**17.36 Copyright—Damages—Innocent Infringement (17 U.S.C. § 504(c)(2))**

An infringement is considered innocent when the defendant has proved both of the following elements by a preponderance of the evidence:

First, the defendant was not aware that [his] [her] [other pronoun] acts constituted infringement of the copyright; and

Second, the defendant had no reason to believe that [his] [her] [other pronoun] acts constituted an infringement of the copyright.

**Comment**

The statutory damage minimum for innocent infringement is $200. 17 U.S.C. § 504(c)(2).

“Whether the defendants’ infringement was innocent is a factual determination.” *See L.A. News Serv. v. Reuters Television Int’l,*, *Ltd.*, 149 F.3d 987, 995 (9th Cir. 1998). But even if the trier of fact finds that an infringement was innocent, this finding does not mandate a reduction in the statutory damages. *See L.A. News Serv. v. Tullo*, 973 F.2d 791, 800 (9th Cir. 1992).

*Revised Dec. 2023*