
Kluwer Copyright Blog

Provider of free Wi-Fi is not liable for copyright infringement

Sanna Wolk (Cirio Law Firm) · Thursday, September 22nd, 2016

A provider that offers free unprotected Wi-Fi should not be held responsible when their users use the service to infringe copyright. This is according to the Court of Justice of the European Union (CJEU) in the long-running German case of Tobias McFadden v Sony Music Entertainment Germany GmbH (C-484/14). The circumstances of the case were that a shop owner was providing free Wi-Fi via a connection named “freiheitstattangst.de”.

The CJEU found that the provider may be able to rely on the ‘mere conduit’ defence against liability in the [E-commerce Directive](#). In contrast to an internet website host, a Wi-Fi-provider normally doesn’t store any information (such as copyright works) of a more permanent nature. For example, the downloading of a film is not normally continued for any length of time and, after having transmitted the information, the Wi-Fi-provider no longer has any control over that information. A Wi-Fi-provider is simply not in a position to take action to remove certain information or disable access to it at a later time.

In addition, the CJEU concluded that a national court could order a provider of free Wi-Fi to take steps to prevent the infringement through password protected accounts and obtaining user identity information.

In this decision the CJEU has struck a balance between the interests of copyright holders and other fundamental rights, especially in relation to the right of freedom to conduct a business and the right of others to information. As pointed out by the CJEU, when several fundamental rights protected under EU law are at stake, it is for the national authorities or courts concerned to ensure that a fair balance is struck between those rights.

One controversial aspect is that a court may issue an injunction requiring a Wi-Fi provider to password protect its network, but the CJEU has stated that password protection is an effective measure only if the user is required to provide identity details to the Wi-Fi provider so that the user cannot act anonymously. However, a provider may not try to obtain users’ identity details by mandatory means. That would interfere with users’ right to privacy (Art. 7 [EU Charter of Fundamental Rights](#)) and potentially the right to protect personal data (Art. 8 [EU Charter of Fundamental Rights](#)).

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please [subscribe here](#).

Kluwer IP Law

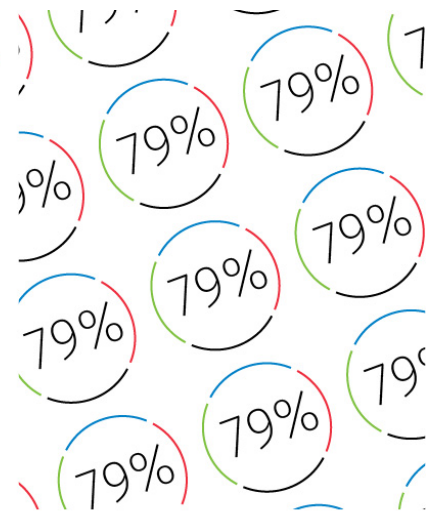
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Thursday, September 22nd, 2016 at 3:51 pm and is filed under [Case Law](#), [inter alia](#), for ensuring that EU law is interpreted and applied in a consistent way in all EU countries. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law. The CJEU also resolves legal disputes between national governments and EU institutions, and can take action against EU institutions on behalf of individuals, companies or organisations.”>[CJEU, European Union, Injunction, Liability, Limitations, Remedies](#)

You can follow any responses to this entry through the [Comments \(RSS\) feed](#). You can leave a response, or [trackback](#) from your own site.