

Understanding the Link Tax: A Guide for MEPs

save the  link



A Link Tax Guide for MEPs

The European Commission has proposed, as part of the Copyright Directive on the Digital Single Market¹ to allow news publishers to claim an additional copyright over the snippets of text which automatically appear alongside most links.

As a result linking to online news content would therefore require a license and explicit permission from the publisher. It would give press publishers the right to charge fees for websites operating any form of business using snippets of text when they link to content from press publishers. These snippets are now automatic with most links and the content displayed is pulled directly from content pulled from press publishers' online news websites.

Because the draft of the Copyright Directive does not limit the implementation of this proposal to aggregators and search engines, it may also allow press publishers to charge non-profits, social media websites, or even individuals who communicate online using hyperlinks.

¹ Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market, Announced September 14th 2016 Source: [European Commission](#)

The apparent impetus behind this proposal is to provide revenue to news publishers, some of which feel that in the digital age they are missing out on their share of the profits.

Proponents claim that this draft law is aimed primarily at aggregation services and search engines, in particular platforms like Google News, but also websites like Flipboard, or Qwant sites that pull together links to content from a variety of sources. As we discuss in more detail below, in countries where proposals of this type have been implemented, it has had a highly negative impact on small, independent news publishers and aggregators, forcing many out of business.

This proposal has been put forward in order to force aggregators and search engines to pay a levy for their business model, which is why we refer to this as the 'link tax.'

The Link Tax in the Digital Single Market Directive

The Copyright Directive on the Digital Single Market reveals that the Commission are proposing a 'link tax'.

Previously referred to as 'ancillary

copyright,' the proposal can be found in Article 11 of the draft law, "Protection of press publications concerning digital uses." It explains that "member states shall provide publishers of news publications with the rights provided for in Articles 2 and 3(2) of Directive 2001/29EC/ for the digital use of their press publications."² The law justifies this additional copyright by stating that publishers should be "remunerated for the online distribution of their works."

These statements point towards charging search engines and other intermediaries for the act of linking ('providing access') to copyrighted content. In the logic of this law, helping people gain access to online content is seen as harmful to the news industry, and it is this idea that was pursued elsewhere in Europe unsuccessfully.

The Commission firmly promised that they would listen to the feedback received from consultations with the public.³

² Directive of the European Parliament and of the Council on copyright in the Digital Single Market. August 2016. p29 Source: [European Commission](#)

³ In a statement to the European Parliament Commissioner Oettinger said " The results of the public consultation will provide input to the Commission's analysis and to its decision as to whether a neighbouring right for publishers should be included in the copyright modernisation proposal to be adopted later in 2016." Source: [Parliamentary Answers, 16 June, 2016](#)

However, despite clear opposition from the public, in their second consultation on the 'copyright value chain' they expanded the ancillary copyright by asking how it would affect all publishers, not just press publishers. However, as currently written the directive applies only to press publishers. They also pursued this idea despite MEPs voting against such a proposal in the final version of MEP Julia Reda's Copyright Evaluation Report.⁴

The Commission have used many different phrases for this proposal in consultations, leaked drafts, and official Communications: ancillary copyright, neighbouring right,⁵ publishers' right, or just simply 'fair remuneration.' This plan is now finally described as "a new right for press publishers."

There may be constantly changing terminology, but wherever the proposals refer to a fee being paid to publishers by those who 'provide access to content,' this is the link tax.

⁴ Full title: Implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

⁵ In the Commission's April 2015 consultation on 'The role of publishers in the copyright value chain' for the first time they asked questions about the creation of a new neighbouring right covering **publishers in all sectors.**

Furthermore, although the language in the new proposal limits the scope of this legislation so as not to include hyperlinks (the urls themselves), in effect the link tax would affect the use of hyperlinks online because a proposal affecting snippets will also have a concrete effect on the way that individuals are currently using hyperlinks in practice.

What would be the effects of this proposal being implemented?

Proponents claim that this proposal is targeted at search engines like Google, and news aggregators like NewsNow, Politics.hu and YAM News. These services provide lists of links, usually with a headline, and a short snippet of explanatory text to accompany them.

