another court filing, the Recording Industry Association of America (RIAA) identified state universities as being well positioned to make copyrighted music and other copyrighted works available to students and others without paying royalties, including displays or transmissions of copyrighted content at university athletic events, radio stations, theaters, and more.

Importantly, the CRCA is a valid preventive measure against copyright infringements. Court precedents recognize that Section 5 of the Fourteenth Amendment empowers Congress to proscribe future wrongdoing. The factual record supporting the CRCA also provides a sound basis for preventing future copyright infringements by states. Abrogation of states Eleventh Amendment immunity, as provided under the CRCA, is therefore needed to remedy and prevent losses to copyright owners caused by infringements.

Accountability of states for copyright infringements is also essential to preserving the integrity of federal law. As then-Register Oman testified in support of the CRCA's passage: "When one group, whether rightly or wrongly, thinks it has found a loophole that gives its members a free copyright ride… the result inevitably is a miasmic atmosphere of disorder and lawlessness that tears the fabric not only of the copyright law but of the disciplines and enterprises involved."

The Supreme Court should affirm the factual and constitution foundations for the Copyright Remedy Clarification Act and conclude that states have no rights to infringe copyrights.

State Sovereign Immunity and the Copyright Remedy Clarification Act of 1990

The Eleventh Amendment to the U.S. Constitution provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." The Eleventh Amendment has been understood to generally prohibit states from being sued in federal court without their consent. Both early and modern Supreme Court precedents recognize certain, albeit complex, exceptions to states' sovereign immunity from being sued in federal court. At issue in *Allen v. Cooper* is whether such an exception applies under the Copyright Remedy Clarification Act of 1990 (CRCA) when states, state institutions, or state officials infringe copyrights.

The Copyright Remedy Clarification Act was plainly intended to make states accountable for copyright infringements just like anyone else who infringes. The CRCA provides, in pertinent part: "Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity, shall not be immune, under the Eleventh Amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in Federal court by any person… for a violation of any of the exclusive rights of a copyright owner." The CRCA also expressly provides that remedies "are available for the violation to the same extent as such remedies are available for such a violation in a suit against any public or private entity," including awards of statutory damages and attorney's fees.

The CRCA was a prompt legislative response to lower federal courts decisions in the late 1980s that held the Copyright Act of 1976 did not clearly abrogate Eleventh Amendment immunity for copyright infringements. The lower court decisions reviewed the CRCA in light of the Supreme Court's ruling in *Atascadero State Hospital* v. *Scanlon* (1985) that a waiver of state sovereign immunity must be "unequivocal." As a result of those lower court decisions, copyright owners were not entitled to money damage awards when states infringed their copyrights.

Leading up the CRCA's passage, Congress tasked the U.S. Copyright Office with assessing the problem. Then-Register of Copyrights Ralph Oman duly submitted a report to Congress that identified several instances of state institutions and officials infringing copyrights. Congress also conducted hearings and amassed a record showing that copyright infringements by the states posed a serious existing problem. Then-Register of Copyrights Oman supported the legislation as a needed measure for securing copyrights, pointing out that states are "major users of copyright material" that they would not "pay for something they can get for free." In passing the CRCA, Congress concluded, reasonably, that ensuring copyright holders were eligible for money damage awards against infringing states was necessary to protect their copyrights.

Since 1990, the problem of state officials infringing copyrights appears to have grown. A report by the Government Accountability Office identified about two dozen copyright lawsuits against states between 1985 and 2001, and plaintiff copyright owners in the U.S. District Court case

Canada Hockey v. Texas A&M University Athletic Department (2019) cited over 170 copyright cases filed against states between 2000 and 2019. In another friend-of-the-court filing, the Recording Industry Association of America (RIAA) identified state universities as being well positioned to make copyrighted music and other copyrighted works available to students and others without paying royalties, including displays or transmissions of copyrighted content at university athletic events, radio stations, theaters, and more.

