# Social Media for Artists

The Internet gives artists a platform to access a worldwide audience for their work. Social media helps creators distribute, promote and sell creative content. But it is important to understand the terms and conditions and different laws that apply to how you use those services.

## Social Media essentials:

- You have to agree to certain terms and conditions to use a social media website. Your agreement creates a legally binding relationship between you and the website.
- You have copyright in your works, but to use a social media website you will need to give the website permission to publish those works. You should read the terms and conditions carefully to understand what rights you're giving away.
- Terms and conditions will also include a wide range of user responsibilities. If you're asked to give a warranty, make sure you have the right to upload the material.
- As an artist using social media, you need to be aware of the laws governing your conduct online, including copyright, defamation law and misleading or deceptive conduct.
- It is difficult to take your content offline, so think carefully before you upload anything.

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## Understanding Social Media terms and conditions

When you set up an account on a social media site, you are asked to accept their terms and conditions . When you click 'Accept' on those terms and conditions, you are saying that you have read and understood the details and that you agree to enter into a legally binding contract. It is important that you take the time to carefully read the terms and conditions so you understand your legal rights and responsibilities.

Terms and conditions generally say that they can be changed by the site operator and those changes will apply to every user, whether you realise those changes have happened or not. It is usually your responsibility as a user to check the terms and conditions periodically for changes. Whether or not you do this, if you continue to use the site, it will be assumed that you accept the changes to the terms and conditions.

In most cases, you agree that the website operator can get rid of (or 'terminate') your account if it finds you in breach of the terms and conditions. This could lead to instant loss of your content, so be careful if you are using social media as a back-up or archive of content.

## What are the key Social Media terms and conditions dealing with copyright?

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The Australian *Copyright Act* protects certain forms of creative expression including artistic works (paintings, drawings, sculptures, works of artistic craftsmanship), musical works (songs), dramatic works (plays, choreographic works, screenplays), literary works (novels, articles, textbooks, non-fiction, poetry, song lyrics), audiovisual works (films, animations, videos), sound recordings and published editions.

Generally, the artist or creator owns the copyright in a work. Copyright is a bundle of economic and legal rights to use the work in certain ways, including reproducing or copying it, communicating it to the public, publishing it and adapting it into new forms. These rights are exclusive to the owner of copyright and so third parties (including social media sites) cannot use copyright material in those ways without the copyright owner's permission.

For more information see Arts Law's information sheet – Copyright.

## What are assignments and licences?

A social media site needs the copyright owner's permission to put copyright material online. That permission is obtained by getting the copyright owner's consent when he or she sets up an account. The terms and conditions may require you to assign or license your copyright.  If you **assign** your copyright, you transfer all your rights to the site which then owns the copyright and can exercise all rights deriving from copyright ownership (including stopping you from using your own work). You should be very cautious about doing this. If you **licence** your copyright, you keep your copyright, but allow the website to exercise some or all of your exclusive rights.

Licences can be:

- exclusive, meaning the copyright owner authorises another party to exclusively exercise some or all of his/her rights of copyright. Once an exclusive licence of copyright is granted, not even the copyright owner can exercise those rights for the duration of the licence.
- non-exclusive, meaning the copyright owner authorises another party to exercise some of his/her rights of copyright. The copyright owner can also exercise those rights and can authorise other third parties to do so as well.

The licence that you grant to the social media site generally allows other people to use your content in ways that are consistent with that site's Terms of Service or Terms of Use. You should be aware that if your content is reposted by other users it may end up being used in different contexts, including a commercial context. That use may still be consistent with the terms of the social media site. It's also important to note whether the terms give the social media site the right to "sub-license" to other parties who have a commercial licensing arrangement with the site (this means to give other parties permission to use your work). You should carefully read the terms of each social media website, because they will set out the scope of the social media site's permission to use the work you upload (content) when using their service.

## What are adaptations and derivative works?

One of the exclusive rights of the copyright owner is to make adaptations or derivative works from the copyright material. An adaptation or derivative work is a new version of a literary, dramatic or musical work which may have its own separate copyright. Examples of adaptations include:

- a play (or screenplay for a film) derived from a novel,
- a translation of a literary work into another language,
- a new arrangement of a musical work, and
- an animation of visual artworks.

Some website terms and conditions require the account holder to grant unlimited rights to third parties to make adaptations or derivative works from uploaded content without consulting or acknowledging the original creator.

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## Key language used in Social Media terms and conditions

- Governing law: This clause decides which laws will be used to interpret the agreement (it could be the law of any state or country). Usually, it is accompanied by a clause stating where any court proceedings must be commenced if there is a dispute. This is relevant when the account holder lives in a different country to the one where the website is hosted. The following is an example of a Governing law clause: *"This agreement is governed by the law in force in the state of California.*" It would be preferable to apply the laws of where you are located to the contract for convenience.
- Irrevocable: When a term states that the granting of a licence is 'irrevocable,' this means that it cannot be undone or withdrawn.
- Perpetual: If this term is used to describe how long a licence of copyright lasts, it means that the licence continues until copyright expires.
- Royalty-free: A royalty free licence is one which gives rights of use over the uploaded content to the licensee (the website operator or other website users) without any obligation to make a payment to the owner of the uploaded content.
- Sublicensable/Transferable: Alicence that is fully sub-licensable or transferableallows the website to pass on the rights it receives to any third party without further consultation.
- Use: This general term is often used to cover the broadest possible grant of rights over uploaded copyright material. A right to 'use' may mean a right to exercise all of the rights of the copyright owner including the right to reproduce the material for any purpose and make adaptations of the material.
- Worldwide: A worldwide licence grants the licensee (the website) the ability to exercise the rights described in the terms and conditions in any country throughout the world.

