

No. 20-915

In the Supreme Court of the United States

UNICOLORS, INC., PETITIONER

v.

H&M HENNES & MAURITZ, L.P.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER**

KEVIN R. AMER
*Acting General Counsel
and Associate Register of
Copyrights*
JORDANA S. RUBEL
Assistant General Counsel
JALYCE E. MANGUM
*Attorney-Advisor
United States Copyright
Office
Washington, D.C. 20540*

ELIZABETH B. PRELOGAR
*Acting Solicitor General
Counsel of Record*
BRIAN M. BOYNTON
*Acting Assistant Attorney
General*
MALCOLM L. STEWART
Deputy Solicitor General
MELISSA N. PATTERSON
*Assistant to the Solicitor
General*
DANIEL TENNY
STEPHANIE R. MARCUS
Attorneys
*Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217*

QUESTION PRESENTED

Under the Copyright Act of 1976, a copyright holder generally may not bring a “civil action for infringement” until “registration of the copyright claim has been made.” 17 U.S.C. 411(a). A certificate of registration meets the requirements of Section 411(a)—and thus entitles a copyright holder to institute an infringement action—even if it includes inaccurate information, unless such information “was included on the application for copyright registration with knowledge that it was inaccurate,” and the inaccuracy, “if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(1). If a defendant in an infringement suit alleges that the copyright registrant knowingly included inaccurate information in its application for a certificate of registration, “the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(2). The question presented is as follows:

Whether petitioner had “knowledge” that its application contained “inaccurate information” within the meaning of Section 411(b)’s threshold requirement for invalidating a copyright registration.

TABLE OF CONTENTS

	Page
Interest of the United States.....	1
Statement	2
Summary of argument	10
Argument.....	13
When information on a certificate of copyright registration reflects an erroneous view of applicable law, the registration remains valid if the applicant believed that its view of the law was correct	13
A. The court of appeals’ holding is contrary to the plain language of Section 411(b).....	14
B. Other Copyright Act provisions reinforce the most natural reading of Section 411(b)(1)(A)’s text.....	21
C. The court of appeals’ construction of Section 411(b)(1)(A) is inconsistent with the history and purpose of the 2008 Pro IP Act	23
D. Policy considerations further counsel against the Ninth Circuit’s interpretation of Section 411(b)(1)(A).....	27
Conclusion	30

TABLE OF AUTHORITIES

Cases:

<i>Advisers, Inc. v. Wiesen-Hart, Inc.</i> , 238 F.2d 706 (6th Cir. 1956), cert. denied, 353 U.S. 949 (1957).....	24
<i>Bouchat v. Baltimore Ravens, Inc.</i> , 241 F.3d 350, (4th Cir.), cert. denied, 532 U.S. 1038 (2001).....	24
<i>Bryan v. United States</i> , 524 U.S. 184 (1998)	18

IV

Cases—Continued:	Page
<i>Cheek v. United States</i> , 498 U.S. 192 (1991)	20
<i>Eckes v. Card Prices Update</i> , 736 F.2d 859 (2d Cir. 1984)	24
<i>Eldred v. Ashcroft</i> , 537 U.S. 186 (2003)	3
<i>Elonis v. United States</i> , 575 U.S. 723 (2015)	19
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994)	20
<i>Fourth Estate Pub. Benefit Corp. v.</i> <i>Wall-Street.com, LLC</i> , 139 S. Ct. 881 (2019).....	3
<i>Global Tech. Appliances, Inc. v. SEB S. A.</i> , 563 U.S. 754, (2011).....	20
<i>Gold Value Int’l Textile, Inc. v. Sanctuary</i> <i>Clothing, LLC</i> , 925 F.3d 1140 (9th Cir. 2019), cert. denied, 140 S. Ct. 1294 (2020)	8, 18, 21, 25
<i>Hardt v. Reliance Standard Life Ins. Co.</i> , 560 U.S. 242 (2010).....	14
<i>Intel Corp. Inv. Policy Comm. v. Sulyma</i> , 140 S. Ct. 768 (2020)	14, 15, 20
<i>Lamps Plus, Inc. v. Seattle Lighting Fixture Co.</i> , 345 F.3d 1140 (9th Cir. 2003)	24
<i>Liparota v. United States</i> , 471 U.S. 419 (1985)	19
<i>Maine Cmty. Health Options v. United States</i> , 140 S. Ct. 1308 (2020)	23
<i>Original Appalachian Artworks, Inc. v. Toy Loft,</i> <i>Inc.</i> , 684 F.2d 821 (11th Cir. 1982)	24
<i>Reed Elsevier, Inc. v. Muchnick</i> , 559 U.S. 154 (2010).....	3, 29
<i>Roberts v. Gordy</i> , 877 F.3d 1024 (11th Cir. 2017).....	16, 20, 25, 27, 28
<i>Sandifer v. United States Steel Corp.</i> , 571 U.S. 220 (2014).....	14
<i>Staples v. United States</i> , 511 U.S. 600 (1994)	20

Cases—Continued:	Page
<i>Unicolors, Inc. v. Urban Outfitters, Inc.</i> , 853 F.3d 980 (9th Cir. 2017).....	20
<i>Urantia Found. v. Maaherra</i> , 114 F.3d 955 (9th Cir. 1997).....	24
Statutes and regulations:	
Copyright Act of 1976, Pub. L. No. 94-553, 90 Stat. 2541 (17 U.S.C. 101 <i>et seq.</i>)	1
17 U.S.C. 102(a)	3
17 U.S.C. 106.....	3
17 U.S.C. 121A(a)	22
17 U.S.C. 302(a)	3
17 U.S.C. 408(a)	2
17 U.S.C. 408(b).....	2
17 U.S.C. 409.....	2, 11, 21, 27
17 U.S.C. 409(4)	21
17 U.S.C. 409(8)	21
17 U.S.C. 409(9)	21
17 U.S.C. 409(10)	11, 22
17 U.S.C. 410.....	2
17 U.S.C. 410(a)	2
17 U.S.C. 410(b).....	2
17 U.S.C. 410(c)	3
17 U.S.C. 411.....	3, 10
17 U.S.C. 411(a)	3, 4
17 U.S.C. 411(b).....	<i>passim</i>
17 U.S.C. 411(b)(1)	1, 2, 4, 15, 25
17 U.S.C. 411(b)(1)(A).....	<i>passim</i>
17 U.S.C. 411(b)(1)(B).....	13, 25
17 U.S.C. 411(b)(2)	4, 9
17 U.S.C. 412.....	3, 10

