



INFORMATIVE NOTE



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LIABILITY OF FREE WI-FI PROVIDERS

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Intermediary providers of free Wi-Fi services acting as a “mere conduit” are exempt from liability in respect of the information provided on the network, on condition that the provider: (i) does not initiate the transmission; (ii) does not select the receiver of the transmission; and (iii) does not select or modify the information contained in the transmission.

In this case, the CJEU was hearing a dispute between Tobias Mc Fadden, the owner of a shop in Germany, who provided access to a free Wi-Fi network, and Sony Music, a global music production company, which claimed its copyright was violated when musical work from its portfolio was made available through that Wi-Fi network free of charge, without its consent.

In coming to its decision, the CJEU applied article 12(1) of the E-Commerce Directive, which was implemented into Portuguese law by article 14 of Decree-Law no. 7/2004 of 7 January, last amended by Law no. 46/2012 of 29 August. The court held that the provision in question must be interpreted as meaning that the party injured by violation of its copyright may not seek compensation from an intermediate provider acting as a mere conduit for acts done by third parties and may not claim the costs associated with the claim for compensation.

This decision also made it clear that the rule in question does not impose any requirements on a service provider who provides access to a communications network other than those specifically mentioned in the text. However, the decision suggests that making the Internet available free of charge on a Wi-Fi network should be subject to identification of the users and the use of passwords. The court held that this would be a fair balance between the interests of the holders of intellectual property rights and the intermediaries.

¹In Case C-484/14: Tobias Mc Fadden v Sony Music Entertainment Germany GmbH

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Chambers European Excellence Awards, 2014, 2012, 2009

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 Top 5 - Game Changers of the last 10 years
Top 50 - Most Innovative Law Firm in Continental Europe
Financial Times - Innovative Lawyers Awards, 2014-2011