

Private, social, public?

Images on social media and some of their legal conditions

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Making works available online

 s. 19a UrhG: Right of making works available to public

“Right of making works available to the public” means the right to make the work available to the public, either by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.

 art. 3 Directive 2001/29/EC (“InfoSoc”)

- Requires member states to give authors exclusive rights to authorise any communication to the public of their works, including “in such a way that members of the public may access them from a place and at a time individually chosen by them” (= legalese for online availability)

Publishing personal data

art. 6 GDPR: Lawfulness of processing

(1) Processing shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes; [...]

art. 9 GDPR: Processing of special categories of personal data

(1) Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited. [...]

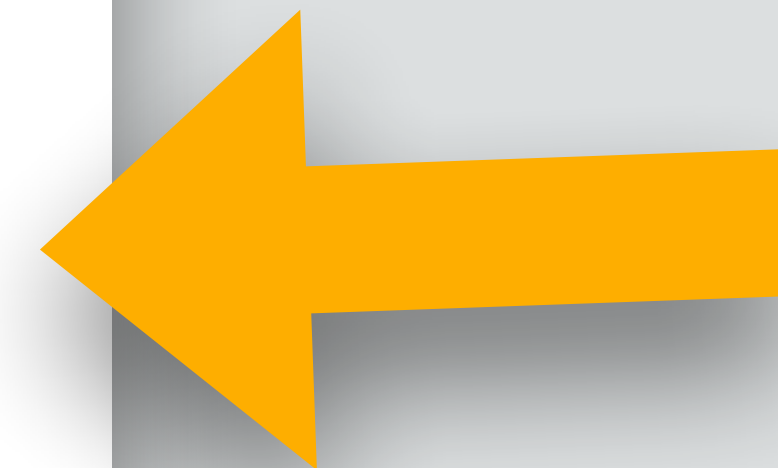
Exceptions applicable, including consent, public interest, [...]

Typical licence for platforms (Instagram)

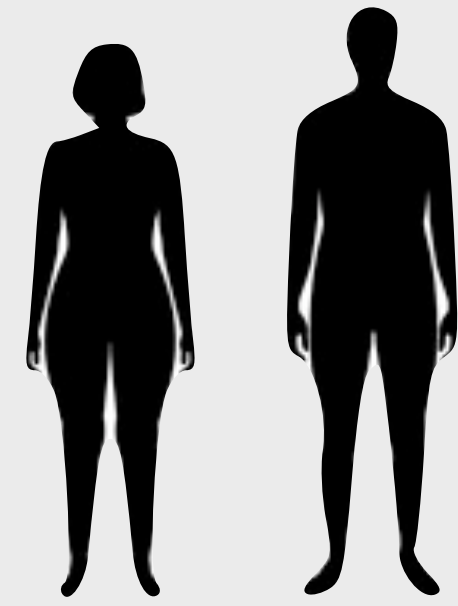
- **You can't attempt to create accounts or access or collect information in unauthorised ways.**
This includes creating accounts or collecting information in an automated way without our express permission.
- **You can't sell, license or purchase any account or data obtained from us or our Service.**
This includes attempts to buy, sell or transfer any aspect of your account (including your username); solicit, collect or use login credentials or badges of other users; or request or collect Instagram usernames, passwords or misappropriate access tokens.
- **You can't post someone else's private or confidential information without permission or do anything that violates someone else's rights, including intellectual property rights (e.g. copyright infringement, trademark infringement, counterfeit or pirated goods).**
You may use someone else's works under exceptions or limitations to copyright and related rights under applicable law. You represent that you own or have obtained all necessary rights to the content that you post or share. Learn more, including how to report content that you think infringes your intellectual property rights, [here](#).
- **You can't modify, translate, create derivative works of or reverse-engineer our products or their components.**

Permissions you give to us. As part of our agreement, you also give us permissions that we need to provide the Service.

- **We do not claim ownership of your content, but you grant us a licence to use it.**
Nothing is changing about your rights in your content. We do not claim ownership of your content that you post on or through the Service and you are free to share your content with anyone else, wherever you choose. However, we need certain legal permissions from you (known as a "licence") to provide the Service. When you share, post or upload content that is covered by intellectual property rights (such as photos or videos) on or in connection with our Service, you hereby grant to us a non-exclusive, transferable, sub-licensable, worldwide licence to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content (consistent with your privacy and application settings) for purposes of making the Instagram Service available. This licence will end when your content is deleted from our systems. You can delete content individually or all at once by deleting your account. To learn more about how we use information, and how to control or delete your content, review the [Data Policy](#) and visit the [Instagram Help Centre](#).