VI

Statutes and regulations—Continued:	Page
17 U.S.C. 512(c)(1)(A)	22
17 U.S.C. 701.....	2
17 U.S.C. 701(a)	2
17 U.S.C. 708.....	2
17 U.S.C. 901(a)(8).....	23
17 U.S.C. 1202(b).....	23
17 U.S.C. 1401(c)(6)(C)(ii).....	23
Prioritizing Resources and Organization for Intellectual Property Act of 2008, Pub. L. No. 110-403, 122 Stat. 4256	3
§ 101(a), 122 Stat. 4257-4258	3, 25
7 U.S.C. 2024(b)(1) (1982)	19
37 C.F.R. (2011):	
Section 202.3(b)(4).....	8
Section 202.3(b)(4)(i)(A).....	5, 16, 28
Section 205.14 (2020).....	9
Miscellaneous:	
<i>Black’s Law Dictionary</i> (11th ed. 2019)	15
84 Fed. Reg. 66,328 (Dec. 4, 2019)	27
85 Fed. Reg. 10,603 (Feb. 25, 2020)	9
Paul Goldstein, <i>Goldstein on Copyright</i> (3d ed. Supp. June 2021)	24
H.R. Rep. No. 617, 110th Cong., 2d Sess. (2008).....	4, 25, 26
<i>Merriam-Webster’s Collegiate Dictionary</i> (11th ed. 2005)	15
Restatement (Second) of Torts (1977).....	25
U.S. Copyright Office:	
<i>Compendium II: Compendium of Copyright Office Practices</i> (Feb. 1988)	4, 5

VII

Miscellaneous—Continued:	Page
<i>Compendium of U.S. Copyright Office Practices</i> (3d ed. Dec. 22, 2014).....	28
<i>Webster’s Seventh New Collegiate Dictionary</i> (1967).....	15

In the Supreme Court of the United States

No. 20-915

UNICOLORS, INC., PETITIONER

v.

H&M HENNES & MAURITZ, L.P.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER**

INTEREST OF THE UNITED STATES

Under the Copyright Act of 1976 (Copyright Act or Act), Pub. L. No. 94-553, 90 Stat. 2541 (17 U.S.C. 101 *et seq.*), a certificate of copyright registration is valid even if it contains inaccurate information, unless such information “was included on the application for copyright registration with knowledge that it was inaccurate,” and the inaccuracy, “if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(1). The question presented in this copyright-infringement suit is whether a registration applicant has “knowledge” that its application contains “inaccurate information” if the applicant is aware of the relevant facts but misapprehends the legal rules that govern eligibility for registration. 17 U.S.C. 411(b)(1)(A). The Court’s resolution of that question will impact

judicial determinations regarding the validity of certificates of registration under Section 411(b)(1).

The Copyright Office advises Congress, federal agencies, the courts, and the public on copyright matters, 17 U.S.C. 701, and is responsible for determining whether an application for a certificate of registration meets the “legal and formal requirements” of the Copyright Act, 17 U.S.C. 410(a). The Court’s interpretation of Copyright Act provisions that govern the validity of certificates of registration may affect the Copyright Office’s performance of those duties. The United States therefore has a substantial interest in the Court’s disposition of this case.

STATEMENT

1. a. The Copyright Act provides for the registration of works by the Register of Copyrights (Register) as director of the Copyright Office. 17 U.S.C. 408(a), 410, 701(a). To obtain registration, an author must submit to the Copyright Office a copy or copies of her work, an application that includes information about the work, and an application fee. 17 U.S.C. 408(a) and (b), 409, 708. If the Register determines that the work “constitutes copyrightable subject matter” and that other statutory requirements have been met, she registers the claim and issues a certificate of registration. 17 U.S.C. 410(a). If the Register instead “determines that * * * the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration.” 17 U.S.C. 410(b).

Under the Copyright Act, registration of a copyright is “not a condition of copyright protection.” 17 U.S.C. 408(a). An author obtains “exclusive rights” in her work upon its creation, including rights of reproduction,

distribution, and display. See 17 U.S.C. 102(a), 106, 302(a); *Eldred v. Ashcroft*, 537 U.S. 186, 195 (2003) (“[F]ederal copyright protection * * * run[s] from the work’s creation.”). Registration of a copyright, however, generally is a “precondition to filing” an infringement suit. *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010). In particular, Section 411 of the Copyright Act provides, as a general matter, that “no civil action for infringement of the copyright in any United States work shall be instituted until preregistration or registration of the copyright claim has been made in accordance with this title.” 17 U.S.C. 411(a). Thus, under Section 411(a), registration of a copyright is “akin to an administrative exhaustion requirement that the owner must satisfy before suing to enforce ownership rights.” *Fourth Estate Pub. Benefit Corp. v. Wall-Street.com, LLC*, 139 S. Ct. 881, 887 (2019).

Registration also can be relevant to the resolution of substantive issues in litigation. A certificate of registration obtained within five years after a work’s first publication “constitute[s] prima facie evidence of the validity of the copyright and of the facts stated in the certificate.” 17 U.S.C. 410(e). Timely registration is also a prerequisite to an award of statutory damages and attorneys’ fees in an infringement suit. 17 U.S.C. 412.

b. In 2008, Congress enacted the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (Pro IP Act), Pub. L. No. 110-403, 122 Stat. 4256, which, as relevant here, amended the Copyright Act to add Section 411(b). See Pro IP Act § 101(a), 122 Stat. 4257-4258 (amending Section 411 in a subsection entitled in part “Harmless Error”) (capitalization altered). In enacting Section 411(b), Congress intended to “strengthen” civil intellectual-property remedies by

“eliminating loopholes that might prevent enforcement of otherwise validly registered copyrights.” H.R. Rep. No. 617, 110th Cong., 2d Sess. 20 (2008) (House Report). The House Report accompanying the Act noted a trend of arguments being made in litigation that “a mistake in the registration documents, such as checking the wrong box on the registration form, renders a registration invalid and thus forecloses the availability of statutory damages.” *Id.* at 24. In response, Congress enacted Section 411(b) to “prevent intellectual property thieves from exploiting this potential loophole.” *Ibid.*

Accordingly, Section 411(b) establishes knowledge and materiality requirements that must be met before a court can invalidate a copyright registration. Paragraph 1 of that section states that a certificate of registration “satisfies the requirements of [Section 411(a)]”—and thus entitles an author to institute an infringement action—“regardless of whether the certificate contains any inaccurate information,” unless such information “was included on the application for copyright registration with knowledge that it was inaccurate,” and the inaccuracy, “if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(1). The statute then provides that, “[i]n any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(2).

c. A “[s]ingle unitary” work is ordinarily registered by submitting one application, deposit, and fee. U.S. Copyright Office, *Compendium II: Compendium of Copyright Office Practices* § 607 (Feb. 1988)

(*Compendium II*). Under Copyright Office regulations, however, “certain other works may also be registered as a single unit.” *Ibid.* Regulations in effect at the time of the registration at issue here permitted an applicant to register, through one application, a number of self-contained published works that are “included in a single unit of publication.” 37 C.F.R. 202.3(b)(4)(i)(A) (2011); *Compendium II* § 607.01 (“Works that are otherwise recognizable as self-contained may be registered on a single application and upon payment of a single fee, if they are first published in a single unit of publication.”).