As research by NERA Economic Consulting on the effects of this law as implemented in Spain has shown,⁶ businesses across the EU would be severely harmed by such a proposal:

- Search engines may choose to operate on a business model of only paying fees to and thus only linking to the biggest,

⁶ Source: [Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual by NERA Economic Consulting.](#)

most viable, news companies, reducing the variety of news sources available to EU citizens.

- Smaller search engines and aggregators which are unable to afford to pay any hyperlinking fees, may shut down.
- Smaller publishers would lose traffic and revenue without links directing people to them, and many would be forced out of business.
- This would clearly undermine citizens' fundamental right to receive and impart information and ideas as set out in Article 10 of the European Convention on Human Rights.

All of the above happened in Spain when ancillary copyright passed in law, resulting in estimated losses for the publishing sector to reach €10 million a year.⁷

It would additionally have knock-on effects for many other communities:

- Consumers normally bear the burden of increased cost for services. As companies are required to pay for publishing hyperlinks with explanatory snippets, we will almost certainly see that cost come

⁷ As above.

back to haunt Internet users in some way.

- The stated aim of the Digital Single Market is to create the conditions for an online marketplace in the European Union that encourages business and where digital innovation will thrive. However, the link tax will restrict innovative services from experimenting with new ways to access information.
- This would create huge legal uncertainty around the act of linking, for the many cases where it is ambiguous who is a press publisher, or what a 'business use' of hyperlinks is. Despite the attempts of the Commission to define press publishers in the draft law, uncertainty still lingers, especially regarding who would have to negotiate these licenses, and who would be liable. In a world where every blog and every post on Facebook is an act of publication, there are no easily drawn lines.

Will this help support the publishing industry?

Unfortunately, there would be very few winners should a link tax be implemented.

These laws may indeed be well-intentioned with the laudable aim of generating growth in online journalism. However, wherever these laws have been implemented, they have caused harm, not benefit, to the publishing industry, the Internet, and the digital economy as a whole. The evidence shows that in practice, such laws entrench market concentration, leaving a few large established publishers in control.

Whilst it may seem that search engines are only able to perform their function by using the creative work of journalists, on closer inspection search engines and publishers have a symbiotic relationship. Without search engines to direct users towards content the publishers lose readers and revenue, and without publishers the search engines have no links. Instead of resolving an injustice, such a levy fails to provide economic benefits for either party.

Has this idea been tested already?

Very similar proposals for an 'ancillary copyright for press publishers' have passed and been implemented in both Spain and

Germany. As such, there is already significant evidence of the harm it creates.

In Spain, Google News closed down operations entirely. The result was that small news outlets who did not have the name recognition of large national or international sites experienced a significant reduction in traffic. A study commissioned by publishers in Spain found that the law “has done substantial damage to the Spanish news industry... will cost publishers €10 million, or about \$10.9 million, which would fall disproportionately on smaller publishers.”⁸

In Germany, publishers chose to waive the fee rather than not be indexed by Google. However, there were many costly legal battles – disputing the definition of a snippet itself, and arguing over what the precise fee would be, initially proposed by VG Media as 11% of search engine profits.

Who is concerned about this issue?

The Save the Link network is made up of over 100 organisations. We include Thunderclap, EDRi,

Project Gutenberg and Creative Commons. The network is led by OpenMedia, an international digital rights advocacy group, focused on access to an open affordable and surveillance-free Internet. There is strong public interest in stopping this link tax. Over 120,000 people have already taken action to say no to these link tax proposals.

The European Commission has twice consulted with the public on these proposals. Together groups like ours, helped 2,819 people respond in full to the EU consultation on neighbouring rights “in the copyright value chain,” 37,000 people sign in a letter in support of our full submission.

Additionally 10,000 people responded to questions on ancillary copyright and other new copyright proposals in the Commission’s consultation on regulation of platforms in 2015.