For more information see Arts Law's information sheet – Contracts – A glossary of jargon

## What are your responsibilities as a Social Media user?

Terms and conditions will include a wide range of user responsibilities, but some are critical for artists. First, nearly every social media site requires you to give a legal warranty that you have the right to the content you upload. Second, some sites will restrict how you conduct business through their site. Last, the way you use the site must not breach any laws.

## What do the warranties mean?

A warranty is a form of strict legal guarantee (a kind of binding promise), and websites ask you to give a warranty that you have the rights to the content you upload. You breach this term if you upload something you didn't have the rights or permission to upload. This is a very strict term; it doesn't matter that you genuinely believed you had the rights, or took all reasonable steps or were deceived by someone else. If you give a warranty you are likely to be found liable to compensate the website operator if that warranty is breached.

## What limitations are there on how you conduct business through Social Media ?

Several sites prohibit users developing or operating any third-party application containing alcohol-related, dating or other mature content (including advertisements) without appropriate age-based restrictions. Artists need to take care if using social media to sell music or other services to ensure that such commercial conduct is permitted by the terms and conditions.

## Complying with relevant laws on Social Media

### Copyright

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As discussed above, copyright law protects certain forms of creative expression. Copyright itself is a bundle of economic and legal rights to use the work in certain ways, usually owned by the artist or creator of the work. Users of social media websites must respect copyright law; they cannot replicate another creator's content without permission.

What are social media websites doing to protect copyright?

- For videos, YouTube, Facebook and Instagram have now introduced advanced tools which scan uploaded videos for content that matches another video. The site then alerts the copyright owner of the match, and they choose how to proceed. If you are a content creator, you have to sign up to these tools and act when a potential infringement is flagged.
- For visual and audio content, copyright owners need to monitor social media for infringements. Once an infringement is identified, submit a report to the website on which it was shared. If the website finds the work was replicated without permission, then it will be taken down.

These tools mean there is a process to follow if your content appears on a social media site without your permission. Equally, however, if you post content which infringes copyright, the action may be taken against you. This can include your content being removed, your account being suspended, or your account being deleted.

As a final point, it is important not to make public allegations of copyright infringement on your social media platform. This creates a financial risk for you if the dispute is heard in the courts. It's possible that your public allegations could run the risk of damaging the reputation of the other party, which may make you liable to pay them damages. If you suspect copyright infringement, then it is safest to follow the formal processes set out by the social media website.

## Defamation

You need to be wary of defamation when saying anything on social media that could harm a person's reputation.

Legally, what is defamation? It is a communication from one person to at least one other that harms the reputation of an identifiable third person, where the communicator (the publisher) has no legal defence. The law of defamation aims to balance the right of free speech with protecting a person's reputation against harm.

Social media platforms are often used as a place to make provocative comments; but it is important to be aware of the legal limitations imposed by defamation law. The test of whether a communication is defamatory is: "Does the communication lower/harm the plaintiff's reputation, hold the plaintiff up to ridicule, or lead others to shun and avoid the plaintiff?" This is judged from the viewpoint of "ordinary reasonable people in the community in general" and takes account of contemporary standards.

For more information, see Arts Law's information sheet – Defamation Law – Online Publication.

## Misleading or deceptive conduct and passing off

The *Australian Consumer law* has rules stopping conduct which could confuse, mislead or deceive consumers into thinking there is a connection between your brand and something else, (for example another brand, product or person). It only applies in trade and commerce. So, this might be relevant if you're selling your work to consumers via a social media platform. Passing off is a similar legal claim that occurs when you try to use the reputation of another person, brand or product to sell your own (and as a result, harm that person, brand or product).

One strategy to overcome these issues is to include a disclaimer that you are not connected with anyone or anything portrayed. There are different ways of doing this and it's worth contacting Arts Law if you decide to go down that path.

Passing off is a similar legal claim that occurs when (i) one trader or brand has a reputation, (ii) another trader makes a misrepresentation about their connection to that trader or brand, and (iii) the first trader suffers damage as a result.

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## Taking your content offline

The licence you grant to a website will generally end when your account is terminated/deleted. But it is almost impossible to remove your content from the internet. It is highly likely that the content you uploaded to a website will have been used, shared or downloaded by others. Search engines like Google index content across the internet, including social media sites, and internet pages like Wayback Machine archive old versions of webpages and store them. As a result, deleting your account probably won't remove your content from the internet as a whole.

You should be very careful in choosing the content you upload; it's wise to assume it will be available online in some form or another indefinitely.

## Social Media Top Tips

- Think carefully about the social media site you choose to showcase your content.
- Read the terms and conditions carefully.
- Don't post any content in respect of which you might want to claim some sort of exclusivity.
- Don't use the site as a de facto back-up library.
- Don't post content which isn't yours unless you are confident that the owner has given you permission.
- Remember that social media is all about social dialogue and communication and engagement but it can carry with it real legal consequences and penalties.

### Further Resources

For more information about the law, consider these information sheets from Arts Law:

- Copyright
- Defamation Law – Online Publication
- Australian Consumer Law and Creators

For more information about the online space, consult these information sheets from the Copyright Council:

- Websites & Copyright
- Websites & User-Generated Content

**Disclaimer**

The information in this information sheet is general. It does not constitute, and should be not relied on as, legal advice. The Arts Law Centre of Australia (Arts Law) recommends seeking advice from a qualified lawyer on the legal issues affecting you before acting on any legal matter.

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