

The Instagram Papers

A collection of essays and analysis of the Instagram Terms of Use

Credits and Terms of Use

This document is offered to readers as a guide to the possible ramifications of the Instagram Terms of Use as well as others that employ similar language. It is not meant to be a legal guide, and carries no warranty as such. Many of the issues contemplated herein are ones that are not yet settled law.

All opinions expressed are those of the authors.

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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.

The Right to Terminate

**By Peter Krogh — Photographer, Author, Technologist, Publisher
Digital Standards and Practices Chair, ASMP**

In the last few years, more than 16 billion images and movies have been uploaded to the Instagram photo application. All of these photos and videos are licensed in a way that appears to give the company an extremely broad right to use the material. This includes the right for Facebook (Instagram's owner) to sell the images with very little restriction. The license also appears to severely limit the rights that are retained by the photographer, including the right to remove the photos and videos from the service.

The Instagram Terms of Use are written in a way that creates a walled garden — a private collection of the world's visual legacy that is privately owned and available for commercial exploitation with little regard to the wishes of the millions of people who created or appear in the photos. The TOU allows Instagram (also called the Service) to sell or license photos without providing any compensation to the photographer.

Most importantly, the Instagram Terms of Use creates a Hotel California for your images. You can check them in, but you can't check out. Once uploaded, Instagram asserts the right to make your photos and your identity part of the Service forever. Users also agree to pay for the company's lawyers if anyone in a photo ever sues the company or sues anyone to whom the company licenses the photos.

Additionally, we believe that there is a strong possibility that the imbalanced Terms of Use embodied in this agreement may become standard practice for social media, particularly for content that is uploaded directly to a service. We're already seeing companies which are building Facebook-compatible technologies adopt Terms of Use modeled on Instagram.

In this document, we examine the meaning of the Instagram Terms of Use, and we outline some of the implications of the document. We then propose a re-balancing of the agreement that can be achieved by a simple right to terminate. If the Instagram service no longer meets the needs of the Instagram user, we propose that the license and liability protection given to Instagram may be terminated by the user.

The rights you grant to Instagram

The Instagram Terms of Use appear to grant to the company a very broad package of rights.

Of course, this includes the right to reproduce your images and videos, with basically no limitation, as long as it is part of the Instagram Service. (More below)

The TOU also allows Instagram to sublicense the images at their will, and with no payment to you. This means that the photos can be lent, sold or leased to whomever the company chooses, for whatever purpose they choose, as long as it is part of the Service.

The TOU also allows Instagram to publish these images using your identity (if you are a person) or your brand (if you are a company.) Again, you exercise limited control over how this is done into the future.

You also agree to allow Instagram to make use of the information it knows about you — who your friends are, what you like, who your customers are, where you go, what products you buy or research, where you shop, what organizations you belong to and more. Because Instagram is owned by Facebook, it can have access to all information that Facebook collects about you. And, again, you agree that you have limited control over how Instagram uses that information.

You agree that you have secured permission (model, property and artwork releases) from anyone or anything in all photos, and that no photo violates any right of property or privacy. You also agree that you will pay Instagram's legal bill if they — or anyone they sell the picture to — ever gets sued for the use of any of the photos.

You agree that, if you are under 18, your parents have also agreed to all these grants of rights, and that your parents agree to assume any legal liability.

You also agree that the company may change anything it wants about the Service at any point in the future, and these changes will not limit any of the rights you have granted above. Basically, the Service may become anything that the company wants it to become. This might include a subscription service, a feed for publishers, a publication (or many publications), a photo licensing service, an advertising agency, a data mine for security services — whatever.

You agree that you will never participate in any class action suit against Instagram.

You agree that you have granted these rights and protections to Instagram and its licensees *forever*, with no ability to terminate the agreement.

I maintain that this is an extremely broad grant of rights, especially considering that you agree to the TOS in perpetuity, and that you agree to open-ended indemnification of the company.

The Service, the Account, the Content, and the Data

In order understand the agreement, let's look at the different components. Although they are not defined in great detail, we can look at the TOU and see some broad outlines.

The Service is defined in the TOU as the Instagram website as well as any applications that are made available by Instagram. Instagram specifically reserves the right to change the Service in any way, at any point in the future. You agree in the TOU to agree to all future changes. There appears to be no limitation on what the Service can become.

Content is defined extremely broadly as anything you upload to the Service, create in the Service, or link to the Service. This includes your username, photos, audio, video, likes, and comments, as well as lots of stuff Instagram does not currently support, such as links and apps.

The Account seems to reference the user's access to the Service and the Content, and is separate from the actual Content and Data. The account may be deleted, but the Content may remain on the Service, presumably at the will of the company. It appears that the Account is simply the means by which you can upload content to the Service or access content on the Service.

The Instagram TOU refers to **Data** that may be associated with your account several times, but never defines it in any way. Data probably refers to metadata that is uploaded with photos and videos such as the date and location taken. It probably also includes other people's likes and comments, as well as internal Instagram data, such as the list of people who have viewed an image.

The Instagram TOU only allows you to have control over your account — your access to the material. You exercise little practical control over the content or the data, and no control at all over the Service.

What you can and can't terminate

Now let's look at what the TOU says about what can and can't be terminated. There are several references to termination, but they all deal with the termination of *your* rights, and never Instagram's rights.

- You may terminate your account, but that does not terminate Instagram's rights to use the content or data associated with the account. Essentially, you may relinquish control over the material in your account and pass it over to Instagram for use in the service.
- Instagram may also simply take the account away from you, for any reason, or for no articulated reason.
- You do not have the right to delete content or data from the service.
- You may change the privacy settings of content, which currently allows you to limit viewing to people in your network. However, there is no stipulation that the privacy policy will remain unchanged. Indeed, you specifically agree that Instagram may change the Privacy Policy at any later date, in any way, for any reason.

Explicit versus Implicit

As part of this discussion, it's important to make a distinction between implicit and explicit permission. These are two pretty different things.

If you post nearly anything to the web in unencrypted form, you are granting implicit permission for it to be reproduced and stored in at least some way. At minimum, you are allowing the bits of the file to be transferred from computer to computer as the file travels through the network of computers that makes up the internet. This does not mean that you have granted anyone explicit permission to store, display or sell the image. Nor do you specifically grant anyone permission to publish internet content in your name. As a matter of practical reality, however, you have granted the entire internet implicit permission to store, transfer and display the content.

Explicit permission is a really different thing. This is particularly true when it is accompanied by liability protection. Explicit permission allows photos and other information to be aggregated and used in a much larger number of ways. It becomes much more difficult to restrain a company's use of your information when you've granted those rights explicitly.

The Instagram contract outlines a very broad set of explicit rights with very little control offered to the creator or subject of the content. It goes pretty far beyond TOU assertions of comparably sized services. It's the first large-scale service I know of that requires you to agree to the sanctioned, sub-licensable use of your photos and your data in perpetuity.

Linked Content versus Uploaded Content

One reason that the Instagram contract is so valuable to the company is that it mostly encompasses *uploaded* content, rather than *linked* content. Much of what you see on most social media sites is linked content. The person who is responsible for the material entering the system is a user who does not have the legal right to grant such permission.

Adding someone's YouTube video to your Facebook page, or pinning a magazine image to your Pinterest board does not create a defensible grant of license in court. It's clear to the social media company that Joe User does not have the rights to most magazine images, no matter what the TOU says.

Uploaded content is a different story. It is much "cleaner" since the vast majority of it originates with mobile phone cameras, and carries metadata that ties it to a photographer, a date, and a location. It is often provided by a user who is also the creator, which creates a much more defensible license.

A large, clean image collection can be turned into a commercial service far more successfully than a bunch of links can. Linked content carries implicit permission for use — it's already published somewhere else on the internet. But it generally carries a low level of explicit permission. Uploaded content, by contrast, carries a much larger probability of valid explicit permission.

Human Shields

The Instagram TOU contains some important legal protections for the company. When you upload photos to Instagram, you agree that anyone in the photo has agreed to the broad use of the photos, including Instagram's right to license them to others. The account holder explicitly agrees to pay for Instagram's lawyers if there is any "breach" of that warranty.

In practical terms, this means that you agree that Instagram can do anything with the photos you upload, and that everyone in the photos is cool with that. If the photo is used or licensed in a way that bothers the subject, the Account holder will be paying the legal fees and the settlements before Instagram will.

Essentially, this sets up the Account holder as a human shield who stands between the subject of the photo and the company, in the case of a legal dispute.

A Walled Garden

The Instagram TOU seems to be written so that it can create a privately held content repository of unprecedented size. Photos may only be accessed through a user account, allowing the company to have nearly total control over the content. Content that is on Instagram is simply not available outside the service.

The Instagram TOU does not allow you to even gather information about your own photos in a comprehensive way. You don't have the rights to the comments about your photos. Services that can gather up information such as likes and comments are explicitly forbidden. While the Instagram TOU states that you own your photos and videos, the company does assert that it has sole ownership of the information about your photos.

This kind of closed ecosystem runs counter to what many people expect from the internet.

How is this different from Google or the Internet Archive?

Okay, so anyone who knows about the internet understands that it's really difficult to "remove" any material from the web. Google Images seems to be able to find photos that were pub-

lished long ago. And the Internet Archive creates copies of huge numbers of web pages and makes them available for free, with no apparent time limit. How is Instagram different?

There is at least one important difference between services like Google Images and Instagram: There is generally no contract between Google and the person who uploaded the images it displays. Google is simply indexing content and showing it to you. The company claims an implicit license to the work, but does not have an explicit license.