The CRCA is now being challenged at the Supreme Court by the State of North Carolina. At issue in *Allen v. Cooper* are alleged infringements by state officials of videos and photos made for commercial purposes by the copyright owners of an underwater vessel once sailed by the English pirate Blackbeard. The plain meaning of the CRCA and its alignment with the Court's 1985 *Atascadero* decision appears straightforward and ought to support copyright liability by states for infringements. However, North Carolina argues that Congress did not validly abrogate states' Eleventh Amendment immunity in accord with later Court precedents, including *Seminole Tribe of Florida v. Florida* (1996) and *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank* (1999). Among other things, North Carolina claims the CRCA doesn't address an existing substantial problem and that it doesn't contain an appropriately targeted remedy. The U.S. Court of Appeals for the Fourth Circuit sided with North Carolina.

However, there are solid constitutional foundations for the CRCA and good reasons why the Fourth Circuit's decision ought to be reversed by the Supreme Court.

The CRCA Is a Valid Exercise of Congressional Power Under the Copyright Clause

First and foremost, the Copyright Remedy Clarification Act is a valid exercise of congressional power under the Article I, Section 8 Copyright Clause. The Copyright Clause grants to Congress the power "To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." By statute, federal courts have exclusive jurisdiction over copyrights in nearly all circumstances. Free State President Randolph May and I examined the origins and meaning of the Copyright Clause in our book, *The Constitutional Foundations of Intellectual Property: A Natural Rights Perspective* (2015), and we also examined the history of civil copyright enforcement under federal law in our *Perspectives from FSF Scholars* paper, "Modernizing Civil Copyright Enforcement for the Digital Age."

In *Allen v. Cooper,* North Carolina argues that *Seminole Tribe* precludes Congress from abrogating states' Eleventh Amendment immunity pursuant to its Article I powers. However, there is good reason for rejecting that argument. In *Central Virginia Community College v. Katz* (2006), the Supreme Court concluded that language in *Seminole Tribe* regarding Congress's Article I powers to abrogate state sovereign immunity was *dicta* – that is, the language was not central to the holding in *Seminole Tribe* and therefore not binding precedent. In *Katz*, the Court determined that Congress could abrogate states' Eleventh Amendment immunity pursuant to the Bankruptcy Clause in Article I, Section 8. The Court observed that federal jurisdiction over bankruptcy is exclusive and that there is a corresponding lack of available remedies under state law.

The Supreme Court's underlying reasoning in *Katz* regarding bankruptcy applies with equal, if not greater, force to copyright. For much of the 19th century, no federal bankruptcy laws existed, and the first comprehensive national bankruptcy law was not passed until 1898. By contrast, the First Congress to meet under the U.S. Constitution passed the Copyright Act of 1790. The 1790 Act was signed by President George Washington. Later Congresses have revised and expanded federal copyright protections.

As Congress recognized when passing the CRCA, abrogation of states sovereign immunity and the availability of money damage awards is necessary because of exclusive federal jurisdiction over copyright protections. Absent the availability of federal copyright protections, copyright owners would be left with only tenuous theories for seeking recovery from infringing states under state law. For many would-be litigants, challenging powerful and resource-rich states in court is already forbidding. But the idea of putting up the time and money to sue states using untested legal theories based on state equity jurisprudence or state unfair competition law is a non-starter. Even if a given state court recognized a non-federal basis for liability for copyright infringements by state officials, state legislatures possess authority to narrow or eliminate such liability. Since *Allen v. Cooper* was filed, the North Carolina legislature passed a law that apparently precludes the state from being held liable under state law for identical or similar circumstances to those at issue in the case.

