



SOCIAL MEDIA FOR ARTISTS

Introduction

The Internet provides artists with a platform to access a worldwide audience for their work. Social media, in particular, is a ready-made do-it-yourself mechanism for distributing, promoting, exhibiting and even selling creative content whether music, visual art, film, literature or other multi-platform art forms. However, the seemingly “free” and “user-friendly” services offered by social media sites are not offered on a no-strings-attached basis, but in fact function within a carefully created legal framework that binds users of their sites to certain conditions. It is vital that users understand those conditions – especially when uploading creative content.

TILL DEATH US DO PART...

When you accept a social media website's terms and conditions, you are saying that you have read and understood the details and are choosing to enter into a **legally binding** relationship with the website owners - just like marriage. Therefore, it's important that you take the time to carefully understand your legal rights and responsibilities!



When you set up an account on a social media site, you are asked to accept their terms and conditions before creating your account (this is similar to user agreements when installing software). Many people can't be bothered with the fine print and skip or scroll through all the terms and conditions and just check the “I ACCEPT” button. By doing so they are actually entering into a binding legal contract without knowing any of the details. Would you do that if it were entering into recording contract, a film distribution deal or book publication agreement?

Social media sites offer real benefits for artists and creators, but they also can have a significant impact on **legal rights** and **responsibilities**. When

an artist uploads creative content to a social media site, it not only increases that artist's exposure, builds market recognition and their fan base but it also may dilute the artist's ownership rights (depending what the terms and conditions say), and make that content more vulnerable to unauthorized appropriation and misuse. It's important to understand those risks before you click on the “I ACCEPT” button.

This information sheet will briefly examine the terms and conditions of various social media sites commonly used by artists and creators including Facebook, Flickr, Google+, Instagram, LinkedIn, Pinterest, TripAdvisor, Twitter, Vimeo, WordPress and YouTube. It is assumed that any content uploaded by the account holder to the social media site is content created by the account holder in which he or she owns the copyright.

Your copyright

The Australian *Copyright Act 1968* (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 by reproducing or copying it, communicating it to the public, publishing it and even 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 the abovementioned ways without the copyright owner's permission.

For more information see Arts Law's information sheet - [Copyright](#).

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 on the social media site. The terms and conditions may require the user to **assign** or give up ownership of their copyright to the site, or ask the user to grant the site a **licence** to use the works for certain purposes and a certain period. If the terms require you to assign your copyright in any content you upload, you transfer all your rights to the site which then owns the copyright and can exercise all rights deriving from copyright ownership. By asking you to license your copyright, you allow the website to exercise some or all of your exclusive rights as the copyright owner whilst still retaining copyright ownership. This may severely impact your own ability to use your creative content in other ways and to earn income from exploiting it.

WHEN IS COPYRIGHT LIKE A FISH POND?

Imagine you own a fish pond. As the owner of the pond, you have the exclusive right to control who can fish there. No one else can fish in your pond without your **permission**. If you give or sell the fish pond to someone else, you **assign** ownership of the pond to them and they then have the exclusive rights of control over who can fish there – including you. If you assign the copyright in your work to someone else, you give up all rights of control over that copyright.

Alternatively, you can grant other fishermen a **licence** to fish in your pond on certain terms – such as when they can fish there, how many fish they can catch and what they must pay you for that licence. You continue to own the pond but you allow others to use it on certain terms. If you grant a copyright licence, you continue to own copyright but allow others to exercise some or all of your rights on terms which you agree with them.



Granting a copyright licence

Fortunately, the terms and conditions of all the social media sites examined in this information sheet state that ownership of copyright in uploaded content remains with the owner of the uploaded content. In other words, there is no assignment or transfer of the exclusive rights of the copyright owner to the social media site. This is a

good thing, as the artist is not required to give away his or her inherent rights as creator in order to access the benefits of the social media site. However, all the sites listed require the artist to grant them a **licence** when accepting their terms and conditions. This licence sets out the scope of the social media site's permission to use the work you choose to upload (**content**) when using their service.

In order to upload content (images, text, film, audio etc.) to *any* social media site, you *will* need to grant a licence of your copyright. This is because making your content accessible online is a form of reproducing and communicating your content – without your permission this would amount to a potential breach of copyright in any content protected under the Copyright Act.

The most common types of copyright licences are:

Exclusive: The copyright owner authorizes 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: The copyright owner authorizes another party to exercise some of his/her rights of copyright; however the copyright owner can also exercise those rights and can authorize other third parties to do so as well.

The licence in your content that you grant to the social media site will allow other people to use your content in ways that are consistent with that site's Terms of Service (TOS) or Terms of Use (TOU). When your content is 'reposted', 're-pinned', 're-tweeted' it may end up being used in different contexts, including a commercial context, but that use could still be consistent with the TOS/TOU of the social media site. As well, the TOS/TOU could state that the social media site has the right to sublicense to other companies and individuals who have some commercial licensing arrangement with the social media site (e.g. a 'partnering' arrangement). However a U.S. court held that there was an infringement of copyright in photographs when a photo agency took images from photographer's Twitter feed and distributed the images for commercial publication through the photo agency's licensing arrangements: See the article by Robyn Ayres & Ruthanna Klawansky ['Photographers' rights to their photos posted on Twitter and twitpics'](#).

For more information see Arts Law's information sheet – [Copyright](#).

Terms and Conditions jargon

Terms that are commonly used in social media website terms and conditions include:

Agreement: A legal arrangement or understanding between two or more parties which they are each legally obligated to carry out.

Adaptations or 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 an adaptation are a play or screenplay for a film (dramatic work) derived from a novel (literary work); a translation of a dramatic or literary work; a new arrangement of a musical work; or 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.