2. a. Petitioner “creates designs for use on textiles and garments.” Pet. App. 4a. Petitioner’s general practice is to create copyrighted designs, print them on fabric, and then “market the designed fabrics to garment manufacturers.” *Ibid.* In some cases, however, petitioner creates “confined” works for specific customers, to whom it grants the right of exclusive use of such works for several months. *Ibid.* During that “exclusivity period,” petitioner neither offers the works for sale to other customers nor places the works in its showroom. *Id.* at 4a-5a.

The present case involves a two-dimensional artwork known as EH101, for which petitioner obtained a copyright registration in February 2011. Pet. App. 5a, 61a-63a. Petitioner’s application for registration included the EH101 design along with 30 other designs. *Id.* at 5a; see Pet. Br. Addendum 33a-43a. Twenty-two of the works, including the EH101 design at issue, had the title prefix “EH,” while the other nine works had the title prefix “CEH.” Pet. App. 5a. Both “EH” and “CEH” referred to works designed in January 2011, but “CEH” works were confined to specific customers. *Ibid.*

The application for registration identified January 15, 2011, as the first publication date for all 31 works. Pet. App. 5a; Pet. Br. Addendum 37a. According to petitioner's President, Nader Pazirandeh, that was the date the designs were first presented to petitioner's salespeople. Pet. App. 5a. After that presentation, the "EH" works were placed in petitioner's public showroom and made available for viewing and sale, but the "CEH" works were restricted to individual customers for at least a few months and thus were not immediately made available to the public. *Id.* at 4a-5a.

The Copyright Office issued a single registration, known as the "[]400 Registration," that encompassed all 31 works. Pet. App. 5a, 61a-63a. The certificate identified January 15, 2011, as the initial publication date for all of the works. *Id.* at 5a, 62a.

b. In 2015, respondent, which owns and operates retail clothing stores, began to sell a jacket and skirt bearing an artwork design that petitioner alleged was identical to its EH101 design. Pet. App. 6a. After discovering that respondent was selling these garments, petitioner filed the present action, alleging that respondent had infringed its copyright in the EH101 design. *Ibid.* The case ultimately proceeded to trial. *Id.* at 6a, 16a-18a. The jury returned a verdict in favor of petitioner, finding that respondent had willfully infringed petitioner's copyright. *Ibid.*

Respondent filed a renewed motion for judgment as a matter of law, or, in the alternative, for a new trial. Pet. App. 6a; D. Ct. Doc. 247 (Apr. 10, 2018). The district court conditionally granted the motion for a new trial subject to petitioner's acceptance of a remittitur of damages, which petitioner accepted. Pet. App. 6a; J.A. 175-202; D. Ct. Doc. 263 (Aug. 13, 2018). The court also

awarded petitioner attorneys' fees and costs. Pet. App. 6a-7a, 19a-31a.

In its renewed motion for judgment as a matter of law, respondent for the first time invoked Section 411(b), asserting that petitioner's copyright registration for its EH101 design was invalid and suggesting that the district court seek the Register's views. D. Ct. Doc. 247-1, at 18 n.11. Specifically, respondent argued that petitioner had knowingly included inaccurate information in its application by seeking a single-unit copyright registration for 31 individual works. J.A. 91-92; D. Ct. Doc. 247-1, at 16-18. Respondent contended that the 31 works identified in the application had not all been "published" together as a "single unit" on the date identified in the application because petitioner had temporarily "confined" some of the designs after that date. J.A. 91-92, 170-173; D. Ct. Doc. 247-1, at 16-18 (citations omitted).

c. The district court denied respondent's motion on two grounds. Pet. App. 9a; J.A. 179-182. First, the court held that, whether or not petitioner had separately marketed and sold some of the 31 designs listed on its application, there was no evidence that the designs were published on different days. J.A. 181-182. The court concluded on that basis that respondent had "not shown that" petitioner's registration "had inaccurate information that, if known to the Register of Copyrights, would have caused it to refuse registration." J.A. 181. Second, the court determined that it could invalidate the copyright registration only if there were evidence that petitioner had intended to defraud the Copyright Office, and the court found no such evidence here. J.A. 180-182.

3. The court of appeals reversed and remanded. Pet. App. 1a-15a. The court stated that “[b]oth the district court’s reasons for denying [respondent] judgment as a matter of law are flawed.” *Id.* at 9a. With respect to the district court’s holding that respondent had failed to establish petitioner’s intent to defraud the Copyright Office, the court of appeals stated that it had “recently clarified that there is no such intent-to-defraud requirement” under Section 411(b). *Id.* at 10a (citing *Gold Value Int’l Textile, Inc. v. Sanctuary Clothing, LLC*, 925 F.3d 1140, 1147 (9th Cir. 2019), cert. denied, 140 S. Ct. 1294 (2020)).

The court of appeals also rejected the district court’s determination that petitioner had properly included confined designs in its registration application. Pet. App. 10a-13a. The court of appeals concluded that, under 37 C.F.R. 202.3(b)(4) (2011), “a collection of works does not qualify as a ‘single unit of publication’ unless all individual works of the collection were first published as a singular, bundled unit.” Pet. App. 12a-13a. The court held that the 31 works listed on petitioner’s application for a certificate of registration had not been initially published in that manner because “the confined works included in the [’]400 Registration were initially made available only to individual, exclusive customers.” *Id.* at 13a.

The court of appeals further held that the “undisputed evidence adduced at trial” showed that petitioner had “included the inaccurate information” on its application “with knowledge that it was inaccurate.” Pet. App. 14a (quoting 17 U.S.C. 411(b)(1)(A)). In the court’s view, the relevant “knowledge inquiry is not whether [petitioner] knew that including a mixture of confined and non-confined designs would run afoul of the single-

unit registration requirements,” but “merely whether [petitioner] knew that certain designs included in the registration were confined and, therefore, were each published separately to exclusive customers.” *Ibid.* Because petitioner had admitted knowing that some of the designs covered by the ’400 Registration were confined, the court held that petitioner had “included the inaccurate information [in its registration application] ‘with knowledge that it was inaccurate.’” *Ibid.* (quoting 17 U.S.C. 411(b)(1)(A)).

