**ANNOTATIONS AND COMMENTS**

This jury instruction applies when a defendant raises the affirmative defense that the plaintiff’s copyright registration contained material inaccuracies, whether by omission or misrepresentation. A registration will not be invalidated unless the inaccuracy was material and the registrant acted with *scienter*, i.e., an intent to mislead the Copyright Office. *See* 17 U.S.C. § 411 (a certificate of registration satisfies the registration requirement “regardless of whether the certificate contains any inaccurate information, unless… (A) the inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate; and (B) the inaccuracy of the information, if known, would have caused the Register of Copyrights to refuse registration”); *St. Luke’s Cataract and Laser Institute P.A. v Sanderson*, 573 F.3d 1186, 1201-02 (11th Cir. 2009) (citing *Original Appalachian Artworks, Inc. v. Toy Loft Inc.*, 684 F.2d 821, 828 (11th Cir. 1982)) (“omissions or misrepresentations in a copyright application can render the registration invalid” where there has been “intentional or purposeful concealment of relevant information”; there must be a showing of “scienter”).

The Eleventh Circuit has not specifically addressed whether the burden of proof for fraud on the Copyright Office is anything other than preponderance of the evidence.