Governing law: This is the state or country whose laws will be used to interpret the agreement. The governing law clause is usually coupled with a jurisdiction clause stating where any court proceedings must be commenced if there is a dispute. This is particularly 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."

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: A licence that is fully sublicensable or transferable allows 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](#)

User Responsibilities

Nearly every social media site requires you to give a legal warranty that you have the right to the content you upload and that your behaviour on that site will not breach any laws, for example, will not infringe another person's copyright or constitute defamation.

A **warranty** is a form of strict legal guarantee – it does not matter that you genuinely believed otherwise 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. The terms of Instagram state "by accessing or using the service you represent and warrant that your activities

Artists should be careful not to use a social media website as a means of storing or cataloguing content or the details of their fanbase. A breach or suspected breach of the terms and conditions (which could follow from a complaint by an unknown third party) could result in an instantaneous loss of work and presence. The Facebook page of 'TheCoolHunter.net' lost all of its content after being disabled under Facebook's terms and conditions. The content and its 'database' of 788,000 fans were accumulated over 5 years and this loss had a significant effect for the page's creators.



are lawful in every jurisdiction where you access or use the service.” It is no excuse that you do not know that the laws in a country where you are on vacation prohibit photographs of certain public buildings... If Instagram is fined or prosecuted because your photo appears on its site, you may be contractually obliged to pay for any loss it incurs as a consequence.

By agreeing to terms and conditions, you are contractually bound by them. In most cases, you agree that the website operator can terminate your account if it finds you in breach. This could lead to instant loss of your

What You Do Online Has Legal Consequences...

Leah Madden, the owner of an Australian swimwear business called White Sands saw swimwear designs featured in a Seafolly catalogue she thought appropriated her own original designs. Madden posted several extracts from the Seafolly catalogue on her Facebook page with comments including “Seriously, almost an entire line-line rip-off of my Shipwrecked collection.” Her followers reacted promptly with comments including “Nasty! Shame on ‘em! Won’t be buying Seafolly.” This led to stories in the trade press.

Seafolly sought a take-down request on Facebook and sued Madden for breaches of the Australian Consumer Law, injurious falsehood and copyright infringement (for reproducing their catalogue images without permission on her Facebook page). Seafolly relied on the comments of Madden’s followers on Facebook to prove that their reputation had been damaged. The Court found that the designs were not in fact copied and held Madden liable for misleading and deceptive conduct in breach of the Australian Consumer Law. Madden was ordered to pay Seafolly \$25,000 in damages plus costs.



content. It is therefore sensible NOT to use a social media site as a de facto back up or archive of content.

Spam: Many sites ban users from posting ‘unauthorised commercial communications and posts or comments that are repetitive and irrelevant in nature’.

Offensive behaviour: Most sites prohibit users from posting content that incites hatred of a particular group, is threatening, pornographic, violent or contains nudity. However, Twitter states in its User Agreement that due to the conversational nature of their service, users are to expect that they will view material that may offend. Vimeo specifically permits non-sexual nudity in user-generated content.

Conduct of other business: 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. Google+ allows discussion but no promotion of such services. Facebook and LinkedIn both

explicitly disallow content containing commercial activities and/or sales such as contests, sweepstakes, barter, advertising, and pyramid schemes without their prior written consent. Vimeo states that users are not to advertise or solicit others to purchase any product or service within the Vimeo Site unless affiliated and with written agreement. Artists need to take care if using social media to sell music or other services that such

commercial conduct is permitted by the terms and conditions.

Illegal activities: Most sites state that users are not to use the site to do anything unlawful, fraudulent, malicious or discriminatory.

Copyright infringement (consequences that can occur and remedies)

Every social media site discussed in this information sheet has a procedure to deal with any content which is posted by a user in breach of copyright. On the one hand, that means you do have a process to follow if your own content appears on a social media site without your permission. On the other hand, if you post content (or your followers or fans post content on your page or account) which infringes copyright, the site may take appropriate action. This can include removal of content, or suspension or termination of accounts.

The copyright infringement policies of the social media sites discussed in this information sheet ' can be found below:

Sites	Copyright Infringement Process
Facebook	General Help Centre at: http://www.facebook.com/legal/copyright.php?howto_report
Flickr	Provides specific instructions to report infringement in Clause 26 of Terms of Services at: http://au.docs.yahoo.com/info/terms/ Form at: http://help.yahoo.com/l/au/yahoo7/copyright/general.html
Google+	General Help Center at: http://support.google.com/bin/static.py?hl=en&ts=1114905&page=ts.cs
Instagram	General Help Center at: http://help.instagram.com/535503073130320/
LinkedIn	Copyright infringement reporting policy: http://www.Linkedin.com/legal/copyright-policy
Pinterest	Copyright infringement reporting policy: http://about.pinterest.com/copyright/
TripAdvisor	Notice and Takedown procedure at: http://www.tripadvisor.com.au/pages/noticetakedown.html
Twitter	Copyright infringement reporting policy: Clause 9 Copyright Policy at https://twitter.com/tos/
Vimeo	Copyright infringement reporting policy: http://vimeo.com/dmca
WordPress	Digital Millennium Copyright Act Policy at http://automattic.com/dmca/
YouTube	Copyright Infringement Resources: http://www.youtube.com/yt/copyright/copyright-complaint.html

For more information see Arts Law's information sheets – [Putting your film or photo online](#) and [New Media – issues for creators working with and across multiple platforms](#)

Other Legal Consequences

It is also important to be aware that there may be other legal consequences in relation to what you do and what you post online that go beyond the scope of complying with the site terms and conditions. The laws of defamation, passing off, misleading and deceptive conduct and injurious falsehood may also be relevant when you are voicing your opinions or making comments online.

