**ANNOTATIONS AND COMMENTS**

This jury instruction applies when one party accuses another party of copyright infringement by means of copying from a copyrighted work and using the copied material in another later work. It can be used where printed materials are involved or in cases involving other copyrighted material.

Because direct evidence of copying is rare, the law provides for proof by circumstantial evidence as to all necessary elements. To the extent that Plaintiff relies on circumstantial evidence as to access or similarity, however, the presumption he creates is rebuttable. If the Defendant can prove independent creation, even if the two works appear to be copies, the Plaintiff cannot recover for copyright infringement.

*Original Appalachian Artworks, Inc. v. Toy Loft, Inc.*,684 F.2d 821, 829 (11th Cir. 1982); *Herzog v. Castle Rock Entertainment*, 193 F.3d 1241, 1248 (11th Cir. 1999).

*Baby Buddies, Inc. v. Toys ‘R* *Us, Inc.*,611 F. 3d 1308, 1315 (11th Cir. 2010) (“A plaintiff may prove copying directly, but because direct evidence of copying is rare a plaintiff may instead rely on indirect proof.”); *Corwin v. Walt Disney World Co.*,475 F.3d 1239, 1253 (11th Cir. 2007) (“Striking similarity exists where the proof of similarity in appearance is so striking that the possibilities of independent creation, coincidence and prior common source are, as a practical matter, precluded.”).