The CRCA Is a Valid Exercise of Congress's Section 5 Powers to Enforce the Due Process Clause of the Fourteenth Amendment

The Copyright Remedy Clarification Act also is a valid exercise of congressional power under Section 5 of the Fourteenth Amendment. That section provides: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article." The copyright owners in *Allen v. Cooper* argue that Section 5 empowered Congress to adopt the CRCA as a means of ensuring that no state shall "deprive any person of life, liberty, or property, without due process of law," as provided in Section 1 of the Fourteenth Amendment. In their briefing, the copyright owners in *Allen v. Cooper* point out that the Supreme Court "has viewed copyrights as 'property' for more than a century," and quote the Court's statement in *Fox Film Corp. v. Doyle* (1932) that "copyright is property" akin to land and patents and also its statement in *Ager v. Murray* (1888) that "[a] patent or a copyright… is property."

Indeed, the historical basis for understanding that copyrights are property rights runs far deeper than a century-plus of Supreme Court precedent. FSF President Randolph May and I traced the property rights' view of copyrights back to the drafting of the Constitution and to its antecedents in the first three chapters of our book, *The Constitutional Foundations of Intellectual Property*. As we explain therein, James Madison and other American Founders regarded copyright as property – "literary property," in the case of printed books – that is grounded in an individual's creative labors. According to this property-rights understanding, the fruits or proceeds arising from an individual's copyright work belongs rightfully and exclusively to the owner.

In *Allen v. Cooper,* North Carolina argues that the Supreme Court's decision in *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank* (1999) precludes Congress from abrogating states' Eleventh Amendment immunity pursuant to Section 5 of the Fourteenth

Amendment. In *Florida Prepaid*, the Court concluded that the Patent and Plant Variety Protection Remedy Clarification Act of 1992 did not validly abrogate states' Eleventh Amendment immunity. The Court found that Congress never undertook serious study of patent infringements by states and it failed to establish a record demonstrating a substantial and existing problem of states infringing patent rights. According to Court, the states appeared willing to respect patent rights and Congress was not warranted in giving patent owners the ability to seek monetary damage awards against states in federal court.

However, there is good reason for distinguishing *Florida Prepaid*. As pointed out earlier, the CRCA was amply supported by the legislative record. Congress commissioned a Copyright Office study of the problem of copyright infringements by states and state officials. It also conducted hearings and received evidence regarding specific instances of such infringements, including instances where those infringements were litigated. Also pointed out earlier, copyright infringement by states has continued and likely increased since the early 1990s.

Additionally, *Florida Prepaid* ought to be distinguished from *Allen v. Cooper* because the CRCA is a valid preventive measure. Court precedents recognize that Section 5 empowers Congress to proscribe future wrongdoing. And Congress had a solid factual record upon which to base its prediction that future copyright infringements by state institutions or officers would occur absent the abrogation of states' sovereign immunity. Furthermore, then-Register Oman filed a friend-of-the-court brief in *Allen v. Cooper*. He pointed out that Congress's predictive judgment had proven correct. By contrast, the record in *Florida Prepaid* was found to be sparse. Accordingly, the Court concluded that any prediction of future patent infringements by states was "speculative" and did not support the ostensible remedial legislation at issue in that case.

As a matter of constitutional principle, there is reason to question the soundness of *Florida Prepaid*'s requirement of a factual showing of actual constitutional violations before exercising Section 5 to prevent future wrongful conduct. Or at least one can question the legitimacy of a prerequisite of actual violations of rights that are defined and secured exclusively by federal law before passing preventive legislation. The plain terms of Section 5 contain no such prerequisite. Going forward, the Supreme Court perhaps ought to limit the holding of *Florida Prepaid* insofar as it concerns remedial legislation. However, even if the holding in *Florida Prepaid* is to be applied in a straightforward manner, the factual record of instances of states infringing copyrights affords sufficient basis for predicting that future infringements will occur unless prevented by the CRCA.