For more information see Arts Law's information sheets – [Defamation law \(for material published after January 2006\)](#) and [Legal Issues for bloggers](#);

Changes in Terms and Conditions

The terms and conditions of every site contemplate that those terms can be changed by the site operator and those changes will apply to every user, whether they realize those changes have occurred or not. Generally, continuing to use the service after new terms and conditions are published online means you agree and accept those changes. Some sites seek feedback before making changes to their policies (Facebook), others simply post a notice that changes are being made (Google+, Instagram and LinkedIn) while some have no obligation to provide notice and can simply change their terms without warning at any time (Pinterest, TripAdvisor, Twitter, WordPress and YouTube). In that situation, it is the responsibility of the user to check the terms and conditions periodically for changes and continued use of the site is deemed to be acceptance of any changes.

Other issues to be aware of

Adaptations or Derivative works based on your copyrighted work

Depending on each social media website, the terms and conditions may allow users to create adaptations or derivative works based on content uploaded by other users. It is important that those uploading original creative content understand whether or not so doing involves giving permission to third parties to engage in adaptive and transformative use of that content or the creation of derivative works without acknowledging or seeking the express permission of the copyright owner.

One way of managing such third party use is through the Creative Commons licensing system – however this system is built on the fundamental premise that the content owner intends to share content in some form. For further information on the Creative Commons system, see Arts Law's information sheet – [Creative Commons](#).

Importantly, even if the site doesn't expressly permit adaptive or transformative use, the posting of content on any online social media site does, as a practical matter, exponentially increase the opportunity for third parties to access and appropriate your content (with or without your permission). Given the nature of the worldwide web, it can be almost impossible as a practical matter to pursue such infringements. The exposure and global reach and other benefits of social media may make this risk one worth taking but it is important to understand that risk and approach it with eyes wide open!

Taking your content offline

Many of the social media sites discussed above state that the licences you grant to them will end when your account is terminated and your content removed. In reality, this does not mean that the content you have previously uploaded will stop being available on the internet and may mean that even terminating your account does not terminate the licences you have granted.

Due to the nature of the internet and social media sites, it is almost inevitable that at least some if not most of the content you have uploaded will have been used, shared (reposted, 're-pinned', 're-tweeted') or downloaded by others during its availability. The moment you upload content, you share it with at least your friends and often also their friends, if not the general public. Particularly if the site is intended to promote a creative practice and build a fanbase, it is likely that content will be posted with minimum privacy settings (in order to reach as many people as possible) and thus be made as widely available as possible.

If the general public (or your friends) can save, share and use your uploaded content, then terminating your account is likely to be ineffective as a way of removing your content from the internet. In effect, this means **removal of your content after termination of your account is simply not possible**, and you therefore cannot terminate the licences that you previously granted to the website operator and other third party users over your content.

Furthermore, social media sites usually have no control over content indexed by search engines such as Google and Bing. Therefore, you should be very careful in choosing the content you upload – assume it is likely to be available online in some form or another indefinitely.

A closer look at terms and conditions of Social Media sites

This section will briefly examine the licences of several popular social media sites used by artists to display and share their work. The information provided covers key issues, such as the extent of the licence granted to the site operator, third parties or other users, the duration of the licence granted and the relevant jurisdiction.

YOU CANNOT TAKE THOSE THINGS FROM ME FOR FREE!

The terms of a licence can seriously affect an artist's control over their work. Artists should be conscious of their rights when choosing to share their work via social media. In December 2012, outrage was expressed by Instagram users after a proposed change in Instagram's privacy policy allowed advertisers to access user's photographs without any consultation with the account holder. Photographer, Noah Kalina (famously known as the wedding photographer for Facebook creator Mark Zuckerberg) stated on Instagram:

"My name, face and photographs are not only valuable but my livelihood. You cannot take those things from me for free... If you want to use me or my work all you have to do is change this clause and say you will ask first. We can take it from there. If not, I have to leave, and a lot of friends are coming with."

Facebook

Facebook is a social media website which provides each member with a unique personal web page which includes personal details, information and pictures the member uploads to create that person's unique profile. It enables the member to update that profile with comments, photos, video files, and links. Third parties can access that profile and contribute to it and can republish or 'share' the member's content on their own profile using the 'share' button or by their activity of 'liking' it being filtered through to the 'newsfeeds' of their friends. The member can control whether everyone or just certain 'friends' or 'friends of friends' can access and make contributions to the profile.

Many artists use Facebook as a mechanism to promote their work and stay in contact with their followers. Australian musician, Dan Sultan, engages with his fanbase on Facebook by keeping them up to date with upcoming tour information and performance information. He also keeps interest alive by posting photographs of himself either recording or performing. He creates an intimate atmosphere where his followers are made to feel they are a valuable part of his musical life.

