themselves is not a factor of consideration when balancing the performer's dignity against a potential violation. Practices such as changes to an album's track order or the making of a compilation to be sold as a single work were held as influential factors which violated the structure of the work—and thereby Gilberto's reputation. In the opinion of the Superior Court, such practices altered the original identity of the recordings and ignored the steps of Gilberto's evolution as an artist, therefore harming his 'honour or reputation'.

Practical significance

The Superior Court of Justice is the highest court in Brazil on the interpretation of Federal legislation, thus setting a binding precedent for how the 1998 Act will be applied. First, *João Gilberto v EMI Music Ltda.* has set the interpretation of Art. 24, IV in the sense that a violation to the right of integrity must comprise both an 'adverse effect' and a prejudice to the 'honour and reputation' of the performer.

Second, the court has also arguably moved towards the subjective protection for the right of integrity, giving substantial weight to the spirit of the work and its connection to performers. It established that, if unauthorized, subtle changes imperceptible to the public, such as the remastering of a recording, can violate the moral rights of the performer if thus demonstrated by experts. The proposed identity of the recording counts in the assessment, as does the intended 'memory for future generations'. It remains to be seen if the case will set a precedent for expanding the interpretation of 'honour and reputation', as even award-winning modifications indistinguishable to the public can, in the opinion of the Superior Court, have an *adverse effect* and be *prejudicial* to the performer's integrity.

Finally, the case may have a direct impact on the music business. This precedent could be problematic for the exploitation of back catalogue works if no authorization from the performer has been previously given to labels on modifications such as remastering. Hence, it becomes a matter of contractual importance for labels to ensure that remastering and other alterations such as change of track order and changes to the length of tracks are explicitly authorized by performers. Although remastering without authorization is not a violation per se, this judgment certainly provides a stronger basis for control over recordings by performers.

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The exclusion of personal data disclosure in file-sharing cases in Hungary

The Municipal Court of Appeals of Hungary has confirmed that the domestic laws on copyright, electronic commerce and electronic communications shall be interpreted in accordance with EU substantive law and Court of Justice of the European Union (CJEU) case law that allows for but does not oblige member states to legislate on the disclosure of personal data of end-users (identified solely by their IP-addresses) in copyright cases.

Legal context

The decision of the Hungarian Municipal Court of Appeals is significant as it is the first ruling on the balancing of competing interests/fundamental rights of copyright owners (or neighbouring right holders), intermediaries (Internet service providers, or ISPs) and end users in a situation where end users were involved in sharing pornographic materials via peer-to-peer (P2P) file-sharing applications, and where the plaintiff identified the end users solely through their IP addresses. The court had to take a stand about the possibility of disclosure of personal data in a civil (copyright) case initiated against one of the major Hungarian ISPs. Because Hungarian court decisions usually preserve the anonymity of the parties, it is not officially known which ISP has been sued in this case. Thus the case turned out to be a domestic spin-off of the Court of Justice of the European Union (CJEU) case law in the *Promusicae* (C-275/06, ECLI:EU:C:2008:54), *LSG* (C-557/07, ECLI:EU:C:2009:107) and *Bonnier* cases (C-461/10, ECLI:EU:C:2012:219).

Facts

The plaintiff was a German corporation that has been involved in the production and commercialization of adult content. M P GmbH, based in Augsburg, Germany, and engaged by the plaintiff, collected the IP addresses of end users from the respective P2P file-sharing sites. The plaintiff initiated proceedings against one of the leading ISPs in Hungary to disclose the personal data (names and addresses) of those clients who were allegedly involved in file sharing. The plaintiff argued that ISPs have contributed to the copyright infringements of individuals on a commercial scale, and thus are obliged to disclose information on the infringement as required by Article 94(4)(c) of the Act on Copyright Law (Act No LXXVI of 1999). The defendant disputed the plaintiff's claims. It stressed that under Article 13/A(6) of the Act on Electronic Commerce (Act No CVIII of 2001) and Article 159/A of the Act on Electronic Communications (Act No C of 2003), the disclosure of personal data by an intermediary—without the user's permission—is unlawful in civil (copyright) cases.