The CRCA Is a Valid Exercise of Congress's Section 5 Powers to Enforce the Privileges or Immunities Clause of the Fourteenth Amendment

An amicus brief filed in *Allen v. Cooper* by several law professors also makes the intriguing argument that the CRCA is a valid exercise of Congress's Section 5 powers to protect copyrights under the Privileges or Immunities Clause contained in Section 1 of the Fourteenth Amendment. That clause states that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." According to the Court in *The Slaughter-House Cases* (1873), the Privileges or Immunities Clause protects rights "which owe their existence to the Federal government, its National Character, its Constitution, or its laws," as well as those

rights that "depend[] on the Federal government for their existence or protection." And in *Saenz v. Roe* (1999), the Court stated that the Clause protects rights that have "been conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created." The law professors also cite older legal treatises, including Thomas M. Cooley's *The General Principles of Constitutional Law in the United States* (1880) for the proposition that, from early on, the Privileges or Immunities Clause was understood to protect federal statutory rights.

Copyrights surely are "privileges or immunities of citizens of the United States" within the meaning set forth in Supreme Court jurisprudence. The Copyright Clause expressly authorizes Congress to secure such exclusive rights Title 17 of the United States Code provides them. Moreover, since the beginning, copyrights have been regarded as necessary to the strengthening of the Union under the Constitution. This is reflected in the contributions of James Madison to securing copyright protections at our nation's founding. In his memorandum "Vices of the Political System of the United States" (1787), Madison criticized the state of governance under the Articles of Confederation. Under the heading for vice number 5, "want of concert in matters where common interest requires it," Madison wrote that "[i]nstances of inferior moment are the want of uniformity in the laws concerning… literary property." In *Federalist No. 43*, Madison, writing under the pen name "Publius," addressed the proposed Intellectual Property Clause or Copyright Clause for securing copyrights and patent rights. He wrote that "[t]he States cannot separately make effectual provisions for either of the cases." And as a member of the First Congress, Madison helped implement the Clause by passing the Copyright Act of 1790.

Furthermore, copyrights have frequently been called "privileges" in American jurisprudence. For example, in the circuit court cases of *Gray v. Russell* (1839) and *Gould v. Hastings* (1840), Justices Joseph Story and Smith Thompson both referred to the "privilege of copyright." Writing for the Supreme Court in *Holmes v. Hurst* (1899), Justice Henry Brown also addressed the "privilege of copyright." For jurists in the 18th and early 19th centuries, the term "privileges" was used synonymously with "rights," including exclusive rights in creative works secured by federal law.

More specifically, early American jurists understood the term "privileges" to mean civil rights secured through the social compact. This classical definition of privileges is traceable to Sir William Blackstone. Consistent with this definition, copyrights are civil rights. (Professor Adam Mossoff ably described the American Founders' understanding of "privilege" and early American use of that term with reference to patent rights in his 2006 *Cornell Law Review* article, "Who Cares What Jefferson Thought about Patents? The Patent 'Privilege' in Historical Perspective.")

Interestingly, the narrow interpretation of the Clause adopted by *Slaughter-House* and cited by the law professors in *Allen v. Cooper* has been criticized for narrowing the scope of protections to only a subset of national rights belonging to citizens. Although copyrights are clearly "Privileges or Immunities" according to that narrow interpretation, copyrights are just as surely fit within the broader interpretation that has been advanced by the Fourteenth Amendment's framers, the Court's dissenters in *Slaughter-House*, and many scholars.

Scholars also have emphasized that the framers of the Fourteenth Amendment understood the Privileges or Immunities Clause to incorporate the meaning of Article IV's Privileges and

Immunities Clause offered by Justice Bushrod Washington in his 1823 circuit opinion in *Corfield v. Coryell*. As Justice Washington wrote in *Corfield*, Article IV includes those "privileges and immunities" that are "in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign." Justice Washington added that those "privileges and immunities" included "[p]rotection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety."

Copyrights surely are "in their nature, fundamental; which belong, of right, to the citizens of all free governments" within this broad interpretation of the Fourteenth Amendment's Privileges or Immunities Clause. As Mr. May and I explained in our book, the *Constitutional Foundations of Intellectual Property*, going back to the American Founding, copyrights have been understood to be rooted in a person's natural right to the fruits of his or her labor, which is their private property. And it is the government's role to protect private property rights.