	Licence over your content¹
What the terms and conditions say	<p>You own all of the content and information you post on Facebook, and you can control how it is shared through your <u>privacy</u> and <u>application settings</u>.</p> <p><i>For content that is covered by intellectual property rights, like photos and videos (IP content), you specifically give Facebook a non-exclusive, transferable, sub-licensable, royalty-free, worldwide licence to use any IP content that you post on or in connection with Facebook (IP Licence). This IP Licence ends when you delete your IP content or your account unless your content has been shared with others, and they have not deleted it.</i></p> <p>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).</p>
Rights of third parties	<p>Your privacy settings enable you to limit which other users of Facebook can see your posts. The most restricted privacy setting ‘Only Me’ means that only you can see the content on your profile and it is shared to no other users. If your settings are set to the broadest setting of ‘Public’, your content is available to everyone including applications which might use your content. The default position is that your content is available to everyone which includes that photos are able to be downloaded. When people use Facebook, they may store and share information about you and others users such as when they upload and manage their invites and contacts.</p>
Rights of website operator	<p><i>You give Facebook an unlimited licence over your content, meaning they have the right to use your uploaded content for any purpose.</i> Facebook also collects data about you from the computer, mobile phone or other devices you use to access Facebook which can include your IP address, your GPS location and other information.</p>
How long	<p>The licence you grant continues indefinitely until you remove your content or Facebook terminates your membership. However, if you have shared any of that content with others and they have not deleted it, this means the licence granted to Facebook in relation to that content continues indefinitely. Facebook is a content sharing site so it is likely that you will have shared at least some of your content in which case <i>the licence continues until all those people with whom your content has been shared have also deleted it. This may never happen.</i></p>
Termination	<p>If you violate the letter or spirit of your agreement with Facebook, or Facebook considers that you have created any risk or possible legal exposure for it, <i>Facebook may delete your account and all of your content.</i></p>
Jurisdiction	<p>The laws of the State of California govern your agreement with Facebook. Any litigation must be in the courts of Santa Clara County, California.</p>
What does Facebook promise you	<p>‘We try to keep Facebook up, bug-free, and safe, but you use it <i>at your own risk</i>. We are providing Facebook as is without any express or implied warranties including, but not limited to, implied warranties of merchantability, fitness for a particular purpose,</p>

and non-infringement. *We do not guarantee that Facebook will always be safe, secure or error-free* or that Facebook will always function without disruptions, delays or imperfections. *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.’

Flickr

Flickr is a photo sharing site operated by Yahoo!7 and allows users to create an online profile and display their photos online. Users can tailor their profile to display their pictures and create streams or galleries of photos including pinning photos to various locations on a world map. Flickr is generally more accepted and used by professional photographers over other social media sites. Rather than having a ‘social’ focus on sharing photos with friends and family, the premise of Flickr is to nurture a culture of serious photographers who share and critique each other’s work through ‘favouriting’ and commenting on photos. As a result, Flickr’s terms and conditions provide greater control than other sites for users over how their work is used by third parties. Getty Images is a stock library of professional photographers which has curated a fabulous collection of photos published and available for licence through the Flickr site.

	Licence over your content ⁱⁱ
What the terms and conditions say	<p>“Yahoo!7 does not claim ownership of Content you submit or make available for inclusion on the Service.</p> <p>However, with respect to Content you submit or make available for inclusion on publicly accessible areas of the Service, you grant Yahoo!7 the following <i>worldwide, royalty-free and non-exclusive licence(s) ... to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Service solely for the purpose for which such Content was submitted or made available.</i>¹</p>
Rights of third parties	<p>Flickr also <i>allows you to limit use of your work by others by providing the ability to create a Creative Commons licence which is effectively an open sharing licence that specify limits to using your content</i> at http://www.Flickr.com/creativecommons/.</p> <p>Note, however, content other than photos, graphics, audio or video (such as text) you make available on publicly accessible areas are covered by a perpetual, irrevocable and fully sub-licensable licence to use.</p>
Rights of website operator	Flickr may <i>only</i> reproduce your photos, graphics, audio and videos on their site as you intended.
How long	The licence granted to Flickr continues until your account is deleted and all traces of your work (including where it has been shared by other people) are deleted. The responsibility is therefore on you as the user to terminate.
Termination	If you violate the letter or spirit of your agreement with Flickr, or Flickr considers that you have created any risk or possible legal exposure for it, Flickr may <i>delete your account and all of your content</i> .
Jurisdiction	The laws of State of New South Wales govern your agreement with Flickr. Any

¹ Yahoo!7 Terms of Use, Clause 9.

	litigation must be in the courts of New South Wales, Australia.
What does Flickr promise you	<p>'Yahoo!7 provides users with access to a rich collection of resources, including various communications tools, forums, shopping services, search services, personalized content and branded programming through its network of properties which may be accessed through any various medium or device now known or hereafter developed (the "Service").</p> <p>You understand and agree that the Service is provided "AS IS" and that Yahoo!7 assumes <i>no responsibility for the timeliness, deletion, mis-delivery or failure to store any user communications or personalization settings</i>. You are responsible for obtaining access to the Service, and that access may involve third-party fees (such as Internet service provider or airtime charges). You are responsible for those fees, including those fees associated with the display or delivery of advertisements. In addition, you must provide and are responsible for all equipment necessary to access the Service.'²</p>

Google+

Google+ allows users to create a profile targeted at recording and sharing the user's "social media experience" with other users by allowing the sharing of photos, movies and links and other real-time aspects, such as what music you are listening to at the moment. It offers group video calls. This service operates in conjunction with Google's other services such as Gmail, YouTube, Google Maps, Google Drive, allowing content to be seamlessly shared onto Google+. You may also follow the feed or live video broadcasts of other members such as prominent figures. Given the focus on the free flow of content, the ability to control content use by third parties is limited to privacy setting preferences.

	Licence over your contentⁱⁱⁱ
What the terms and conditions say	<p>"When you upload or otherwise submit content to our Services, you give Google+ (and those we work with) a <i>worldwide licence 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...</i> for the limited <i>purpose of operating, promoting, and improving existing and new Google Services</i>."³</p>
Rights of third parties	<p>Google+ does not specify what rights you give to third parties to use the content you uploaded. Users can tailor their privacy settings to control who is able to access their content through the ability to create 'circles' and place contacts into these, such as a 'best friends' circle or a 'business' circle. You can then choose which circle you would like to share content with each time.</p> <p>However, <i>the default setting enables anyone in your 'circle' unlimited rights to 'reshare' beyond the circle unless you actively 'disable reshare' on your uploaded content.</i></p>

² Yahoo!7 Terms of Use, Clause 2.

