In the judgment of 10 January 2013 in the case of Ashby Donald and others v. France, the European Court of Human Rights (ECtHR) heard the activists Moraes, Claisse and Marne and the fashion photographer Claisse. The case concerned the conviction in France for copyright infringement and the damages incurred by it. The applicants were ordered to pay the costs and expenses incurred by the French authorities and the companies that held the fashion shows, as well as the fashion photographers. The case also concerned the conviction for breach of the copyright law for the use of photographs on the internet.

The ECtHR held that the conviction for copyright infringement was a violation of Article 10 of the European Convention on Human Rights (ECHR), which guarantees the right to freedom of expression. The Court found that the use of photographs on the internet was a form of "commercial speech" and that the conviction for copyright infringement violated the applicants' right to freedom of expression.

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Concerning a copyright infringement, C. Geiger, "Pour une plus grande flexibilité dans le maniement des exceptions au droit d'auteur", in Auteurs & Dir. Voorhoof, "Freedom of Expression, Parody, Copyright and Trademarks", in Proceedings of the ALAI, 343-363.

The ongoing struggle between the right to freedom of expression, the right to information, and the right to intellectual property is a matter of concern, especially where commercial interests may interfere with the right to freedom of expression and information. This raises questions on the balance to be struck between the protection of copyright and the protection of the other fundamental rights enshrined in the Convention.

The case of Ashby Donald and others v. France is a pertinent example. In this case, the French authorities ordered the removal of photographs from a magazine due to the violation of copyright. The European Court of Human Rights considered that the protection of copyright should not interfere with the right to freedom of expression. The Court emphasized the importance of striking a balance between the rights involved and highlighted the need for a thorough examination of the facts and circumstances of each case.

In the case of Ashby Donald and others v. France, the Court of Human Rights did not find a violation of Article 10 in the case of Ashby Donald and others v. France, holding that the removal of the photographs was justified by the need to protect the rights of the copyright holder. This decision underscores the importance of balancing the rights to freedom of expression and information against the rights to intellectual property.

In the case of Stambuk v. Germany, the Court of Human Rights found a violation of Article 10, highlighting the importance of protecting freedom of expression in matters of copyright enforcement. The Court noted that the measures adopted to protect copyright "could potentially undermine freedom of information", since that freedom "could come to the public.

The CJEU has also been active in this area, confirming the approach of the Court of Human Rights. In the case of Scarlet v. Sabam, the CJEU reiterated that the protection of copyright is indeed necessary, at the same time reducing the margin of appreciation available to the national authorities.

In conclusion, the ongoing struggle between the rights to freedom of expression and information and the protection of copyright requires a careful balancing test between the conflicting interests involved. The courts must strike a fair balance between the protection of copyright and the protection of the fundamental rights of individuals who are affected by such measures. This requires a thorough examination of the facts and circumstances of each case, ensuring that the protection of copyright is indeed necessary, at the same time reducing the margin of appreciation available to the national authorities.