

Free WiFi: A Cautionary Tale

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In today's post, [Malcolm Seymour](#), a member of our New York office who specializes in commercial litigation and regulatory enforcement actions, discusses the benefits and legal considerations for those who provide free WiFi to their hospitality customers.

Whether booking a hotel, reserving a flight or choosing a café, hospitality customers are increasingly influenced by the quality and availability of high-speed wireless internet networks ("WiFi") at their chosen destination. One third of all hotel guests, and two thirds of all business travelers, [say that they would refuse](#) to return to a hotel with substandard WiFi. And with the advent of [free web services](#) that monitor [hotel WiFi performance](#), it is easier than ever for customers to vote with their feet.

But the road to free WiFi is not without peril. Hosts of open WiFi networks [risk loss of service](#), or potential liability under United States and international copyright laws, for infringing acts committed by their users.

The good news is that hotspot operators in the United States can, through the adoption of best practices, shield themselves from most legal liability under the Digital Millennium Copyright Act ("DMCA"). Under the DMCA, Internet service providers — including WiFi hosts — are not supposed to be liable for copyright infringements committed by users if they act as "mere conduits" for user traffic. The DMCA [creates a safe harbor](#) for such conduits, provided they meet several criteria:

- The WiFi host must not initiate the transmission (upload or download) of information over their network;
- The host must not mediate this transmission in any way, i.e. by specifying a recipient for the transmission, specifying the material to be transmitted, or modifying the content transmitted;
- The host must not store copies of the content transmitted for longer than necessary to complete the transmission;
- The host must adopt and reasonably implement a "take-down" plan for responding to notices of infringement and for banning repeat infringers; and
- The host must not interfere with standard technical measures used for copyright protection, such as watermarks on images, password protection, or other digital rights management devices.

Hotels should ensure that their wireless networks are enabled to comply with these requirements, especially when it comes to suspending service to repeat infringers. Hotels that have implemented reasonably thorough policies to guard against copyright infringement should be safe if litigation erupts over piracy committed by a hotel guest or visitor.

The bad news — we are lawyers after all — is that copyright violations can still cause law-abiding hotspot operators big headaches with their service providers, even placing them at risk of [service suspension](#). What's more, copyright law varies between countries, and not all travel destinations have kept pace with the United States in modernizing their laws to accommodate open sharing of WiFi connections.

Germany is perhaps the most notorious outlier, thanks to a 2012 decision and subsequent enactment that hold operators of unsecured WiFi networks liable for the copyright infringement of their users. Backlash against these laws has prompted Germany's current parliament to propose a repeal of this law. New Zealand is another destination known for its harsh "three strikes" rule, which may necessitate implementation of special software protocols to prevent peer-to-peer sharing over WiFi networks.

With the rise of smartphones and handheld devices, hospitality customers increasingly view open WiFi as a necessity rather than a luxury. Customers, while rarely grateful for strong service or fast connection speeds, will notice and complain if service is lacking. But as these examples show, operating a WiFi hotspot introduces serious risks that can only be mitigated by someone with knowledge of local law.

If you have any questions about setting up or securing your network, please feel free to contact [Greg](#) or [Malcolm](#) directly.

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