³ Google Terms of Service, Your Content in Our Services.

Rights of website operator	Google+ <i>may reproduce your content</i> for the purpose of operating, promoting and improving their services.
How long	The licence you grant <i>continues even after you stop using the service</i> . Users are given the option of removing their Content, however depending on the user's privacy settings, Content may still be available after removal.
Termination	If you violate the letter or spirit of your agreement with Google+, or Google+ considers that you have created any risk or possible legal exposure for it, Google+ <i>may delete your account and all of your content</i> .
Jurisdiction	The laws of State of California govern your agreement with Google+. Any litigation must be in the courts of Santa Clara County, California.
What does Google+ promise you	<i>Neither Google+ nor its suppliers or distributors make any specific promises</i> about the services, including... about the content within the services, the specific function of the services, or their reliability, availability, or ability to meet your needs. <i>Google+ provides the services "as is"</i> . Some jurisdictions provide for certain warranties, like the implied warranty of merchantability, fitness for a particular purpose and non-infringement. <i>To the extent permitted by law, Google+ excludes all warranties</i> .

Instagram

Instagram is a photo sharing site that allows users to create a profile and upload photos with a searchable hashtag # and comments. It is owned by Facebook. Instagram provides certain software tools including a set of photo filters so that users can adjust, crop or change their photos. Depending on your privacy settings, other users may 'favourite' and comment on your photos. Users can follow other users and grow their own group of 'followers'. Instagram reserves a broad right to reproduce your photos and takes no responsibility for the use made of your photos by other users.

	Licence over your content^{iv}
What the terms and conditions say	You grant Instagram <i>a non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide licence to use the Content that you post</i> on or through the Service, subject to the Service's Privacy Policy. The Privacy Policy states that Instagram <i>may share your content</i> with third parties who help provide the service and with third party advertisers.
Rights of third parties	You agree that <i>any content you post is publicly available to other users, subject to your privacy settings</i> . Note that other users are bound by Instagram's Terms and Conditions, which state that they are not to use Instagram content (including the content that you upload) outside the site; however if they do use your content outside the site Instagram has no obligation to do anything about it.
Rights of website operator	Instagram has a broad right to 'use' your content. Instagram retains the right to reproduce and use your content in their discretion for their service subject to the terms and conditions of their Privacy Policy and Terms of Use. ⁴ However, they agree to not sell your content to third parties without your consent. ⁵
How long	The terms of the agreement and licence will cease at termination of the account, however content that is shared beyond your account will remain useable within the

⁴ Instagram Privacy Policy.

⁵ Instagram Privacy Policy, clause 3.

	site until all traces are deleted.
Termination	If you violate the letter or spirit of your agreement with Instagram or Instagram considers that you have created any risk or possible legal exposure for it, Instagram may delete your account and all of your content.
Jurisdiction	The laws of the State of California govern your agreement with Instagram. Any litigation must be in the courts of Santa Clara County, California.
What does Instagram promise you	Instagram is not responsible or liable for the conduct of any user and has no obligation to get involved in any dispute with another user. Instagram content is provided on an "as is", "as available" and "with all faults" basis. To the fullest extent permissible by law, neither Instagram nor its parent company nor any of their employees, managers, officers or agents (collectively, the "Instagram parties") make any representations or warranties or endorsements of any kind whatsoever, express or implied, as to: (a) the service; (b) the Instagram content; (c) user content; or (d) security associated with the transmission of information to Instagram or via the service.

LinkedIn

LinkedIn offers a professional directory for users to create a professional profile that lists their qualifications and employment history and shows their connections to other LinkedIn users. Profiles may include photos. There is a 'free' service and a 'Premium' subscription service. Users can endorse other user's skills or experience and 'recommend' them. Users are allowed to view other profiles and create business connections. LinkedIn tracks your use of the website for marketing and company research. The licence which LinkedIn requires users to grant is broader than required given the scope of the service. Creators trying to build market recognition may use this service without strict privacy settings.

	Licence over your content^v
What the terms and conditions say	You grant LinkedIn a <i>nonexclusive, irrevocable, worldwide, perpetual, unlimited, assignable, sublicenseable, fully paid up and royalty-free right... 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</i> 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.
Rights of third parties	Please note that ideas you post and information you share may be seen and used by other members, and LinkedIn cannot guarantee that other members will not use the ideas and information that you share on LinkedIn. The ability of others to access content you post on LinkedIn is subject to your privacy settings which determine who you allow to view your profile and is then a question of their privacy settings – over which you have no control. LinkedIn operates in terms of 'degrees' of connections. 1 st degree members (those that you have directly contacted either by inviting them to connect or accepting their invitation to connect) see your full profile. Other members can access your full profile if they search by first and last name.
Rights of website operator	You grant unlimited rights to LinkedIn to use information and content which you upload.
How long	There is no specified term; however you may request the deletion of your content at

	any time, <i>unless you have shared information or content with others and they have not deleted it, or it was copied or stored by other users.</i>
Termination	If you violate the letter or spirit of your agreement with LinkedIn, or LinkedIn considers that you have created any risk or possible legal exposure for it, LinkedIn may delete your account and all of your content.
Jurisdiction	The laws of the State of California govern your agreement with LinkedIn. Any litigation must be in the courts of Santa Clara County, California.
What does LinkedIn promise you	Every user is given a limited, revocable, non-exclusive, non-assignable, non-sublicensable licence and right to access the Services. LinkedIn is provided on an “as is” and “as available” basis. LinkedIn does not control or vet user generated content for accuracy and does not provide any express warranties or representations. To the fullest extent permissible under applicable law, LinkedIn and its suppliers disclaim any and all implied warranties and representations, including, without limitation, any warranties of merchantability, fitness for a particular purpose, title, accuracy of data, and non-infringement.