Other Google services that allow direct user uploads (such as Google Docs or Google Drive) also have open-ended Terms of Service, but they are significantly less aggressive than the ones that Instagram claims. Google does not claim an explicit right to sublicense your content, nor does it ask for explicit liability protection. Flickr and MySpace both have Terms of Service that make explicit provisions for termination of the agreements.

What we see with Instagram is a significant extension of the licenses that we normally see in internet services, in my opinion. Offering full indemnification for any commercial use, it dramatically extends the rights claimed when compared to other major distribution services.

Okay, so what should be done about this? In the next sections, let's outline the practical needs and desires of social media services, and propose a more balanced relationship between user and service.

Whereas...

It's clear that services like Facebook, Instagram and Google all provide valuable services that are expensive to support. There should be no expectation that these services will continue to be available for free, or will be supported only by a soft advertising model.

It's also clear that these services must create an environment where users agree to refrain from copyright and privacy violation, and shoulder some of the responsibility to act in accordance with the law.

And it's also clear that these services must be allowed to evolve in order for it to have long-term viability. Any user agreement must take this into account

And, finally, it's also clear that the simple act of distributing *anything* on the internet involves the transfer of intellectual property from one service to another as the photo, video or text propagates through the web.

Free isn't free

The Instagram service is being provided at no transactional cost to the users. Clearly this is unsustainable in the long term. The servers and bandwidth that are necessary to make Instagram work are expensive to implement. The company will only survive if it can create a business model that provides a profitable return on investment. One way or another, someone has to pay.

It's clear that internet-based companies need flexibility to create these business models. Many compelling new services evolved from completely different origins. The ability to change a business model is one of the most valuable features of development in the internet age. In the change from free to profitable, companies may evolve in ways that are objectionable to large chunks of the user base.

As a professional photographer, I understand the value of licensing images. I believe that Instagram and other photo services are poised to serve a multi-billion dollar market. There is a new appetite for photographs that is truly unprecedented. Editorial and advertising services are yearning for access to the photo stream. I'd like to see this done with some mechanism for revenue sharing, as services take these photos to the market. Other services like Eye Em are building this machinery in, while Instagram seems to be specifically excluding a revenue share.

One important function of Terms of Use is to define the limits of what a service may become, and how users may exit the service if it no longer suits them. If, as my reading indicates, Instagram intends to become a commercialized content-licensing service that does not pay the creators, many users will object. And many will be surprised to find out how little control they have over their photos, data, screen names and identities.

The Right to Terminate

I think agreements that facilitate the needs listed above must have some balance, and I see a bright line where I think that balance must be achieved. That balance should be tied to the intentional termination of the explicit protections the agreement provides.

I do not believe that aggressive indemnification clauses should extend beyond the intentional termination of the account. Nor do I believe that explicit rights to sublicense content should extend beyond intentional termination. And I believe that an individual should have the ability to prevent a company from assuming someone's identity once an account has been intentionally terminated.

As services become larger repositories of intellectual property, the balance of power shifts away from the user and toward the company. The only way to ensure a fair balance, in my opinion, is to let the user remove his permission for the explicit use of his identity and content, as well as his liability protection for the service.

I realize that creating language to achieve these objectives is not easy. Our current language of licensing is tied to the old model of publishing, where publication could be easily tied to delivery on hard goods or over scarce public airwaves. We simply don't have a good way to describe propagation over internet servers that distinguishes it from sales on paper.

And I also acknowledge that we don't want the public record as embodied in social media to simply disappear wholesale. Note, for instance, that I use the term "intentional termination" so that accounts or identities may survive the death of their users, if that is their will.

But it should be possible to create a user agreement that allows the individual to have some control over the licensable use of content, as well as the liability protection granted. Indeed, this has been standard practice for most crowd-populated content services on the web until now. Users should insist on this, and courts should hold that grants of rights that exceed this are not enforceable.

Why this Matters

One way or another, these issues will be settled in the coming years. There are giant unanswered questions regarding privacy, right-to-exploit, liability, use of identity, and cultural preservation, to name but a few.

They may be settled by standard practice in Terms of Use, as each service slowly adopts a more and more inclusive package of company rights. Or perhaps they will be decided in courtrooms as these agreements are challenged. And they also may be decided by legislative bodies, as governments see an imbalance in these agreements and craft legislation that limits what can be included. Of course, both litigation and legislation could come down on the side of expansive rights held by the service providers.

Is it going to be possible for individuals to exercise control over their images, their online profiles and even their identity in the online world? If we would like it to be so, we need to begin to set the limits of what we consider to be balanced, moral and justifiable. That process begins, for me, with a discussion of the limits granted to these services and the rights to terminate your agreements as outlined here.

So, What's next?

Are the Instagram Terms of Service simply going to become the new normal? Certainly Facebook would like it to be so. The TOU confers some very valuable rights to the company in an exploitable package. It also sets the stage for a favorable litigation outcome when these issues come before the court.

I see several important prerequisites for change.

People have to care. The new rights profile *will* become the new normal if too few people care enough to push back. While many people are sanguine about releasing their information into the wilds of the internet, I think there are fewer who are totally okay with conveying those explicit internet rights to a single company.

People have to see how this is different. Many people I talk to think all internet Terms of Service are inscrutable legalese that is stacked against them. Very few people read the terms,

and fewer understand them. But there is a difference here. I believe this document lays that out pretty clearly.

People have to know what kind of change to ask for. It does little good to stand up and scream that a business practice is unfair. “Unfair” is not specific and is not actionable. The proper response will outline what specifically is imbalanced, and will propose a remedy. Again, I think I’ve laid that out reasonably well here, proposing that contracts with social media companies should have a meaningful termination clause.

People need to take action. Once you know what your objectives are, it’s easier to understand what kind of action can help you reach them. This part is not contemplated by this document at all. I hope that this can be a crowdsourced solution: a multi-faceted effort to raise awareness that spreads the word and asks for a more balanced approach.

The first-level advocates for change include photographers, stock agencies, media companies, and related associations that have a greater understanding of the value of exploitable licenses. But I think they could immediately be joined by advocates for privacy and childrens’ rights. The issues here go far beyond the right to commercialize photography and well into the commercialization and control of identity.

It will be interesting to see if anyone cares enough to act.

Peter Krogh will be moderating a panel discussion on this issue at the 2013 PhotoPlus Expo in New York in October.

#KnowYour(Copy)Rights: Applying a Legal Filter to Instagram's Revised Terms of Use

by **Ross Buntrock** (ross.buntrock@arentfox.com), **Arent Fox LLP**
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Less than three years old, Instagram, a mobile photograph-sharing program which was purchased by Facebook for \$1 billion in April 2012, has quickly become a force in social media, amassing a huge repository of user-created content from its 90 million active, registered users. While the vast majority of standard Instagram users may have little concern with the legal ownership issues related to posted Instagram content, professional photographers and other major brands in the photo space have taken notice of Instagram's Terms of Use ("TOU"), especially since Instagram's December 17, 2012 announcement that it was adopting new TOU, which took effect January 19, 2013.

Unsurprisingly, given Instagram's meteoric rise, the original TOU ("Original TOU") that covered pre-2013 behavior on Instagram failed to address some of the key intellectual property issues related to display of user-created content. Instagram initially proposed changes to the Original TOU that would go into effect on January 16, 2013 ("Revised TOU"), but after a huge backlash ensued, Instagram finalized a second revised TOU that went into place on January 19, 2013 ("Final TOU"). Unfortunately, while the Final TOU appropriately addresses some of the concerns of owners of copyrighted materials, the Final TOU is only a slight improvement over the Revised TOU and creates a new landscape of social network photography sharing that puts copyright holders in a precarious situation.

The Original TOU: A Snapshot of a Simpler Time

The Original TOU, while not user friendly, was not nearly as onerous as the new version. The Original TOU is divided into three sections: Basic Terms, General Conditions, and Proprietary Rights in Content on Instagram. It is the third section that contains the most important terms related to intellectual property rights. The very first term includes the most relevant language,

as it describes the kind of rights Instagram is claiming in regards to the content posted to its service:

Instagram does NOT claim ANY ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that you post on or through the Instagram Services. By displaying or publishing ("posting") any Content on or through the Instagram Services, you hereby grant to Instagram **a non-exclusive, fully paid and royalty-free, worldwide, limited license** to use, modify, delete from, add to, publicly perform, publicly, display, reproduce and translate such Content, including without limitation distributing part or all of the Site in any media formats through any media channels, except Content not shared publicly ("private") will not be distributed outside the Instagram Services. *[Emphasis added.]*

With this one term, Instagram has attempted to find the sweet spot between ownership and licensing. Unless the user actively identifies the content as "private," Instagram has the ability as a licensee to take any content posted via its service and perform a number of functions. And, unlike the vast majority of licensing agreement that exchange use by the licensee for a royalty or fee paid to the licensor, Instagram's license is "fully paid and royalty-free." While technically Instagram does not own the content, the vast licensee powers given to Instagram via the Original TOU are alarming, especially given the second term in the Proprietary Rights section.

