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**ADMINISTRATIVE DEVELOPMENTS**

## LIBRARY OF CONGRESS

Small Claims Procedures for Library and Archives Opt-Outs and Class Actions. The U.S. Copyright Office has issued a proposed rule to establish procedures by which a library or archive may preemptively opt out of Copyright Claims Board (CCB) proceedings. The proposed rule also sets forth procedures relating to class actions involving the same transaction or occurrence as a claim before the CCB. Public comments are due by 11:59 p.m. eastern time on October 4, 2021.

The Copyright Alternative in Small-Claims Enforcement (CASE) Act of 2020 directs the Register of Copyrights to establish regulations permitting a library or archive that does not wish to participate in proceedings before the CCB to preemptively opt out of such proceedings. The proposed rule includes procedures by which a library or archives may notify the Office of its intention to opt out. The proposed rule also provides that the Office will maintain a list of libraries and archives that have opted out on its website.

With respect to class action proceedings, the proposed rule provides that any party to an active CCB proceeding who receives notice of a class action arising out of the same transaction or occurrence as the CCB proceeding must either opt out of the class action or seek written dismissal of the CCB within fourteen days of receiving the class action notice.

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Copyright Office Releases Report on Sovereign Immunity in Copyright Infringement Cases.

Today the U.S. Copyright Office released a report entitled *Copyright and State Sovereign Immunity*. The 117-page report marks the completion of a study conducted by the Office in response to an April 2020 request by Senators Thom Tillis and Patrick Leahy following the Supreme Court's decision in *Allen v. Cooper*. In that case, the court held that Congress had exceeded its authority under section 5 of the Fourteenth Amendment when it enacted legislation authorizing copyright infringement suits for damages against states. The senators asked the Office to determine whether there is sufficient basis for legislation abrogating state sovereign immunity when states infringe copyrights.

The report discusses comments provided by a wide variety of stakeholders in written submissions and during public roundtables held in December 2020. The report concludes that although many state entities, in particular universities and libraries, have adopted policies and programs to deter copyright infringement, the record of alleged infringement by state entities is significantly greater than when Congress last considered the issue. Given the demands of the legal standard, however, and some ambiguity in its application, the Office cannot conclude with certainty that the evidence would be found sufficient to meet the constitutional standard for abrogation. The report notes that if Congress decides not to proceed with abrogation legislation at this time, the Office would support consideration of alternative approaches to address this issue.

The full report is available on the Office's website at [copyright.gov/policy/state-sovereign-immunity](https://copyright.gov/policy/state-sovereign-immunity).