Pinterest

Pinterest account holders create personal picture boards of their choosing from uploaded pictures or by ‘re-pinning’ pictures from others that reflect their personality or themes or particular interests. These may be done in conjunction with themes such as ‘holidays’, ‘60s hairstyles’, or ‘wedding ideas.’ Many wedding photographers ask clients to create Pinterest ‘wedding boards’ to demonstrate their style and gauge a ‘look and feel’. Users can set privacy settings on their picture boards. Users are allowed to view photo boards created by users and can comment and ‘favourite’ particular pictures. The sharing of pictures and photos on this site is seamless, and the licence to be granted to Pinterest and others in order to use its services is expansive to allow this to be done.

Twigseeds is the nom de plume of the wonderfully whimsical Australian illustrator and artist, Kate Knapp. Kate uses Facebook and Pinterest to keep her audiences updated with the lives of her creations, such as the character Ruby Red Shoes.

	Licence over your content^{vi}
What the terms and conditions say	<i>You grant Pinterest and its users a non-exclusive, royalty-free, transferable, sublicensable, worldwide licence 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 Pinterest Products. Nothing in these Terms shall restrict other legal rights Pinterest may have to User Content, for example under other licences.⁶</i>
Rights of third parties	Pinterest states that when you upload content to Pinterest, you must either be the copyright owner or, if not the owner, ensure you are not breaching someone else’s copyright in uploading the content. If you are not the owner, you must be in a position to grant the broad licence described above. In uploading content to Pinterest, you must accept that the content you upload will be freely used by other users and may be altered. There is no obligation on such users to acknowledge you as the creator.
Rights of website operator	Pinterest has very broad rights to use your content for any purpose and in any way for the purpose of operating Pinterest and associated products and services. This licence specifically contemplates that Pinterest or other users may make derivative

⁶ Pinterest Terms of Service, Clause 2(b).

	works or adaptations from your content.
How long	Content that is uploaded onto Pinterest will remain useable for other users of the site even after you terminate, and therefore the licence continues indefinitely.
Termination	If you violate the letter or spirit of your agreement with Pinterest, or Pinterest considers that you have created any risk or possible legal exposure for it, Pinterest may delete your account and all of your content.
Jurisdiction	The laws of the State of California govern your agreement with Pinterest. Any litigation must be in the courts of Santa Clara County, California.
What does Pinterest promise you	'You may use Pinterest only if you can form a binding contract with Pinterest, and only in compliance with these Terms and all applicable laws. Pinterest cannot guarantee that unauthorized third parties will not be able to defeat its security measures. The Products and all included content are provided on an "as is" basis without warranty of any kind, whether express or implied. Pinterest specifically disclaims any and all warranties and conditions of merchantability, fitness for a particular purpose, and non-infringement. Pinterest takes no responsibility and assumes no liability for any content that you or any other user or third party posts or transmits. To the maximum extent permitted by law, Pinterest shall not be liable for any loss resulting from your use or any conduct or content of any third party.

TripAdvisor

TripAdvisor is forum for users to exchange information about travelling or specific travel destinations and experiences by posting pictures, reviews and blogs. TripAdvisor takes a very broad licence over your content including for commercial purposes. It's not a site generally used extensively by artists but photographers and writers using it incidentally should take care not to post content over which they do not want others to have broad rights.

	Licence over your content^{vii}
What the terms and conditions say	You grant TripAdvisor and its affiliates a <i>non-exclusive, royalty-free, perpetual, transferable, irrevocable and fully sublicensable right to (a) use, reproduce, modify, adapt, translate, distribute, publish, create derivative works from and publicly display and perform such Submissions throughout the world in any media, now known or hereafter devised; and (b) use the name that you submit in connection with such Submission.</i> You acknowledge that TripAdvisor may choose to provide attribution of your comments or reviews at our discretion.
Rights of third parties	There is no provision for privacy settings which could restrict third party access.
Rights of website operator	TripAdvisor has extensive rights over your content including to make commercial use of it without acknowledging or paying you.
How long	The licence you give TripAdvisor is 'perpetual' with no means of terminating it.
Termination	If you violate the agreement or TripAdvisor considers that you have created any risk or possible legal exposure for it, TripAdvisor may delete your account and all of your content.
Jurisdiction	The laws of the State of Massachusetts govern your agreement with TripAdvisor. Any litigation must be in the courts of Massachusetts.
What does TripAdvisor promise you	TripAdvisor takes no responsibility and assumes no liability for any content posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor is TripAdvisor liable for any mistakes, defamation, slander, libel, omissions, falsehoods,

	<p>obscurity, pornography or profanity you may encounter. As a provider of interactive services, it is not liable for any statements, representations or content provided by its users in any public forum, personal home page or other interactive area. TripAdvisor reserves the right, and has absolute discretion, to remove, screen or edit without notice any content at any time and for any reason, and you are solely responsible for creating backup copies of and replacing any content you post or store on the site at your sole cost and expense.</p>
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Twitter

Twitter is a text-based social media site where users may post online text containing a maximum of 140 characters and pictures called 'twitpics.' Unique features of Twitter include hashtagging or adding '#' in front of words which record all the text of users using the same hashtag and create feeds from certain topics. Users are also able to freely reply to texts of all users including prominent figures by the use of '@' in front of the user's name. Lastly, users may 're-tweet' the posts of others into their own feed.

