



Social Media White Paper

AMERICAN PHOTOGRAPHIC ARTISTS

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THE APA WHITE PAPER:
SOCIAL MEDIA RIGHTS AND LIABILITIES FOR POSTED CONTENT ¹

June 24, 2013

Behance
Facebook
Flickr
Google+
Houzz
Instagram
LinkedIn
Picassa
Pinterest
Tumblr
Twitter
Vimeo
YouTube

Introduction

Professional photographers conduct their business within a vast world of social media opportunities. **Behance**, for example, is a portfolio or gallery presentation tool allowing the photographer to post or showcase material on-line for public or restricted viewing generally formatted in a portfolio or gallery context. Behance reaches tens of millions, if not hundreds of millions of viewers. **Facebook** is a social media platform, allowing the photographer to post material on-line for public or restricted viewing, generally in on line social media venue. Facebook has been reported to have more than one billion users. **Flickr**, which is owned by Yahoo, is an on line photo sharing web site, reportedly reaching 87 million people. **Houzz**, which has a more focused audience, is an architectural, interior, and landscape design presentation platform that formats photographic presentations of home design solutions in ideabooks. Unverified Wiki data

¹ Prepared by: James Lorin Silverberg, Esq., Admitted DC, MD, NY, The Intellectual Property Law Professional Corporation, Washington, D.C. This paper has been prepared solely for the APA Board, and is for informational purposes only. Reference should be made directly to the terms of each Website discussed herein for a complete and accurate account of the terms. This paper is not to be relied upon by third parties. It is not intended as, nor is it offered as, legal advice. It is not a solicitation or offer of representation. It does not create an attorney client relationship. Website terms may change subsequent to the date of this paper (6.24.2013) and such changes may render the contents of this paper untimely, inaccurate, and or incomplete. Interpretations of web site terms may also vary. **The reader is cautioned to rely solely upon the advice of their own attorney and not upon the contents of this paper as to the meaning of the terms of any website, or of any license, and as to the implications, if any, of the reader's use of any website.**

reports that there are more than 4.7 million user ideabooks that have been created on the site. **Instagram** is a photo and video sharing platform which has in excess of 100 million users. **LinkedIn**, a well known professional networking tool, has over 255 Million users, and serves as a platform that facilitates content posts which may include photographic materials. Picassa, which is owned by Google, is an online photo sharing application used to organize, edit, and share photos, including photo sharing within the Google+ community, which includes over 500 million users. **Pinterest** advertises itself as an on line tool to post (pin) material, and to organize material, on “boards.” Pinterest reportedly reaches 48.7 Million users. **Twitter** is a real-time information network of over 500 million users through which content can be “tweeted” to a user’s followers. **Vimeo** is an on line video sharing platform used by over 14 million users. **Youtube** is a searchable on line video sharing platform, with over 1 billion users.²

Professional photographers use these social media web sites for portfolio publication and exposure, for business-to-business networking, as a portal exhibition tool, for general marketing, for commentary on the photographic arts, as well as for incidental, semi-professional, and personal communication. The allure of social media sites is undeniable: the ability to reach billions of people, to communicate efficiently with business prospects, and to create an accessible channel to the photographer’s work for whatever professional or personal aspiration they may have. This APA white paper is designed to help APA alert photographers who may be unable to resist the attraction of social media opportunities to the possible consequences of participation in social media platforms. What are the consequences of their post?

The Formation of Your Relationship with Social Media Site

The rights and liabilities that attach to social media posts stem principally from the contractual relationship that the professional establishes with a social

² User statistics are from DMR, Digital Marketing Ramblings , <http://expandedramblings.com/index.php/resource-how-many-people-use-the-top-social-media/>. Statistics for Google+ are from Wikipedia.

media site. This relationship is typically formed through the use of “usage” or “click-through” agreements. Because, as a matter of law, contract formation requires that the parties “manifest assent” to an agreement, the sites will usually state, in sum and substance that, if you “use” the site, the “use” itself manifests agreement to, and creates a binding contract as to, the site’s terms.³ Click-through agreements may take various forms, sometimes existing merely through the site usage, and sometime occurring through a registration page, preliminary page, or through drop down menus or pop-up boxes. They sometime can be found in navigated pages. And they sometimes appear in a social media site in more than one page or site location, such as on Terms of Use, Privacy, Community Guideline, Settings, Preferences, third party sites, or other pages.

³ **Flickr (Yahoo)**, Terms of Service, (Para. 1) By accessing and using the Yahoo! Services, you accept and agree to be bound by the terms and provision of the TOS.

Houzz, Terms Of Use Agreement , 3.21.2013, “By using the Website, you agree to be bound by this Agreement. If you do not agree to these terms and conditions, please do not use the Website or any of the Information or Services.....”

Instagram (owned by Facebook), Terms of Use, 1.19.2013, “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.

Pinterest Business Terms of Service 6.21.2013. By creating a Commercial Account, or by accessing or using our Products, you agree to be bound by these Terms and by our Privacy Policy.

Picassa, Google+, (Google) Terms of Service 3.1.2012 “By using our Services, you are agreeing to these terms. Please read them carefully.”

Tumblr Terms of Service 3.22.2012 “By using or accessing the Services, you ("**Subscriber**" or "**you**") agree to become bound by all the terms and conditions of this Agreement. If you do not agree to all the terms and conditions of this Agreement, you shouldn't and aren't permitted to use the Services.”

Twitter 6.25.2012 Terms of Service Your access to and use of the Services are conditioned on your acceptance of and compliance with these Terms. By accessing or using the Services you agree to be bound by these Terms.

Vimeo, Terms of Service, 1.2013, “By registering as a member or by using the Vimeo Service in any way, you accept these Terms of Service ("Agreement"), which forms a binding agreement between you and Vimeo. If you do not wish to be bound by this Agreement, do not use the Vimeo Service.”

Youtube, Terms of Service, 6.9.2010, “By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Google's Privacy Policy, found at <http://www.google.com/intl/en/policies/privacy/> and incorporated herein by reference, and (3) YouTube's Community Guidelines, found at www.youtube.com/t/community_guidelines and also incorporated herein by reference. If you do not agree to any of these terms, the Google Privacy Policy, or the Community Guidelines, please do not use the Service.”

Terms of Use

The usual case involves site registration which requires the provision of identifying “user information,” followed by or involving a statement of “Terms of Use,” or “Terms of Service,” “User Agreement,” or “Statement of Rights and Responsibilities”⁴ to which the professional navigates, in order to select an “agree” or “do not agree” or similar hyperlink option, and by which the user manifests their assent to (or declines) the “TOU,” “UA,” “TOS,” “SRR” or terms of other appellation.⁵ These terms are frequently detailed, textually dense, and laden with terminology that is difficult to parse through computer graphic interfaces employed, and even when located the terms may be difficult to understand. The terms themselves can be many pages long. The terms may incorporate terms from other parts of the host’s site, for example, terms from a separate “privacy statement” which appear on different pages or sections of the host site. Some sites include in their terms additional rules from “Community Guidelines,” or from “Platform Policies” or other sections of their sites in which terms are posted.⁶ Some sites incorporate contractual licensing terms from

⁴ **Facebook**, Facebook Statement of Rights and Responsibilities 12.11.2012. See also Facebook “Data Use Policy,” “Platform Page,” “Facebook Platform Policies,” “Advertising Guidelines,” “Promotion guidelines,” Brand Permissions Center,” “How to Report Claims of Intellectual Property Infringement,” Pages Terms, and “Community Standards.”

Flickr (Yahoo) Terms of Service, 3.16.2012, (Para. 1) In addition, when using particular Yahoo! owned or operated services, you and Yahoo! shall be subject to any posted guidelines or rules applicable to such services, which may be posted and modified from time to time. All such guidelines or rules (including but not limited to our [Spam Policy](#)) are hereby incorporated by reference into the TOS. Yahoo! may also offer other services that are governed by different Terms of Service. In such cases the other terms of service will be posted on the relevant service to which they apply.

Instagram (owned by Facebook), 1.19.2013 Terms of Use; **Instagram** “Privacy Policy,” Instagram Community Guidelines.”

Vimeo, Terms of Service, 1.2013 **ENTIRE AGREEMENT:** This Agreement incorporates the following documents by reference: Privacy Policy Cookie Policy, Community Guidelines, Vimeo Pro Guidelines, Mobile App Addendum, Payment Addendum, Copyright and DMCA Policy.

⁵ **LinkedIn** 5.13.2013. By clicking “Join Now” (or “Join LinkedIn” or similar), you acknowledge that you have read and understood the terms and conditions of this Agreement and that you agree to be bound by all of its provisions. By clicking “Join Now,” you also consent to use electronic signatures and acknowledge your click of the “Join Now” button as one. Please note that the LinkedIn User Agreement and Privacy Policy are also collectively referred to as LinkedIn’s “Terms of Service.”

⁶ **Picassa, Google+**, (Google) Terms of Service 3.1.2012 “Our Services are very diverse, so sometimes additional terms or product requirements (including age requirements) may apply. Additional terms will be available with the relevant Services, and those additional terms become part of your agreement with us if you use those Services.” See Also, Google+ User Content and Conduct Policy.

sources that are not part of the site itself, such as “Creative Commons” licenses. Some sites incorporate terms from affiliated or related sites that would have to be reviewed on the other sites. This fact notwithstanding, site users routinely manifest their assent to terms without fully reading or understanding the terms, without reviewing applicable policies which may form a part of them, and without visiting other sites or reading the terms applicable from other sites.

Without regard to this difficulty, it is well established that these usage or click through agreements may be binding agreements. The photographer’s failure to read or understand the terms will not exonerate them from their deal. They may be expected to comply with any liabilities they have assumed, and any rights that they have extended, knowingly or unknowingly, in the host’s form agreements and in any other agreement that may be incorporated into or referenced by the host’s agreement. Furthermore, although it may seem, and may actually be, impossible, photographers would do well to carefully review all site terms within their grasp before agreeing to them, to monitor them for changes, and to consult with an attorney regarding their impact. Some of the major areas of concern that deserve particular attention are addressed below.

