European Union

“Pirate Bay”

European Convention on Human Rights, Art. 10 – *Neij and Sunde Kolmisoppi v. Sweden*

Decision of the European Court of Human Rights
(Fifth Section)

19 February 2013 – Application No. 40397/12

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1. Article 10 of the European Convention on Human Rights applies not only to the content of the information but also to the means of transmission or reception since any restriction of such means interferes with the right to receive and impart information.
2. The freedom of expression of Art. 10 is granted to everyone, irrespective of whether the aim pursued is profit-making or not.
3. Interference with the right to freedom of expression is justified when such is “prescribed by law”, pursues a legitimate aim and is “necessary in a democratic society” to attain such aims.
4. When determining whether an interference is “necessary”, the nature of the competing interests involved as well as the degree to which those interests require protection must be taken into account. *In casu*, the interest in sharing information must be weighed against the interest in protecting the rights of copyright-holders.
5. The State enjoys a wide margin of appreciation in regard to the test of “necessity in a democratic society” and the balance of competing interests.
6. The nature and severity of penalties imposed are factors to be taken into account when assessing the proportionality of interference with the freedom of expression guaranteed.

Available at <http://www.echr.coe.int>.