The platforms’ consultation⁹ had a number of accessibility and readability problems. It initially only addressed questions on ancillary copyright towards rights-holders, opening it up more broadly after receiving robust

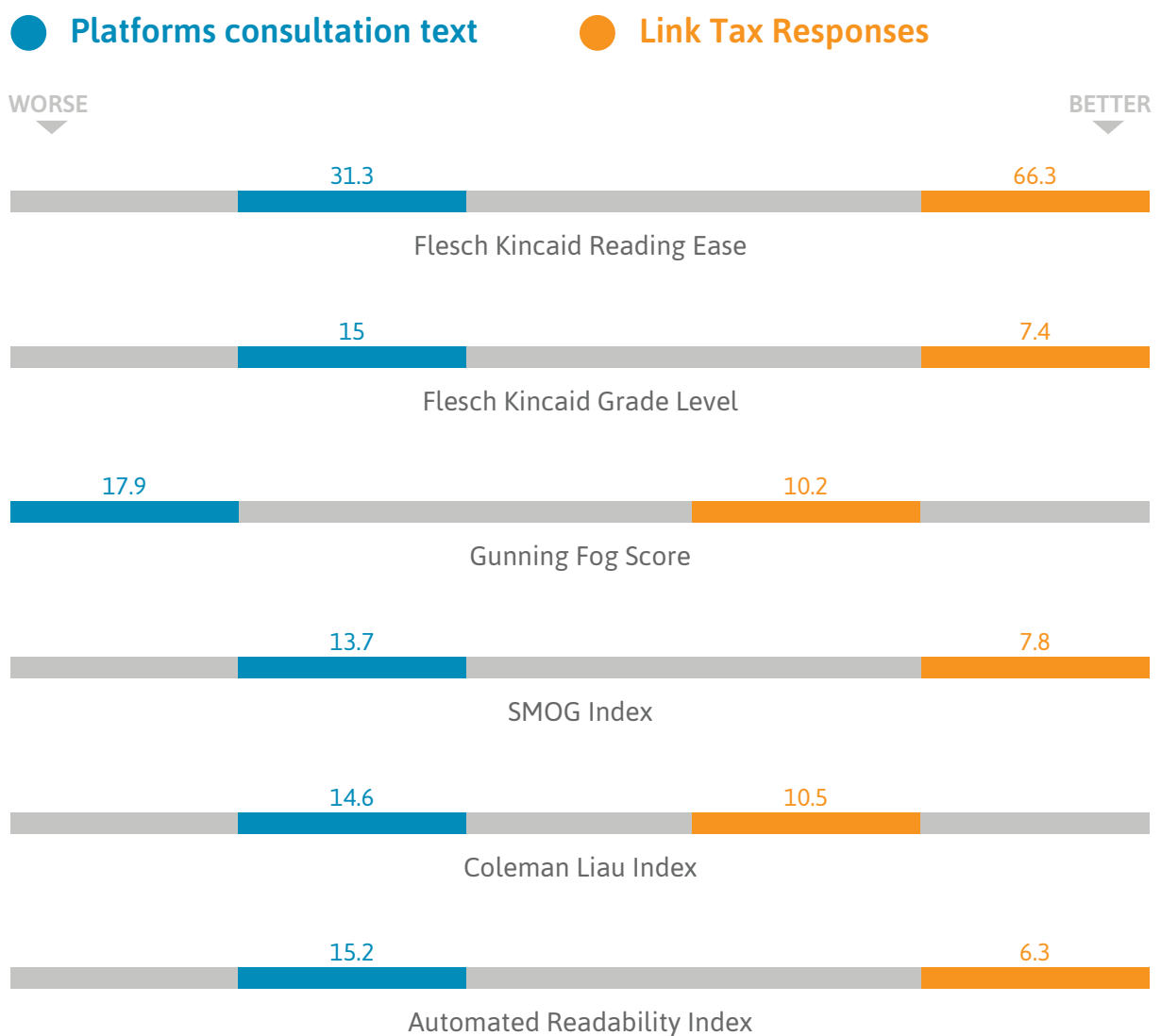
⁸ [Source: Impacto del Nuevo Artículo 32.2 de la Ley de Propiedad Intelectual by NERA Economic Consulting.](#)

⁹ Full title: Regulatory environment for platforms, online intermediaries, data and cloud computing and the collaborative economy

critique from Members of the European Parliament and civil society. Below is a readability index comparing the language used in the platforms consultation to the responses collected through the Save the Link network. A clear disparity is present between the

level at which the Commission addressed these issues with the public, and the response from Internet users, indicating that a simplified approach would have likely led to a clearer understanding of the issue and more direct feedback.