Parties and Beneficiaries

Fully understanding which parties are identified to an agreement is one of the beginning challenges to fully understanding the host’s terms, including any terms that are related. While the host is typically identified as a party to the terms, extensive complications with party identification frequently surface from the host agreement. The host agreement may extend its terms to “affiliated parties” or to “affiliates.” These affiliates may be identified as related web sites owned or controlled by the host.⁷ They may be identified as unrelated third

⁷ Vimeo, Terms of Service, 1.2013, PLEASE READ THIS DOCUMENT CAREFULLY. Vimeo, LLC ("Vimeo," "we," or "us") offers an online video sharing platform and community through its website located at Vimeo.com (the "Vimeo

parties or web sites owned or controlled by other entities.⁸ These other sites or entities may not be identified by name. Sometimes they are not identified in any readily discernable manner. The host may intend to forge future relationships with other entities or other sites, and include them under the rubric of affiliated parties. These may in fact be parties who do not currently exist as parties to the agreement, but who may be added in the future without the photographer knowing the fact when it transpires.

The host may also identify additional parties to, or beneficiaries of, the agreement. These may include “assigns” or “assignees.” An assignee might be a party with whom the host or affiliate does business, and to whom the host or affiliate grants rights or obligations that arise under the host agreement. Another class of beneficiaries may include licensees or sub-licensees. As with “affiliates,” assignees, licensees, and sub-licensees may be identified, or unidentified, leaving the photographer, in the latter case, with little or no understanding of who their agreement is with, or who the beneficiaries of the agreement actually are.

Site”) and related domains (including VimeoPRO.com), mobile applications, desktop applications, and PC television applications (collectively, the “Vimeo Service”).

YouTube, Terms of Service, 6.9.2010, (Para. 2) “The Service includes all aspects of YouTube, including but not limited to all products, software and services offered via the YouTube website, such as the YouTube channels, the YouTube “Embeddable Player,” the YouTube “Uploader” and other applications.”

⁸ **Facebook** 12.11.2012 (Para 18(1). “By “Facebook” we mean the features and services we make available, including through (a) our website at www.facebook.com and any other Facebook branded or co-branded websites (including sub-domains, international versions, widgets, and mobile versions); (b) our Platform; (c) social plugins such as the Like button, the Share button and other similar offerings and (d) other media, software (such as a toolbar), devices, or networks now existing or later developed.”

LinkedIn 5.13.2013 User Agreement (1. Introduction, Para B) You agree that by registering on LinkedIn, or by using our website, including our mobile applications, developer platform, premium services, or other information provided as part of the LinkedIn services (collectively “LinkedIn” or the “Services”), you are entering into a legally binding agreement.... “

YouTube, Terms of Service 6.9.2010, (Para. 2(B) “The Service may contain links to third party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, YouTube will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.”

“Plugins,” and third party services, may also obtain or provide access to content, in which case, the terms of those services may apply. Additionally, many hosts include their other “site users” as direct beneficiaries of their terms of use or services. Any analysis of the rights and liabilities which are being assumed by, or extended to the photographer must therefore be considered in the daunting context of each host, its affiliates, its assignees, licensees, sublicensees, and other site users. What arises is a complex relationship between the photographer, host, and other prospective entities and individuals with whom the photographer establishes, through the host agreement, a web of rights and liability obligations.

Rights Grants

Of significant concern to the photographer is whether the host, its affiliates, licensees, sub-licensees, and other site users obtain rights or licenses in the photographer’s posted content. The photographer’s copyright includes a bundle of rights. These include the right to reproduce a work in copies, the right to distribute copies, the right to publicly display their work, the right to publicly perform their work, and the right to make derivative works that are based upon or which incorporate pre-existing work.⁹ The Digital Millenium Copyright Act also extends to photographers certain additional rights in copyright management information, including rights concerning the identification of their authorship and licensing information.¹⁰ Use of the photographer’s rights without the

⁹ Title 17 United States Code: “Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following: (1) to reproduce the copyrighted work in copies or phonorecords; (2) to prepare derivative works based upon the copyrighted work; (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

¹⁰ Title 17 U.S.C. Section 1202(b), **Removal or Alteration of Copyright Management Information.**— No person shall, without the authority of the copyright owner or the law — (1) intentionally remove or alter any copyright management information, (2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or (3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law, knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

photographer's permission, and or removal of copyright management information (subject to various conditions) may be a violation of the copyright law. So as to avoid infringement claims, social media hosts are careful to provide for, if not always to clearly spell out, their rights to the photographer's posted content.

As a preamble to the very provisions by which they acquire their permissions to use the photographer's content, many hosts provide in their TOU or TOS the possibly misleading assurance that they assert no ownership in the photographer's content.¹¹ *Technically*, this may be true. The copyright law requires that a transfer of *ownership* of copyright be in writing, signed by the owner of the rights conveyed.¹² Absent the photographer's written assignment, the photographer will therefore retain *ownership* of the copyright. However, while the photographer will in fact typically retain "ownership" of their

¹¹ Behance Terms of Service, "Behance Inc does not claim any permanent ownership of Content you submit or make available for inclusion on the Service."

Facebook 12.11.2012 (Para. 2). "You own all of the content and information you post on Facebook..."

Flickr (Yahoo) Terms of Service, 3.16.2012, (Para. 9) "Yahoo! does not claim ownership of Content you submit or make available for inclusion on the Yahoo! Services."

Instagram. (owned by Facebook), Terms of Service, 1.19.2013 General Conditions, Rights Para 1." Instagram does not claim ownership of any Content that you post on or through the Service."

LinkedIn, User Agreement, (Para. 2) "You own the information you provide LinkedIn under this Agreement..."

Picassa, Google+, Terms of Service 3.1.2012 "You retain ownership of any intellectual property rights that you hold in that content. In short, what belongs to you stays yours."

Pinterest Business Terms of Service 6.21.2013. Para 2(a). "You retain all rights in, and are solely responsible for, the User Content you post to Pinterest."

Tumblr, Terms of Service, 3.22.2012 "Ownership: Subscribers retain ownership of all intellectual property rights in their Subscriber Content, and Tumblr and/or third parties retain ownership of all intellectual property rights in all Content other than Subscriber Content."

Twitter, Terms of Service, 6.25.2012, (Para. 1) You retain your rights to any Content you submit, post or display on or through the Services."

YouTube, Terms of Service 6.9.2010, (Para. 6(c) . "For clarity, you retain all of your ownership rights in your Content."

Vimeo, Terms of Service, 1.2013 "As between you and Vimeo, you own the video content ("videos") that you submit to the Vimeo Service."

¹² Title 17 U.S.C. Section 204(a) "A transfer of copyright ownership, other than by operation of law, is not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner's duly authorized agent."

copyrights in the social media context, they will typically be providing to the Host, and any party who the Host grandfathers under its terms, or who acquires interests through the host relationship, a “license” to use their work. In the same way one can own a condominium, but permit others who do not “own” it to lease it and reside within it, or in the same way one can own a car, but permit others who do not “own it” to drive it, one can “own” a copyright and, without giving up “ownership,” permit others to exploit it.

Difference Between Ownership And License

Though a license may not technically be a form of rights “ownership,” licenses may nevertheless convey prospectively extensive permissions to the host and others to use a work. And, the grant of a license may have consequences just as onerous as an assignment of ownership. The distinction between “ownership” of a right, and the “license” of a right, may therefore be somewhat immaterial to the photographer considering the expansiveness of some license grants. The assurance of rights ownership, i.e., that “you own your content,” may therefore be overshadowed by the consequence of the license itself. In fact, rather than being read as an assurance that the photographer has retained rights, these clauses might better be understood as the photographer’s assurance to the host that the photographer owns the rights in the posted content. In that light, the host would have recourse against the photographer if a claim were to arise because of defects in the photographer’s ownership claim.

License Agreements

The license agreements employed by most hosts provide for the prospectively extensive exploitation of rights in posted content.¹³ Frequently

¹³ **Behance**, Terms of Service, “By communicating with Behance, Inc., including submitting or sending Content, a Contribution, correspondence or other information or material to Behance (“Your Content”), you grant Behance, Inc. a limited license, for the period of time your portfolio of Your Content is published in Behance’s systems, to display the work royalty-free, unrestricted, and world-wide, across Behance’s sites, in search results, and in Behance-powered Galleries and Showcases. In some instances, media must be reformatted for display and incorporation into Behance’s galleries. As such, during this limited license, you allow Behance, Inc. to reproduce, modify, publish, translate, distribute,

perform and display Your Content (in whole or part), and/or to incorporate it in other works in any form, media, or technology now known or later developed. Such limited license also includes incorporating a Contribution, in whole or in part, into a Behance feature or in promotional or marketing materials (attributed properly to the artist)."

Facebook 12.11.2012 (Para 2(1)). For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give us the following permission, subject to your privacy and application settings: you grant us a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license to use any IP content that you post on or in connection with Facebook (IP License). See also, **Facebook** 12.11.2012 (Para. 18(7)) "By "use" we mean use, copy, publicly perform or display, distribute, modify, translate, and create derivative works of."