Further, copyrights "have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign." The natural rights understanding of copyrights is reflected in language contained in several of the dozen state copyright laws that were passed prior to the ratification of the U.S. Constitution. And the natural rights understanding of copyrights was a background assumption when the Copyright Clause to the Constitution was drafted and ratified, and also when the First Congress passed the Copyright Act of 1790. Indeed, as we also explained in *The Constitutional Foundations of Intellectual Property*, the natural rights understanding of the basis of copyrights remained prevalent throughout the antebellum and reconstruction era.

Upholding the CRCA's abrogation of Eleventh Amendment immunity does not require the Supreme Court to reexamine the meaning of the Privileges or Immunities Clause. However, in a detailed concurring opinion in *McDonald v. Chicago* (2010), Justice Clarence Thomas provided a detailed exposition of the Clause and concluded that it protects at least the personal liberty guarantees in the Bill of Rights. A further reconsideration of the Clause's meaning in *Allen v. Cooper* would shed light on the nature and purpose of copyrights in securing a person's right to the fruits of his or her labor.

Conclusion

At issue in *Allen v. Cooper* is the effect of the Copyright Remedy Clarification Act of 1990 (CRCA) when state officials infringe copyrights. The CRCA is a valid exercise of congressional power under the Copyright Clause, and it is also a valid exercise of Congress's enforcement powers under Section 5 of the Fourteenth Amendment. The Act addresses a genuine and growing problem of states infringing copyrights and inflicting financial losses on copyright owners.

State institutions and officials ought to be held liable for copyright infringements just like other infringers. Securing copyrights is a federal responsibility, and states should not be permitted to undermine those protections or the integrity of the law. The Supreme Court should uphold the

Copyright Remedy Clarification Act's abrogation of Eleventh Amendment state sovereign immunity.

* Seth L. Cooper is a Senior Fellow and Director of Policy Studies of the Free State Foundation, an independent, nonpartisan free market-oriented think tank located in Rockville, Maryland.

Further Reading

Randolph J. May and Seth L. Cooper, "Volition Has No Role to Play in Determining Copyright Violations," *Perspectives from FSF Scholars*, Vol. 14, No. 21 (September 9, 2019).

Randolph J. May, "Trade Agreements Should Not Export Ineffective Copyright Laws," *FSF Blog* (August 8, 2019).

Seth L. Cooper, "Trade Agreements Should Include Stronger Online Copyright Protections," *Perspectives from FSF Scholars*, Vol. 14, No. 12 (April 25, 2019).

Seth L. Cooper, "IP Enforcement Coordinator's Report Spotlights Copyright Protection Progress," *FSF Blog* (March 6, 2019).

Seth L. Cooper, "IP Commission Recommends Steps to Protect America From International IP Theft," *FSF Blog* (March 1, 2019).

Randolph J. May and Seth L. Cooper, "Modernizing International Agreements to Combat Copyright Infringement," *Perspectives from FSF Scholars*, Vol. 13, No. 42 (November 16, 2018).

Randolph J. May and Seth L. Cooper, "Modernizing Criminal Copyright Law to Combat Online Piracy," *Perspectives from FSF Scholars*, Vol. 13, No. 23 (June 18, 2018).

Randolph J. May and Seth L. Cooper, "Modernizing Civil Copyright Enforcement for the Digital Age: The Need for Notice-and-Takedown Reforms and Small Claims Relief," *Perspectives from FSF Scholars*, Vol. 13, No. 8 (February 28, 2018).

Randolph J. May and Seth L. Cooper, "Unalienable Rights and Alienable Intellectual Property: Why 'Moral Rights' Should Not Be Imported into U.S. Copyright Law," *Perspectives from FSF Scholars*, Vol. 12, No. 46 (December 11, 2017).