

A sigh of relief from providers of free Wi-Fi?

- ▶ Business owner provides access to free wi-fi for customers
- ▶ Copyright infringement by a user of the free wi-fi
- ▶ Is the business owner liable to compensate the rights holder?

What's it about?

Tobias McFadden (like many business owners) offered free wi-fi from his premises in order to attract custom. However, access to the network was not protected in any way, and Sony Music alleged that McFadden's free wi-fi was used to transmit a song in which Sony Music owned the relevant rights, thereby infringing its copyright. The EU E-Commerce Directive provides that "information society service" providers are not liable for infringements carried out using their services. "Information society service" is defined in the Technical Standards Directive as being a service normally provided for remuneration, at a distance, by electronic means and at a service recipient's request.

McFadden sought a declaration of non-infringement in the German courts, who referred several questions to the ECJ. These included: was the free wi-fi service an "information society service"? Does the E-Commerce Directive preclude a rights owner from seeking compensation or an injunction from a free wi-fi provider whose service is used to infringe copyright?

Why does it matter?

The ECJ held that the provision of free wi-fi is an "information society service". Although provided free of charge in this case, it is a service which is usually provided for remuneration. Further, it was held that providers of free wi-fi could not be liable to pay compensation to rights-holders whose copyright had been infringed through transmission of a work using the wi-fi, without consent. However, providers of free wi-fi could find themselves facing an injunction requiring them to halt the infringement, or to require them to password-protect the connection.

Now what?

Many businesses that provide free wi-fi already require users to register by providing some information such as a name and an email address. This case confirms that requiring users to register in this way is essential in order for the business to be able to argue that it was merely the conduit for an infringement. This will not, however, protect it from injunctive proceedings, which could be both costly and disruptive.

[McFadden v Sony Music Entertainment Germany GmbH, Case C-484/14](#)

For further information on this or any other IP related matter please contact [Katie Kinloch](#) on 0161 9346305