Flickr (Yahoo) Terms of Service, 3.16.2012 (Para 9) However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Yahoo! Services, you grant Yahoo! the following worldwide, royalty-free and non-exclusive license(s), as applicable: a. With respect to Content you submit or make available for inclusion on publicly accessible areas of Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Yahoo! Services solely for the purposes of providing and promoting the specific Yahoo! Group to which such Content was submitted or made available. Author's Notes: For "photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Yahoo! Services *other than Yahoo! Groups*, [emphasis added] the license is "solely for the purpose for which such Content was submitted or made available." *Authors Note: (para 9(c) provides: "Publicly accessible" areas of the Yahoo! Services are those areas of the Yahoo! network of properties that are intended by Yahoo! to be available to the general public."*

Houzz, Terms of Use Agreement, 3.21.2013 "***** you authorize us and our affiliates, licensees and sublicensees, without compensation to you or others, to copy, adapt, create derivative works of, reproduce, incorporate, distribute, publicly display or otherwise use or exploit such Content throughout the world in any format or media (whether now known or hereafter created) for the duration of any copyright or other rights in such Content, and such permission shall be perpetual and may not be revoked for any reason. Further, to the extent permitted under applicable law, you waive and release and covenant not to assert any moral rights that you may have in any Content posted or provided by you. "**** You further agree that we may use the posted or provided Content in any manner that we deem appropriate or necessary. "

Instagram (owned by Facebook), Terms of Use, Rights, (Para. 1) 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. See Also, Privacy Policy. 1.19.2013, "By using our Service you understand and agree that we are providing a platform for you to post content, including photos, comments and other materials ("**User Content**") to the Service and to share User Content publicly. This means that other Users may search for, see, use, or share any of your User Content that you make publicly available through the Service, consistent with the terms and conditions of this Privacy Policy and our Terms of Use (which can be found at <http://instagram.com/legal/terms/>." *See also*, Privacy Policy "Any information or content that you voluntarily disclose for posting to the Service, such as User Content, becomes available to the public, as controlled by any applicable privacy settings that you set. To change your privacy settings on the Service, please change your profile setting. Once you have shared User Content or made it public, that User Content may be re-shared by others."

LinkedIn, User Agreement, (Para. 2). "Additionally, you grant LinkedIn a nonexclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicenseable, fully paid up and royalty-free right to us to copy, prepare derivative works of, improve, distribute, publish, remove, retain, add, process, analyze, use and commercialize, in any way now known or in the future discovered, any information you provide, directly or indirectly to LinkedIn, including, but not limited to, any user generated content, ideas, concepts, techniques and/or data to the services, you submit to LinkedIn, without any further consent, notice and/or compensation to you or to any third parties." See also, LinkedIn User Agreement, 5.13.2013, (Para.9(I)) We may freely assign or delegate all rights and obligations under the Agreement, fully or partially without notice to you. We may also substitute, by way of unilateral novation, effective upon notice to you, LinkedIn Corporation for any third party that assumes our rights and obligations under this Agreement.

Picassa, Google+, (Google) Terms of Service, 3.1.2012 "When you upload or otherwise submit content to our Services, you give Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content. The rights you grant in this license are for the limited purpose of operating, promoting, and improving our Services, and to develop new ones. This license continues even if you stop using our Services (for example, for a business listing you have added to Google Maps). Some Services may offer you ways to access and remove content that has been provided to that Service. *Author's note: Although it is expressed as if it were a "limitation," the suggestion or assurance in these terms that the license is only for the "limited" purpose of Google operating Google services and new services might be construed to permit Google to do, without limitation, whatever it wished with the posted content.*

Pinterest Business Terms of Service 61.21.2013 (Para 2(b)) "How Pinterest and other users can use your content. You grant Pinterest and its users a non-exclusive, royalty-free, transferable, sublicensable, worldwide license to use, store, display, reproduce, re-pin, modify, create derivative works, perform, and distribute your User Content on Pinterest solely for the purposes of operating, developing, providing, and using the Products. Nothing in these Terms shall restrict other legal rights Pinterest may have to User Content, for example under other licenses. See also Pinterest Privacy Policy 6.21.2013 (Para. 1) "When you sign up for or use our products, you voluntarily give us certain information. This can include your name, profile photo, pins, comments, likes, email address you used to sign up, and any other information you provide us. If you're using Pinterest on your mobile device, you can also choose to provide us with location data."

Tumblr, Terms of Service 3.22.2012 When you transfer Subscriber Content to Tumblr through the Services, you give Tumblr a non-exclusive, worldwide, royalty-free, sublicensable, transferable right and license to use, host, store, cache, reproduce, publish, display (publicly or otherwise), perform (publicly or otherwise), distribute, transmit, modify, adapt (including, without limitation, in order to conform it to the requirements of any networks, devices, services, or media through which the Services are available), and create derivative works of (including, without limitation, by Reblogging, as defined below), such Subscriber Content. The rights you grant in this license are for the limited purpose of operating the Services in accordance with their functionality, improving the Services, and allowing Tumblr to develop new Services. The reference in this license to "derivative works" is not intended to give Tumblr itself a right to make substantive editorial changes or derivations, but does enable Tumblr Subscribers to redistribute Subscriber Content from one Tumblr blog to another in a manner that allows Subscribers to, e.g., add their own text or other Content before or after your Subscriber Content ("Reblogging"). *See Also* "Privacy Policy User Content: By default, all sharing through the Services is public, and when you provide us with content it is published so that anyone can view it. Although we do provide tools, like password-protected blogs, that let you publish content privately, you should assume that anything you publish is publicly accessible unless you have explicitly selected otherwise. Content published and shared publicly is accessible to everyone, including search engines, and you may lose any privacy rights you might have regarding that content. In addition, information shared publicly may be copied and shared throughout the Internet, including through features native to the Services, such as "Reblogging." While you are free to remove published pieces of content from or delete your Account, because of the nature of Internet sharing, the strong possibility of Reblogging of your content by others, and technological limitations inherent to the Services, copies of that content may exist elsewhere and be retained indefinitely, including in our systems."

Twitter, Terms of Service, 6.25.2012 (Para. 5) "By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed)." *See also* (Para. 5) Such additional uses by Twitter, or other companies, organizations or individuals who partner with Twitter, may be made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services. "See also, (Para.5) "We may modify or adapt your Content in order to transmit, display or distribute it over computer networks and in various media and/or make changes to your Content as are necessary to conform and adapt that Content to any requirements or limitations of any networks, devices, services or media."

Vimeo, Terms of Service, 1.2013, (Para 9.1) "By submitting a video, you grant Vimeo and its affiliates a limited, worldwide, non-exclusive, royalty-free license and right to copy, transmit, distribute, publicly perform and display (through all media now known or hereafter created), and make derivative works from your video for the purpose of (i) displaying the video within the Vimeo Service; (ii) displaying the video on third party websites and applications through a video embed or Vimeo's API subject to your video privacy choices; (iii) allowing other users to play, download, and embed on third party websites the video, subject to your video privacy choices; (iii) promoting the Vimeo Service, provided that you have made the video publicly available; and (iv) archiving or preserving the video for disputes, legal proceedings, or investigations. See Also, Para 9.2 Non-video content "You grant Vimeo and its affiliates a worldwide, perpetual, irrevocable, non-exclusive, royalty-free license and right to copy, transmit, distribute, publicly perform and display (through all media now known or hereafter created), and make derivative works from your non-video content. In addition, you waive any so-called "moral rights" in your non-video content."

YouTube Terms of Service, 6.9.2010, (Para. 6 (c)) "However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels."

these licenses are worldwide. They typically provided for no compensation to the photographer. They are sometimes irrevocable. The host is sometimes assuming the right to post material on its site and on affiliated sites,¹⁴ both those that are known, and those that are unknown. Affiliates may themselves obtain the right to post content provided to the host. In these instances the host agreement may defer to the affiliate agreements for what controls apply to the use of your content.¹⁵ The hosts will frequently assume the right to assign, transfer, license or sub-license rights to third parties in the user's general grant of

¹⁴ **Instagram (owned by Facebook)**, Privacy Policy, 1.19.2013, We may share User Content and your information (including but not limited to, information from cookies, log files, device identifiers, location data, and usage data) with businesses that are legally part of the same group of companies that Instagram is part of, or that become part of that group ("Affiliates"). Affiliates may use this information to help provide, understand, and improve the Service (including by providing analytics) and Affiliates' own services (including by providing you with better and more relevant experiences). But these Affiliates will honor the choices you make about who can see your photos. *Author's Note: This might appear to be based on the photographer's initial setting for the content which allowed either public or approved user viewing.*

Twitter, Terms of Service, 6.25.2012 (Para. 5) ".You agree that this license includes the right for Twitter to provide, promote, and improve the Services and to make Content submitted to or through the Services available to other companies, organizations or individuals who partner with Twitter for the syndication, broadcast, distribution or publication of such Content on other media and services, subject to our terms and conditions for such Content use."

¹⁵ **Facebook** 12.11.2012 Para 2(3)). When you use an application, the application may ask for your permission to access your content and information as well as content and information that others have shared with you. We require applications to respect your privacy, and your agreement with that application will control how the application can use, store, and transfer that content and information.

Houzz Terms of Use Agreement 3.21.2013 The Website may contain links to other websites for your convenience. We do not control the linked websites or the content provided through such websites, and we have not reviewed, in their entirety, such websites. Your use of linked websites is subject to the privacy practices and terms of use established by the specific linked website, and we disclaim all liability for such use. The fact that we offer such links does not indicate any approval or endorsement by us of any linked website or any material contained on any linked website, and we disclaim any such approval or endorsement.

LinkedIn, User Agreement (Para 4(B)). LinkedIn may include links to third party web sites ("Third Party Sites") on www.linkedin.com, developer.linkedin.com, and elsewhere. LinkedIn also enables third party developers ("Platform Developers") to create applications ("Platform Applications") that provide features and functionality using data and developer tools made available by LinkedIn through its developer platform. You are responsible for evaluating whether you want to access or use a Third Party Site or Platform Application. *You should review any applicable terms or privacy policy of a Third Party Site or Platform Application before using it or sharing any information with it, because you may give the third-party permission to use your information in ways we would not.* [emphasis added]. LinkedIn is not responsible for and does not endorse any features, content, advertising, products or other materials on or available from Third Party Sites or Platform Applications. LinkedIn also does not screen, audit, or endorse Platform Applications. Accordingly, if you decide to use Third Party Sites or use Platform Applications, you do so at your own risk and agree that your use of any Platform Application is on an "as-is" basis without any warranty as to the Platform Developer's actions, and that this Agreement does not apply to your use of any Third Party Site or Developer Application.

