



TIERNEY IP

EUROPEAN INTELLECTUAL PROPERTY CONSULTANCY

The Court of Justice of the European Union (CJEU) ruled in *Tobias McFadden v Sony Music Entertainment Germany GmbH C-484/14* that the operator of a free Wi-Fi network was not liable for acts of infringement committed by users of its network.

The CJEU ruling arose as the result of a referral from the Regional Court of Munich, Germany (Landgericht München), on the question of indirect liability for copyright infringement. The Landgericht München sought the CJEU's guidance on the scope of indirect liability for copyright infringement under the EU Directive on electronic commerce (2000/31). The Directive allows providers of free Wi-Fi (conduit services) to be exempt from liability provided they have (i) not initiated the offending transmission, (ii) have not selected the recipient of the transmission and (iii) neither selected nor modified the information being transmitted.

The CJEU confirmed that, provided the three conditions of the Directive were satisfied, the provider of a free Wi-Fi network could not be held liable for acts of copyright infringement committed by users of the network. Nor would a copyright holder be entitled to claim compensation from the provider of the free Wi-Fi network for such acts.

Significantly however, the CJEU stated that the e-commerce Directive did not prevent a copyright holder from seeking a court order requiring the Wi-Fi provider from taking measures to prevent any infringement of copyright committed by users of their network.

Furthermore, the CJEU ruled that the Directive does not prevent a copyright holder from seeking a court injunction requiring the provider of free Wi-Fi to password protect their network and, in so doing, require users to reveal their identity to act as a deterrent against infringing activities. Importantly, it is to be noted that the e-commerce Directive expressly rules out the use of technical measures to monitor the information users send over the Wi-Fi network.

Overall, the CJEU has struck the right balance between protecting Intellectual Property rights and the freedom of Wi-Fi providers to conduct business and the right of the users of the network in question to freedom of information.