

# Kluwer Copyright Blog

## UK: The photographs are pictures of drugs

Maurizio Borghi · Friday, February 17th, 2012

**Patents Court London, 19 January 2012, Hoffman v Drug Abuse Resistance Education.** A charity infringed copyright in photographs by including them in its website without the author's permission. The fact that the charity was under a good-faith impression that it had permission to use the photographs, as they appeared in a website that was covered by Crown copyright, did not prevent the finding of infringement. Moreover, the innocence defence can apply as a bar to damages only when it can be shown that, at the time of the infringement, the defendant did not know, or had no reason to believe, that copyright subsisted in the work (CDPA, sec. 97). However, the defence does not apply when one believes that he had permission to use the work (e.g. under Crown copyright), but only when one believes or has reason to believe that there is no copyright in existence in that work.

“18. Thus if the defendant did carry out one of the acts provided for in s16, the fact that they thought they had permission is not relevant. Although this may seem harsh, it is not. From the copyright owners point of view, the copyright is his property and his rights have been infringed if he did not give permission. Copyright law provides for other secondary acts of infringement which generally amount to dealing in infringing copies and those acts only infringe if the person knew or had reason to believe that the copies were infringing copies. However for the primary acts of infringement set out in s16, the policy of the law is that if there was in fact no permission, an infringement has occurred even if the person genuinely thought they had permission.

45/46. The photographs are pictures of drugs and it seems to me that the likely market for such photographs would be customers in the public and charitable sectors. (...) On the other hand while I do not doubt the sincerity of Mr Goad's submission that the value of the photographs was minimal or of zero value, photographs only exist because a photographer like Mr Hoffman is prepared to use his skills to produce them. He is entitled to realistic remuneration for the use of his works.”

For the full text of the judgment, click [here](#).

*(Stavroula Karapapa & Maurizio Borghi, Brunel University).*

**A full summary of this case will be added to the Kluwer IP Cases Database ([www.KluwerIPCases.com](http://www.KluwerIPCases.com)).**

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