Pinterest, Business Terms of Service 6.21.2013 Para 6 "Third-party Links, Sites and Services) Our Products may contain links to third-party websites, advertisers, services, special offers, or other events or activities that are not owned or controlled by Pinterest. We do not endorse or assume any responsibility for any such third-party sites, information, materials, products, or services. If you access any third party website, service, or content from Pinterest, you do so at your own risk and you agree that Pinterest will have no liability arising from your use of or access to any third-party website, service, or content."

permissions, or in separate provisions.¹⁶ Although some sites specifically restrict their *user's* use of content, for example to use within the host's services,¹⁷ or to

¹⁶ **Houzz**, Terms of Use Agreement, 3.21.2013 "Miscellaneous **** Houzz may assign, transfer, or delegate this Agreement or any right or obligation or remedy hereunder in its sole discretion.****"

Instagram (owned by Facebook), Terms of Service, 1.19.2013, "Instagram may assign these Terms of Use or any rights hereunder without your consent."

Pinterest Business Terms of Service 6.21.2013 (Para 12) "Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by Pinterest without restriction. Any attempted transfer or assignment in violation hereof shall be null and void."

Tumblr, Terms of Service, 3.22.2012, (Para. 18) "Tumblr may assign this Agreement in whole or in part at any time without your consent."

YouTube, Terms of Service, 6.9.2010 (Para. 13) "These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by YouTube without restriction."

¹⁷ **Flickr (Yahoo!)**, Terms of Service 3.16.2012, (Para. 18) Except as expressly permitted by applicable law or as authorized by Yahoo! or the applicable licensor (such as an advertiser), you agree not to modify, rent, lease, loan, sell, distribute, transmit, broadcast, publicly perform or create derivative works based on the Yahoo! Services, such Content or the Software, in whole or in part." See also, (Para. 12) "You agree not to reproduce, duplicate, copy, sell, trade, resell or exploit for any commercial purposes, any portion or use of, or access to, the Yahoo! Services (including Content, advertisements, Software and your Yahoo! ID)."

Instagram (owned by Facebook) Privacy Policy "What Not To Do," (Para 1)" Don't share photos or videos that aren't yours. This includes other people's posts, and/or things that you have copied or collected from the Internet." *Author's Note: Absent provisions to the contrary, Instagram users would not appear as 1.1.9.2013, to have provisions in the Terms of Service or Privacy Policy that specifically allow them to use posted material.*

LinkedIn, 5.13.2013 User Agreement, (Para. 3) On the condition that you comply with all your obligations under this Agreement, including, but not limited to, the Do's and Don'ts listed in Section 10, we grant you a limited, revocable, nonexclusive, nonassignable, nonsublicenseable license and right to access the Services, through a generally available web browser, mobile device or LinkedIn authorized application (but not through scraping, spidering, crawling or other technology or software used to access data without the express written consent of LinkedIn or its Members), *view information and use the Services that we provide on LinkedIn webpages and in accordance with this Agreement. Any other use of LinkedIn contrary to our mission and purpose (such as seeking to connect to someone you do not know or trust, or to use information gathered from LinkedIn commercially unless expressly authorized by LinkedIn) is strictly prohibited and a violation of this Agreement.* [emphasis added]. We reserve all rights not expressly granted in this Agreement, including, without limitation, title, ownership, intellectual property rights, and all other rights and interest in LinkedIn and all related items, including any and all copies made of the LinkedIn website. LinkedIn further provides, LinkedIn User Agreement, (Para 10) Dos and Donts, (Para. B(10)). "B. Don't Undertake the following: **** Duplicate, license, sublicense, publish, broadcast, transmit, distribute, perform, display, sell, rebrand, or otherwise transfer information found on LinkedIn (excluding content posted by you) except as permitted in this Agreement, LinkedIn's developer terms and policies, or as expressly authorized by LinkedIn.

Picassa, Google+, Terms of Service 3.1.2012, Using our Services does not give you ownership of any intellectual property rights in our Services or the content you access. You may not use content from our Services unless you obtain permission from its owner or are otherwise permitted by law."

Tumblr, Terms of Service 3.22.2012 "As a Subscriber of the Services, Tumblr grants you a worldwide, non-exclusive, non-sublicensable, and non-transferable license to download, store, view, display, perform, redistribute, and create derivative works of Content solely in connection with your use of, and in accordance with the functionality and restrictions of, the Services (including, without limitation, Paid Services, as defined below)." *Author's Note: It may not be clear what the parameters are under the restriction that the use be "in connection with the Service."*

Twitter 6.25.2013, Terms of Service . Except as permitted through the Services, these Terms, or the terms provided on dev.twitter.com, you have to use the Twitter API if you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Content or Services. [emphasis added]

Vimeo, Terms of Service, 1.2013 (Para 9.1 Videos) "**LICENSE TO OTHER USERS:** You further grant all users of the Vimeo Service permission to view your videos for their personal, non-commercial purposes. This includes the right to

use within the host's service with very limited exception,¹⁸ in various circumstances other "site users" are entitled to post or "use" the photographers content.¹⁹ It is not always clear whether these rights are limited to use on the host

copy and make derivative works from the videos solely to the extent necessary to view the videos. The foregoing licenses are in addition to any license you may decide to grant (e.g., a Creative Commons license)." *See also*, 9.2 Non-video Content "You further grant all users of the Vimeo Service permission to view your non-video content for their personal, non-commercial purposes. If you make suggestions to Vimeo on improving or adding new features to the Vimeo Service, Vimeo shall have the right to use your suggestions without any compensation to you."

YouTube Terms of Service 6.9.2010 (Para 6 (c) "You also hereby grant each user of the Service a non-exclusive license to access your Content *through the Service*, [emphasis added] and to use, reproduce, distribute, display and perform such Content as permitted *through the functionality of the Service* [emphasis added] and under these Terms of Service." *See Also*, (Para 5(B) pertaining to users' rights in content: "You may access Content for your information and personal use solely as *intended through the provided functionality of the Service* [emphasis added] and as permitted under these Terms of Service. You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content. *You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content.* [emphasis added]. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content." *See also* Para 4(A) You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).

¹⁸ **Houzz**, Terms of Use Agreement, 3.21.2013 "The services made available on, by or through the Website, which include or may include, without limitation, Houzz registration, ideabooks, message boards and involvement in Houzz events (collectively, the "Services"), as well as any information provided on, by or through the Website or as part of or in connection with the Services or otherwise, including but not limited to data, text, graphics, designs, logos, images, audio/visual materials, links and references (collectively, the "Information"), *are provided for personal use only and not for any for-profit or commercial activities or purpose or for resale, except as expressly permitted herein. Without the written consent of Houzz, no Information or any other Houzz materials or property may be copied, reproduced, displayed, republished, downloaded, posted, digitized, translated, modified, transmitted, distributed or commercially exploited in any way, except as expressly permitted herein.* [emphasis added] ****Houzz permits you to view and print a reasonable number of copies of web pages located on the Website for your own personal use, but not for any for-profit or commercial purpose or for resale; provided that (a) you retain all trademark, copyright, and other proprietary notices contained in the original materials, (b) you provide attribution to Houzz, (c) the material is printed in its entirety without modification, reformatting or adaptation of any kind, and (d) any such copies are subject to the terms and conditions of this Agreement and remain the property of Houzz. *You understand and agree that you may not authorize any Information to be reproduced, modified, displayed, performed, transferred, distributed or otherwise used by any third party, and you agree that you will take all reasonable steps to prevent any unauthorized reproduction and/or other use of the Information.* [emphasis added]. You agree to advise Houzz promptly of any such unauthorized use of which you are aware. Failure to abide by these conditions will immediately terminate this permission and may result in the infringement of the copyrights and/or trademarks and other proprietary rights of Houzz or others. *See Also* "Acceptable Use Policy" "You agree not to use the Information, Services or the Website to take any action or actions that **** (j) sublicense, sell, rent, lease, transfer, assign, or convey any rights under this Agreement to any third party, or otherwise commercially exploit or profit from the Information or content of the Website, or any portion thereof, in any manner whatsoever, except as expressly permitted herein...."

¹⁹ **Instagram** (owned by Facebook), 1.19.2013 Privacy Center, Controlling Your Visibility,"If a private user shares a photo to a social network (such as Twitter, Facebook, Foursquare, etc.) using Instagram, the image will be visible on that network and the permalink will be active. In other words, the photo will be publicly accessible by anyone who has access to the image's direct link/URL."

Pinterest, Business Terms of Service. 6.21.2013 Para 1(b). Subject to these Terms and our policies (including our Acceptable Usage Policy), we grant you a limited, non-exclusive, non-transferable, and revocable license to use our Products. *Authors Note: Pinterest's definition of products is set for in the terms as "Pinterest's website, products, and services ("Products")." "User Content" is anything the photographer posts on the "Products," i.e., including the website, and therefore "Products" might appear to include "User Content." See also discussion of Para 2(b). It is not clear how to reconcile this broad permission with the following clause at Para 2(d)(i) "Except as expressly provided in these Terms, you agree not to use, modify, reproduce, distribute, sell, license, or otherwise use our Products without our permission." If the para2(b) allows commercial use, this restriction would not seem to prohibit commercial use, although it is not clear to the Author that it should be read otherwise.*

site, and with some hosts may allow use of the content off of the site in other media as well.²⁰ These license terms may go well beyond anything being imagined by the Photographer, and permitted uses may be entirely unexpected.

Restricting Use of Content Through Preferences or Settings

The photographer's ability to establish personal settings for content usage poses an ostensible solution for content control. It should be noted, however, that the host may retain licensed rights entirely apart from, or which are not controlled by personal settings. Where settings do affect content usage, one might be careful to consider the extent to which control can actually be exercised. In the context of social media posts, the usual objective of which is to publish and expose the work to millions of Internet users around the world, "social media privacy" might be considered an oxymoron.²¹ "Privacy" settings typically provide for *waiivers* of privacy and for wide dissemination of the content, provide for limited restrictions on the host's use of material, frequently leave posted content on the Internet long after the photographer discontinues use of a site, and allow for various types of continued residual use. Many hosts warn that any real publication of material on the site is unlikely to preserve any true measure of privacy, the alternative to which is the photographer's determination not to use the site, or to use it under conditions of publication which preserve privacy but

²⁰ **Facebook** 12.11.2012 (Para 2(4)). "When you publish content or information using the Public setting, it means that *you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture).*"[emphasis added]. **Facebook** 12.11.2012 (Para. 18(7)) "By "use" we mean use, copy, publicly perform or display, distribute,

Tumblr, Terms of Service, 3.22.2012 You also agree that this license includes the right for Tumblr to make all publicly-posted Content available to third parties selected by Tumblr, so that those third parties can distribute and/or analyze such Content on other media and services. *Author's Note: This permission appears to give Tumblr authorization to grant extensive use of content to site users, however, Tumblr's user grant actually appears to be more limited than what this enables.*

²¹ **Facebook** 12.11.2012 (Para 2(4)). "When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture)."