Immediately after claiming a broad royalty-free license to use Instagram content, Instagram indicates its intent to use the content as part of advertisements and promotions. Not only are the details of this use largely undefined, but Instagram also specifies that the manner of this promotional use is subject to change without notifying the Instagram user. Instagram also gives the user extremely little control over the terms of this license, as the Original TOU does not specify the manner in which the user may revoke the license. Instagram is also claiming a high level of control over use of Instagram content, while at the same time placing the burden of ensuring that the original content was obtained legally on the Instagram user, who must implicitly aver that he or she has acquired the proper license or ownership rights to the material. And as a final piece to this proprietary ownership puzzle, it is the user who bears the burden of paying any royalties for the content posted.

The Revised & Final TOU: The Cloudy Future of Instagram User IP Rights Comes Into Focus

If the Original TOU set off warning bells for savvy Instagram users by granting Instagram a free license without assuming any major liability, Instagram's changes in the Revised and Final TOU should have put its users on alert. In the process of creating an updated TOU, Instagram created more clarity about what issues it is most concerned with. It has asserted an explicit right to sub-license, beefed up its liability protection, outlined the right to evolve the service in an unrestricted manner, and precluded the users' rights to terminate their own accounts or to remove material. While the company did remove some language from the Revised TOU, the underlying rights to make broad use of the photos and identities of Instagram users remain in the Final TOU.

In the advertising section of the Revised TOU, Instagram makes an earnest attempt to explain its re-purposing of Instagram content for promotional purposes:

To help us deliver interesting paid or sponsored content or promotions, you agree that a business or other entity may pay us to display your username, likeness, photos (along with any associated metadata), and/or actions you take, in connection with paid or sponsored content or promotions, without any compensation to you.

This lack of compensation was implicit in the Original TOU's statement that Instagram's license was royalty-free, but in the Revised TOU, Instagram includes the rationale for this arrangement. Interestingly, the Final TOU does not include this language. Instead the Final TOU reverts back to the Original TOU language on advertising. By actively deciding to leave this term general and relatively vague, Instagram may be hoping that users will miss the amount of control and imbalance of revenue inherent in the free license being granted to Instagram.

The remaining key updates survived the revision process and appear in the Final TOU, which was expanded from the three sections in the Original TOU to twelve sections in the Final TOU. The first key change is found in the "Rights" section, which replaced "Rights in Content" from the Original TOU. Here, Instagram further expands the scope of its license, creeping closer and closer to ownership rights in Instagram content. Whereas Instagram claims a "non-exclusive, fully paid and royalty-free, worldwide, limited license" in the Original TOU, the Final TOU adds

a couple of key words and claims a “non-exclusive, fully paid and royalty-free, **transferable, sub-licensable**, worldwide license” (emphasis added). Instagram continues to add rights to its license, giving it the flexibility to treat Instagram content in a manner normally reserved for proprietary owners of copyrighted materials.

The final language of Instagram’s claimed license is also concerning because of how little control the Instagram user has over terminating the license. The only termination language included in the Final TOU is related to how Instagram can terminate the user’s privileges for violating the TOU. By giving the user no ability to force the termination of the agreement, the license and liability protection that the user grants Instagram is indefinite and completely open-ended. Even after the Instagram user has terminated his account, the license granted to Instagram survives and Instagram is afforded both rights to the Instagram content and shelter from any liability incurred. This open-endedness becomes more concerning when coupled with the abstract and seemingly unrestricted manner in which Instagram defines its service. In the “General Conditions” section of the Final TOU, Instagram reserves “the right to **modify** or terminate the Service or [user] access to the Service **for any reason.**” (emphasis added) Instagram is free to define its Service and could continue to expand the scope of its license indefinitely based upon the language in the Final TOU. There is nothing in the Final TOU that would stop Instagram from deciding to become a stock photo agency, a publisher, or a broadcast service, and use the personal or brand identity that the license grants to Instagram without the threat of incurring liability. Instagram’s freedom to unrestricted sublicensing starts trading dangerously close to exploitation when considered in this context.

The second key change involves the addition of two entirely new sections to the Final TOU. While the burden of securing any necessary intellectual property rights to the material posted by on Instagram remains with the user, the Final TOU includes both a new limitation of liability clause and a new indemnification clause. The limitation of liability clause disclaims all liability attributable to Instagram for a laundry list of actions, including “any action taken in connection with copyright or other intellectual property owners.” At the same time, the added indemnification clause prohibits Instagram users from holding Instagram liable for any claims made against Instagram users related to any user-created content. The addition of these new terms follows Instagram’s established trend of disclaiming any liability for how Instagram content was originally created, while still retaining the ability to use Instagram content in an unrestrained fashion.

The final change involves restricting Instagram user's rights to seek recovery from Instagram by limiting any dispute to arbitration. The Final TOU includes an opt-out provision that Instagram users must execute or else be subject to binding arbitration for any dispute that arises related to use of the Instagram application. However, intellectual property disputes are not covered by the opt-out clause, and instead must be resolved by arbitration under the American Arbitration Association's rules. The arbitration notice and provision represent a final consideration that copyright owners must account for when operating on Instagram.

Exposing the Negative: What This Means for Copyright Owners

In an ironic twist, the Final TOU includes a new section that instructs Instagram users on how to report copyright and other intellectual property violations to Instagram for resolution. Unfortunately, the question remains whether it is Instagram that users should be reporting for commandeering their intellectual property rights. After reviewing the legal issues in both the Original TOU and the Final TOU, copyright owners who have more at stake than the standard Instagram user need to proceed with caution when posting content to Instagram. Both independent professional photographers and major brands in the photography space should post photographs to Instagram with a complete understanding of the license associated with creating Instagram content. While the most direct and clear threat may be to Instagram's users whose business and/or livelihood are tied to the intellectual property of photographs, Instagram's TOUs could threaten any user's control of identifying information. Any user or entity using Instagram, who wants to retain control over his name, identity, and images, should do some hard weighing of the pros and cons of posting to Instagram prior to relinquishing a significant amount of control over content.

Ross Buntrock is practice group leader of Arent Fox's Communications, Technology and Mobile practice and is nationally recognized for his work in communications, media and technology law.

Original TOU for Instagram

Terms of Use

We are updating our Terms of Use: Our updated Terms of Use will be effective on January 19, 2013.

By using the instagram.com website and Instagram service you are agreeing to be bound by the following terms and conditions ("Terms of Use").

Basic Terms

1. You must be 13 years or older to use this site.
2. You may not post nude, partially nude, or sexually suggestive photos.
3. You are responsible for any activity that occurs under your screen name.
4. You are responsible for keeping your password secure.
5. You must not abuse, harass, threaten, impersonate or intimidate other Instagram users.
6. You may not use the Instagram service for any illegal or unauthorized purpose. International users agree to comply with all local laws regarding online conduct and acceptable content.
7. You are solely responsible for your conduct and any data, text, information, screen names, graphics, photos, profiles, audio and video clips, links ("Content") that you submit, post, and display on the Instagram service.
8. You must not modify, adapt or hack Instagram or modify another website so as to falsely imply that it is associated with Instagram.
9. You must not access Instagram's private API by any other means other than the Instagram application itself.
10. You must not crawl, scrape, or otherwise cache any content from Instagram including but not limited to user profiles and photos.
11. You must not create or submit unwanted email or comments to any Instagram members ("Spam").
12. You must not use web URLs in your name without prior written consent from Instagram, inc.
13. You must not transmit any worms or viruses or any code of a destructive nature.

14. You must not, in the use of Instagram, violate any laws in your jurisdiction (including but not limited to copyright laws).

15. Violation of any of these agreements will result in the termination of your Instagram account. While Instagram prohibits such conduct and content on its site, you understand and agree that Instagram cannot be responsible for the Content posted on its web site and you nonetheless may be exposed to such materials and that you use the Instagram service at your own risk.

General Conditions

1. We reserve the right to modify or terminate the Instagram service for any reason, without notice at any time.

2. We reserve the right to alter these Terms of Use at any time. If the alterations constitute a material change to the Terms of Use, we will notify you via internet mail according to the preference expressed on your account. What constitutes a “material change” will be determined at our sole discretion, in good faith and using common sense and reasonable judgement.

3. We reserve the right to refuse service to anyone for any reason at any time.

4. We reserve the right to force forfeiture of any username that becomes inactive, violates trademark, or may mislead other users.

5. We may, but have no obligation to, remove Content and accounts containing Content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, obscene or otherwise objectionable or violates any party’s intellectual property or these Terms of Use.

6. We reserve the right to reclaim usernames on behalf of businesses or individuals that hold legal claim or trademark on those usernames.

Proprietary Rights in Content on Instagram

1. Instagram does NOT claim ANY ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, “Content”) that you post on or through the Instagram Services. By displaying or publishing (“posting”) any Content on or through the Instagram Services, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, worldwide, limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce and translate such Content, including without limitation distributing part or all of the Site in any media formats through any media channels, except Content not shared publicly (“private”) will not be distributed outside the Instagram Services.

2. Some of the Instagram Services are supported by advertising revenue and may display advertisements and promotions, and you hereby agree that Instagram may place such advertising and promo-

tions on the Instagram Services or on, about, or in conjunction with your Content. The manner, mode and extent of such advertising and promotions are subject to change without specific notice to you.

3. You represent and warrant that: (i) you own the Content posted by you on or through the Instagram Services or otherwise have the right to grant the license set forth in this section, (ii) the posting and use of your Content on or through the Instagram Services does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights or any other rights of any person, and (iii) the posting of your Content on the Site does not result in a breach of contract between you and a third party. You agree to pay for all royalties, fees, and any other monies owing any person by reason of Content you post on or through the Instagram Services.

