**17.7** **Copyright Infringement—Copyright Registration Certificate**

**(17 U.S.C. § 410(c))**

A copyright owner may obtain a certificate of registration from the Copyright Office.

[*When defendant does not present evidence regarding validity or ownership of copyright*]

The evidence in this case includes Exhibit \_\_\_, a certificate of copyright registration from the Copyright Office. You are instructed that the certificate is sufficient to establish that there is a valid copyright in [*identify the work in question*].

[*When defendant presents evidence regarding validity or ownership of copyright*]

The evidence in this case includes Exhibit \_\_\_, a certificate of copyright registration from the Copyright Office. [If you find that this certificate was made within five years after first publication of the plaintiff’s work, you may consider this certificate as evidence of the facts stated in the certificate.] From this certificate you may, but need not, conclude that: [*state specifics of the certificate relevant to the case, e.g., that plaintiff’s work is the original and copyrightable work of the author and that the plaintiff owns the copyright in that work*],which I explain in Instructions [*insert instruction numbers relevant to elements of plaintiff’s burden*].

**Comment**

This instruction should be given if the plaintiff submits a copyright registration certificate made before orwithin five years of first publication. *See* 17 U.S.C. § 410(c) (“In any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate. The evidentiary weight to be accorded the certificate of a registration made thereafter shall be within the discretion of the court.”) For a definition of publication, *see* 17 U.S.C. § 101.

A copyright registration certificate can shift the burden of proof concerning plaintiff’s ownership of a valid copyright. *United Fabrics Int’l, Inc. v. C&J Wear, Inc.*, 630 F.3d 1255, 1257 (9th Cir. 2011)*.* “For instance, if a copyright holder secures a registration certificate within five years after first publication, such certificate will constitute prima facie evidence of both the validity of the copyright and the facts stated in the certificate.” *Cosmetic Ideas, Inc. v. IAC/Interactivecorp,* 606 F.3d 612, 619 (9th Cir. 2010) (citing 17 U.S.C. § 410(c)), *abrogated by*

*Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 886-87 (2019)

(“[R]egistration occurs, and a copyright claimant may commence an infringement suit, when the

Copyright Office registers a copyright. Upon registration of the copyright, however, a copyright

owner can recover for infringement that occurred both before and after registration.”).

Under the Copyright Act, the party claiming infringement must show ownership. *See Lamps Plus, Inc. v. Seattle Lighting Fixture Co*., 345 F.3d 1140, 1144 (9th Cir. 2003) (“Ownership of the copyright is … always a threshold question.” (quoting *Topolos v. Caldewey*,698 F.2d 991, 994 (9th Cir. 1983))).

Where a copyright registrant has registered a collective work, the registrant may also bring an infringement action on behalf of the component works, provided the registrant owns the rights to the component works as well. *Unicolors, Inc. v. Urban Outfitters, Inc*., 853 F.3d 980, 989 (9th Cir. 2017) (citation omitted). It is not necessary to list each of the component works in the copyright application for each of those works to be copyrighted. *Id*. The Copyright Act contains a safe harbor, 17 U.S.C. § 411(b)(1)(A), which provides that a certificate of registration is valid even though it contains inaccurate information, as long as the copyright holder lacked “knowledge that it was incorrect.” The safe harbor “does not distinguish between a mistake of law and a mistake of fact. Lack of knowledge of either fact or law can excuse an inaccuracy in a copyright registration.” *Unicolors, Inc. v. H&M Hennes & Mauritz, L.P.*, 142 S.Ct. 941, 945 (9th Cir. 2022). A court need not accept a copyright holder’s claim that it was unaware of the relevant copyright law. Instead, “[c]ircumstantial evidence, including the significance of the legal error, the complexity of the relevant rule, the applicant’s experience with copyright law, and other such matters, may also lead a court to find that an applicant was actually aware of, or willfully blind to, legally inaccurate information”; moreover, willful blindness can support a finding of actual knowledge. *Id*., at 948.

*Revised Mar. 2022*