Pinterest, See Privacy Policy 61.21.2013. *Author's Note: Pinterst Privacy policy states that the profile page allows the photographer to link their Pinterest account to Facebook or Twitter or other services and to publish activity to those services. Pinterest also allows the creation of "secret" boards. However participants in the board may choose to make the contents available to any one else thereby eviscerating any privacy pertaining to the content.*

which may not meet the photographer's objectives for publication under which they maintain controls.²²

Creative Commons Licenses

Some hosts offer "Creative Commons" licenses that the photographer may employ to control content usage.²³ But, upon review of these, one might conclude that they pose more content control problems than they solve. The Creative Commons licenses generally permit extensive use of the photographer's work. For example, they permit others to remix, tweak, and build upon the work, and to disseminate it, for commercial and noncommercial purposes, but subject to certain conditions. The Creative Commons licenses generally require that "attribution" be given to the photographer. The licenses are next broken down into "commercial" and "noncommercial" permissions, although the term noncommercial is not defined. (And one might note that even noncommercial uses may compete with, or render commercially worthless, the photographer's retained right to commercially exploit the work). Both the commercial and noncommercial attribution licenses are offered in three variations, 1) Revisions can be made to the work, 2) Revisions can be made to the works but the derivative author must agree to identical use of their work, and 3) Revisions cannot be made to the work that is being redistributed.²⁴ In short, these licenses

²² **Twitter Authors Note:** 6.21.2013, *Account Settings for Twitter allow Public [visible to anyone] and Private [visible to approved followers] Tweets, Twitter states:* "When you protect your Tweets, the following restrictions are put in place: People will have to request to follow you; each follow request will need approval. ****Your Tweets will only be visible to users you've approved. Other users will not be able to retweet your Tweets. **** Protected Tweets will not appear in Twitter search or Google search. @Replies you send to people who aren't following you will not be seen by those users (because you have not given them permission to see your Tweets). You cannot share permanent links to your Tweets with anyone other than your approved followers." *Author's Note:* it is not clear that the foregoing is a restriction on licenses granted to Twitter, as opposed to Twitter "followers."

²³ Behance, Terms of Service, **Copyright Settings**, "For the greatest exposure, we suggest you publish under a Creative Commons License. Learn More Here. *Author's Note:* the User is requested to choose one of the following settings: " **CREATIVE COMMONS LICENSE [attribution, NONCOMMERCIAL, No DERIVATIVES]** (Recommended. This will allow you to maximize your exposure) Allow commercial uses of your work Allow modifications of your work [adds derivative use] **NO POSTING OR USAGE WITHOUT EXPLICIT PERMISSION** (Not recommended. This will limit your exposure) **IMPORTANT NOTE:** By selecting this option, you are choosing not to allow ANY posting/use of your work (by any third party, blogs, etc) without explicit permission."

²⁴ Creative Commons Licenses: "**Attribution CC BY** This license lets others distribute, remix, tweak, and build upon your work, even commercially, as long as they credit you for the original creation. This is the most accommodating of licenses offered. Recommended for maximum dissemination and use of licensed materials. **Attribution-ShareAlike CC BY-SA**

allow for prospectively extensive use of the photographer's work, doing little to restrict use as to a particular media, territory, or duration, the main restrictions being that attribution will be required, that editing will or will not be permitted, and use will be either commercial or non-commercial.

Terminating Use of Content

The photographer's ability to terminate the use of their content after the content has been posted on a host site introduces a separate series of concerns. Where the photographer has agreed to an irrevocable license to use their material, that license may not be rescinded and may endure perpetually for the photographer's life, the life of the copyright which might survive them, and ultimately until the photographer's work falls into the public domain and can no longer be controlled at all, even if the photographer terminates use of the site or their agreement with the site.²⁵ In some instances the host will suggest that the

This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. This license is often compared to "copyleft" free and open source software licenses. All new works based on yours will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects. **Attribution-NoDerivs CC BY-ND** This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you. **Attribution-NonCommercial CC BY-NC** This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms. **Attribution-NonCommercial-ShareAlike CC BY-NC-SA** This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms. **Attribution-NonCommercial-NoDerivs CC BY-NC-ND** This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially."

²⁵ **Houzz** Terms of Use Agreement 3.21.2013 " **** you authorize us and our affiliates, licensees and sublicensees, without compensation to you or others, to copy, adapt, create derivative works of, reproduce, incorporate, distribute, publicly display or otherwise use or exploit such Content throughout the world in any format or media (whether now known or hereafter created) for the duration of any copyright or other rights in such Content, and such permission shall be perpetual and may not be revoked for any reason. [emphasis added].

LinkedIn, User Agreement, Para 7(c) Effect of termination, "Upon termination of your LinkedIn account, you lose access to the Services. The terms of this Agreement shall survive any termination, except Section 3 ("Your Rights") and Sections 4(a) (b) and (d) ("Our Rights and Obligations")." [Author's Note: Among the terms that survive include those set forth at paragraph 2(B), namely, the photographer's grant of the right to LinkedIn to continue using the Photographer's content.]

Picassa, Google+ Terms of Service, 3.1.2012, "This license continues even if you stop using our Services." Author's note: the referred to license that continues is to: "Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content."

Tumblr, Terms of Service 3.22.2012, "Note also that this license to your Subscriber Content continues even if you stop using the Services, primarily because of the social nature of Content shared through the Services - when you post

host's right to use the content may be terminated.²⁶ But termination may be limited with important exceptions. Many hosts will point out that termination of the photographer's use of the material on the host site may not terminate use of the material on affiliated sites. Some hosts indicate that the termination may not terminate their affiliates or sub-licensees use of the material. Additionally, some hosts terms of use establish that if a site user has used the photographers' posted material, termination by the photographer of their use of the material on the site will not effect a termination by the site user who has reposted or used the photographer's material before the photographer's termination.²⁷ This,

something publicly, others may choose to comment on it, making your Content part of a social conversation that cannot later be erased without retroactively censoring the speech of others."

²⁶ **Flickr (Yahoo!)** Terms of Service, 3.16.2012 (Para. 6) "This license exists only for as long as you elect to continue to include such Content on the Yahoo! Services and will terminate at the time you remove or Yahoo! removes such Content from the Yahoo! Services." *See also* (Para 15) "Termination of your Yahoo! account includes any or all of the following: *** (b) deletion of your password and all related information, files and content associated with or inside your account (or any part thereof)"

Vimeo, Terms of Service, 1.2013 (Para 9.1 Videos) DURATION OF LICENSES: The above licenses will continue unless and until you remove your videos from the Vimeo Service, in which case the licenses will terminate within a commercially reasonable period of time. Notwithstanding the foregoing, the license for legal archival/preservation purposes will continue indefinitely. Please note that removed videos may be cached in search engine indices after removal and that Vimeo has no control over such caching. *Author's Note: Unlike the Video License, the Vimeo License for Non-Video Content is "perpetual."*

YouTube, Terms of Service, 6.9.2010 (Para. 6(c) "The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted." *Author's Note: The legal effect of termination of an account on valid a sub-license granted while the account is in effect is beyond the scope of this paper and should be considered by YouTube users. .*

²⁷ **Facebook** 12.11.2012 (Para 2(1)). This IP License ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it. **Facebook 12.11.2013** Para 13 Termination *****You may also delete your account or disable your application at any time. In all such cases, this Statement shall terminate, but the following provisions will still apply: 2.2, 2.4, *****. [*Author's Note: However, deletion of the account may be subject to Facebook 12.11.2012 (Para 2(4)). "When you publish content or information using the Public setting, it means that you are allowing everyone, including people off of Facebook, to access and use that information, and to associate it with you (i.e., your name and profile picture)." Consequently, account deletion is no assurance that content use will terminate].*

Instagram (owned by Facebook) Terms of Service 1.19.2013 Privacy Policy If you remove information that you posted to the Service, copies may remain viewable in cached and archived pages of the Service, or if other Users or third parties using the Instagram API have copied or saved that information. *See also, Privacy Policy, Rights, Para 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. **** 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." *Author's Note, Instagram permits the user to set two privacy settings, alternatively permitting all followers or only approved followers to view posts. Additionally, Instagram's Terms of Use for Application Program Interfaces requires that the application programmer will "Remove from your application within 24 hours any Instagram user's photos or other information that the owner of the photo asks you to remove."**

Pinterest, Business Terms of Service 6.21.2013 Para 2(c). "How long we keep your content: Following termination or deactivation of your account, or if you remove any User Content from Pinterest, we may retain your User Content for a

theoretically, may also include affiliates and licensees. Some sites suggest that you must request removal of content directly from the third party site.²⁸ In light of the foregoing, the photographer's right to terminate use of content may be non-existent or mythical. In such cases the photographer's control over the content may simply be lost forever.

