ECHR: Copyright vs. freedom of expression

Kluwer Copyright Blog
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Please refer to its post at Kluwer Copyright Blog: "ECHR: Copyright on Freedom of Expression: A Critical Analysis of Recent Judgments of the European Court of Human Rights on Copyright Law and Artistic Expression, with a Focus on the Grand Chamber Judgment in the Case of Peta Deutschland v. Germany, 10 January 2013".

In December 2012 the Court of Human Rights in Strasbourg issued the first ever case-law on the freedom of expression vis-à-vis copyright. The case of Peta Deutschland v. Germany was the first case in which the Court had to assess whether the restrictions on the use of copyright-protected works and actions based on copyright (arturfällig) can be regarded as acceptable restrictions on freedom of expression established by the rights of individuals under the European Convention on Human Rights.

While the judgment is by no means an exhaustive answer to all questions, it may still be regarded as a milestone in the ongoing discussions of the European Court of Human Rights on the protection of freedom of expression in the context of copyright law. The judgment has implications for both domestic and international copyright law and for the interpretation of the European Convention on Human Rights.

The judgment of 10 January 2013 in the case of Peta Deutschland v. Germany clarifies how the Court understands the principle of freedom of expression and how it applies it in the context of copyright law. The Court's approach is based on a careful analysis of the relevant facts and a balanced consideration of the competing interests at stake.

The Court held that the ban on the reproduction of seven posters related to the atrocities of the Nazi-genocide amounted to a violation of freedom of expression. The ban was not justified by a sufficient public interest and was not proportionate to the legitimate aim pursued.

The Court emphasized the importance of balancing the rights of copyright holders and the right to freedom of expression. The Court acknowledged the legitimate aims of copyright law, such as protecting the rights of creators and ensuring the sustainability of the cultural sector. However, the Court also recognized the importance of freedom of expression and the right to information.

The Court concluded that the ban on the reproduction of the posters was disproportionate to the legitimate aim pursued. The Court found that the ban was not necessary to protect the rights of copyright holders and that it had a restrictive effect on freedom of expression.

The Court's judgment is significant because it sets a precedent for future cases involving the balance between copyright and freedom of expression. The judgment also highlights the importance of considering the context and the specific circumstances of each case when balancing the competing interests at stake.

The judgment of 10 January 2013 in the case of Peta Deutschland v. Germany is expected to influence the interpretation of copyright law in Europe and to provide guidance for future cases involving the balance between copyright and freedom of expression.
In matters of copyright enforcement interfering with the right of freedom of expression and information. This requires inevitably a balancing test of copyright protected works and sanctions based on copyright law ultimately can be regarded as such cases interferences with the right of freedom of expression and information, based on copyright law, will when sanctions risk to have a chilling effect on the freedom of expression and information in a democracy. In

As long as it is unclear which criteria should be used in this balancing exercise and how they should be applied in an acceptable way. As the Court stated, it saw no reason to disagree with the findings by the French judicial authorities. The Court undertakes such a balancing exercise, as it found that the French judicial authorities have done this exercise in an acceptable way. As the Court stated, it saw no reason to disagree with the findings by the French judicial authorities.

Where the balancing exercise between two Convention rights has been undertaken by the national authorities in conformity with theCourt’s case law, it must result in a fair balance. The Court emphasized in the Court’s case law in such cases that it is important to achieve a fair balance between the rights involved. In terms of predictability of the outcome of such a balancing test, a clear set of criteria is essential. As the Court stated, where the outcome of such a balancing test is uncertain or entail unpredictable consequences, the Court cannot be expected to give a clear-cut answer, which would be difficult to apply. Where the outcome of such a balancing test is uncertain, the Court cannot be expected to give a clear-cut answer, which would be difficult to apply.

The European Court of Justice in some recent judgments has also confirmed this approach when it had to undertake such a balancing exercise. However, the circumstance itself of the balancing of conflicting rights is usually a matter of legal judgment and thus depends on the particular legal order. It is also true that the Court’s case law does not provide a clear-cut answer in such cases. In the Court’s case law, the Court has stated that the outcome of such a balancing test is uncertain or entail unpredictable consequences, the Court cannot be expected to give a clear-cut answer, which would be difficult to apply.

In the case and especially due to the fact that it ‘only’ concerned an interference in the context of “commercial matters or advertising.” As the Court stated, it saw no reason to disagree with the findings by the French judicial authorities. The Court undertakes such a balancing exercise, as it found that the French judicial authorities have done this exercise in an acceptable way. As the Court stated, it saw no reason to disagree with the findings by the French judicial authorities.

The Court acknowledged that it is not always possible to achieve a fair balance between two Convention rights. However, the Court stated that where the outcome of such a balancing test is uncertain, the Court cannot be expected to give a clear-cut answer, which would be difficult to apply.

The Court addressed the case on which this judgment was also applied in the case of Cassadou Coca v. Spain, in which the Court examined the issue of the right to freedom of expression and information guaranteed by Article 10 of the Convention. What essentially matters is whether the publication, the article, the expression or the pictures contribute to a debate of general interest, even though the Court found that the publication was not a public communication in the strict sense of the term. The Court stated that the publication of the pictures was intended to be a public communication. The Court stated that the publication of the pictures was intended to be a public communication. The Court stated that the publication of the pictures was intended to be a public communication.

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Auteursrecht en informatievrijheid: over de beperkte toepassing van artikel 10 EVRM, Mediaforum 2005/4, 157-165.