Readability score comparison



TEXT STATISTICS

No. of sentences
No. of words
No. of complex words
Percent of complex words
Average words per sentence
Average syllables per word

Platforms consultation

298
7358
1677
22.79%
24.69
1.78

Link tax responses

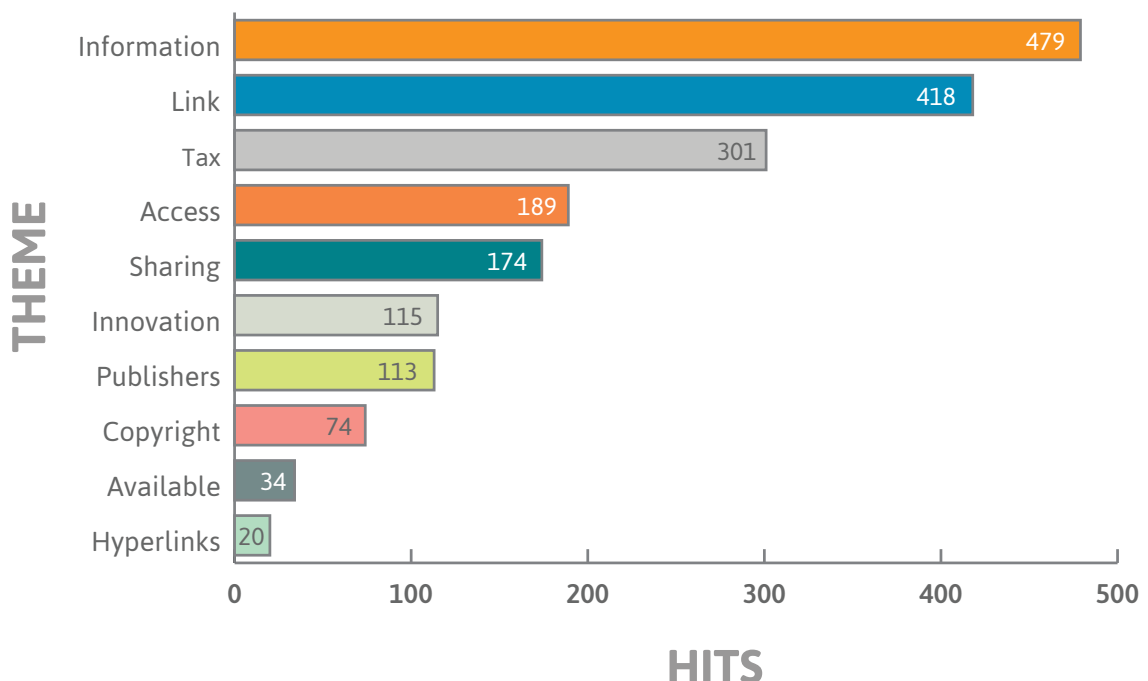
4859
65201
8567
13.14%
13.42
1.50

The above chart shows the results of Flesch–Kincaid readability tests done using a tool at Readability-Score.com. These tests are designed to indicate how difficult a reading passage in English is to understand.

