Although the European Court did not look at Article 10 in the case of Babyface and others v. France, it judged in this case that the defendant had correctly copied and adapted pictures online without the permission of the copyright owner, thereby interfering with the right of freedom of expression and information.

For the first time in a judgment on the merits, the European Court of Human Rights has claimed that a copyright violation by the defendant is not valid because a copyright law provision has been infringed. Indeed, it is sufficient to consider that the unauthorised use, reproduction or public communication of a work cannot rely on one of the narrowly interpreted exceptions in the copyright law itself, including the application of the so-called "fair use" doctrine. In this regard, the Court refers to "une marge d'appréciation particulièrement importante" (§ 41) when acknowledging that the national authorities have a margin of appreciation that is particularly important.

In these circumstances and taking into account the particular important margin of appreciation of the national courts and their calculation of the damages, with respect for the guarantees of a fair trial not being convincingly shown, the Court finds that the judgment in this case is not in conformity with the Convention or its Protocols (§ 40).

The Court is of the opinion that in this case a wide margin of appreciation is to be given to the domestic courts and their calculation of the damages, with respect for the guarantees of a fair trial not being convincingly shown. The Court finds that the judgment in this case is not in conformity with the Convention or its Protocols. The European Court referred to "une marge d'appréciation particulièrement importante" (§ 41) when acknowledging that the national authorities have a margin of appreciation that is particularly important.

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The article was also published on the ECHR blog here...

Copyright law enforcement must be in accordance with Article 10 of the Convention...

Another reason why the European Court accepts a wide margin of appreciation in Ashley Donald and others v. France is because it has to balance two conflicting fundamental rights enshrined in the Convention and Protocols. In such a context the Court is required to verify whether the domestic authorities struck a fair balance when prohibiting the use granted by the Convention and Protocols. In this case the Court had to balance on one hand, freedom of expression protected by Article 10, and on the other hand, the right to property protected by Article 1 of the First Protocol. Especially since the broader Contract of 1950 and the European Convention on Human Rights has not given an exclusive margin to one another. In the case of Ashley Donald and others v. France the European Court of Human Rights did not need to assess whether and to what extent the capacity of the suit was needed, as the National Court of France already had...