4. The Instagram Services contain Content of Instagram ("Instagram Content"). Instagram Content is protected by copyright, trademark, patent, trade secret and other laws, and Instagram owns and retains all rights in the Instagram Content and the Instagram Services. Instagram hereby grants you a limited, revocable, nonsublicensable license to reproduce and display the Instagram Content (excluding any software code) solely for your personal use in connection with viewing the Site and using the Instagram Services.

5. The Instagram Services contain Content of Users and other Instagram licensors. Except as provided within this Agreement, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell any Content appearing on or through the Instagram Services.

6. Instagram performs technical functions necessary to offer the Instagram Services, including but not limited to transcoding and/or reformatting Content to allow its use throughout the Instagram Services.

7. Although the Site and other Instagram Services are normally available, there will be occasions when the Site or other Instagram Services will be interrupted for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and equipment that are beyond the control of Instagram. Also, although Instagram will normally only delete Content that violates this Agreement, Instagram reserves the right to delete any Content for any reason, without prior notice. Deleted content may be stored by Instagram in order to comply with certain legal obligations and is not retrievable without a valid court order. Consequently, Instagram encourages you to maintain your own backup of your Content. In other words, Instagram is not a backup service. Instagram will not be liable to you for any modification, suspension, or discontinuation of the Instagram Services, or the loss of any Content.

Proposed Revision of Instagram TOU, 12/18/2012

Terms of Use

These Terms of Use are effective on January 16, 2013. To access our previous Terms of Use, please [click here](#).

By accessing or using the Instagram website, the Instagram service, or any applications (including mobile applications) made available by Instagram (together, the "Service"), however accessed, you agree to be bound by these terms of use ("Terms of Use"). The Service is owned or controlled by Instagram, LLC ("Instagram"). These Terms of Use affect your legal rights and obligations. If you do not agree to be bound by all of these Terms of Use, do not access or use the Service.

There may be times when we offer a special feature that has its own terms and conditions that apply in addition to these Terms of Use. In those cases, the terms specific to the special feature control to the extent there is a conflict with these Terms of Use.

ARBITRATION NOTICE: EXCEPT IF YOU OPT-OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND INSTAGRAM WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

Basic Terms

1. You must be at least 13 years old to use the Service.
2. You may not post violent, nude, partially nude, discriminatory, unlawful, infringing, hateful, pornographic or sexually suggestive photos or other content via the Service.
3. You are responsible for any activity that occurs through your account and you agree you will not sell, transfer, license or assign your account, followers, username, or any account rights. With the exception of people or businesses that are expressly authorized to create accounts on behalf of their employers or clients, Instagram prohibits the creation of and you agree that you will not create an account for anyone other than yourself. You also represent that all information you provide or provided to Instagram upon registration and at all other times will be true, accurate, current and complete and you agree to update your information as necessary to maintain its truth and accuracy.
4. You agree that you will not solicit, collect or use the login credentials of other Instagram users.

5. You are responsible for keeping your password secret and secure.
6. You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or entities and you must not post private or confidential information via the Service, including, without limitation, your or any other person's credit card information, social security or alternate national identity numbers, non-public phone numbers or non-public email addresses.
7. You may not use the Service for any illegal or unauthorized purpose. You agree to comply with all laws, rules and regulations (for example, federal, state, local and provincial) applicable to your use of the Service and your Content (defined below), including but not limited to, copyright laws.
8. You are solely responsible for your conduct and any data, text, files, information, usernames, images, graphics, photos, profiles, audio and video clips, sounds, musical works, works of authorship, applications, links and other content or materials (collectively, "Content") that you submit, post or display on or via the Service.
9. You must not change, modify, adapt or alter the Service or change, modify or alter another website so as to falsely imply that it is associated with the Service or Instagram.
10. You must not access Instagram's private API by means other than those permitted by Instagram. Use of Instagram's API is subject to a separate set of terms available here: <http://instagram.com/about/legal/terms/api/> ("API Terms").
11. You must not create or submit unwanted email, comments, likes or other forms of commercial or harassing communications (a/k/a "spam") to any Instagram users.
12. You must not use domain names or web URLs in your username without prior written consent from Instagram.
13. You must not interfere or disrupt the Service or servers or networks connected to the Service, including by transmitting any worms, viruses, spyware, malware or any other code of a destructive or disruptive nature. You may not inject content or code or otherwise alter or interfere with the way any Instagram page is rendered or displayed in a user's browser or device.
14. You must comply with Instagram's Community Guidelines, available here: <http://help.instagram.com/customer/portal/articles/262387-communityguidelines>.
15. You must not create accounts with the Service through unauthorized means, including but not limited to, by using an automated device, script, bot, spider, crawler or scraper.
16. You must not attempt to restrict another user from using or enjoying the Service and you must not encourage or facilitate violations of these Terms of Use or any other Instagram terms.
17. Violation of these Terms of Use may, in Instagram's sole discretion, result in termination of your Instagram account. You understand and agree that Instagram cannot and will not be responsible for the Content posted on the Service and you use the Service at your own risk. If you violate the letter or

spirit of these Terms of Use, or otherwise create risk or possible legal exposure for Instagram, we can stop providing all or part of the Service to you.

General Conditions

1. We reserve the right to modify or terminate the Service or your access to the Service for any reason, without notice, at any time, and without liability to you. You can deactivate your Instagram account by logging into the Service and completing the form available here: <https://instagram.com/accounts/remove/request/>. If we terminate your access to the Service or you use the form detailed above to deactivate your account, your photos, comments, likes, friendships, and all other data will no longer be accessible through your account (e.g., users will not be able to navigate to your username and view your photos), but those materials and data may persist and appear within the Service (e.g., if your Content has been reshared by others).
2. Upon termination, all licenses and other rights granted to you in these Terms of Use will immediately cease.
3. We reserve the right, in our sole discretion, to change these Terms of Use ("Updated Terms") from time to time. Unless we make a change for legal or administrative reasons, we will provide reasonable advance notice before the Updated Terms become effective. You agree that we may notify you of the Updated Terms by posting them on the Service, and that your use of the Service after the effective date of the Updated Terms (or engaging in such other conduct as we may reasonably specify) constitutes your agreement to the Updated Terms. Therefore, you should review these Terms of Use and any Updated Terms before using the Service. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms, and will apply to your use of the Service from that point forward. These Terms of Use will govern any disputes arising before the effective date of the Updated Terms.
4. We reserve the right to refuse access to the Service to anyone for any reason at any time.
5. We reserve the right to force forfeiture of any username for any reason.
6. We may, but have no obligation to, remove, edit, block, and/or monitor Content or accounts containing Content that we determine in our sole discretion violates these Terms of Use.
7. You are solely responsible for your interaction with other users of the Service, whether online or offline. You agree that Instagram is not responsible or liable for the conduct of any user. Instagram reserves the right, but has no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment when interacting with others, including when you submit or post Content or any personal or other information.
8. There may be links from the Service, or from communications you receive from the Service, to third-party web sites or features. There may also be links to third-party web sites or features in images or comments within the Service. The Service also includes third-party content that we do not control, maintain or endorse. Functionality on the Service may also permit interactions between the Service

and a third-party web site or feature, including applications that connect the Service or your profile on the Service with a third-party web site or feature. For example, the Service may include a feature that enables you to share Content from the Service or your Content with a third party, which may be publicly posted on that third party's service or application. Using this functionality typically requires you to login to your account on the third-party service and you do so at your own risk. Instagram does not control any of these third-party web services or any of their content. You expressly acknowledge and agree that Instagram is in no way responsible or liable for any such third-party services or features. YOUR CORRESPONDENCE AND BUSINESS DEALINGS WITH THIRD PARTIES FOUND THROUGH THE SERVICE ARE SOLELY BETWEEN YOU AND THE THIRD PARTY. You may choose, at your sole and absolute discretion and risk, to use applications that connect the Service or your profile on the Service with a third-party service (each, an "Application") and such Application may interact with, connect to or gather and/or pull information from and to your Service profile. By using such Applications, you acknowledge and agree to the following: (i) if you use an Application to share information, you are consenting to information about your profile on the Service being shared; (ii) your use of an Application may cause personally identifying information to be publicly disclosed and/or associated with you, even if Instagram has not itself provided such information; and (iii) your use of an Application is at your own option and risk, and you will hold the Instagram Parties (defined below) harmless for activity related to the Application.

9. You agree that you are responsible for all data charges you incur through use of the Service.

We prohibit crawling, scraping, caching or otherwise accessing any content on the Service via automated means, including but not limited to, user profiles and photos (except as may be the result of standard search engine protocols or technologies used by a search engine with Instagram's express consent).

Rights

1. Instagram does not claim ownership of any Content that you post on or through the Service. Instead, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service, except that you can control who can view certain of your Content and activities on the Service as described in the Service's Privacy Policy, available here: <http://instagram.com/legal/privacy/>.

2. Some or all of the Service may be supported by advertising revenue. To help us deliver interesting paid or sponsored content or promotions, you agree that a business or other entity may pay us to display your username, likeness, photos (along with any associated metadata), and/or actions you take, in connection with paid or sponsored content or promotions, without any compensation to you. If you are under the age of eighteen (18), or under any other applicable age of majority, you represent that at least one of your parents or legal guardians has also agreed to this provision (and the use of your name, likeness, username, and/or photos (along with any associated metadata)) on your behalf.

3. You acknowledge that we may not always identify paid services, sponsored content, or commercial communications as such.

