



Permission to link? Simply not possible

The web relies on a simple but profound concept that explains its popularity: any person can share a citation to information with anyone else, anywhere. The other person can then click on the citation -the link- and immediately see the cited information. In the words of one of the creators of the web: "*When you make a link, you can link to anything. That means people must be able to put anything on the Web, no matter what computer they have, software they use or human language they speak and regardless of whether they have a wired or wireless Internet connection*"¹

In a few weeks, the European Court of Justice will -strangely- have to decide if this simple principle remains true in the European Union. The central question raised in the *GS Media* case ²is: when you link to content that was posted without the rightholder's permission, are you yourself infringing copyright?

As the table below shows, the freedom to link is at stake: it is indeed **impossible to make sure a link does not point to illegal content.**

Below are the reasons why:

[Note: to anticipate a world without links, all references are in non-clickable footnotes]

<p>You can never control the page you link to</p>	<p>All web pages are dynamic!</p>	<p>Examples: * A video of an astronaut singing a Bowie song was posted lawfully, then became illegal, then became legal again - but for two years only³ * A Wikipedia page which content is updated, * A blog post, * A live report on an event on a news site that embeds tweets as the story evolves etc.</p>
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¹ Tim Berners-Lee, *Long Live The Web*, Scientific American, December 2010.

² C-160/15.

³ The Verge, Chris Hadfield's 'Space Oddity' returns to YouTube with David Bowie's agreement, November 4, 2014.

<p>There is no such thing as a "legal" page</p>	<p>No one can know just by looking at a page whether its content is lawful or not. No one.</p>	<p>Appearances can be deceptive! Examples are numerous. Here a just a few: * "Legal" platform Spotify is sued for copyright infringement⁴ * "Legal" platform Deezer once decided to keep online Universal's repertoire, against Universal's consent⁵ * An author posted her own works on her own Facebook page. without authorization⁶</p>
<p>You can never know in advance if your link points to legal content</p>	<p>Your link points to the address of the page, its URL, not to the content itself. The content is under someone else's responsibility, and can change at any moment. What content is found at an Internet address can change just like the identity of who lives at a street address can change.</p>	<p>A press article, a video on a platform, a blog post, a social media profile, etc. can be replaced by another one and keep the same link</p>
<p>Can you really ask for permission?</p>	<p>That can be extremely difficult. First, you will need to identify which content on the page can be under copyright. Then you need to identify who has the rights (it can be several people) In case of an orphan work identification will be even more difficult. Then you need to contact each rights owner. If you find their details (which is a big <i>if</i>), you may not know their language or they might not understand yours. Then you would need to agree on the terms of a license. And this for EACH link you post to Twitter or Facebook or Tumblr on a forum.</p>	

⁴ DailyMail, Spotify hit with \$150 million copyright suit on behalf of 'hundreds and thousands' of artists, December 29, 2015

⁵ Paris Court of First Instance, Sept. 5, 2011.

⁶ The 1709 Blog, Tangible Digital Files, April 7, 2015.

Would a permission be a guarantee that you can link?	Even if you got a license from all owners of content under copyright on the page you link to, this content might prove infringing.	Smashing hit <i>Blurred Lines</i> was ruled infringing ⁷ Madonna's <i>Frozen</i> song was found infringing ⁸ , etc.
Should you ask for permission?	For each link, before it is created, transaction costs would be terrifying. See also the economic approach.	
Repeat the question as many times as you create links	Everyone routinely creates links: journalists, researchers, social media users, review sites, search engines, and so many others!	347,222 tweets are posted in a minute, 3,300,000 pieces of content shared on Facebook in a minute ⁹ . Most include links.
=>If linking from page X to infringing page Y is illegal, then linking from page Z to X is too, also linking from page A, from page B. and ultimately from all pages of the web.		

⁷ The Verge, Jury finds Robin Thicke and Pharrell copied a Marvin Gaye song for Blurred Lines, March 10, 2015

⁸ The IP Kat, Madonna found guilty of copyright infringement, November 22, 2005.

⁹ Intel, What happens in an internet minute, 2014.