

## **Liability of the Wi-Fi Provider**

The topic studied in one of the latest decisions within Internet-related law, issued by European Union Court of Justice (“ECJ”), on 15 September 2016, was the determination of the liability of the provider of “information society services” for the unlawful acts of their clients.

The facts underlying the decision were pretty simple; Mr. Mc Fadden, owned a little music shop in Munich which offered free Wi-Fi access. One of his visitors, used this wireless connection to make available free of charge, a musical work without the consent of the right holders, namely Sony Music Entertainment Germany GmbH.

It was clear to the EJC, that the services provided by Mr. Mc Fadden fell within the scope of the concept “information society services” although there was no remuneration, since the service provider was clearly advertising its other services and recovering the cost through them.

It was also clear, that the provider of services of a mere conduit of information cannot be expected to “expeditiously obtain knowledge of illegal information”, as was the case for “caching” providers. Consequently, the damaged party was not able to seek compensation from Mr. Mc Fadden. However, Sony Music could obtain protection before a national authority or court.

Following the decision of the ECJ, the measure that would help the right holder in order to protect its intellectual property without infringing freedom to conduct a business or freedom of information, would be to obtain an injunction ordering that the internet connection be secured by means of a password in order to ensure that a proper balance was struck between all the rights at stake.

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30d5c79b4848ab0944d3828ade3f9de416b4.e34KaxiLc3qMb40Rch0SaxyKb3v0?text=&docid=183363&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=190513>

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