Analysis

The plaintiff's claims were rejected both by the trial court and the Municipal Court of Appeals. The latter confirmed that the plaintiff correctly noted that the defendant had provided services to the end users on a commercial scale; and thus the ISP might be compelled to disclose information on the infringements under the Act on Copyright Law. The end users' activity had, however, remained within the scope of 'private communication', and thus the disclosure of personal data by the intermediary was forbidden. The Act on Electronic Commerce allows for such disclosure solely with the permission of the relevant client of the electronic commerce service providers; and the Act on Electronic Communications obliges intermediaries to store and disclose personal data solely for the purposes of criminal investigations or national security. The Municipal Court of Appeals noted that the decision was fully in compliance with CJEU case law. The court stressed that:

> [T]he court has properly concluded that, on the one hand, EU law requires Member States to interpret directives in a proportional way that allows for a fair balance of the different fundamental rights acknowledged by the EU law. On the other hand, Member States—in their own competences—are allowed to create such obligation where the disclosure of personal data in order to safeguard copyright might be ordered in civil proceedings. Under Hungarian law such regulation was not acceptable. Thus the defendant, as an intermediary, shall not be obliged to provide the requested data under the Acts discussed above.

Practical significance

There are several important consequences of the Municipal Court of Appeals' decision. First, the court has clearly followed the CJEU case law which has confirmed the right of EU Member States' to require the disclosure of end users' personal data in copyright cases. As in Spain (cf the *Promusicae* case), but unlike Austria or Sweden (cf the *LSG* and *Bonnier* cases, respectively), the Hungarian Parliament has not adopted such provisions.

Consequently, the ruling—which excluded the possibility of further appeal and is thus final and legally binding—has practically made it impossible for copyright owners to fight against file sharers in cases where only the infringer's IP address is known. Should the copyright owner initiate a criminal investigation at the Hungarian National Tax and Customs Administration (NAV), the NAV might be able to compel the ISPs to disclose personal data. Article 385(5) of the Act on Criminal Law (Act No C of 2012), however, denies criminal liability for instances of copyright infringement committed by copying and making available to the public of protected subject matter (ie via file sharing) where the damages caused by the infringer do not exceed HUF 500 000 (approximately EUR 1600). Should a specific file sharer download and/or make available to the public only a few movies, he would certainly remain under the said limit. Consequently, criminal proceedings such as these can hardly help copyright owners enforce their rights.

Finally, and most importantly for the file-sharing community, the decision clearly confirms the unwillingness of the statutes (and the judiciary) to support the practices of 'copyright trolls' in Hungary. As has been confirmed in the press (http://index.hu/tech/2016/02/12/dr_kozma_agota_level_ugyved_balatonboglar_letoltes/), the same plaintiff and its counsel have continuously contacted end users with 'pay up or else' letters since 2014. Journalists have been unsuccessful in uncovering how the attorney has obtained the exact names and addresses of end users who have allegedly infringed the German corporation's rights; nor have any court proceedings been initiated in that regard. Concerns over the legality of the plaintiff counsel's behaviour are therefore real. In light of the decision of the Municipal Court of Justice, the counsels of file sharers might recommend their clients not to pay at all, as plaintiffs are not allowed to access their personal data lawfully.

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General

Don't threat the small stuff—Reform coming for unjustified threats

Unjustified threats provisions are soon to change significantly, for the benefit of all involved. The UK Government has published its response to the Law Commission's draft bill on unjustified threats, including a recommendation that the bill be put before Parliament under an accelerated procedure.

Legal context

The use and abuse of threats in IP cases is highly topical worldwide, and a matter of general practice for all IP professionals: whether in the fields of patents, trade marks or designs, and in each case whether their scope is UK or the wider EU.

The current legal position is that unjustified threats are actionable in tort in respect of any losses they cause; and the aggrieved party may also seek declarative and even injunctive relief. The unjustified threats provisions will be familiar to practitioners, being scattered through various acts of parliament to remind us that monopoly IP rights are