4. You represent and warrant that: (i) you own the Content posted by you on or through the Service or otherwise have the right to grant the rights and licenses set forth in these Terms of Use; (ii) the posting and use of your Content on or through the Service does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy rights, publicity rights, copyrights, trademark and/or other intellectual property rights; (iii) you agree to pay for all royalties, fees, and any other monies owed by reason of Content you post on or through the Service; and (iv) you have the legal right and capacity to enter into these Terms of Use in your jurisdiction.

5. The Service contains content owned or licensed by Instagram (“Instagram Content”). Instagram Content is protected by copyright, trademark, patent, trade secret and other laws, and, as between you and Instagram, Instagram owns and retains all rights in the Instagram Content and the Service. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Instagram Content and you will not reproduce, modify, adapt, prepare derivative works based on, perform, display, publish, distribute, transmit, broadcast, sell, license or otherwise exploit the Instagram Content.

6. The Instagram name and logo are trademarks of Instagram, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Instagram, except in accordance with our brand guidelines, available here: <http://help.instagram.com/customer/portal/articles/182487>. In addition, all page headers, custom graphics, button icons and scripts are service marks, trademarks and/or trade dress of Instagram, and may not be copied, imitated or used, in whole or in part, without prior written permission from Instagram.

7. Although it is Instagram’s intention for the Service to be available as much as possible, there will be occasions when the Service may be interrupted, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. Also, Instagram reserves the right to remove any Content from the Service for any reason, without prior notice. Content removed from the Service may continue to be stored by Instagram, including, without limitation, in order to comply with certain legal obligations, but may not be retrievable without a valid court order. Consequently, Instagram encourages you to maintain your own backup of your Content. In other words, Instagram is not a backup service and you agree that you will not rely on the Service for the purposes of Content backup or storage. Instagram will not be liable to you for any modification, suspension, or discontinuation of the Services, or the loss of any Content. You also acknowledge that the Internet may be subject to breaches of security and that the submission of Content or other information may not be secure.

8. You agree that Instagram is not responsible for, and does not endorse, Content posted within the Service. Instagram does not have any obligation to prescreen, monitor, edit, or remove any Content. If your Content violates these Terms of Use, you may bear legal responsibility for that Content.

9. Except as otherwise described in the Service’s Privacy Policy, available at <http://instagram.com/legal/privacy/>, as between you and Instagram, any Content will be non-confidential and non-proprietary and we will not be liable for any use or disclosure of Content. You acknowledge and agree that your relationship with Instagram is not a confidential, fiduciary, or other type of special relationship, and that your decision to submit any Content does not place Instagram in a position that is any different from the position held by members of the general public, including with regard to your Content. None of

your Content will be subject to any obligation of confidence on the part of Instagram, and Instagram will not be liable for any use or disclosure of any Content you provide.

10. It is Instagram's policy not to accept or consider content, information, ideas, suggestions or other materials other than those we have specifically requested and to which certain specific terms, conditions and requirements may apply. This is to avoid any misunderstandings if your ideas are similar to those we have developed or are developing independently. Accordingly, Instagram does not accept unsolicited materials or ideas, and takes no responsibility for any materials or ideas so transmitted. If, despite our policy, you choose to send us content, information, ideas, suggestions, or other materials, you further agree that Instagram is free to use any such content, information, ideas, suggestions or other materials, for any purposes whatsoever, including, without limitation, developing and marketing products and services, without any liability or payment of any kind to you.

Reporting Copyright and Other IP Violations

1. We respect other people's rights, and expect you to do the same.
2. We provide you with tools to help you protect your intellectual property rights. To learn more about how to report claims of intellectual property infringement, visit: http://help.instagram.com/customer_portal/articles/270501.
3. If you repeatedly infringe other people's intellectual property rights, we will disable your account when appropriate.

Disclaimer of Warranties

THE SERVICE, INCLUDING, WITHOUT LIMITATION, INSTAGRAM CONTENT, IS PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER INSTAGRAM NOR ITS PARENT COMPANY NOR ANY OF THEIR EMPLOYEES, MANAGERS, OFFICERS OR AGENTS (COLLECTIVELY, THE "INSTAGRAM PARTIES") MAKE ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE SERVICE; (B) THE INSTAGRAM CONTENT; (C) USER CONTENT; OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO INSTAGRAM OR VIA THE SERVICE. IN ADDITION, THE INSTAGRAM PARTIES HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.

THE INSTAGRAM PARTIES DO NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICE OR THE SERVER THAT MAKES THE SERVICE AVAILABLE IS FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES. THE INSTAGRAM PARTIES DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) ON THE SERVICE IS ACCURATE, COMPLETE, OR USEFUL. YOU ACKNOWLEDGE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE INSTAGRAM PARTIES DO NOT WARRANT THAT YOUR USE OF THE SERVICE IS LAWFUL IN ANY PARTICU-

LAR JURISDICTION, AND THE INSTAGRAM PARTIES SPECIFICALLY DISCLAIM SUCH WARRANTIES. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO YOU AND THESE TERMS OF USE.

BY ACCESSING OR USING THE SERVICE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE. THE INSTAGRAM PARTIES DO NOT ENDORSE CONTENT AND SPECIFICALLY DISCLAIM ANY RESPONSIBILITY OR LIABILITY TO ANY PERSON OR ENTITY FOR ANY LOSS, DAMAGE (WHETHER ACTUAL,

CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURY, CLAIM, LIABILITY OR OTHER CAUSE OF ANY KIND OR CHARACTER BASED UPON OR RESULTING FROM ANY CONTENT.

Limitation of Liability; Waiver

UNDER NO CIRCUMSTANCES WILL THE INSTAGRAM PARTIES BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES) THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE SERVICE; (B) THE INSTAGRAM CONTENT; (C) USER CONTENT; (D) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICE; (E) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY THE INSTAGRAM PARTIES OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY OTHER PARTY'S USE OF THE SERVICE; (F) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (G) ANY ERRORS OR OMISSIONS IN THE SERVICE'S OPERATION; OR (H) ANY DAMAGE TO ANY USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF THE INSTAGRAM PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SERVICE). IN NO EVENT WILL THE INSTAGRAM PARTIES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY, INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE INSTAGRAM PARTIES TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OR ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00). YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF INSTAGRAM'S ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, SERVICE, PROPERTY, PRODUCT OR OTHER CONTENT OWNED OR CONTROLLED BY THE INSTAGRAM PARTIES, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROP-

ERTY, PRODUCT, SERVICE, OR OTHER CONTENT OWNED OR CONTROLLED BY THE INSTAGRAM PARTIES. BY ACCESSING THE SERVICE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

INSTAGRAM IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT INFORMATION, OR DATA OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES.

Indemnification

You (and also any third party for whom you operate an account or activity on the Service) agree to defend (at Instagram's request), indemnify and hold the Instagram Parties harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with any of the following (including as a result of your direct activities on the Service or those conducted on your behalf): (i) your Content or your access to or use of the Service; (ii) your breach or alleged breach of these Terms of Use; (iii) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; or (v) any misrepresentation made by you. You will cooperate as fully required by Instagram in the defense of any claim. Instagram reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of Instagram.

Arbitration

Except if you opt-out or for disputes relating to: (1) your or Instagram's intellectual property (such as trademarks, trade dress, domain names, trade secrets, copyrights and patents); (2) violations of the API Terms; or (3) violations of provisions 13 or 15 of the Basic Terms, above ("Excluded Disputes"), you agree that all disputes between you and Instagram (whether or not such dispute involves a third party) with regard to your relationship with Instagram, including without limitation disputes related to these Terms of Use, your use of the Service, and/or rights of privacy and/or publicity, will be resolved by binding, individual arbitration under the American Arbitration Association's rules for arbitration of consumer-related disputes and you and Instagram hereby expressly waive trial by jury. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules. You may bring claims only on your own behalf. Neither you nor Instagram will participate in a class action or classwide arbitration for any claims covered by this agreement. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consoli-

dated claims involving another person's account, if Instagram is a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either Instagram or you can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use. You may opt out of this agreement to arbitrate. If you do so, neither you nor Instagram can require the other to participate in an arbitration proceeding. To opt out, you must notify Instagram in writing within 30 days of the date that you first became subject to this arbitration provision. You must use this address to opt out: Instagram, LLC ATTN: Arbitration Opt-out 1601 Willow Rd. Menlo Park, CA 94025

You must include your name and residence address, the email address you use for your Instagram account, and a clear statement that you want to opt out of this arbitration agreement. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with Instagram.

Time Limitation on Claims

You agree that any claim you may have arising out of or related to your relationship with Instagram must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

Governing Law & Venue

These Terms of Use are governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE. For any action at law or in equity relating to the arbitration provision of these Terms of Use, the Excluded Disputes or if you opt out of the agreement to arbitrate, you agree to resolve any dispute you have with Instagram exclusively in a state or federal court located in Santa Clara, California, and to submit to the personal jurisdiction of the courts located in Santa Clara County for the purpose of litigating all such disputes. If any provision of these Terms of Use is held to be unlawful, void, or for any reason unenforceable during arbitration or by a court of competent jurisdiction, then that provision will be deemed severable from these Terms of Use and will not affect the validity and enforceability of any remaining provisions. Instagram's failure to insist upon or enforce strict performance of any provision of these Terms will not be construed as a waiver of any provision or right. No waiver of any of these Terms will be deemed a further or continuing waiver of such term or condition or any other term or condition. Instagram reserves the right to change this dispute resolution provision, but any such changes will not apply to disputes arising before the effective date of the amendment. This dispute resolution provision will survive the termination of any or all of your transactions with Instagram.