Publishing Liabilities

Posting content exposes photographers to the same liabilities that they have experienced in publishing content through traditional media. In the forefront of these concerns are the photographer's longstanding concerns with content clearances. Photographs may employ copyrightable content from other

commercially reasonable period of time for backup, archival, or audit purposes. Furthermore, Pinterest and its users may retain and continue to use, store, display, reproduce, re-pin, modify, create derivative works, perform, and distribute any of your User Content that other users have stored or shared through Pinterest." *Author's Note: The rights grant, in any event, would appear to continue under Para 7, which states "Upon termination, you continue to be bound by Sections 2, 3(b), and 7-13 of these Terms." Para 2, contains the initial grant, and therefore would appear to survive.*

Tumblr, Terms of Service, 3.22.2012 "Termination and Deletion: On termination of your Account or upon your deletion of particular pieces of Subscriber Content from the Services, Tumblr shall make reasonable efforts to make such Subscriber Content inaccessible and cease use of it; however, you acknowledge and agree that: (a) caching of, copies of, or references to the Subscriber Content may not be immediately removed; (b) such removed Subscriber Content may persist in backups (not available to others) for a reasonable period of time; and (c) such removed Subscriber Content may be available (and stored on our servers) through the accounts of other Subscribers, such as because of Reblogging." *Authors Note: This provision contrasts with the user license which allows Tumblr to continue use of content; presumably Tumblr's continued use would not infringe the content, and would merely be a breach of Tumblr's agreement in the event that Tumblr did not make reasonable efforts to make the content inaccessible.*

Twitter, Terms of Service 6.25.2012. You may end your legal agreement with Twitter at any time for any reason by deactivating your accounts and discontinuing your use of the Services. ***** In all such cases, the Terms shall terminate, including, without limitation, your license to use the Services, except that the following sections shall continue to apply: ***** 5.... ***** *Author's Note: (Para 5) provides" By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute such Content in any and all media or distribution methods (now known or later developed). It would therefore appear that Twitter's right to continue content usage is not terminated by account termination.*

²⁸ **Facebook** (Special Provisions Applicable to Developers Operators of Applications and Websites. /12.11.2012 (Para. 9(2)(4). You will delete all data you receive from us concerning a user if the user asks you to do so, and will provide a mechanism for users to make such a request. {*Authors Note: This may be inapplicable to users other than Developers/Operators of Web sites.*}

LinkedIn, User Agreement, Para. 2(B) "You own the information you provide LinkedIn under this Agreement, and may request its deletion at any time, unless you have shared information or content with others and they have not deleted it, or it was copied or stored by other users." *Author's Note: Although LinkedIn has provisions which may be construed to restrict site users to use of content to use of the content on linked in, deletion of the content does not necessarily retract content that the photographer has exported (e.g., from LinkedIn through Twitter See Also, LinkedIn Privacy Policy, "(Para.3) "Please note: Information you have shared with others (for example, through InMail, network updates, content sharing, or LinkedIn Groups) or that others have copied may also remain visible after you have closed your account or deleted the information from your own profile. ***** In addition, you may not be able to access, correct, or eliminate any information about you that other Members copied or exported out of LinkedIn, because this information may not be in our control. Your public profile may be displayed in search engine results until the search engine refreshes its cache.*

authors, in which case the photographer is required to obtain the other rights owners' permission to republish the content. Where the photograph includes the image of a person, privacy or publicity clearances may be needed. The privacy clearances may be required where the photograph includes a publication of a private fact, where it exhibits an unreasonable intrusion into someone's private affairs, or where it places an individual in a false light in the public eye. Publicity clearances may be required where the photograph exploits name or likeness, not exclusively, but usually, in an endorsement or advertising context. There may be defamation or libel concerns where a photograph makes a false statement which subjects the depicted person to public hatred, scorn, or ridicule. Some photographs depict trademarks, in which case there may be a need to either clear the mark, or clarify or dispel the use of the mark in a way that might cause "customer confusion."

Most social media hosts require the photographer, as part of the photographer's obligations to the host, to warrant and or represent that the photographer owns all of the rights required to post the content, and that the posting of the content will not violate any rights of any other party.²⁹ The

²⁹ **Facebook** 12.11.2013 You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law.

Houzz, Terms of Use Agreement, 3.21.2013 "By posting or providing any Content on the Website, you represent and warrant to Houzz that you own or have the right to use and permit us to use and license such Content in the manner stated in this Agreement. By way of example and not limitation, if you post or otherwise provide a photograph which includes an image of any person, you need to first obtain permission or a release from such person appearing in the photograph to use their image and permit us to use and license it as stated in this Agreement and you must be the owner or licensee of the copyright in the photograph, with the right to permit us to use it as stated in this Agreement. By way of further example and not limitation, if you post or otherwise provide a photograph of a pictorial, graphic, sculptural or architectural work that is protected by copyright, you need to first obtain permission or a release from the owner of the copyright in such work to reproduce and adapt their work and permit us to use it as stated in this Agreement and you must be the owner or licensee of the copyright in the photograph, with the right to permit us to use it as stated in this Agreement."

Instagram (owned by Facebook), 1.19.2013, General Conditions, Rights (Para. 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."

photographer's breach of the photographer's warranty or representation would give rise to liability to the host, as well as to any liability that might extend to the person whose rights have been violated.

Resolving Disputes With the Host and Others

There are special difficulties that arise when attempting to resolve disputes with the social media host, if a dispute arises concerning content usage. These difficulties have statutory, contractual, and practical roots. One statutory hurdle to dispute resolution stems from the Communications Decency Act.³⁰ A single sentence found within this federal statute has been construed by the courts to immunize hosts from liability where they do not themselves post, or participate in the actual posting of, content and merely act as a passive portal for their users' content postings. In order to avail themselves of this immunity, some hosts go to lengths in their terms to underscore that they will not participate in the user's posting and that the site user is solely responsible for the content they post.³¹ Were a photographer inadvertently to infringe someone's right of

Pinterest Business Terms of Service 6.21.2013 (Para 2(d)(ii) You therefore agree that any User Content that you post to Pinterest does not and will not violate any law or infringe the rights of any third party.

Vimeo, Terms of Service, 1.2013, (Para. 10) "For each piece of content that you submit, you represent and warrant that: (i) you have the right to submit the content to Vimeo and grant the licenses set forth above; (ii) Vimeo will not need to obtain licenses from any third party or pay royalties to any third party; (iii) the content does not infringe any third party's rights, including intellectual property rights and privacy rights; and (iv) the content complies with this Agreement and all applicable laws."

YouTube, Terms of Service 6.9.2010 (Para/ 6(B) "You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service." See Also (Para 6(D) "You further agree that Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant YouTube all of the license rights granted herein."

³⁰ 47 U.S.C. Section 230(c)(1) (1) "**Treatment of publisher or speaker** No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

³¹ **Flickr (Yahoo)**, Terms of Service, 3.16.2012, (Para. 6) "You understand that all information, data, text, software, music, sound, photographs, graphics, video, messages, tags, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not Yahoo!, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available via the Yahoo! Services. Yahoo! does not control the Content posted via the Yahoo! Services and, as such, does not guarantee the accuracy, integrity or quality of such Content." See Also, Para. 6(n)." You acknowledge that Yahoo! may or may not pre-screen Content, but that Yahoo! and its designees shall have the right (but not the obligation) in their sole discretion to pre-screen, refuse, or remove any Content that is available via the Yahoo! Services."

publicity, the infringement might therefore be substantially complicated by the fact that the host may have no liability for the appearance of the offending content, and therefore have no obligation to take it down. The photographer who posts content on-line has a special liability concern with the fact that their inability to obtain a remedy from the host may foment the damage that is caused and result in a substantial increase in their liability.

Indemnification

Most hosts include in their terms of use an extensive array of assurances that they will incur no liability for anything that might go awry. These terms typically include a hold-harmless clause and or indemnification. Under these clauses, the photographer releases the host from any liability from the photographer's use of the site.³² Through an indemnification the host secures an

Instagram (owned by Facebook), 1.19.2013, Terms of Use, Rights (Para. 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."

Twitter, Terms of Use 6.25.2012 (Para. 4) "All Content, whether publicly posted or privately transmitted, is the sole responsibility of the person who originated such Content. We may not monitor or control the Content posted via the Services and, we cannot take responsibility for such Content. Any use or reliance on any Content or materials posted via the Services or obtained by you through the Services is at your own risk. We do not endorse, support, represent or guarantee the completeness, truthfulness, accuracy, or reliability of any Content or communications posted via the Services or endorse any opinions expressed via the Services."

³² **Behance**, Terms of Service, 12. INDEMNIFICATION Upon a request by Behance, Inc., you agree to defend, indemnify and hold Behance, Inc., its affiliates, officers, directors, employees, representatives, successors and assigns, harmless from any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising in any way from your use or misuse of the Site or Services, or the uploading, posting, publishing, e-mailing, reproduction, distribution or transmission of any Content or other materials by you or Users authorized by you or any violation of these Terms and Conditions by you (including, but not limited to, any claim that your Contribution infringes the rights of any third party). Behance, Inc. reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you, in which event you will cooperate with Behance, Inc. in asserting any available defense.

Facebook 12.11.2012. If anyone brings a claim against us related to your actions, content or information on Facebook, you will indemnify and hold us harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim. Although we provide rules for user conduct, we do not control or direct users' actions on Facebook and are not responsible for the content or information users transmit or share on Facebook. We are not responsible for any offensive, inappropriate, obscene, unlawful or otherwise objectionable content or information you may encounter on Facebook. We are not responsible for the conduct, whether online or offline, or any user of Facebook.

Flickr (Yahoo!), Terms of Service 3.16.2012, (Para. 11) You agree to indemnify and hold Yahoo! and its subsidiaries, affiliates, officers, agents, employees, partners and licensors harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content you submit, post, transmit, modify or otherwise make available through the Yahoo! Services, your use of the Yahoo! Services, your connection to the Yahoo! Services, your violation of the TOS, or your violation of any rights of another.

agreement from the photographer that if the host must defend a suit or claim *the photographer will assume financial responsibility* for any damages the host may be required to pay, and for any legal fees or liability the host may incur. These indemnification clauses, which may appear to the photographer as dense and

Houzz, Terms of Use Agreement, 3.21.2013 You agree to fully indemnify, defend, and hold Houzz, our licensors, suppliers, agents, successors, and assigns and our and their directors, officers, employees, consultants, and other representatives, harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees), and other expenses that arise directly or indirectly out of or from: (a) your breach of this Agreement, including but not limited to the Acceptable Use Policy; (b) any allegation that any materials you submit to us or transmit to the Website infringe or otherwise violate the copyright, patent, trademark, trade secret, or other intellectual property or other rights of any third party; (c) your activities in connection with the Website or other websites to which the Website is linked; and/or (d) your negligence or willful misconduct.

Instagram (owned by Facebook), 1.19.2013 Terms of Use, 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.

