Although, the European Court did not find a violation of Article 10 in the case of Hobby Lobby and others v. US. The judgment in this case has, however, confirmed that copyright enforcement, restrictions or use of copyright protected works and electronic content based on copyright law neither can interfere with the right of freedom of expression nor information.

For the first time in a judgment on the merits, the European Court of Human Rights has confirmed that a decision based on copyright law for the legitimate, namely republishing, copyright protected material may be regarded as an interference with the right of freedom of expression and information under Article 10 of the European Convention. Such interference must be in accordance with the three conditions:

1. Authorised by law.
2. Necessary in a democratic society.
3. Pertinently motivated as being necessary in a democratic society apart from being prescribed by law.

In support of these conditions, in the case of Anheuser-Busch Inc. v. Portugal (ECtHR 9 October 2012), the Court has held that the Portuguese criminal law provisions do not infringe the applicants’ right to freedom of expression. In this case, the Court has also confirmed the applicants’ lack of compliance with the principle that the criminal law must be strictly interpreted. The European Court has also delivered a considerable amount of additional case law and jurisprudence on the topic of the European Convention on Human Rights (ECtHR) and its application to freedom of expression.

The Court explicitly recognises the applicability of Article 10 in this case: “La Cour rappelle que l'article 10 de la Convention est applicable en ce qui concerne l'exercice du droit à la liberté de communication au sens des articles 7 et 13, et que le fait d'une action privée peut être étendu en application de l'article 10 de la Convention ou ses Protocoles” (§ 40).

Relying on Article 7 (no punishment without law), the applicants also alleged that, in refusing to apply an exception in French copyright law, the conviction of the applicants was a violation of Article 10 of the Convention and the right of property as protected by Article 1 of the First Protocol to the Convention. For the first time in a judgment on the merits, the European Court has confirmed that a violation of Article 10 of the Convention by the French authorities. The Court was indeed of the opinion that the conviction for breach of copyright and the award of damages were to be considered as being committed with respect to the right of freedom of expression. This is due to the fact that the conviction and the award of damages were to be considered as being committed with respect to the right of freedom of expression and information.

In these circumstances and taking into account the particular important margin of appreciation of the national authorities, the Court concludes unanimously that there is no violation of Article 10 of the Convention.

Finally, the European Court does not consider that the fines and the substantial award of damages as degrading to an equal extent as before the domestic courts and their calculation of the damages, with respect to the guarantees of a fair trial not being adhered to. The Court explicitly recognises the applicability of Article 10 in this case: “La Cour rappelle que l'article 10 de la Convention est applicable en ce qui concerne l'exercice du droit à la liberté d'expression et d'information”.

In the current case, being the second to consider the particular important margin of appreciation of the national authorities, the Court concludes unanimously that there is no violation of Article 10 of the Convention.

Relying on Article 19 in conjunction with Article 10, the applicants also alleged that, in refusing to apply an exception in copyright law for the legitimate, namely republishing, copyright protected material, the conviction of the applicants was a violation of Article 10 of the Convention. For the first time in a judgment on the merits, the European Court has confirmed that a violation of Article 10 of the Convention by the French authorities. The Court was indeed of the opinion that the conviction for breach of copyright and the award of damages were to be considered as being committed with respect to the right of freedom of expression.

In these circumstances and taking into account the particular important margin of appreciation of the national authorities, the Court concludes unanimously that there is no violation of Article 10 of the Convention.
Teressor of the Turkish Republic, with its Judgment in "Gunesli v. Turkey", the European Court of Human Rights has found the right of access to information in Article 10 of the Convention to be a fundamental right of individuals which protects their right to freedom of expression. This judgment was accompanied by a Declaration that the right to freedom of expression under Article 10 of the Convention must be exercised in conformity with the requirements of Article 17 of the Convention. The Declaration states that the right to freedom of expression is subject to certain limitations, but that these limitations must be necessary in a democratic society and that they may only be applied in such a way as to achieve a legitimate aim, such as the protection of national security, public order, or the reputation of public officials. The use of copyright in this context is therefore subject to the balancing of the right to free expression against the right to protection of copyright.

Copyright infringement cases are often complex and difficult to resolve. In such cases, the European Court of Human Rights has had to balance the interests of the copyright holder against the public interest in freedom of expression. This balancing test is often guided by the principle of proportionality, which requires that any restrictions on the right to free expression must be necessary and proportionate to the objective pursued.

In the case of "Scarlet Extended NV v. Belgische Vereniging van Auteurs, Componisten en Uitgevers" (Grand Chamber) 7 February 2012, the Court had to decide whether the Belgian courts had correctly applied the principle of proportionality in balancing the enforcement of copyright against the public interest in freedom of expression.

The Court found that the Belgian courts had not applied the principle of proportionality correctly. The Court noted that the Belgian courts had failed to consider the public interest in freedom of expression and had instead focused on the interests of the copyright holder. The Court also noted that the Belgian courts had not taken into account the fact that the website in question had been operating lawfully for several years and that it had not been found to be infringing copyright.

The Court concluded that the Belgian courts had not applied the principle of proportionality correctly and that the enforcement of copyright in this case had not been proportionate to the objective pursued. The Court therefore found a violation of Article 10 of the Convention in this case.

The Court's decision in "Scarlet Extended NV v. Belgische Vereniging van Auteurs, Componisten en Uitgevers" has been widely welcomed by copyright holders and advocates of free expression. The Court's decision has been seen as a clear statement that the enforcement of copyright must be balanced against the public interest in freedom of expression.

In conclusion, the European Court of Human Rights has found that the enforcement of copyright must be balanced against the public interest in freedom of expression. The Court has emphasized the importance of the principle of proportionality in such cases and has concluded that the enforcement of copyright must be necessary and proportionate to the objective pursued. The Court's decision in "Scarlet Extended NV v. Belgische Vereniging van Auteurs, Componisten en Uitgevers" has been seen as a clear statement that the enforcement of copyright must be balanced against the public interest in freedom of expression.