Entire Agreement

If you are using the Service on behalf of a legal entity, you represent that you are authorized to enter into an agreement on behalf of that legal entity. These Terms of Use constitute the entire agreement between you and Instagram and governs your use of the Service, superseding any prior agreements between you and Instagram. You will not assign the Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Instagram. Any purported assignment or delegation by you without the appropriate prior written consent of Instagram will be null and void. Instagram may assign these Terms of Use or any rights hereunder without your consent. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the parties nevertheless agree that such portion will be deemed severable from these Terms of Use and will not affect the validity and enforceability of the remaining provisions, and the remaining provisions of the Terms of Use remain in full force and effect. Neither the course of conduct between the parties nor trade practice will act to modify the Terms of Use. These Terms of Use do not confer any third-party beneficiary rights.

Territorial Restrictions

The information provided within the Service is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Instagram to any registration requirement within such jurisdiction or country. We reserve the right to limit the availability of the Service or any portion of the Service, to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service or other feature that Instagram provides.

Software related to or made available by the Service may be subject to United States export controls. Thus, no software from the Service may be downloaded, exported or re-exported: (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading any software related to the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list. The effective date of these Terms of Use is January 16, 2013. These Terms of Use were written in English (US). To the extent any translated version of these Terms of Use conflicts with the English version, the English version controls. By using the instagr.am/instagram.com website and Instagram service you are agreeing to be bound by the following terms and conditions ("Terms of Use").

Basic Terms

1. You must be 13 years or older to use this site.
2. You may not post nude, partially nude, or sexually suggestive photos.
3. You are responsible for any activity that occurs under your screen name.

4. You are responsible for keeping your password secure.
5. You must not abuse, harass, threaten, impersonate or intimidate other Instagram users.
6. You may not use the Instagram service for any illegal or unauthorized purpose. International users agree to comply with all local laws regarding online conduct and acceptable content.
7. You are solely responsible for your conduct and any data, text, information, screen names, graphics, photos, profiles, audio and video clips, links (“Content”) that you submit, post, and display on the Instagram service.
8. You must not modify, adapt or hack Instagram or modify another website so as to falsely imply that it is associated with Instagram.
9. You must not access Instagram’s private API by any other means other than the Instagram application itself.
10. You must not crawl, scrape, or otherwise cache any content from Instagram including but not limited to user profiles and photos.
11. You must not create or submit unwanted email or comments to any Instagram members (“Spam”).
12. You must not use web URLs in your name without prior written consent from Instagram, inc.
13. You must not transmit any worms or viruses or any code of a destructive nature.
14. You must not, in the use of Instagram, violate any laws in your jurisdiction (including but not limited to copyright laws).
15. Violation of any of these agreements will result in the termination of your Instagram account. While Instagram prohibits such conduct and content on its site, you understand and agree that Instagram cannot be responsible for the Content posted on its web site and you nonetheless may be exposed to such materials and that you use the Instagram service at your own risk.

General Conditions

1. We reserve the right to modify or terminate the Instagram service for any reason, without notice at any time.
2. We reserve the right to alter these Terms of Use at any time. If the alterations constitute a material change to the Terms of Use, we will notify you via internet mail according to the preference expressed on your account. What constitutes a “material change” will be determined at our sole discretion, in good faith and using common sense and reasonable judgement.
3. We reserve the right to refuse service to anyone for any reason at any time.

4. We reserve the right to force forfeiture of any username that becomes inactive, violates trademark, or may mislead other users.
5. We may, but have no obligation to, remove Content and accounts containing Content that we determine in our sole discretion are unlawful, offensive, threatening, libelous, defamatory, obscene or otherwise objectionable or violates any party's intellectual property or these Terms of Use.
6. We reserve the right to reclaim usernames on behalf of businesses or individuals that hold legal claim or trademark on those usernames.

Proprietary Rights in Content on Instagram

1. Instagram does NOT claim ANY ownership rights in the text, files, images, photos, video, sounds, musical works, works of authorship, applications, or any other materials (collectively, "Content") that you post on or through the Instagram Services. By displaying or publishing ("posting") any Content on or through the Instagram Services, you hereby grant to Instagram a nonexclusive, fully paid and royalty-free, worldwide, limited license to use, modify, delete from, add to, publicly perform, publicly display, reproduce and translate such Content, including without limitation distributing part or all of the Site in any media formats through any media channels, except Content not shared publicly ("private") will not be distributed outside the Instagram Services.
2. Some of the Instagram Services are supported by advertising revenue and may display advertisements and promotions, and you hereby agree that Instagram may place such advertising and promotions on the Instagram Services or on, about, or in conjunction with your Content. The manner, mode and extent of such advertising and promotions are subject to change without specific notice to you.
3. You represent and warrant that: (i) you own the Content posted by you on or through the Instagram Services or otherwise have the right to grant the license set forth in this section, (ii) the posting and use of your Content on or through the Instagram Services does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights or any other rights of any person, and (iii) the posting of your Content on the Site does not result in a breach of contract between you and a third party. You agree to pay for all royalties, fees, and any other monies owing any person by reason of Content you post on or through the Instagram Services.
4. The Instagram Services contain Content of Instagram ("Instagram Content"). Instagram Content is protected by copyright, trademark, patent, trade secret and other laws, and Instagram owns and retains all rights in the Instagram Content and the Instagram Services. Instagram hereby grants you a limited, revocable, nonsublicensable license to reproduce and display the Instagram Content (excluding any software code) solely for your personal use in connection with viewing the Site and using the Instagram Services.
5. The Instagram Services contain Content of Users and other Instagram licensors. Except as provided within this Agreement, you may not copy, modify, translate, publish, broadcast, transmit, distribute, perform, display, or sell any Content appearing on or through the Instagram Services.

6. Instagram performs technical functions necessary to offer the Instagram Services, including but not limited to transcoding and/or reformatting Content to allow its use throughout the Instagram Services.

7. Although the Site and other Instagram Services are normally available, there will be occasions when the Site or other Instagram Services will be interrupted for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and equipment that are beyond the control of Instagram. Also, although Instagram will normally only delete Content that violates this Agreement, Instagram reserves the right to delete any Content for any reason, without prior notice. Deleted content may be stored by Instagram in order to comply with certain legal obligations and is not retrievable without a valid court order. Consequently, Instagram encourages you to maintain your own backup of your Content. In other words, Instagram is not a backup service. Instagram will not be liable to you for any modification, suspension, or discontinuation of the Instagram Services, or the loss of any Content.

New Instagram TOU, 1/19/2013

Terms of Use

These Terms of Use are effective on January 19, 2013. To access our previous Terms of Use, please [click here](#).

By accessing or using the Instagram website, the Instagram service, or any applications (including mobile applications) made available by Instagram (together, the “Service”), however accessed, you agree to be bound by these terms of use (“Terms of Use”). The Service is owned or controlled by Instagram, LLC (“Instagram”). These Terms of Use affect your legal rights and obligations. If you do not agree to be bound by all of these Terms of Use, do not access or use the Service.

There may be times when we offer a special feature that has its own terms and conditions that apply in addition to these Terms of Use. In those cases, the terms specific to the special feature control to the extent there is a conflict with these Terms of Use.

ARBITRATION NOTICE: EXCEPT IF YOU OPT-OUT AND EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN THE ARBITRATION SECTION BELOW, YOU AGREE THAT DISPUTES BETWEEN YOU AND INSTAGRAM WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.

Basic Terms

1. You must be at least 13 years old to use the Service.
2. You may not post violent, nude, partially nude, discriminatory, unlawful, infringing, hateful, pornographic or sexually suggestive photos or other content via the Service.
3. You are responsible for any activity that occurs through your account and you agree you will not sell, transfer, license or assign your account, followers, username, or any account rights. With the exception of people or businesses that are expressly authorized to create accounts on behalf of their employers or clients, Instagram prohibits the creation of and you agree that you will not create an account for anyone other than yourself. You also represent that all information you provide or provided to Instagram upon registration and at all other times will be true, accurate, current and complete and you agree to update your information as necessary to maintain its truth and accuracy.
4. You agree that you will not solicit, collect or use the login credentials of other Instagram users.
5. You are responsible for keeping your password secret and secure.

6. You must not defame, stalk, bully, abuse, harass, threaten, impersonate or intimidate people or entities and you must not post private or confidential information via the Service, including, without limitation, your or any other person's credit card information, social security or alternate national identity numbers, non-public phone numbers or non-public email addresses.

7. You may not use the Service for any illegal or unauthorized purpose. You agree to comply with all laws, rules and regulations (for example, federal, state, local and provincial) applicable to your use of the Service and your Content (defined below), including but not limited to, copyright laws.

8. You are solely responsible for your conduct and any data, text, files, information, usernames, images, graphics, photos, profiles, audio and video clips, sounds, musical works, works of authorship, applications, links and other content or materials (collectively, "Content") that you submit, post or display on or via the Service.

9. You must not change, modify, adapt or alter the Service or change, modify or alter another website so as to falsely imply that it is associated with the Service or Instagram.

10. You must not access Instagram's private API by means other than those permitted by Instagram. Use of Instagram's API is subject to a separate set of terms available here: <http://instagram.com/about/legal/terms/api/> ("API Terms").

11. You must not create or submit unwanted email, comments, likes or other forms of commercial or harassing communications (a/k/a "spam") to any Instagram users.