Based on that determination, the court of appeals directed the district court to refer the case to the Register under Section 411(b)(2), so that the Register could advise the court whether she would have refused registration if she had known of the inaccuracy that the court of appeals identified. Pet. App. 14a (citing 17 U.S.C. 411(b)(2)). The court of appeals therefore remanded the case “so that the district court can complete this requirement before deciding whether [petitioner’s] registration is invalid.” *Ibid.*¹

¹ On remand, in September 2020 and April 2021, the district court sent requests to the Copyright Office under Section 411(b) by U.S. mail. D. Ct. Doc. 303 (Sept. 4, 2020); D. Ct. Doc. 305 (Apr. 23, 2021). In May 2020, however, the Copyright Office had promulgated a regulation stating that such requests should be transmitted by email. See 85 Fed. Reg. 10,603 (Feb. 25, 2020) (promulgating 37 C.F.R. 205.14, effective May 26, 2020). After this Court granted a writ of certiorari, the Register sent the district court a letter, served on the parties, notifying the court that the Copyright Office had not previously been aware of the court’s requests for its views. See J.A. 221. Petitioner has requested that the district court continue or stay the request for a response from the Register pending this Court’s disposition of this case; respondent has opposed that request; and the district court has not yet ruled on it. J.A. 203-226. As the Register informed the district court, the Copyright Office will comply with

SUMMARY OF ARGUMENT

Errors in a certificate of copyright registration do not invalidate the registration unless, *inter alia*, the registrant included “inaccurate information” on the registration application “with knowledge that it was inaccurate.” 17 U.S.C. 411(b)(1)(A). The term “information” in that provision encompasses statements that rest in part on the applicant’s understanding of copyright law. *Ibid.* When such a statement reflects the applicant’s misunderstanding of pertinent law, the registrant lacks “knowledge that [the information] was inaccurate”; the registration is valid for purposes of Sections 411 and 412; and the copyright holder may pursue an infringement action. *Ibid.* The court of appeals erred in concluding otherwise.

A. Under the plain text of Section 411(b)(1)(A) and the ordinary meaning of the term “knowledge,” an applicant acts “with knowledge that [particular information is] inaccurate” only if she is aware of the inaccuracy. 17 U.S.C. 411(b)(1)(A). Much of the “information” that applicants for copyright registration submit reflects the application of law to fact. To identify the date when a particular work was first published, for example, the applicant must consider both the relevant law (*i.e.*, the rules that specify what events count as “publication” under the Copyright Act) and the pertinent facts (to determine when the first of those events occurred).

In this case, the court of appeals treated petitioner’s submission of a registration application covering 31 works as an implicit representation that the works satisfied the legal requirements for registration on a single form. Based on its reading of a Copyright Office

any directive the district court issues when it rules on petitioner’s pending stay motion.

regulation that addresses such joint registrations, the court concluded that those legal requirements were not met here and that petitioner's representation therefore was "inaccurate." The court further held that, so long as petitioner was aware of the facts that caused joint registration to be impermissible, Section 411(b)(1)(A)'s "knowledge" requirement was satisfied, even if petitioner was unaware of the legal rules that govern joint registrations and believed that all 31 works could properly be registered on one application.

The court of appeals thus held that, although a registrant's misunderstanding of law can cause information on the application to *be* inaccurate, the only "knowledge" that matters under Section 411(b)(1)(A) is knowledge of the relevant facts. 17 U.S.C. 411(b)(1)(A). That approach produced the anomalous holding that a registrant can possess "knowledge that [particular information] was inaccurate," *ibid.*, even though she believed the information to be correct. That holding was contrary to Section 411(b)(1)(A)'s clear text. And because Section 411(b)(1)(A) unambiguously specifies what type of knowledge a challenger in respondent's position must establish, the court had no need to rely on the presumptions or default rules that courts sometimes apply in construing statutes that address scienter less clearly.

B. Other Copyright Act provisions reinforce the most natural reading of Section 411(b)(1)(A)'s text. Section 409 of the Copyright Act requires applicants for registration to provide a broad array of "information" that reflects the application of law to fact. 17 U.S.C. 409(10). And some Copyright Act provisions explicitly attach legal consequences to imputed or constructive knowledge that particular legal requirements exist.

The absence of similar language in Section 411(b)(1)(A) highlights the court of appeals' error.

C. The backdrop against which Congress drafted Section 411(b), and Congress's purpose in enacting the provision, further support the most natural reading of the statutory text. Even before Congress enacted the Pro IP Act in 2008, courts routinely refused to invalidate copyright registrations based on inadvertent errors during the application process, including errors of law. Far from suggesting any congressional intent to facilitate such invalidation, Section 411(b) is structured as a means of *preserving* the validity of registrations, not as a trap for the unwary or for those unschooled in copyright law. The Pro IP Act's legislative history confirms that Congress disapproved infringers' attempts to exploit loopholes stemming from registration requirements, and to reserve invalidation for inaccuracies that result from conscious wrongdoing.

D. Policy considerations further counsel against the court of appeals' reading of Section 411(b). Copyright registrants often are not experts in either copyright law or procedures, some of which may involve complex legal determinations or conflicting case law. Treating Section 411(b)'s scienter requirement as inapplicable to mistakes of law therefore could interfere with enforcement of valid copyrights. This case illustrates how the Ninth Circuit's rule could potentially delay or preclude holders of valid copyrights from pursuing meritorious infringement actions.

ARGUMENT

WHEN INFORMATION ON A CERTIFICATE OF COPYRIGHT REGISTRATION REFLECTS AN ERRONEOUS VIEW OF APPLICABLE LAW, THE REGISTRATION REMAINS VALID IF THE APPLICANT BELIEVED THAT ITS VIEW OF THE LAW WAS CORRECT

Under Section 411(b) of the Copyright Act, inaccurate information in a certificate of registration, standing alone, is not sufficient to invalidate a copyright registration. Rather, the registration is valid unless such inaccurate information “was included on the application for copyright registration with knowledge that it was inaccurate,” and the inaccuracy, “if known, would have caused the Register of Copyrights to refuse registration.” 17 U.S.C. 411(b)(1)(A) and (B).

Applications for copyright registration often contain statements that incorporate both legal and factual components. Petitioner’s application, for example, identified January 15, 2011, as the date of first publication of the 31 works for which registration was sought. Pet. Br. Addendum 37a; see Pet. App. 5a, 62a. To determine the date of a work’s first publication, an applicant must consider both the applicable law (*i.e.*, what events constitute “publication” under the Copyright Act) and the relevant facts (*i.e.*, when, for the relevant work, the first of those events occurred). An inaccurate statement concerning the date of a work’s first publication may reflect the registrant’s error of law, error of fact, or both.

The court of appeals correctly recognized that the term “information” in Section 411(b) extends beyond purely factual statements to encompass this sort of mixed statement of law and fact, and that such “information” may be “inaccurate” if it reflects the copyright registrant’s legal error. 17 U.S.C. 411(b)(1)(A); Pet.