LinkedIn, 5.13.3013 User Agreement (Para 2(d)) Indemnification, You agree to indemnify us and hold us harmless for all damages, losses and costs (including, but not limited to, reasonable attorneys' fees and costs) related to all third party claims, charges, and investigations, caused by (1) your failure to comply with this Agreement, including, without limitation, your submission of content that violates third party rights or applicable laws, (2) any content you submit to the Services, and (3) any activity in which you engage on or through LinkedIn.

Picassa, Google+, Terms of Service 3.1.2012 If you are using our Services on behalf of a business, that business accepts these terms. It will hold harmless and indemnify Google and its affiliates, officers, agents, and employees from any claim, suit or action arising from or related to the use of the Services or violation of these terms, including any liability or expense arising from claims, losses, damages, suits, judgments, litigation costs and attorneys' fees.

Pinterest, Business Terms of Service 6.21.2013 (Para 8) "You agree to indemnify and hold harmless Pinterest and its officers, directors, employees and agents, from and against any claims, suits, proceedings, disputes, demands, liabilities, damages, losses, costs and expenses, including, without limitation, reasonable legal and accounting fees (including costs of defense of claims, suits or proceedings brought by third parties), in any way related to (a) your access to or use of our Products, (b) your User Content, or (c) your breach of any of these Terms."

Vimeo, Terms of Service, 1.2013 (Para 11) "**Indemnification** You will indemnify, defend, and hold harmless Vimeo and its affiliates, directors, officers, employees, and agents, from and against all third party actions that: (i) arise from your activities on the Vimeo Service; (ii) assert a violation by you of any term of this Agreement; or (iii) assert that any content you submitted to Vimeo violates any law or infringes any third party right, including any intellectual property or privacy right."

YouTube, Terms of Service, 6.9.2012 (Para. 11), "To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service."

innocuous legal jargon, can be far reaching, and may require the photographer to assume significant financial liabilities even if the host or the photographer have done nothing wrong, but the host must nonetheless deal with an albeit frivolous or groundless claim. In these circumstances, even if the host has no liability, the photographer may have a liability for legal fees and defense costs that are staggering. In addition the hosts may add limitations on their liabilities in the event that the hold harmless or indemnification provisions are not enforced.³³

³³ **Facebook** 12.11.2012 (Para 16(3)). "FACEBOOK 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 **** OUR AGGREGATE LIABILITY ARISING OUT OF THIS STATEMENT OR FACEBOOK WILL NOT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) OR THE AMOUNT YOU HAVE PAID US IN THE PAST TWELVE MONTHS. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN SUCH CASES, FACEBOOK'S LIABILITY WILL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW."

FLICKR (Yahoo!), Terms of Service 3.16.2012 (Para. 20) "YOU EXPRESSLY UNDERSTAND AND AGREE THAT YAHOO! AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS SHALL NOT BE LIABLE TO YOU FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF YAHOO! HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (a) THE USE OR THE INABILITY TO USE THE YAHOO! SERVICE; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE YAHOO! SERVICE; OR (e) ANY OTHER MATTER RELATING TO THE YAHOO! SERVICE."

Houzz, Terms of Use Agreement, 3.21.2013, "NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND, NEITHER HOUZZ NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE, OR OTHER DAMAGES (INCLUDING WITHOUT LIMITATION ANY LOSS OF PROFITS, LOST SAVINGS, OR LOSS OF DATA) OR LIABILITIES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY MANNER TO THE WEBSITE, INFORMATION, SERVICES AND/OR ANY LINKED WEBSITE, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES. YOUR SOLE REMEDY WITH RESPECT TO THIS WEBSITE, THE INFORMATION, SERVICES, OR ANY LINKED WEBSITE IS TO STOP USING THE WEBSITE, SERVICE, OR LINKED WEBSITE, AS APPLICABLE. NEITHER HOUZZ NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES WILL HAVE ANY LIABILITY TO YOU FOR ANY DAMAGES, EXPENSES OR OTHER LIABILITY INCURRED BY YOU AS A RESULT OF (1) ANY INACCURACY, INCOMPLETENESS OR MISREPRESENTATION OF ANY INFORMATION, CONTENT, POSTINGS OR SUBMISSIONS PROVIDED OR POSTED ON THE WEBSITE BY THIRD PARTIES OR (2) YOUR HIRING OR ENGAGEMENT OF, OR ASSOCIATION WITH, ANY THIRD PARTY ADVERTISING OR OFFERING SERVICES THROUGH THE WEBSITE."

Pinterest Business Terms of Service 6.13.2013, (Para. 10) "TO THE MAXIMUM EXTENT PERMITTED BY LAW, PINTEREST SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (A) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE PRODUCTS; (B) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE PRODUCTS, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; OR (C) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT."

Twitter, Terms of Service 6.25.2012 (Para. 11(c)). TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TWITTER ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL

Most hosts include in their terms of use additional provisions that secure a convenient means for the host, though possibly not the photographer, to resolve a dispute. This may be through the host being given an option to arbitrate (as opposed to litigate) a dispute if it were to arise.³⁴ The terms of use will also

OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM (i) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE THE SERVICES; (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES; (iii) ANY CONTENT OBTAINED FROM THE SERVICES; OR (iv) UNAUTHORIZED ACCESS, USE OR ALTERATION OF YOUR TRANSMISSIONS OR CONTENT. **** THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND WHETHER OR NOT THE TWITTER ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

Tumblr, Terms of Service, 3.22.2012 (Para 14) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TUMBLR, ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, AND/OR DISTRIBUTORS SHALL NOT BE LIABLE FOR: (A) ANY INDIRECT, INCIDENTAL, EXEMPLARY PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER; (B) LOSS OF: PROFITS, REVENUE, DATA, USE, GOOD-WILL, OR OTHER INTANGIBLE LOSSES; (C) DAMAGES RELATING TO YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICES; (D) DAMAGES RELATING TO ANY CONDUCT OR CONTENT OF ANY THIRD PARTY OR SUBSCRIBER USING THE SERVICES, INCLUDING WITHOUT LIMITATION, DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OR CONTENT; AND/OR (E) DAMAGES IN ANY MANNER RELATING TO ANY CONTENT. THIS LIMITATION APPLIES TO ALL CLAIMS, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, WHETHER OR NOT TUMBLR HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND FURTHER WHERE A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

Vimeo, Terms of Service, 1.2013 (Para. 14) **“ Limitation of Liability. To the fullest extent permitted by law: (i) Vimeo shall not be liable for any direct, indirect, incidental, special, consequential, or exemplary damages, including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses; ****”**

YouTube, Terms of Service, 6.9.2010 (Para.10) **“IN NO EVENT SHALL YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION. YOU SPECIFICALLY ACKNOWLEDGE THAT YOUTUBE SHALL NOT BE LIABLE FOR CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.”**

³⁴ **Houzz**, Terms of Use Agreement, 3.21.2013, The parties agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled by binding arbitration in accordance with California Code of Civil Procedure Section 1280 et seq., and the then current rules and procedures of JAMS. The arbitration shall be a confidential proceeding, closed to the general public. The arbitration will take place in San Francisco, California and be conducted in the English language. The decision rendered by the arbitrator will be binding upon the parties hereto, and any judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. ****” If any arbitration or other proceeding is brought to enforce or interpret this Agreement or matters relating to it, the substantially

frequently include forum selection provisions.³⁵ Through the forum selection provision, the host can chose a location to resolve a dispute that is convenient for

prevailing party, as determined by the arbitrator's award, will be entitled to recover reasonable attorneys' fees and other costs and expenses incurred in such arbitration or proceeding from the other party, in addition to any other relief to which such prevailing party is entitled; provided that in no event will the arbitrator have the authority to award punitive damages."

Instagram (owned by Facebook), Terms of Service, 1, 1.19.2013, "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.

Pinterest, Business Terms of Service, 6.21.2013 (Para 11) "For any dispute you have with Pinterest, you agree to first contact us and attempt to resolve the dispute with us informally. If Pinterest has not been able to resolve the dispute with you informally, we each agree to resolve any claim, dispute, or controversy (excluding claims for injunctive or other equitable relief) arising out of or in connection with or relating to these Terms by binding arbitration by the American Arbitration Association ("AAA") under the Commercial Arbitration Rules and Supplementary Procedures for Consumer Related Disputes then in effect for the AAA, except as provided herein. Unless you and Pinterest agree otherwise, the arbitration will be conducted in the county where you reside. Each party will be responsible for paying any AAA filing, administrative and arbitrator fees in accordance with AAA rules, except that Pinterest will pay for your reasonable filing, administrative, and arbitrator fees if your claim for damages does not exceed \$75,000 and is non-frivolous (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)). The award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses, and any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction."

³⁵ **Behance**, Terms of Service, (Para. 20) You expressly agree that exclusive jurisdiction for any claim or dispute with Behance, Inc. or relating in any way to your use of the Site shall be in the federal or state courts located in New York County, New York, and you further agree and expressly consent to the exercise of personal jurisdiction in such courts in connection with any such dispute, including any claim involving Behance, Inc. or its affiliates, officers, directors, employees, representatives, successors, assigns, or content providers.

Facebook 12.11.2012 (Para 16(1)). "You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to this Statement or Facebook exclusively in a state or federal court located in Santa Clara County. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions. You agree to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims."

Flickr (Yahoo!), Terms of Srvice 3.22.2016, (Para. 28). "... any and all claims, causes of action or disputes (regardless of theory) arising out of or relating to the TOS, or the relationship between you and Yahoo!, shall be brought exclusively in the courts located in the county of Santa Clara, California or the U.S. District Court for the Northern District of California. You and Yahoo! agree to submit to the personal jurisdiction of the courts located within the county of Santa Clara, California or the Northern District of California, and agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts."

Houzz, Terms of Use Agreement, 3.21.2-013 The parties consent to the jurisdiction of all federal and state courts in California. Venue will lie exclusively in San Francisco, California

Instagram (owned by Facebook), 1.19.2013 Terms of Use, Governing Law and Venue, "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."

