

The plaintiff does not argue that Nebraska has somehow waived its sovereign immunity. See [filing 6 at 20-23](#). Rather, the plaintiff argues that the Copyright Remedy Clarification Act, 17 U.S.C. § 501(a), abrogates the states' sovereign immunity from copyright claims. [Filing 6 at 21](#). And the plaintiff points to a decision from the U.S. District Court for the Eastern District of North Carolina where the court so held. [Filing 6 at 21-22](#) (citing *Allen v.*

---

8:20-cv-00135-JMG-CRZ Doc # 14 Filed: 04/13/20 Page 2 of 3 - Page ID # 183

*Cooper*, 244 F. Supp. 3d 525 (E.D.N.C. 2017)).

Absent from the plaintiff's brief, however, is any mention of the fact that on appeal, the U.S. Court of Appeals for the Fourth Circuit reversed that ruling and held that Congress lacked authority to abrogate the states' Eleventh Amendment immunity. *Allen v. Cooper*, 895 F.3d 337, 349 (4th Cir. 2018). Similarly missing from the plaintiff's brief is the fact that the U.S. Supreme Court subsequently affirmed the Fourth Circuit's decision, also holding that states retain their sovereign immunity to copyright claims. *Allen v. Cooper*, No. 18-877, 2020 WL 1325815, at \*9 (U.S. Mar. 23, 2020).

It certainly appears that the U.S. Supreme Court's decision in *Allen* is dispositive of the plaintiff's copyright claim.<sup>1</sup> And sovereign immunity is a