App. 13a. The court nevertheless held that, so long as a registrant knows the relevant facts at the time it submits its application, the registrant acts “with knowledge that [the information on the application] was inaccurate,” even if the inaccuracy is attributable to the registrant’s good-faith mistake of law. Pet. App. 14a (citation omitted). That holding is incorrect. Under the plain language of Section 411(b)(1)(A), a copyright registrant who believed that the information on her application was accurate cannot reasonably be said to have acted “with knowledge that it was inaccurate” simply because an actual inaccuracy was attributable to the registrant’s legal rather than factual error. 17 U.S.C. 411(b)(1)(A). And other Copyright Act provisions, as well as the statute’s history and purpose, reinforce the most natural reading of Section 411(b)(1)(A)’s text.

A. The Court Of Appeals’ Holding Is Contrary To The Plain Language Of Section 411(b)

1. This Court “‘must enforce plain and unambiguous statutory language’ in [the Copyright Act], as in any statute, ‘according to its terms.’” *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020) (quoting *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251 (2010)). Under Section 411(b), the threshold requirement for invalidating a registration is a finding that “inaccurate information was included on the application for copyright registration with knowledge that it was inaccurate.” 17 U.S.C. 411(b)(1)(A).

Because the Copyright Act does not define the term “knowledge,” that word should “be interpreted as taking [its] ordinary, contemporary, common meaning.” *Sandifer v. United States Steel Corp.*, 571 U.S. 220, 227 (2014) (citation omitted). The term “knowledge” historically has “meant and still means ‘the fact or condition

of being aware of something.’” *Intel Corp.*, 140 S. Ct. at 776 (quoting *Webster’s Seventh New Collegiate Dictionary* 469 (1967); citing *Merriam-Webster’s Collegiate Dictionary* 691 (11th ed. 2005) (same)); see also *Black’s Law Dictionary* 1043 (11th ed. 2019) (“awareness or understanding of a fact or circumstance”). And Section 411(b)(1)(A) specifies the *type* of knowledge that can trigger invalidation of a copyright registration—*i.e.*, “knowledge that [particular information] was inaccurate,” 17 U.S.C. 411(b)(1)(A).

2. Respondent has identified two potential inaccuracies in petitioner’s application for copyright registration. First, although petitioner’s application identified January 15, 2011, as the date of first publication for all 31 works listed on that application, respondent asserts that only 22 of the designs were first published on that date, and that “nine designs were first published on a different day.” Br. in Opp. i; see *id.* at 23-24. We agree that the term “information” in Section 411(b)(1) encompasses mixed statements of law and fact, such as petitioner’s identification of January 15, 2011, as the date of first publication of the works for which registration was sought. We further agree that, if January 15, 2011, was *not* the date of first publication of some of those works, that information was “inaccurate,” whether petitioner’s misidentification of the publication date was attributable to a mistake of fact, a mistake of law, or both. Because respondent does not contend that any purely factual statement on petitioner’s application was erroneous, that understanding of the statutory terms “information” and “inaccurate” is crucial to respondent’s threshold contention that “inaccurate information was included on [petitioner’s] application for copyright registration.” 17 U.S.C. 411(b)(1)(A).

The court of appeals failed to appreciate, however, how that understanding of the terms “information” and “inaccurate” affects the scienter inquiry under Section 411(b)(1)(A). There is no contention here that petitioner misstated purely factual information, a scenario in which petitioner’s knowledge of the law would have no evident bearing on whether petitioner knew that the information it submitted was inaccurate. Rather, petitioner’s alleged misrepresentation involved an application of law to facts: to identify the dates when petitioner’s works were first published, and to determine whether petitioner submitted inaccurate information about those dates, it is necessary to apply the legal rules that define “publication” under the Copyright Act. Precisely for that reason, petitioner’s understanding of those legal rules is central to the determination whether petitioner *knew* the publication date it identified was inaccurate. If petitioner’s misunderstanding of applicable law caused it to believe that January 15, 2011, was the first date of publication for all 31 works, then petitioner lacked “knowledge that” its identification of that publication date “was inaccurate,” 17 U.S.C. 411(b)(1)(A), even if it was aware of all the relevant facts. See *Roberts v. Gordy*, 877 F.3d 1024, 1030 (11th Cir. 2017) (recognizing that an error of law regarding the “definition of publication” can negate the knowledge that Section 411(b) requires for invalidation of a copyright registration).

Respondent also identifies, and the court of appeals focused on, a second potential inaccuracy in petitioner’s application for copyright registration. Based on the court’s interpretation of 37 C.F.R. 202.3(b)(4)(i)(A) (2011), the court concluded that petitioner had included an “inaccuracy” in its application by “register[ing] a

collection of works * * * as a single-unit publication when the works were not initially published as a singular, bundled collection.” Pet. App. 13a. The court thus treated petitioner’s application as containing an implicit and inaccurate representation that the various works satisfied the legal requirements for a joint registration. Respondent likewise argues that petitioner’s “copyright application did not qualify as a group registration because it did not constitute a ‘single unit of publication’ under 37 C.F.R. § 202.3(b)(4)(i)(A),” and that petitioner “knowingly misrepresented that all thirty-one designs, including EH101, were published together.” Br. in Opp. 8.

The court of appeals concluded, with respect to this alleged inaccuracy, that “the knowledge inquiry is not whether [petitioner] knew that including a mixture of confined and non-confined designs would run afoul of the single-unit registration requirements.” Pet. App. 14a. Rather, the court limited the “inquiry [to] merely whether [petitioner] knew that certain designs included in the registration were confined and, therefore, were each published separately to exclusive customers”—that is, whether petitioner was aware of the relevant underlying facts. *Ibid.* That approach was erroneous for the reasons set forth above. If petitioner believed that all 31 designs included on the ’400 Registration were eligible to be registered on one application, it lacked “knowledge that” its implicit representation to that effect “was inaccurate,” 17 U.S.C. 411(b)(1)(A), regardless of whether its mistake was attributable to an error of law or an error of fact. The practical effect of the court of appeals’ approach is to decouple the “information” that the court will consider in determining whether “inaccurate information was included on

the application,” *ibid.*, from the “information” that the court will consider in assessing the applicant’s knowledge. Nothing in the statutory text supports that result.