Despite the way in which it was addressed, Internet users who spoke out using the Save the Link response tool were nearly unanimous in their feedback: they rejected the link tax and spoke broadly about the necessity

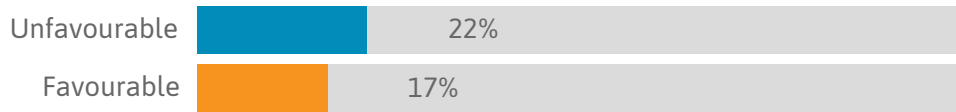
of an open Internet to access information, connect with others and advance cultural and political understanding. In the charts below, you can see the values that co-occurred when individuals responded to using the tool:

Key Concepts and Relevancy

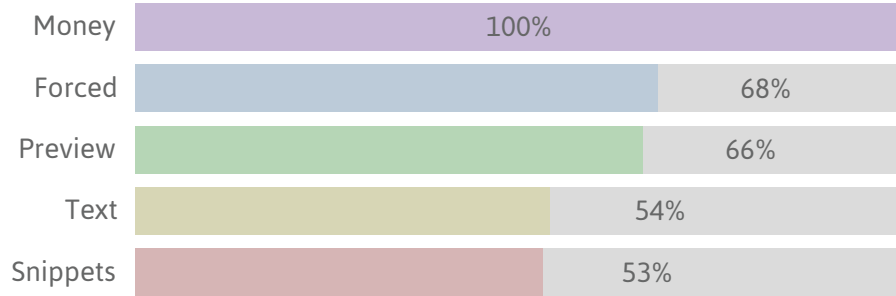


Tax

SENTIMENT



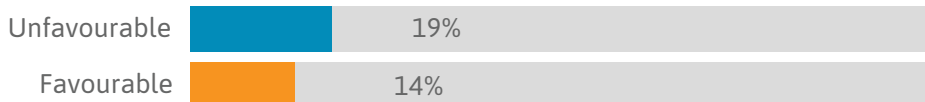
RELATED CONCEPTS



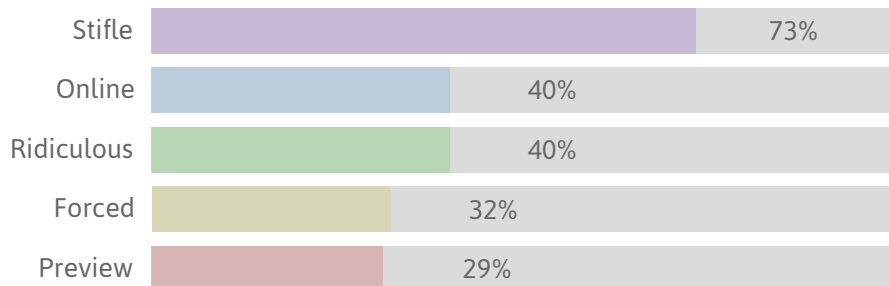
The above graph shows that when respondents to the survey spoke about the concept of “tax” the following concepts co-occurred. Sentiment analysis shows respondents view this concept with a “unfavourable” lens, as they spoke of the negative impact this would have on Internet users and innovators.

Innovation

SENTIMENT



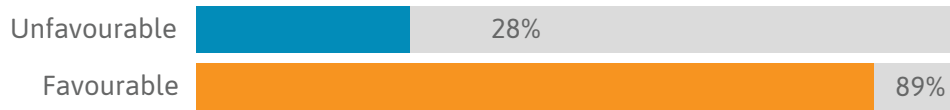
RELATED CONCEPTS



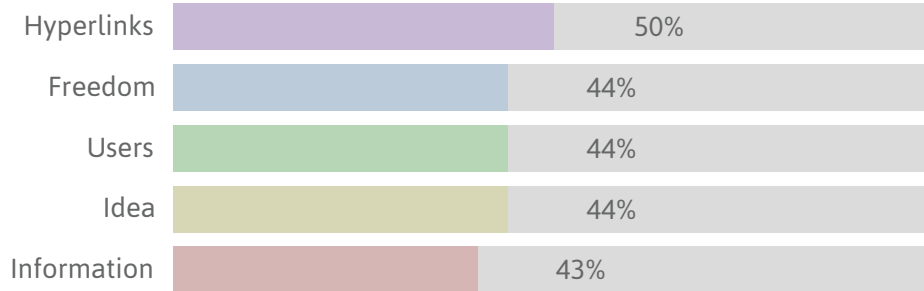
The above graph shows that when respondents to the survey spoke about the concept of “innovation” the following concepts co-occurred. Sentiment analysis shows respondents view this concept with a “unfavourable” lens, as they spoke of the link tax and the hinderance to innovative services and platforms.

