

Executive Summary

Instagram Terms of Use: Too broad to be the new norm

Since 2010, more than 16 billion images and movies have been uploaded to Instagram, the image sharing service. ASMP believes that few of the users who share these images on the site understand the extent of the rights they are giving away. That is due to Instagram's onerous Terms of Use, which appear to grant the company extremely broad usage rights to sublicense all uploaded photos and video. While clearly benefiting Instagram, the rights of imaging professionals and general users stand to be infringed upon in an unprecedented way.

Specifically, the agreement gives Instagram perpetual use of photos and video as well as the nearly unlimited right to license the images to any and all third parties. And, after granting this broad license to Instagram, photographers also relinquish the right to terminate the agreement. Once uploaded, they cannot remove their work and their identity from Instagram. Additionally, in the event of litigation regarding the photo or video, it is the account holder who is responsible for attorney and other fees, not Instagram.

Moreover, while Instagram's agreement includes the right to sublicense images, it specifically excludes the need to ever pay the creator, regardless of the way the company may use or sell their work. ASMP believes strongly that fair compensation for the creators of work is a vital component of a fair agreement.

These are critical issues for ASMP members and ones that we believe should be taken very seriously. ASMP is concerned that not only have Instagram's Terms of Use gone beyond acceptable standards, but also that other social media providers may use these terms as a template for their own agreements. We have already seen companies which are building Facebook-compatible technologies adopting Terms of Use modeled on Instagram's.

ASMP has worked with attorneys from the law firm of Arent Fox to examine the Instagram Terms of Use and their implications. ASMP plans to share these findings with all interested parties. After reviewing and discussing the issues involved, ASMP hopes to find a workable pathway for resolving this situation. At the very least, there must be a balance between the

needs of the provider for a practical user agreement, and the basic rights of the user in terms of copyright, privacy and compensation.

As online services become larger repositories of intellectual property, power has shifted away from the user and toward the company provider. We believe there are two important elements of “fair balance” that should be included in provider Terms of Use. First, users must have the ‘right to terminate’ — enabling them to remove permissions for the use of their identities and content at any time. Second, ASMP feels that sale of user content should be accompanied by fair compensation to the creator.

ASMP looks forward to continuing a dialogue on the issues raised surrounding the Instagram Terms of Use. Unless changes are made by Instagram, we believe the terms will have a profound and negative impact on imaging professionals, publishers and general users. ASMP will also continue to seek solutions to stop these terms from becoming a standard of the industry. We invite our colleagues to join us in this discussion with the goal of finding a resolution that will meet the needs of all parties.