12. You must not use domain names or web URLs in your username without prior written consent from Instagram.

13. You must not interfere or disrupt the Service or servers or networks connected to the Service, including by transmitting any worms, viruses, spyware, malware or any other code of a destructive or disruptive nature. You may not inject content or code or otherwise alter or interfere with the way any Instagram page is rendered or displayed in a user's browser or device.

14. You must comply with Instagram's Community Guidelines, available here: <http://help.instagram.com/customer/portal/articles/262387-communityguidelines>.

15. You must not create accounts with the Service through unauthorized means, including but not limited to, by using an automated device, script, bot, spider, crawler or scraper.

16. You must not attempt to restrict another user from using or enjoying the Service and you must not encourage or facilitate violations of these Terms of Use or any other Instagram terms.

17. Violation of these Terms of Use may, in Instagram's sole discretion, result in termination of your Instagram account. You understand and agree that Instagram cannot and will not be responsible for the Content posted on the Service and you use the Service at your own risk. If you violate the letter or spirit of these Terms of Use, or otherwise create risk or possible legal exposure for Instagram, we can stop providing all or part of the Service to you.

General Conditions

1. We reserve the right to modify or terminate the Service or your access to the Service for any reason, without notice, at any time, and without liability to you. You can deactivate your Instagram account by logging into the Service and completing the form available here: <https://instagram.com/accounts/remove/request/>. If we terminate your access to the Service or you use the form detailed above to deactivate your account, your photos, comments, likes, friendships, and all other data will no longer be accessible through your account (e.g., users will not be able to navigate to your username and view your photos), but those materials and data may persist and appear within the Service (e.g., if your Content has been reshared by others).
2. Upon termination, all licenses and other rights granted to you in these Terms of Use will immediately cease.
3. We reserve the right, in our sole discretion, to change these Terms of Use (“Updated Terms”) from time to time. Unless we make a change for legal or administrative reasons, we will provide reasonable advance notice before the Updated Terms become effective. You agree that we may notify you of the Updated Terms by posting them on the Service, and that your use of the Service after the effective date of the Updated Terms (or engaging in such other conduct as we may reasonably specify) constitutes your agreement to the Updated Terms. Therefore, you should review these Terms of Use and any Updated Terms before using the Service. The Updated Terms will be effective as of the time of posting, or such later date as may be specified in the Updated Terms, and will apply to your use of the Service from that point forward. These Terms of Use will govern any disputes arising before the effective date of the Updated Terms.
4. We reserve the right to refuse access to the Service to anyone for any reason at any time.
5. We reserve the right to force forfeiture of any username for any reason.
6. We may, but have no obligation to, remove, edit, block, and/or monitor Content or accounts containing Content that we determine in our sole discretion violates these Terms of Use.
7. You are solely responsible for your interaction with other users of the Service, whether online or offline. You agree that Instagram is not responsible or liable for the conduct of any user. Instagram reserves the right, but has no obligation, to monitor or become involved in disputes between you and other users. Exercise common sense and your best judgment when interacting with others, including when you submit or post Content or any personal or other information.
8. There may be links from the Service, or from communications you receive from the Service, to third-party web sites or features. There may also be links to third-party web sites or features in images or comments within the Service. The Service also includes third-party content that we do not control, maintain or endorse. Functionality on the Service may also permit interactions between the Service and a third-party web site or feature, including applications that connect the Service or your profile on the Service with a third-party web site or feature. For example, the Service may include a feature that enables you to share Content from the Service or your Content with a third party, which may be publicly posted on that third party’s service or application. Using this functionality typically requires

you to login to your account on the third-party service and you do so at your own risk. Instagram does not control any of these third-party web services or any of their content. You expressly acknowledge and agree that Instagram is in no way responsible or liable for any such third-party services or features. YOUR CORRESPONDENCE AND BUSINESS DEALINGS WITH THIRD PARTIES FOUND THROUGH THE SERVICE ARE SOLELY BETWEEN YOU AND THE THIRD PARTY. You may choose, at your sole and absolute discretion and risk, to use applications that connect the Service or your profile on the Service with a third-party service (each, an "Application") and such Application may interact with, connect to or gather and/or pull information from and to your Service profile. By using such Applications, you acknowledge and agree to the following: (i) if you use an Application to share information, you are consenting to information about your profile on the Service being shared; (ii) your use of an Application may cause personally identifying information to be publicly disclosed and/or associated with you, even if Instagram has not itself provided such information; and (iii) your use of an Application is at your own option and risk, and you will hold the Instagram Parties (defined below) harmless for activity related to the Application.

9. You agree that you are responsible for all data charges you incur through use of the Service.

10. We prohibit crawling, scraping, caching or otherwise accessing any content on the Service via automated means, including but not limited to, user profiles and photos (except as may be the result of standard search engine protocols or technologies used by a search engine with Instagram's express consent).

Rights

1. Instagram does not claim ownership of any Content that you post on or through the Service. Instead, you hereby grant to Instagram a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service, subject to the Service's Privacy Policy, available here <http://instagram.com/legal/privacy/>, including but not limited to sections 3 ("Sharing of Your Information"), 4 ("How We Store Your Information"), and 5 ("Your Choices About Your Information"). You can choose who can view your Content and activities, including your photos, as described in the Privacy Policy.

2. Some of the Service is supported by advertising revenue and may display advertisements and promotions, and you hereby agree that Instagram may place such advertising and promotions on the Service or on, about, or in conjunction with your Content. The manner, mode and extent of such advertising and promotions are subject to change without specific notice to you.

3. You acknowledge that we may not always identify paid services, sponsored content, or commercial communications as such.

4. You represent and warrant that: (i) you own the Content posted by you on or through the Service or otherwise have the right to grant the rights and licenses set forth in these Terms of Use; (ii) the posting and use of your Content on or through the Service does not violate, misappropriate or infringe on the rights of any third party, including, without limitation, privacy rights, publicity rights, copyrights, trademark and/or other intellectual property rights; (iii) you agree to pay for all royalties, fees, and any

other monies owed by reason of Content you post on or through the Service; and (iv) you have the legal right and capacity to enter into these Terms of Use in your jurisdiction.

5. The Service contains content owned or licensed by Instagram (“Instagram Content”). Instagram Content is protected by copyright, trademark, patent, trade secret and other laws, and, as between you and Instagram, Instagram owns and retains all rights in the Instagram Content and the Service. You will not remove, alter or conceal any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Instagram Content and you will not reproduce, modify, adapt, prepare derivative works based on, perform, display, publish, distribute, transmit, broadcast, sell, license or otherwise exploit the Instagram Content.

6. The Instagram name and logo are trademarks of Instagram, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Instagram, except in accordance with our brand guidelines, available here: <http://help.instagram.com/customer/portal/articles/182487>. In addition, all page headers, custom graphics, button icons and scripts are service marks, trademarks and/or trade dress of Instagram, and may not be copied, imitated or used, in whole or in part, without prior written permission from Instagram.

7. Although it is Instagram’s intention for the Service to be available as much as possible, there will be occasions when the Service may be interrupted, including, without limitation, for scheduled maintenance or upgrades, for emergency repairs, or due to failure of telecommunications links and/or equipment. Also, Instagram reserves the right to remove any Content from the Service for any reason, without prior notice. Content removed from the Service may continue to be stored by Instagram, including, without limitation, in order to comply with certain legal obligations, but may not be retrievable without a valid court order. Consequently, Instagram encourages you to maintain your own backup of your Content. In other words, Instagram is not a backup service and you agree that you will not rely on the Service for the purposes of Content backup or storage. Instagram will not be liable to you for any modification, suspension, or discontinuation of the Services, or the loss of any Content. You also acknowledge that the Internet may be subject to breaches of security and that the submission of Content or other information may not be secure.

8. You agree that Instagram is not responsible for, and does not endorse, Content posted within the Service. Instagram does not have any obligation to prescreen, monitor, edit, or remove any Content. If your Content violates these Terms of Use, you may bear legal responsibility for that Content.

9. Except as otherwise described in the Service’s Privacy Policy, available at <http://instagram.com/legal/privacy/>, as between you and Instagram, any Content will be non-confidential and non-proprietary and we will not be liable for any use or disclosure of Content. You acknowledge and agree that your relationship with Instagram is not a confidential, fiduciary, or other type of special relationship, and that your decision to submit any Content does not place Instagram in a position that is any different from the position held by members of the general public, including with regard to your Content. None of your Content will be subject to any obligation of confidence on the part of Instagram, and Instagram will not be liable for any use or disclosure of any Content you provide.

10. It is Instagram’s policy not to accept or consider content, information, ideas, suggestions or other materials other than those we have specifically requested and to which certain specific terms, condi-

tions and requirements may apply. This is to avoid any misunderstandings if your ideas are similar to those we have developed or are developing independently. Accordingly, Instagram does not accept unsolicited materials or ideas, and takes no responsibility for any materials or ideas so transmitted. If, despite our policy, you choose to send us content, information, ideas, suggestions, or other

materials, you further agree that Instagram is free to use any such content, information, ideas, suggestions or other materials, for any purposes whatsoever, including, without limitation, developing and marketing products and services, without any liability or payment of any kind to you.

Reporting Copyright and Other IP Violations

1. We respect other people's rights, and expect you to do the same.
2. We provide you with tools to help you protect your intellectual property rights. To learn more about how to report claims of intellectual property infringement, visit: <http://help.instagram.com/customer-portal/articles/270501>.
3. If you repeatedly infringe other people's intellectual property rights, we will disable your account when appropriate.

