

Creating Intellectual Property Rights from Human Rights: The Example of the European Human Rights Convention

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In this article, I examine the possibility that several provisions of the European Convention on Human Rights (ECHR) could be the basis of private causes of action that require the creation of intellectual property (IP) rights by member countries. The article builds on two cases from the European Court of Human Rights: *von Hannover v. Germany* (2004), and *Anheuser-Busch, Inc. v. Portugal* (2007). *Von Hannover* establishes an obligation on the part of ECHR members to create a strong right of privacy, a precursor in the United States to a right of publicity. *Anheuser-Busch*, while rejecting a property rights claim based on a trademark application, left the door open to future attempts to use the ECHR to create IP rights. Using these cases as a starting point, the article focuses primarily on three provisions of the ECHR: Article 8 (Right of Privacy), Article 10 (Right of Freedom of Speech and Press), and Article 1 of the First Protocol (property rights). The article examines the jurisprudence of the European Court of Human Rights relating to these (and other) provisions of the ECHR and connects them with the principles enunciated in *von Hannover* and *Anheuser-Busch*.

In conjunction with its examination of the ECHR and the cases in the Court of Human Rights, the article posits several specific instances in which IP rights might be created, including rights of publicity, rights to traditional knowledge, and even more conventional IP rights such as trademark and copyright. In addition, the article will examine the implications of potential Court of Human Rights orders for the European Union, all of whose members are also members of the ECHR. Finally, the article will discuss some implications of using the ECHR to create what are really private rights, such as the possible effect on the use of human rights to remedy wrongs wrought by the government which are at the core of the ECHR and other human rights regimes.