Performer Lady Gaga currently has more than 39 million Twitter followers and some 58 million Facebook likes. This gives her immediate access to an enormous number of followers in real time. Her website features 'click on' icons to link you directly to her via, email, Facebook, Instagram, Twitter and YouTube.

	Licence over your content^{viii}
What the terms and conditions say	The user grants Twitter a <i>worldwide, non-exclusive, royalty-free licence (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display and distribute your uploaded content in any and all media or distribution methods (now known or later developed)</i> ... ⁷ Twitter gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive licence to use the software that is provided to you by Twitter as part of the services.
Rights of third parties	Other users are allowed to use your content in unlimited ways, however this must theoretically only be done in conjunction with using the Twitter service and adhering to its policies.
Rights of website operator	Twitter is allowed to use your content in unlimited ways.
How long	Even after termination of your account, Twitter retains all its rights over the content you posted.
Termination	If you violate the agreement with Twitter, or Twitter considers that you have created any risk or possible legal exposure for it, Twitter may delete your account and all of your content.
Jurisdiction	The laws of the State of California govern your agreement with Twitter. Any litigation must be in the courts of Santa Clara County, California.
What does Twitter promise you	Your access to and use of Twitter is at your own risk. You understand and agree that the Services are provided to you on an "as is" and "as available" basis. Twitter disclaims all warranties and conditions, whether express or implied, of merchantability, fitness for a particular purpose, or non-infringement.

⁷ Twitter Terms of Service, Clause 5.

	Twitter disclaims all responsibility and liability for: (i) the completeness, accuracy, availability, timeliness, security or reliability of the services or any content; (ii) any harm to your computer system, loss of data, or other harm that results from your access to or use of the services or any content; (iii) the deletion of, or the failure to store or to transmit, any content and other communications maintained by the services; and (iv) whether the services will meet your requirements or be available on an uninterrupted, secure, or error-free basis.
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Vimeo

Vimeo is a video sharing site. Similarly to Flickr, Vimeo seeks to foster a community of active video makers and allows users to comment and critique other users' videos. Vimeo actively provides a comprehensive copyright policy and facilitates the grant by users of Creative Commons' licences for their work.

	Licence over your content⁸
What the terms and conditions say	By submitting a video, you grant Vimeo and its affiliates a limited, <i>worldwide, non-exclusive, royalty-free licence 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</i> 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) <i>allowing other users to play, download, and embed</i> 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. The foregoing licences are in addition to any licence you may decide to grant (e.g. a Creative Commons licence). ⁸
Rights of third parties	Vimeo users are granted a licence to copy and make derivative works of your videos to the extent necessary to view your videos for <i>personal, non-commercial purposes</i> . Vimeo also allows owners to offer a Creative Commons licence over their content. You grant all users permission to view your non-video content for their personal, non-commercial purposes and waive any "moral rights" in your non-video content.
Rights of website operator	Vimeo can reproduce and modify your video content for the sole purposes of non-commercial viewing. With regard to non-video content, Vimeo and affiliates are granted a worldwide, perpetual, irrevocable, non-exclusive, royalty-free licence and right to copy, transmit, distribute, publicly perform and display (through all media now known or hereafter created), and make derivative works of your non-video content.
How long	You may delete your account at any time. Basic accounts may be deleted from the Vimeo Service if they remain inactive (i.e. the user fails to log in) for a continuous period of at least six (6) months. Subscription accounts will remain active until the end of the subscription term and any renewal term. The licences end a commercially reasonable period of time after termination of your account however, are indefinite for archival/preservation purposes. However, where your content has been stored in

⁸ Vimeo Terms of Service, Clause 9.

	search engine records, or downloaded, Vimeo cannot control this use.
Termination	Vimeo may suspend, disable, or delete your account (or any part thereof) or block or remove any content you submitted if Vimeo determines that you have violated any provision of the Agreement or that your conduct or content would tend to damage Vimeo's reputation and goodwill. If Vimeo deletes your account for the foregoing reasons, you may not re-register for the Vimeo Service. Vimeo may block your email address and internet protocol address to prevent further registration.
Jurisdiction	The laws of the State of New York govern your agreement with Vimeo. Any litigation must be in the courts of New York County, New York.
What does Vimeo promise you	If you do not wish to be bound by this Agreement, do not use the Vimeo Service. Vimeo grants you a limited, non-exclusive licence to access and use the Vimeo Service for your own <i>personal, non-commercial purposes</i> . This includes the right to view content available on the Vimeo Service. This licence is personal to you and may not be assigned or sublicensed to anyone else.

WordPress

WordPress is an online platform operated by Automatic that allows users to create blogs (or online diaries) on which they may post copyright content such as writing, photos, drawings and other forms of media. WordPress allows users to choose whether their blog may be shown to the public or to a specific group of people by invitation and users may further tailor the permissions of their Content to third parties through the availability of Creative Commons licences. Authors may use WordPress without privacy settings to reach and build reading audiences.

Actresses Jane Fonda, and Mary-Kate and Ashley Olsen, bands Beastie Boys and New Kids on the Block and authors Stephen Fry, Kevin Smith, Martha Stewart and Richard Branson have all blogged on WordPress.

