

**Request for a preliminary ruling from the Landgericht München I (Germany)
lodged on 3 November 2014 — Tobias Mc Fadden v Sony Music Entertainment
Germany GmbH**

(Case C-484/14)

Language of the case: German

Referring court

Landgericht München I

Parties to the main proceedings

Applicant: Tobias Mc Fadden

Defendant: Sony Music Entertainment Germany GmbH

Questions referred

Question 1

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), ¹ in conjunction with Article 2(a) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), in conjunction with Article 1 point 2 of Directive 98/34/EC as amended by Directive 98/48/EC, ² to be interpreted as meaning that 'normally provided for remuneration' means that the national court must establish whether

a. the person specifically concerned, who claims the status of service provider, normally provides this specific service for remuneration,

or

b. there are on the market any providers at all who provide this service or similar services for remuneration,

or

c. the majority of these or similar services are provided for remuneration?

Question 2:

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') to be interpreted as meaning that 'provision of access to a communication network' means that the only criterion for provision in conformity with the Directive is that access to a communication network (for example, the internet) should be successfully provided?

Question 3:

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), in conjunction with Article 2(b) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), to be interpreted as meaning that, for the purposes of 'provision' within the meaning of Article 2(b) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), the mere fact that the information society service is made available, that is to say, in this particular instance, that an open WLAN is put in place, is sufficient, or must the service be 'actively promoted', for example?

Question 4:

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') to be interpreted as meaning that 'not liable for the information transmitted' precludes as a matter of principle, or in any event in relation to a first established copyright infringement, any claims for injunctive relief, damages or payment of the costs of the warning notice and court proceedings which the person affected by a copyright infringement pursues against the access provider?

Question 5:

Is the first half-sentence of Article 12(1) in conjunction with Article 12(3) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') to be interpreted as meaning that the Member States must not to allow the national court, in substantive proceedings against the access provider, to make an order requiring the access provider to refrain in future from enabling third parties to make a particular copyright-protected work available for electronic retrieval from online exchange platforms via a specific internet connection?

Question 6:

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') to be interpreted as meaning that, in the circumstances of the main proceedings, the provision contained in Article 14(1)(b) of Directive 2000/31/EC is to be applied *mutatis mutandis* to a claim for a prohibitory injunction?

Question 7:

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') in conjunction with Article 2(b) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') to be interpreted as meaning that the requirements applicable to a service provider are confined to the condition that a

service provider is any natural or legal person providing an information society service?

Question 8:

If Question 7 is answered in the negative, what additional requirements must be imposed on a service provider for the purposes of interpreting Article 2(b) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce')?

Question 9:

(a)

Is the first half-sentence of Article 12(1) of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), taking into account the existing protection of intellectual property as a fundamental right forming part of the right to property (Article 17(2) of the Charter of Fundamental Rights of the European Union) and the provisions of the following directives on the protection of intellectual property, in particular copyright:

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society;

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights,

and taking into account the freedom of information and the fundamental right under EU law of the freedom to conduct a business (Article 16 of the Charter of Fundamental Rights of the European Union),

to be interpreted as meaning that it does not preclude a decision of the national court, in substantive proceedings, whereby the access provider is ordered, with costs, to refrain in future from enabling third parties to make a particular copyright-protected work or parts thereof available for electronic retrieval from online exchange platforms via a specific internet connection and it is left to the access provider to determine what specific measures he will take in order to comply with that order?

(b)

Does this also apply where the access provider is in fact able to comply with the prohibition imposed by the court only by terminating or password-protecting the internet connection or examining all communications passing through it in order to ascertain whether the particular copyright-protected work is unlawfully transmitted again, and this fact is apparent from the outset rather than coming to light only in the course of enforcement or penalty proceedings?

¹ OJ 2000 L 178, p. 1.

2 Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998 amending Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations, OJ 1998 L 217, p. 18.