LinkedIn, 5.13.2013 User Agreement Dispute Resolution (Para. 8(A). You and LinkedIn agree that all claims arising out of or related to this Agreement must be resolved exclusively by a state or federal court located in Santa Clara County, California, except as otherwise agreed by the parties or as described in the Arbitration Option paragraph below. You and LinkedIn agree to submit to the personal jurisdiction of the courts located within Santa Clara County, California for the purpose of litigating all such claims. Notwithstanding the above, you agree that LinkedIn shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

them, though possibly inconvenient for the photographer. The practical ramification of these clauses may be that the photographer may be required to incur substantial expense to bring, defend, or participate in a claim in distant and inconvenient location. This expense may be so significant that the photographer may not be able to meaningfully address a legal issue despite the merits of the photographer's position. If the dispute is from a construction of the terms of use, the photographer may therefore assume that they may have to pay their host's fees and costs, as well as their own fees and costs to resolve a matter in the forum selected by the host. Some hosts include additional restrictions imposing, for example, their own statutes of limitations from bringing claims³⁶; or dollar limitations on liability.³⁷ These time frames may be shorter time frames than the

Picassa, Google+, Terms of Services, 3.1.2012, All claims arising out of or relating to these terms or the Services will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.

Pinterest, Business Terms of Service 6.21.2013, (Para 12) We each agree to submit to the personal jurisdiction of a state court located in Santa Clara County, California or the United States District Court for the Northern District of California, for any actions not subject to Section 11 (Arbitration).

Tumblr, Terms of Service 3.22.2012 (Para. 17) You agree that any claim or dispute you may have against Tumblr must be resolved exclusively by a state or federal court located in New York County, New York, except as otherwise agreed by the parties. You agree to submit to the personal jurisdiction of the courts located within New York County, New York for the purpose of litigating all such claims or disputes.

Twitter, Terms of Service 6.25.2012 (Para 12(b)) All claims, legal proceedings or litigation arising in connection with the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum.

Vimeo, Terms of Service, 1.2013 (Para. 16) "Any action arising out of or relating to this Agreement or your use of the Vimeo Service must be commenced in the state or federal courts located in New York County, New York, United States of America (and you consent to the jurisdiction of those courts). In any such action, Vimeo and you irrevocably waive any right to a trial by jury."

YouTube, Terms of Service 6.9.2010, (Para 14) "Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County, California."

³⁶ **Flickr (Yahoo!)**, Terms of Service, 3.16.2012, Para 28) "*tatute of Limitations*. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Yahoo! Services or the TOS must be filed within one (1) year after such claim or cause of action arose or be forever barred."

Instagram (owned by Facebook), Terms of Use, 1.19.2013, 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.

³⁷ **Picassa, Google+**, Terms of Service 3.1.2012, "TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF GOOGLE, AND ITS SUPPLIERS AND DISTRIBUTORS, FOR ANY CLAIM UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES (OR, IF WE CHOOSE, TO SUPPLYING YOU THE SERVICES AGAIN)."

law otherwise allows, and these dollar limits may be substantially less than the damages that would be otherwise allowed. The end result is a package of rights grants and liabilities to which the photographer will be bound, and which the photographer cannot contest due to waivers of claims, the expense which they have assumed, prospective future expense involved in addressing any issues, inconvenience and impracticality of addressing claims, and their agreement to limit remedies only to remedies that ultimately will not be worth pursuing.

Amendments

There is not too much solace to be taken by the professional who studiously masters the technical terms of each host site. Most hosts provide that amendments may be made to the host agreements,³⁸ unilaterally, sometimes

Pinterest Business Terms of Service 6.21.2013 Para 10. "IN NO EVENT SHALL PINTEREST'S AGGREGATE LIABILITY FOR ALL CLAIMS RELATED TO THE PRODUCTS EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNTS PAID BY YOU TO PINTEREST FOR THE PAST THREE MONTHS FOR THE PRODUCTS."

Tumblr, Terms of Service, 3.22.2012 (Para. 14) "TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL LIABILITY OF TUMBLR AND ITS DIRECTORS, OFFICERS, SHAREHOLDERS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, AGENTS, SUPPLIERS, AND/OR DISTRIBUTORS, FOR ANY CLAIM UNDER THIS AGREEMENT, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE GREATER OF FIFTY DOLLARS (US\$50.00) OR THE AMOUNT YOU PAID US TO USE THE APPLICABLE SERVICE(S)."

Twitter, Terms of Service, 6.25.2012, (Para 11 (c)) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF THE TWITTER ENTITIES EXCEED THE GREATER OF ONE HUNDRED U.S. DOLLARS (U.S. \$100.00) OR THE AMOUNT YOU PAID TWITTER, IF ANY, IN THE PAST SIX MONTHS FOR THE SERVICES GIVING RISE TO THE CLAIM.

Vimeo, Terms of Service, 1.2013, (Para. 14) "****Vimeo's total liability to you shall not exceed the amounts paid by you to Vimeo over the twelve (12) months preceding your claim(s)."

³⁸ **Houzz**, Terms of Use Agreement 3.21.2013 We reserve the right at any time, with or without cause, to: change the terms and conditions of this Agreement; change the Website, including eliminating or discontinuing any Information or Services or other feature of the Website; or deny or terminate your use of and/or access to the Website. Any changes we make will be effective immediately upon our making such changes available on the Website or otherwise providing notice thereof. You agree that your continued use of the Website after such changes constitutes your acceptance of such changes."

Instagram (owned by Facebook), Terms of Service, 1.19.2013 General Conditions, (Para. 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."

without prior notice, and typically with the restriction that the photographer's use of the site after an amendment, will constitute their agreement to the amendment.

Social Media Solutions

There are no easy answers to the problem of content control on social media sites, short of refusing participation. The loss of control over a small, selected number, of photographs may be a business cost worth incurring. The photographer would then be careful not to post the balance of their portfolio in a way that control might be lost. Perhaps the most tolerable (least painful) situation in the current social media marketplace is to post material on sites which restrict their own license

LinkedIn 5.13.2013 General Terms, Para 9(E) Amendments to This Agreement We reserve the right to modify, supplement, or replace the terms of this Agreement, effective prospectively upon posting at www.linkedin.com or notifying you otherwise. For example, we may present a banner on the Services when we have amended this Agreement or the Privacy Policy so that you may access and review the changes prior to your continued use of the site. If you do not want to agree to changes to this Agreement, you can terminate this Agreement at any time per Section 7 (Termination).

Picassa, Google+, Terms of Service 3.1.2012, "We may modify these terms or any additional terms that apply to a Service to, for example, reflect changes to the law or changes to our Services. You should look at the terms regularly. We'll post notice of modifications to these terms on this page. We'll post notice of modified additional terms in the applicable Service. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes addressing new functions for a Service or changes made for legal reasons will be effective immediately. If you do not agree to the modified terms for a Service, you should discontinue your use of that Service."

Pinterest Business Terms of Service 6.21.2013 (Para 13) "We may revise these Terms from time to time and the most current version will always be posted on our website. If a revision, in our sole discretion, is material we will notify you. By continuing to access or use the Products after revisions become effective, you agree to be bound by the revised Terms. If you do not agree to the new terms, please stop using the Products."

Tumblr Terms of Service 3.22.2012 "Tumblr reserves the right, in its sole discretion, to modify this Agreement at any time by posting a revised Agreement through the Services and by providing notice to you that this Agreement has changed, generally via e-mail where practicable, and otherwise through the Services (such as through a notification in your Tumblr Dashboard). You are responsible for reviewing and becoming familiar with any modifications to this Agreement. Modifications are effective when posted, and your use of the Services following any such posted modification and notice of same constitutes your acceptance of the terms and conditions of this Agreement as modified."

Twitter, Terms of Service 6.25.2012 (Para 12(c)) We may revise these Terms from time to time, the most current version will always be at twitter.com/tos. If the revision, in our sole discretion, is material we will notify you via an @Twitter update or e-mail to the email associated with your account. By continuing to access or use the Services after those revisions become effective, you agree to be bound by the revised Terms.

Vimeo, Terms of Service, 1.2013 (Para. 16) "**MODIFICATION:** This Agreement may not be modified except by a revised Terms of Service posted by Vimeo on the Vimeo Site or a written amendment signed by an authorized representative of Vimeo. A revised Terms of Service will be effective as of the date it is posted on the Vimeo Site."

YouTube, Terms of Service 6.9.2010 (Para 1) Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version www.youtube.com/t/terms. YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms of Service shall be deemed to confer any third-party rights or benefits.

to on site usage which the photographer approves, and which restrict third party use of the material to usage on the host site only. Additionally, the photographer would want to determine that the on-site usage could be terminated. The most onerous circumstances are where the host retains irrevocable rights in content, where site users can make unrestricted uses of material, and where the content cannot be withdrawn from, and remains in the hands of, the host and other site users. Before subscribing to any plan or agreement, photographers would be well advised to seek legal advice from their own attorney, and to gain a full understanding of how their social media usage will impact their particular rights and liabilities.

APPENDIX

Rights Permissions In A Nutshell

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Flickr * Preferred Practice Site**

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Instagram (owned by Facebook) ***** Warning !!!!!

License: non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service. User can chose between public and private followers. Subject to privacy settings for public and approved followers. Terms state Instagram is not liable for any use or disclosure of content, and that as between you and Instagram content will be non-confidential and non-proprietary. Terms provide that Users may use or re-share the content that is made publicly available, but also state that users cannot share content that is not theirs. Application programmers may be requested to remove content. If you remove content, it might still be viewable on API, and with third parties who have saved the information. Provision for continued use by Instagram does not appear to be affected by removal of information.

LinkedIn ***** Warning !!!!!

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Tumblr **** Warning !!!!!

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for the purpose of operating the Services in accordance with their functionality, improving the Services, and allowing Tumblr to develop new Services. This may be construed to permit Tumblr to use content for anything that is a new service and is not restricted to web formats or similar services. According to the terms, information shared publicly may be copied and shared throughout the Internet Tumblr states that it shall make reasonable efforts to make such Subscriber Content inaccessible and cease use of it on termination.

Twitter **Warning !!!!!**

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Vimeo VIDEO content***Preferred Practice Site**

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