Although the European Court did not find a violation of Article 10 in the case of A. H. du Puy and others v. France, the judgment in this case does not definitely confirm that copyright enforcement, restrictions on the use of copyright protected works and works based on copyright law (such as Territoriality) can be regarded as interference with the right of freedom of expression and information under Article 10 of the Convention. Such interference must be in accordance with the three conditions enshrined in the second paragraph of Article 10 of the Convention. These ensure that a case is covered by Article 10 and that the interference is justified.

In the present case, the applicants were three French fashion photographers who published photos of models at a fashion show and the fashion clothing shown on the catwalks. They claimed that a French magazine had published these photos without permission and that its editor-in-chief had been convicted by the French courts for violating the copyright law. The applicants alleged that the conviction interfered with their freedom of expression as guaranteed by Article 10 of the Convention. The French courts had found that the photos were protected by copyright law and that the applicants had not obtained permission to publish them.

The European Court accepted that there was a sufficient and proportionate justification for interfering with the applicants' freedom of expression. The Court noted that the concept of "commercial speech" is not applicable to the publication of the pictures, as the applicants did not have a "commercial speech" character to their publication. The Court also noted that the applicants' photos were intended to be published as part of a "high fashion" publication, and that the applicants' photos were not intended to be sold or distributed for profit.

The Court concluded that the applicants' conviction for violating the copyright law was a justified interference with their freedom of expression. The Court also noted that the applicants' photos were not intended to be sold or distributed for profit, and that the applicants' conviction was not excessive in relation to the legitimate aim pursued.

The Court further noted that the applicants' photos were intended to be published as part of a "high fashion" publication, and that the applicants' photos were not intended to be sold or distributed for profit. The Court also noted that the applicants' conviction was not excessive in relation to the legitimate aim pursued.

The Court thus concluded that the applicants' conviction for violating the copyright law was a justified interference with their freedom of expression. The Court also noted that the applicants' photos were not intended to be sold or distributed for profit, and that the applicants' conviction was not excessive in relation to the legitimate aim pursued. The Court therefore upheld the applicants' conviction for violating the copyright law.
Secondly, the Court’s judgment is a clear elucidation of the difference between, on the one hand, expression and carrying forward a view of public debate or a debate of general interest for society, and on the other hand, "commercial speech". Speech, images, pictures and content which are merely money-driven or aimed at the release of the value protected by the anti-commercial speech provision of Article 10(2) of the Convention, the Court is to balance against the right of freedom of expression of those who are carrying forward a view of public debate or a debate of general interest for society.

Ceased to be a mere matter of exercising the right to freedom of expression and information (ECtHR 08 December 2011).

Due to this emerging case law related to internet and other new forms of technology, including rights and freedoms guaranteed by the Convention, the European Court has recently updated its practice.

The judgment of 08 January 2013 in Astley Claydon and others v. France, concerning a copyright infringement following the publication of pictures, or, in other words, the time and whether it may not be the last case before the European Court in 2013 which is a internet case.

Money or message driven?

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