Data and their legal containers



personal data

privacy laws

data protection



invention

patent



work

copyright

related rights



brand

trademark law

trade secret protection law



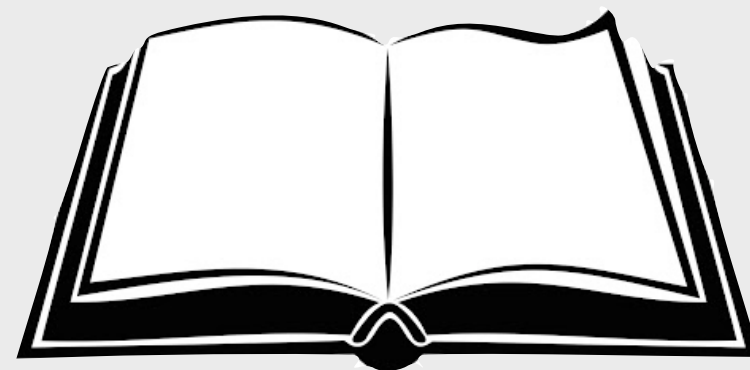
secret



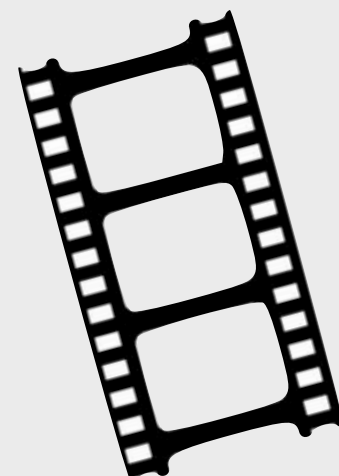
object

property

**Perception
interface**



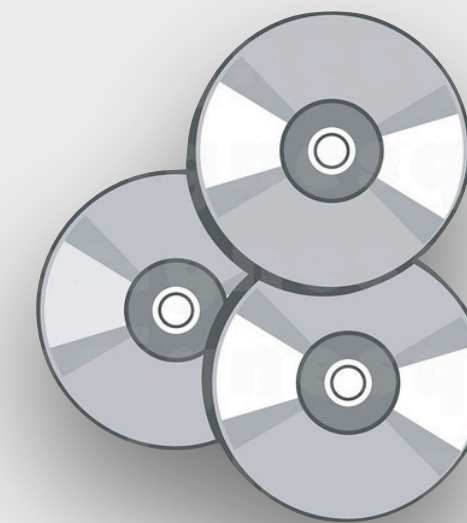
publisher



producer



performing rights



recording rights



broadcasting rights

...

Making works available online on social media

Copyright cleared (own work / exception / licence)?

e.g. pastiche / parody
for memes

Personal / privacy rights OK

(informed consent / legitimate interest ...)?



Is redistribution on the platform covered?

licence

use on platform OK

APIs / (hacker?) tools / terms & conditions

use outside the platform

general rules



Privileged communication: artistic & scientific freedom / research

 s. 23 KUG [law regulating personality rights]

- Images may be disseminated and displayed without consent:
 - 1 portraits from contemporary history (i.e. of historical relevance);
 - 2 where people just happen to be in the picture (accidentally, not prominent);
 - 3 images of meetings, processions and similar events (i.e. where the collective character of the event remains in focus)
 - 4 portraits which have not been made to order, provided that the dissemination or display serves a higher artistic interest (i.e. art)
- Exceptions: images that violate legitimate interests of the person depicted or, if he or she is deceased (< 10 years), of his or her relatives.

Privileged communication: scientific freedom / research

🇪🇺 art. 5 Directive 2001/29/EC (“InfoSoc”) / 🇩🇪 s. 51 UrhG: Quotations

- Works can be reproduced if they are the specific subject of academic analysis (“criticism and review”).

🇪🇺 art. 89 GDPR: Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

- If **technical and organisational measures** are in place, personal data can be processed and archived for scientific or historical research purposes.

↪ pseudonymisation – anonymisation – limited access (“classified data”)

Privileged communication: scientific freedom / research

s. 44b UrhG: Text and data mining

- Text and data mining is permitted. Copies are to be deleted when they are no longer needed.

s. 60d UrhG: Text and data mining for scientific research purposes

- Non-commercial research organisations, libraries and museums are authorised to make reproductions for text and data mining.
- They may share their datasets to a limited circle of people for their joint scientific research.
- They may keep the data for as long as necessary for the purposes of the scientific research or the monitoring of the quality of the scientific findings.

A legally defined area for free research: a call for a protected / protecting platform

