

Deepfake: Violation of Software Personality Rights

In the last couple of weeks deepfake has become known as the most frightening online practice. In the common language, deepfakes are known as the videos in which – with the help of artificial intelligence and computer learning- some parts of the original content will be overwritten, meaning that in typical cases one person’s face will be replaced by another person.

A couple of weeks ago, the online media has been dominated by the panic of deepfakes, which stems from the obvious perspective, that this tool accessible by anyone, allows them to become a part of any video based on the video user’s choice. It is well represented by the fact, that in recent times the internet has been flooded with pornographic videos made in contribution with seemingly known celebrities, but there are speculations saying that deepfake can open a new chapter in the vengeful wave that reached the threshold of the mainstream press. For now, it is difficult to prevent someone from becoming the victim of this new device, but we consider it rewarding to think about how the law can help the injured party in such situations. The content and the nature of injurious videos are furthermore left to the reader’s imagination.

The Protection of Image

One of the rights of personality mentioned in the Hungarian Civil Code is the right to image. Based on this, an image of a person can only be created and can only be used if that person has consented to it. This means that a photo cannot be taken of someone who has not consented to it (excluded the crowd scene, where the photograph is taken of a person not as an individual but as a part of the crowd). In the regard of our topic the contribution to the right of use is more important. In practice the outcome is that for disclosure and any other act of use (in our opinion, a deepfake video fits into the latter circle) a separate consent is required.

Since there is a privileged legal interest to remedy a direct infringement of the image as soon as possible, the civil procedure law maintained the legacy of the previous law to retain the claim to the right to image (and the recorded voice) among the personality rights to be treated as a priority. This regarding the proceeding and their rules is practically the same as in the lawsuit for retraction. The first thing is to call on the creator or user of the image to stop the infringement, give a fair amount of satisfaction (for example to publish a proper statement at its own expenses) and to eliminate the injured situation, the restoration of the state prior to the infringement, or the destruction of the result by the infringement, or to be deprived from the infringement may or should be required (the latter cases cannot be interpreted identically in all cases).

Care should be taken with high priority with the drafted appeal, because if any of its mandatory elements are missing, the recipient may refuse the performance. This is possible within 30 days of acknowledgement of the infringement, the failure of which cannot be excusable by the fact that, beyond three months after the production or abusive use of the image there is no possibility for this notice and thus for the related specialized litigation. If the infringer fails to comply with his obligation within the time limit fixed in the notice, direct action is permitted within 15 days from the beginning of the last day of the deadline (in respect of which the delay may be



excusable). This is the reason why the claimant has relatively limited requests, so from the legal consequences of infringement of personality rights, the financial advantage or tort cannot be demanded. This serves to ensure that the lawsuit can be closed as quickly as possible, avoiding a more complex debate on the sum of any claims.

In the view of weighty interest associated with the closure of these types of cases, the trial shall be held within 15 days of the date on which the statement of claim is sent to the respondent, which is formally divided into a case initiation and substantive subject (as in the general rules of the valid civil procedure law), as a matter of principle the substantive trial is held right after the case initiation phase. The possibilities of proof are also limited in this case. Claims that have not been enforced in such procedure (claims that have not been submitted or have not been resolved by substantive decision) can be enforced in the proceedings under general rules. A major issue in such litigations is how to prosecute a person who has committed an actual infringement, since in many cases the real identity of the infringing person cannot be established. While the judicial practice may be helpful in some ways, for example, the responsibility is being put on the social media profile owner's regarding violations of personality rights, but it is worth considering that with due care the infringer remains outside of the scope of the law and the courts.

In the case above – the mentioned restitution, and the claims for the passing of the gained benefits - the right to reputation as a personality right, which protects the individuals if untrue implication is published or disseminated in an abusive attack on that person's good name. However, this is not exclusive, the infringement of the right to reputation can occur in other ways, the breach can be established in other behaviours which – according to the aggrieved party and the nature of the video- can be easily interpreted in the case of a deepfake video, without the surface of any specific statement of facts.

We believe that deepfake is a real threat to basically everybody, which can cause serious aggravation in the face of harmful intent. Although there are attempts to filter out videos created under such process with the help of effective artificial intelligence, however these are still in their infancy, so – as long as the problem does not resolve itself- we find it necessary that all tools should be available for the remedy of the injury.