Internet

SENTIMENT



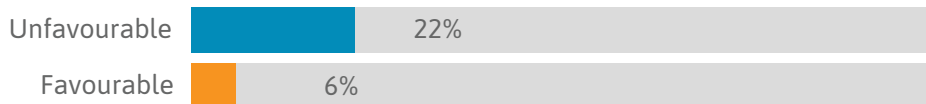
RELATED CONCEPTS



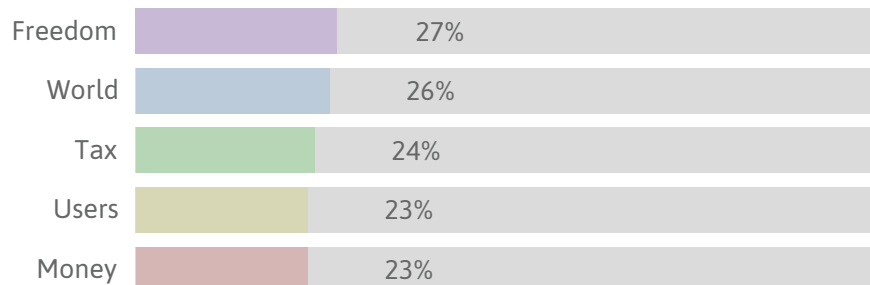
The above graph shows that when respondents to the survey spoke about the concept of "Internet" the following concepts co-occurred. Sentiment analysis shows respondents view this concept with a "favourable" lens, as they spoke of freedom to explore, communicate and create.

Access

SENTIMENT



RELATED CONCEPTS



The above graph shows that when respondents to the survey spoke about the concept of "access" the following concepts co-occurred. Sentiment analysis shows respondents view this concept with a "unfavourable" lens, as they spoke of losing access to information and the barriers to free expression online.

Link

SENTIMENT



RELATED CONCEPTS



The above graph shows that when respondents to the survey spoke about the concept "link" the following concepts co-occurred. Sentiment analysis shows respondents view this concept with a "favourable" lens, as they spoke of the ability to share content and access information.

Furthermore, MEPs from across the spectrum, from members of the European Conservatives and Reformists Group to those in the Progressive Alliance of Socialists and Democrats in the European Parliament are engaged in this campaign. Ahead of the EU copyright reform process, the European Parliament evaluated 2001's Copyright Directive with a draft report put forward by MEP Julia Reda. During the compromise stage, there was a call for an introduction of an ancillary copyright for press publishers. At the time this amendment was firmly rejected by MEPs and removed from the final version. The amended report was then

adopted with an overwhelming majority of 445 votes to 65, with 32 abstentions.¹⁰

Publishers and journalists are divided on this issue: <http://mediapublishers.eu/> is a coalition of publishers who believe that the introduction of the link tax would severely harm them; in contrast <http://www.publishersright.eu/> represents a coalition of publishers who are calling for this additional copyright.

¹⁰ Julia Reda's copyright evaluation report; European Parliament resolution of 9 July 2015 on the implementation of 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. Source: [Julia Reda](#).

What is the solution?

As a Member of the European Parliament, an elected representative of the people, you have the ability to prevent the link tax from becoming law. You can ensure this happens in a number of ways:

- Speak up in the JURI Committee to remove these proposals from the copyright package ahead of the vote.
- Propose amendments to remove the ‘publisher’s right’ from the draft Copyright Directive.
- Speak to your national government leaders to ensure the European Council do not endorse this idea.
- Speak up in Parliament to challenge ancillary copyright proposals.
- Speak to your fellow MEPs about this issue.
- Vote against these proposals wherever they appear.
- Meet with members of the Save the Link coalition, or OpenMedia to talk about these issues further.
- Reassure your constituents that you oppose this idea.