Disclaimer of Warranties

THE SERVICE, INCLUDING, WITHOUT LIMITATION, INSTAGRAM CONTENT, IS PROVIDED ON AN "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER INSTAGRAM NOR ITS PARENT COMPANY NOR ANY OF THEIR EMPLOYEES, MANAGERS, OFFICERS OR AGENTS (COLLECTIVELY, THE "INSTAGRAM PARTIES") MAKE ANY REPRESENTATIONS OR WARRANTIES OR ENDORSEMENTS OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, AS TO: (A) THE SERVICE; (B) THE INSTAGRAM CONTENT; (C) USER CONTENT; OR (D) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO INSTAGRAM OR VIA THE SERVICE. IN ADDITION, THE INSTAGRAM PARTIES HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.

THE INSTAGRAM PARTIES DO NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED; THAT DEFECTS WILL BE CORRECTED; OR THAT THE SERVICE OR THE SERVER THAT MAKES THE SERVICE AVAILABLE IS FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES. THE INSTAGRAM PARTIES DO NOT MAKE ANY

REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) ON THE SERVICE IS ACCURATE, COMPLETE, OR USEFUL. YOU ACKNOWLEDGE THAT YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE INSTAGRAM PARTIES DO NOT WARRANT THAT YOUR USE OF THE SERVICE IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND THE INSTAGRAM PARTIES SPECIFICALLY DISCLAIM SUCH WARRANTIES. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU TO THE EXTENT

SUCH JURISDICTION'S LAW IS APPLICABLE TO YOU AND THESE TERMS OF USE. BY ACCESSING OR USING THE SERVICE YOU REPRESENT AND WARRANT THAT YOUR ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE SERVICE. THE INSTAGRAM PARTIES DO NOT ENDORSE CONTENT AND SPECIFICALLY DISCLAIM ANY RESPONSIBILITY OR LIABILITY TO ANY PERSON OR ENTITY FOR ANY LOSS, DAMAGE (WHETHER ACTUAL, CONSEQUENTIAL, PUNITIVE OR OTHERWISE), INJURY, CLAIM, LIABILITY OR OTHER CAUSE OF ANY KIND OR CHARACTER BASED UPON OR RESULTING FROM ANY CONTENT.

Limitation of Liability; Waiver

UNDER NO CIRCUMSTANCES WILL THE INSTAGRAM PARTIES BE LIABLE TO YOU FOR ANY LOSS OR DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES) THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE SERVICE; (B) THE INSTAGRAM CONTENT; (C) USER CONTENT; (D) YOUR USE OF, INABILITY TO USE, OR THE PERFORMANCE OF THE SERVICE; (E) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY THE INSTAGRAM PARTIES OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR ANY OTHER PARTY'S USE OF THE SERVICE; (F) ANY ACTION TAKEN IN CONNECTION WITH COPYRIGHT OR OTHER INTELLECTUAL PROPERTY OWNERS; (G) ANY ERRORS OR OMISSIONS IN THE SERVICE'S OPERATION; OR (H) ANY DAMAGE TO ANY USER'S COMPUTER, MOBILE DEVICE, OR OTHER EQUIPMENT OR TECHNOLOGY INCLUDING, WITHOUT LIMITATION, DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF THE INSTAGRAM PARTIES HAVE BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED IN WHOLE OR IN PART BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE SERVICE). IN NO EVENT WILL THE INSTAGRAM PARTIES BE LIABLE TO YOU OR ANYONE ELSE FOR LOSS, DAMAGE OR INJURY,

INCLUDING, WITHOUT LIMITATION, DEATH OR PERSONAL INJURY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT WILL THE INSTAGRAM PARTIES TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OR ACTION EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100.00).

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF INSTAGRAM'S ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NOT IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEB SITE, SERVICE, PROPERTY, PRODUCT OR OTHER CONTENT OWNED OR CONTROLLED BY THE INSTAGRAM PARTIES, AND YOU WILL HAVE NO RIGHTS TO ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEB SITE, PROPERTY, PRODUCT, SERVICE, OR OTHER CONTENT OWNED OR CONTROLLED BY THE INSTAGRAM PARTIES.

BY ACCESSING THE SERVICE, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

INSTAGRAM IS NOT RESPONSIBLE FOR THE ACTIONS, CONTENT, INFORMATION, OR DATA OF THIRD PARTIES, AND YOU RELEASE US, OUR DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM YOU HAVE AGAINST ANY SUCH THIRD PARTIES.

Indemnification

You (and also any third party for whom you operate an account or activity on the Service) agree to defend (at Instagram's request), indemnify and hold the Instagram Parties harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with any of the following (including as a result of your direct activities on the Service or those conducted on your behalf): (i) your Content or your access to or use of the Service; (ii) your breach or alleged breach of these Terms of Use; (iii) your violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; (iv) your violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; or (v) any misrepresentation made by you. You will cooperate as fully required by Instagram in the defense of any claim. Instagram reserves the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of Instagram.

Arbitration

Except if you opt-out or for disputes relating to: (1) your or Instagram's intellectual property (such as trademarks, trade dress, domain names, trade secrets, copyrights and patents); (2) violations of the API Terms; or (3) violations of provisions 13 or 15 of the Basic Terms, above ("Excluded Disputes"), you agree that all disputes between you and Instagram (whether or not such dispute involves a third party) with regard to your relationship with Instagram, including without limitation disputes related to these Terms of Use, your use of the Service, and/or rights of privacy and/or publicity, will be resolved by binding, individual arbitration under the American Arbitration Association's rules for arbitration of consumer-related disputes and you and Instagram hereby expressly waive trial by jury. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules. You may bring claims only on your own behalf. Neither you nor Instagram will participate in a class action or classwide arbitration for any claims covered by this agreement. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if Instagram is a party to the proceeding. This dispute

resolution provision will be governed by the Federal Arbitration Act. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either Instagram or you can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will not have authority to award damages, remedies or awards that conflict with these Terms of Use.

You may opt out of this agreement to arbitrate. If you do so, neither you nor Instagram can require the other to participate in an arbitration proceeding. To opt out, you must notify Instagram in writing within 30 days of the date that you first became subject to this arbitration provision. You must use this address to opt out: Instagram, LLC ATTN: Arbitration Opt-out 1601 Willow Rd. Menlo Park, CA 94025 You must include your name and residence address, the email address you use for your Instagram account, and a clear statement that you want to opt out of this arbitration agreement. If the prohibition against class actions and other claims brought on behalf of third parties contained above is found to be unenforceable, then all of the preceding language in this Arbitration section will be null and void. This arbitration agreement will survive the termination of your relationship with Instagram.

Time Limitation on Claims

You agree that any claim you may have arising out of or related to your relationship with Instagram must be filed within one year after such claim arose; otherwise, your claim is permanently barred.

Governing Law & Venue

These Terms of Use are governed by and construed in accordance with the laws of the State of California, without giving effect to any principles of conflicts of law AND WILL SPECIFICALLY NOT BE GOVERNED BY THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, IF OTHERWISE APPLICABLE. For any action at law or in equity relating to the arbitration provision of these Terms of Use, the Excluded Disputes or if you opt out of the agreement to arbitrate, you agree to resolve any dispute you have with Instagram exclusively in a state or federal court located in Santa Clara, California, and to submit to the personal jurisdiction of the courts located in Santa Clara County for the purpose of litigating all such disputes. If any provision of these Terms of Use is held to be unlawful, void, or for any reason unenforceable during arbitration or by a court of competent jurisdiction, then that provision will be deemed severable from these Terms of Use and will not affect the validity and enforceability of any remaining provisions. Instagram's failure to insist upon or enforce strict performance of any provision of these Terms will not be construed as a waiver of any provision or right. No waiver of any of these Terms will be deemed a further or continuing waiver of such term or condition or any other term or condition. Instagram reserves the right to change this dispute resolution provision, but any such changes will not apply to disputes arising before the effective date of the amendment. This dispute resolution provision will survive the termination of any or all of your transactions with Instagram.

Entire Agreement

If you are using the Service on behalf of a legal entity, you represent that you are authorized to enter into an agreement on behalf of that legal entity. These Terms of Use constitute the entire agreement between you and Instagram and governs your use of the Service, superseding any prior agreements between you and Instagram. You will not assign the Terms of Use or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of Instagram. Any purported assignment or delegation by you without the appropriate prior written consent of Instagram will be null and void. Instagram may assign these Terms of Use or any rights hereunder without your consent. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid or otherwise unenforceable, the parties nevertheless agree that such portion will be deemed severable from these Terms of Use and will not affect the validity and enforceability of the remaining provisions, and the remaining provisions of the Terms of Use remain in full force and effect. Neither the course of conduct between the parties nor trade practice will act to modify the Terms of Use. These Terms of Use do not confer any third-party beneficiary rights.

Territorial Restrictions

The information provided within the Service is not intended for distribution to or use by any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Instagram to any registration requirement within such jurisdiction or country. We reserve the right to limit the availability of the Service or any portion of the Service, to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service or other feature that Instagram provides.

Software related to or made available by the Service may be subject to United States export controls. Thus, no software from the Service may be downloaded, exported or re-exported: (a) into (or to a national or resident of) any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading any software related to the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of, any such country or on any such list. The effective date of these Terms of Use is January 19, 2013. These Terms of Use were written in English (US). To the extent any translated version of these Terms of Use conflicts with the English version, the English version controls.