	Licence over your content^x
What the terms and conditions say	The user grants a <i>world-wide, royalty-free, and non-exclusive licence to reproduce, modify, adapt and publish the Content solely for the purpose of displaying, distributing and promoting your blog.</i> ⁹
Rights of third parties	No licence is granted to third parties to use your content. However, WordPress contains an option for users to grant a Creative Commons Sharealike Licence over their content to third parties.
Rights of website operator	The licence granted to WordPress is restricted to uses necessary to publish and promote your blog on its service.
How long	It continues for as long as you continue to use it.
Termination	Your access to all or any part of the Website can be terminated by WordPress at any time, with or without cause, with or without notice, effective immediately.
Jurisdiction	The laws of the State of California govern your agreement with WordPress. Any litigation must be in the courts of San Francisco County, California.
What does	The basic service is free, and there are paid upgrades for advanced features such as

⁹ Wordpress Terms of Service. Clause 2.

WordPress promise you	domain hosting and extra storage. WordPress disclaims all warranties of any kind, express or implied, including, without limitation, the warranties of merchantability, fitness for a particular purpose and non-infringement. It makes no warranty that the Website will be error free or that access thereto will be continuous or uninterrupted. You understand that you download from, or otherwise obtain content or services through, the Website at your own discretion and risk.
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YouTube

YouTube is a video sharing platform that is widely used by video makers ranging from amateur to professional artists. Musicians, videographers and vloggers (video bloggers) who create video diaries have successfully used the forum of YouTube to access global exposure and develop a reputation through users 'subscribing' to their YouTube channel.

	Licence over your content^{xi}
What the terms and conditions say	"...You retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a <i>worldwide, non-exclusive, royalty-free, sublicenseable and transferable licence to use, reproduce, distribute, prepare derivative works of, display, publish, adapt, make available online or electronically transmit, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates')</i> 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.
Rights of third parties	You also grant each user of the Service a non-exclusive licence to access your Content, and to use, reproduce, distribute, display, publish, make available online or electronically transmit, and perform such Content for personal use. ¹⁰ YouTube also enables users to offer other users a Creative Commons licence. Details can be found http://www.youtube.com/yt/copyright/creative-commons.html with the licence found at http://creativecommons.org/licenses/by/3.0/legalcode .
Rights of website operator	The licence granted to YouTube is a broad licence to use your content for 'its business'.
How long	The licence granted to YouTube to use your content ceases when you remove the Content from their site within a commercially reasonable time of termination. Should another user re-upload your videos, you have the right to seek that YouTube remove them. However, a licence for limited uses in archiving continues to be granted. A perpetual licence continues to be granted to YouTube in terms of the comments which you have posted on other areas of the site such as other users' videos.
Termination	YouTube will terminate a user's access to the Service if the user is determined to be a repeat infringer. YouTube reserves the right to decide whether Content violates the Terms of Service for reasons other than copyright infringement, such as, but not limited to, pornography, obscenity, or excessive length. YouTube may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation of the Terms of Service.
Jurisdiction	The laws of the State of California govern your agreement with YouTube. Any litigation must be in the courts of Santa Clara County, California.

¹⁰ YouTube Terms of Service Clause 5B.

What does YouTube promise you

You agree that your use of the services shall be at your sole risk. YouTube excludes all warranties, express or implied, in connection with the services and your use and assumes no liability or responsibility for 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 the use of any content posted, emailed, transmitted, or otherwise made available via the services.

Conclusion – Top Tips To Remember

- 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 to do so – maybe by posting it first on the site you use or through a Creative Commons licence.
- 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 Information

The Australian Copyright Council (ACC) has free information sheets on their website:

- [Websites & Copyright](#)
- [Websites User Generated Content & Web 2.0](#)
- [YouTube & Copyright](#)

i Facebook Terms of Service version of 11 December 2012 accessed at <http://www.facebook.com/legal/terms> .

ii Yahoo! Terms of Service version at 1 May 2013 accessed at <http://au.docs.yahoo.com/info/terms/>

iii Google+ Terms of Service version of 1 May 2013 accessed at <http://www.google.com/intl/en/policies/terms/>.

iv Instagram Terms of Use version of 19 January 2013 accessed at <http://instagram.com/about/legal/terms/>.

Instagram API Terms of Use at 1 May 2013 at <http://instagram.com/about/legal/terms/api/>

v LinkedIn User Agreement version of 13 May 2013 accessed at <http://www.Linkedin.com/legal/user-agreement>.

LinkedIn Copyright Policy version at 24 March 2010 accessed at <http://www.Linkedin.com/legal/copyright-policy>.

vi Pinterest Terms of Service at 1 May 2013 accessed at <http://about.pinterest.com/terms/>.

Pinterest Copyright at 1 May 2013 accessed at <http://about.pinterest.com/copyright/>.

vii Tripadvisor.com.au Website Terms, Conditions and Notices at 6 July 2009 accessed at <http://www.tripadvisor.com.au/pages/terms.html>.

TripAdvisor: Notice & Takedown Procedure at 1 May 2013 accessed at <http://www.tripadvisor.com.au/pages/noticetakedown.html>.

viii Twitter Terms of Service version of 25 June 2012 accessed at <https://twitter.com/tos>

The Twitter Rules version at 1 May 2013 accessed at <https://support.twitter.com/articles/18311-the-twitter-rules>.

ix Vimeo Terms of Service version at January 2013 at <http://vimeo.com/terms>

Vimeo.com DMCA (Copyright) Notifications and Counter-Notifications Process version at May 2011 accessed at <http://vimeo.com/dmca>.

x WordPress Terms of Service version of 12 November 2012 accessed at <http://en.wordpress.com/tos/>.

xi YouTube Terms of Service at 1 May 2013 accessed at <http://www.youtube.com/t/terms>.

YouTube Copyright Infringement Notification Basics at 1 May 2013 accessed at <http://www.youtube.com/yt/copyright/copyright-complaint.html>.

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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