3. In *Gold Value Int’l Textile, Inc. v. Sanctuary Clothing, LLC*, 925 F.3d 1140 (2019), cert. denied, 140 S. Ct. 1294 (2020)), the Ninth Circuit examined Section 411(b)(1)(A) and stated that “the term ‘knowingly’ does not necessarily have any reference to a culpable state of mind or to knowledge of the law.” *Id.* at 1147 (citation omitted). Relying on this Court’s decision in a criminal case, the court in *Gold Value* further concluded that “the knowledge requisite to knowing violation of a statute is factual knowledge as distinguished from knowledge of the law.” *Ibid.* (quoting *Bryan v. United States*, 524 U.S. 184, 192 (1998)). The court of appeals in this case cited *Gold Value* in support of its holding that a copyright registrant’s understanding of applicable law is irrelevant to the “knowledge” inquiry under Section 411(b)(1)(A). See Pet. App. 14a.

To the extent that parallels to criminal law are relevant here, they make clear the need to identify precisely what “knowledge” the particular statute at issue requires. See *Bryan*, 524 U.S. at 193 (“[U]nless the text of the statute dictates a different result, the term ‘knowingly’ merely requires proof of knowledge of the facts that constitute the offense.”) (emphasis added; footnote omitted); *id.* at 193 n.15 (giving examples of statutes whose scienter elements “referred to knowledge of the law as well as knowledge of the relevant facts”). Section 411(b) addresses circumstances in which “inaccurate information was included on [an] application for copyright registration,” and it requires “knowledge that [the information] was inaccurate.” 17 U.S.C. 411(b)(1)(A).

And as explained above, it is central both to respondent's own theory and to the court of appeals' analysis that the term "information" in that provision extends beyond purely factual statements to encompass statements concerning the application of law to fact.

Once those principles are understood, the error in the court of appeals' analysis is clear. Section 411(b)(1)(A) refers specifically to "knowledge that" information set forth on a copyright-registration application "was inaccurate." A registrant who believes that the information she submits is accurate cannot reasonably be said to possess the knowledge to which Section 411(b)(1)(A) refers, even if she knows all the relevant facts. The court thus erred in relying on background principles used to interpret statutes that do not clearly specify what type of knowledge is required.²

² The scienter principles developed in the criminal-law context may have little purchase here, given that the resolution of scienter issues in many criminal cases involves interpretive questions that Section 411(b) does not present. First, where a criminal statute "does not specify any required mental state," courts "generally 'interpret [such] statutes to include broadly applicable scienter requirements,'" in accordance with "the 'general rule'" that "a guilty mind is 'a necessary element in the indictment and proof of every crime.'" *Elonis v. United States*, 575 U.S. 723, 734 (2015) (brackets and citations omitted). Second, where a criminal statute includes an explicit knowledge requirement, ambiguity may exist regarding which elements of a crime must be committed knowingly. See, e.g., *Liparota v. United States*, 471 U.S. 419, 420-421 & n.1 (1985) (examining whether a statute that imposed criminal penalties on "[w]hoever knowingly uses, transfers, acquires, alters, or possesses" food stamps "in any manner not authorized by" statute or regulation required the government to prove that a "defendant knew that he was acting in a manner not authorized by statute or regulations") (quoting 7 U.S.C. 2024(b)(1) (1982)). Because Section 411(b)(1)(A) specifically requires knowledge that "information * * * included on

4. Construing Section 411(b)(1)(A)'s "knowledge" requirement in accordance with that term's ordinary meaning does not give registrants free license to disregard or claim ignorance of copyright law. This Court has accepted the possibility "that evidence of 'willful blindness' supports a finding of actual knowledge." *Intel Corp.*, 140 S. Ct. at 779; see *Global Tech. Appliances, Inc. v. SEB S. A.*, 563 U.S. 754, 766 (2011) ("It is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts."). And litigants who challenge copyright registrations under Section 411(b) may utilize "any of the 'usual ways' to prove actual knowledge," including "through 'inference from circumstantial evidence.'" *Intel Corp.*, 140 S. Ct. at 779 (quoting *Farmer v. Brennan*, 511 U.S. 825, 842 (1994)); see also *Staples v. United States*, 511 U.S. 600, 615, n.11 (1994) ("[K]nowledge can be inferred from circumstantial evidence."). Thus, considerations such as the settled nature of a legal requirement, a registrant's motive to include an inaccuracy in its application, and the plausibility of a registrant's asserted ignorance or mistake may all be relevant in establishing knowledge under Section 411(b)(1)(A). See *Unicolors, Inc. v. Urban Outfitters, Inc.*, 853 F.3d 980, 990 (9th Cir. 2017) (suggesting that registration forms created a "minefield for applicants attempting to properly register a derivative work"); *Roberts*, 877 F.3d at 1030 (noting "the absence of any sort of motive for deception" in deciding whether "the errors made in each of the registrations" were intentional); cf. *Cheek v. United States*, 498 U.S. 192, 203-204 (1991) (observing, in a federal criminal tax

the application" was "inaccurate," no such ambiguities arise here. 17 U.S.C. 411(b)(1)(A).

prosecution, that “the more unreasonable the asserted beliefs or misunderstandings [regarding applicable legal requirements] are, the more likely the jury will consider them to be nothing more than simple disagreement with known legal duties * * * and will find that the Government has carried its burden of proving knowledge”).³

B. Other Copyright Act Provisions Reinforce The Most Natural Reading Of Section 411(b)(1)(A)’s Text

To establish compliance with the statutory requirements for copyright registration, an applicant must state, *inter alia*, whether the work for which registration is sought is a work made for hire, 17 U.S.C. 409(4); whether, when, and where the work has been published, 17 U.S.C. 409(8); and whether the work is a derivative work or compilation, 17 U.S.C. 409(9). Answering those questions requires consideration of applicable law as well as an awareness of pertinent facts. In addition to the enumerated items that Section 409 requires to be included, the Register is authorized to include in the application form “any *other information* * * * bearing upon the preparation or identification of the work or the

³ In *Gold Value*, the Ninth Circuit invoked a prior criminal-law decision that had discounted the relevance of a defendant’s possible mistakes or ignorance of law. See 925 F.3d at 1147. The *Gold Value* court also stated, however, that the registrant in that case had “no reasonable basis for” its asserted view of the law, and that the registrant’s “lack of authority or plausible explanation for its position distinguish[ed] [that] case from others in which a claimant’s good faith or inadvertent mistake did not constitute a knowing inaccuracy.” *Ibid.* As discussed, although Section 411(b) does not impose a freestanding reasonableness requirement, the unreasonableness of a registrant’s purported view of the law may support an inference that the view was not sincerely held. See pp. 20-21, *supra*.

existence, ownership, or duration of the copyright.” 17 U.S.C. 409(10) (emphasis added). The italicized language indicates that Congress viewed the enumerated items as types of “information” within the meaning of the statute.

