**9.7: Copyright – Validity – How Obtained**

**(For Use Where No Presumption of Validity Applies)**

Copyright automatically exists in a work the moment it is created. The owner may register the copyright by depositing a copy of the copyrighted work in the Library of Congress’s Copyright Office. After determining that the material is copyrightable and that legal and formal requirements have been satisfied, the Register of Copyrights registers the work and issues a certificate of registration to the copyright owner. There’s no administrative investigation on the originality or uniqueness of the work or a determination of the claim’s validity. A certificate of copyright registration is refused only if the work falls outside the broad category of matter eligible for copyright registration.

So while the existence of a copyright registration may create some presumption that a work is indeed entitled to copyright protection, the fact that a copyright registration has been issued doesn’t conclusively establish whether the work is entitled to copyright protection.

In this case, [name of plaintiff]’s copyright isn’t entitled to a presumption of validity. [He/She/It] has the burden of establishing by a preponderance of the evidence that [he/she/it] owns a valid copyright.

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence that:**

 The claimed work is original to the author – not copied from other works – meaning that the author independently created the work?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to this question is “yes,” answer the next question.

 The claimed work possesses at least a minimal degree of creativity?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer to either of these questions is “No,” don’t continue with your analysis of [name of plaintiff]’s claim for infringement.