The “information” that applicants for copyright registration must provide thus often will reflect legal determinations—determinations that may demand an understanding of complex copyright principles or analysis of conflicting case law. Both parties and the court of appeals agree that “information” of this sort may be “inaccurate” within the meaning of Section 411(b)(1)(A) if it reflects a misunderstanding of applicable law, as when an applicant misidentifies the date when a work was first published because she misunderstands what events constitute “publication” under the copyright laws. As explained above, there is no sound basis for construing the term “information” or “inaccurate” differently when determining whether the registrant possessed “knowledge that it [*i.e.*, the information] was inaccurate.” 17 U.S.C. 411(b)(1)(A).

Other Copyright Act provisions, by contrast, refer specifically to circumstances where an actor *should have been* aware that a particular legal requirement is implicated. See 17 U.S.C. 121A(a) (insulating certain exports from infringement liability where “the authorized entity engaged in the exportation did not know *or have reasonable grounds to know* that the copies or phonorecords would be used other than by eligible persons”) (emphasis added); 17 U.S.C. 512(c)(1)(A) (providing a safe harbor from liability to an internet service provider who lacks “actual knowledge” of infringing activity on its systems, or “*in the absence of such actual knowledge, is not aware of facts or circumstances from*

which infringing activity is apparent) (emphasis added); 17 U.S.C. 901(a)(8) (defining “having ‘notice of protection’” in the chapter regarding semiconductor chip products as “having actual knowledge that, *or reasonable grounds to believe* that, a mask work is protected under this chapter”) (emphasis added); 17 U.S.C. 1202(b) (imposing “civil remedies” for various acts performed by one “*having reasonable grounds to know*” that her act “will induce, enable, facilitate, or conceal an infringement of any right under this title”) (emphasis added); 17 U.S.C. 1401(e)(6)(C)(ii) (defining “knowing,” in connection with misuse of noncommercial-use notices, to mean that a person “has actual knowledge of the information,” “*acts in deliberate ignorance of the truth or falsity of the information,*” or “*acts in grossly negligent disregard of the truth or falsity of the information*”) (emphases added). Section 411(b) contains no analogous language that might justify imputing knowledge of relevant legal principles to registration applicants. See, e.g., *Maine Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1323 (2020) (“This Court generally presumes that when Congress includes particular language in one section of a statute but omits it in another, Congress intended a difference in meaning.”) (citations and internal quotation marks omitted).

C. The Court Of Appeals’ Construction Of Section 411(b)(1)(A) Is Inconsistent With The History And Purpose Of The 2008 Pro IP Act

The backdrop against which Congress enacted Section 411(b) in 2008 as part of the Pro IP Act further supports the most natural reading of Section 411(b)(1)(A)’s text. Before 2008, even in the absence of Section 411(b) or a comparable provision, courts were generally unwilling to invalidate copyright registrations based on

“innocent errors or omissions” in an application. Paul Goldstein, *Goldstein on Copyright* § 3.12.3 & n.23 (3d ed. Supp. June 2021) (collecting pre-2008 cases). Some courts of appeals used terms like “fraud on the Copyright Office” to limit the circumstances in which an applicant’s errors could justify invalidation of a copyright registration, while others held that invalidation was unwarranted in cases involving “innocent” error or the absence of deliberate inaccuracies.⁴ Regardless of the

⁴ See, e.g., *Lamps Plus, Inc. v. Seattle Lighting Fixture Co.*, 345 F.3d 1140, 1145 (9th Cir. 2003) (stating that inaccuracies “do not invalidate a copyright” unless “the claimant intended to defraud the Copyright Office by making the misstatement”) (quoting *Urantia Found. v. Maaherra*, 114 F.3d 955, 963 (9th Cir. 1997)); *Bouchat v. Baltimore Ravens, Inc.*, 241 F.3d 350, 357 (4th Cir.) (noting finding that copyright owner’s “fail[ure] to note the derivative nature of his authorship in his copyright application” was not “fraudulent or knowing,” and concluding that an “inadvertent omission will not invalidate a copyright registration”), cert. denied, 532 U.S. 1038 (2001); *Eckes v. Card Prices Update*, 736 F.2d 859, 861-862 (2d Cir. 1984) (explaining that “[o]nly the ‘knowing failure to advise the Copyright Office of facts which might have occasioned a rejection of the application constitute[s] reason for holding the registration invalid and thus incapable of supporting an infringement action,’” and concluding that the presumption of the certificate’s validity “was not overcome because of fraud”) (citation omitted; second set of brackets in original); *Original Appalachian Artworks, Inc. v. Toy Loft, Inc.*, 684 F.2d 821, 827-828 (11th Cir. 1982) (rejecting assertion of “fraud and unclean hands,” explaining that “a common element” in cases invalidating registrations “has been intentional or purposeful concealment of relevant information,” and observing that “[w]here this element of ‘scienter’ is lacking, courts generally have upheld the copyright”); *Advisers, Inc. v. Wiesen-Hart, Inc.*, 238 F.2d 706, 708 (6th Cir. 1956) (per curiam) (concluding that “an innocent misstatement, or a clerical error, * * * unaccompanied by fraud or intent to extend the statutory period of copyright protection, does not invalidate the copyright”), cert. denied, 353 U.S. 949 (1957).

precise formulation used, however, pre-2008 courts routinely concluded that an applicant's unwitting or immaterial mistakes, whether of fact or law, did not justify invalidating a registration and depriving the copyright holder of its ability to bring an infringement action.⁵

In enacting Section 411(b) in 2008 as a rule of "Harmless Error," Pro IP Act, § 101(a), 122 Stat. 4257-4258, Congress gave no indication that it intended, for the first time, to permit courts to invalidate copyright registrations based on applicants' inadvertent mistakes of law. On the contrary, Congress designed Section 411(b) to *prevent* inadvertent errors from invalidating certificates of registration. Indeed, the subsection at issue here is an exception to Section 411(b)'s general rule that a certificate of registration is valid "regardless of whether [it] contains any inaccurate information." 17 U.S.C. 411(b)(1); see 17 U.S.C. 411(b).

Congress's overarching purpose in enacting the 2008 Pro IP Act was to "improve intellectual property enforcement in the United States and abroad." House Report 20. As relevant here, Congress sought to streng-

⁵ The court of appeals was correct that Section 411(b)(1)(A) requires only "knowledge that [the submitted information] was inaccurate," 17 U.S.C. 411(b)(1)(A), and does not explicitly require "[f]raud" on the Copyright Office. Pet. App. 10a; see *Gold Value*, 925 F.3d at 1147; but cf. *Roberts*, 877 F.3d at 1030. The absence of a specific and separate "fraud" requirement, however, does not materially alter the analysis. While Section 411(b)(1)(A) does not include an independent intent-to-defraud requirement, it tracks important elements of common-law fraud by requiring scienter and materiality, permitting invalidation only where an applicant knowingly submitted false information and that information would have affected the Copyright Office's registration decision. See 17 U.S.C. 411(b)(1)(A) and (B); Restatement (Second) of Torts §§ 525-545 (1977).

then civil intellectual-property laws by “eliminating loopholes that might prevent enforcement of otherwise validly registered copyrights.” *Ibid.* The House Report accompanying the Act noted a trend of arguments being advanced in litigation that “a mistake in the registration documents, such as checking the wrong box on the registration form, renders a registration invalid and thus forecloses the availability of statutory damages.” *Id.* at 24. In response, Congress enacted Section 411(b) to “prevent intellectual property thieves from exploiting this potential loophole.” *Ibid.* Section 411(b) helps to achieve that purpose by codifying scienter and materiality requirements for invalidation of a copyright registration based on inaccurate information in the application. “[T]he Act makes clear that a registration containing inaccuracies will satisfy the registration requirements of the Copyright Act unless the mistake was knowingly made and the inaccuracy, if known, would have caused the Register of Copyrights to refuse the registration.” *Ibid.*

The Ninth Circuit’s interpretation of Section 411(b)(1)(A)’s “knowledge” requirement, by contrast, would open the “loopholes” that Congress sought to close, transforming the copyright-registration process into a series of traps for the unwary—including even those applicants who exercise due diligence but fail to predict how a court will rule on an unsettled legal issue. In describing the manner in which Section 411(b) would operate, the House Report does not distinguish between inaccuracies of fact and inaccuracies of law, but rather refers more generally to “inaccuracies” and “mistake[s]” that were “knowingly made.” House Report 24. Indeed, the specific example cited by the House Report—checking the wrong box on the form—can as

easily result from a legal error as from a factual misunderstanding. By treating Section 411(b)(1)(A)'s scienter requirement as inapplicable to an important category of inaccuracies and mistakes, the Ninth Circuit's decision subverts Congress's intent to strengthen civil intellectual-property-law enforcement.

D. Policy Considerations Further Counsel Against The Ninth Circuit's Interpretation Of Section 411(b)(1)(A)

For the reasons set forth above, the court of appeals erred in holding that Section 411(b) permits the invalidation of a copyright registration where an applicant was unaware of or misunderstood the legal rules that rendered "information" in its application "inaccurate." See Pet. App. 14a. The approach that the court adopted could weaken copyright protection and make it more difficult for copyright holders to proceed with infringement suits.

Because copyright registrants generally are not experts in either copyright law or procedures, treating Section 411(b)(1)(A)'s scienter requirement as inapplicable to mistakes of law could impede enforcement of valid copyrights through civil infringement suits. See, e.g., *Roberts*, 877 F.3d at 1030 (noting that authors are "not necessarily [skilled] in proper copyright registration procedures"). As noted, Section 409 requires applicants to provide a broad range of information that reflects legal determinations, some of which require an understanding of complex copyright principles or analysis of conflicting case law. See, e.g., 84 Fed. Reg. 66,328, 66,331-66,332 (Dec. 4, 2019) (discussing conflicting judicial decisions regarding whether materials posted online have been published).

The Eleventh Circuit's decision in *Roberts* is illustrative. In that case, the court determined that the

registrations at issue contained legal inaccuracies arising from “an understandable—albeit incorrect—definition of publication.” *Roberts*, 877 F.3d at 1030. Because none of the inaccuracies “appear[ed] to have been made with the scienter necessary for invalidating a registration,” however, the court held that the registrations remained valid. *Ibid.*; see *id.* at 1030-1031. That result furthered Congress’s purposes in crafting Section 411(b) because the registrants in that case “[we]re the undisputed authors of” the song at issue, and preserving the registration “afforded [them] the opportunity to protect their copyright from what they view[ed] as an unlawful use.” *Id.* at 1031. The *Roberts* court further explained that “good faith inaccuracies in th[e] registrations should not preclude the undisputed authors from copyright protection.” *Ibid.*

The Ninth Circuit’s holding here, by contrast, could potentially delay or preclude copyright holders’ pursuit of meritorious infringement actions. In concluding that petitioner’s copyright application contained inaccurate information, the court determined that “a collection of works does not qualify as a ‘single unit of publication’” under 37 C.F.R. 202.3(b)(4)(i)(A) (2011) “unless all individual works of the collection were first published as a singular, bundled unit.” Pet. App. 13a. That was not a settled point of law at the time of the ’400 Registration; the court acknowledged that it had “never previously addressed what it means to publish multiple works as a ‘single unit.’” *Id.* at 11a; see also U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 1103 (3d ed. Dec. 22, 2014) (addressing the option to “register a number of works that were packaged or physically bundled together as a single unit by the claimant and first published on the same date”). The court

nevertheless held that Section 411(b)(1)(A)'s scienter requirement was satisfied, finding it sufficient that petitioner "knew that certain designs included in the registration were confined and, therefore, were each published separately to exclusive customers." Pet. App. 14a.

That holding has already delayed enforcement of, and (if affirmed) could ultimately negate, the favorable judgment that petitioner had previously obtained in the underlying infringement suit. Although Section 411(b) establishes a mechanism by which a copyright registration may be set aside after the fact, Congress reserved that mechanism for registrants who submitted information that they *knew* to be inaccurate. By expanding Section 411(b)(1)(A) to encompass inaccuracies produced by good-faith misunderstandings of law, the court of appeals deviated from the statutory text and subverted the policy balance struck by Congress.⁶

⁶ District courts possess significant discretion to impose timing requirements on a defendant's Section 411(b) challenge to a registration's validity. Here, respondent first invoked Section 411(b) in a post-trial motion, after the jury had found for petitioner on its claim of copyright infringement. See D. Ct. Doc. 247-1, at 18 n.11. If petitioner had argued at that time that respondent's challenge to the registration was untimely, the district court could permissibly have declined to address it. See *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 157 (2010) (holding that "Section 411(a)'s registration requirement is a precondition to filing a claim that does not restrict a federal court's subject-matter jurisdiction"). But petitioner raised no such argument, see J.A. 137-139; the district court and court of appeals addressed and decided respondent's Section 411(b)(1)(A) challenge on the merits; and petitioner does not contest in this Court the timeliness of respondent's challenge to the registration's validity.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

KEVIN R. AMER
*Acting General Counsel and
Associate Register of
Copyrights*
JORDANA S. RUBEL
Assistant General Counsel
JALYCE E. MANGUM
*Attorney-Advisor
United States Copyright
Office*

ELIZABETH B. PRELOGAR
Acting Solicitor General
BRIAN M. BOYNTON
*Acting Assistant Attorney
General*
MALCOLM L. STEWART
Deputy Solicitor General
MELISSA N. PATTERSON
*Assistant to the Solicitor
General*
DANIEL TENNY
STEPHANIE R. MARCUS
Attorneys

AUGUST 2021