

The Second Life Terms of Service: Content, Creators, & Rights

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Summary

- ▶ What do we mean by *copyright*?
- ▶ What do terms used in terms of use mean?
- ▶ What kinds of terms are normal, and what do they say?
 - ▶ Yahoo / Flickr
 - ▶ Facebook
 - ▶ Twitpic
 - ▶ LinkedIn
- ▶ A close look at the Second Life ToS
- ▶ Where do we go from here?



What does *copyright* mean, exactly?

- ▶ Content creators are granted *exclusive rights* over their works:
 - ▶ Reproduction: the right to **make copies**
 - ▶ Distribution: the right to **share or transfer**
 - ▶ Derivation: the right to **modify**
 - ▶ Public performance: the right to **perform works in public**
 - ▶ Public display: the right to **display works in public**
- ▶ “*Exclusive*” means no one else can do these things unless the creator gives permission.
- ▶ **BUT**...transmission of content on the internet generally involves all of these rights.

What do license terms mean, exactly?

Non-exclusive	The permission does not belong to only one party. A non-exclusive license is one that can be shared: many people may use the same content at the same time.
Perpetual	The permission does not end or have a time limit.
Worldwide	The permission is granted throughout the world and is not limited by country.
Irrevocable	You cannot take back your permission.
Royalty-free / Fully paid	The party who has permission does not owe you any money for it.
Sublicenseable	The party who has permission may grant or extend some of those permissions to a third party (often for a fee).
Transferable / Assignable	The party who has permission may give or sell its rights to a third party.
Limited / Unlimited	The permission is limited in specific ways (or is not limited).
The license ends...	The permission you granted ends when this thing happens.

Terms of Use: license agreements

- ▶ Terms of use agreements usually contain intellectual property licenses both ways.
 - ▶ The user is permitted to use the site's content and the site is permitted to use the user's content.
- ▶ A well-written intellectual property license is usually:
 - ▶ **Limited in purpose,**
 - ▶ **Limited in term, and**
 - ▶ **Limited in scope.**

**...But
not
always**



Yahoo / Flickr

9. CONTENT SUBMITTED OR MADE AVAILABLE FOR INCLUSION ON THE YAHOO! SERVICES

Yahoo! does not claim ownership of Content you submit or make available for inclusion on the Yahoo! Services. 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:

b. With respect to photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Yahoo! Services other than Yahoo! Groups, the license to use, distribute, reproduce, modify, adapt, publicly perform and publicly display such Content on the Yahoo! Services solely for the purpose for which such Content was submitted or made available. 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.

c. With respect to Content other than photos, graphics, audio or video you submit or make available for inclusion on publicly accessible areas of the Yahoo! Services other than Yahoo! Groups, the perpetual, irrevocable and fully sublicensable license to use, distribute, reproduce, modify, adapt, publish, translate, publicly perform and publicly display such Content (in whole or in part) and to incorporate such Content into other works in any format or medium now known or later developed.

Facebook

2. Sharing Your Content and Information

You own all of the content and information you post on Facebook, and you can control how it is shared through your privacy and application settings. In addition:

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). 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.

- ▶ But in 2009, Facebook's Terms of Service *used* to also say:
 - ▶ “You may remove your User Content from the Site at any time. If you choose to remove your User Content, the license granted above will automatically expire, however you acknowledge that the Company may retain archived copies of your User Content.”
- ▶ The Terms of Service has changed. Your permission never ends if you have shared content with others.

TwitPic

Copyright

All content uploaded to Twitpic is copyright the respective owners. The owners retain full rights to distribute their own work without prior consent from Twitpic. It is not acceptable to copy or save another user's content from Twitpic and upload to other sites for redistribution and dissemination.

By uploading content to Twitpic you give Twitpic permission to use or distribute your content on Twitpic.com or affiliated sites.

To publish another Twitpic user's content for any commercial purpose or for distribution beyond the acceptable Twitter "retweet" which links back to the original user's content page on Twitpic, whether online, in print publication, television, or any other format, you are required to obtain permission from Twitpic in advance of said usage and attribute credit to Twitpic as the source where you have obtained the content.

You retain all ownership rights to Content uploaded to Twitpic. However, by submitting Content to Twitpic, you hereby grant Twitpic 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 Twitpic'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.

You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in media Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your media from the Service provided that any sub-license by Twitpic to use, reproduce or distribute the Content prior to such termination may be perpetual and irrevocable.

- ▶ Note that if someone wants to use *your* content, they have to get permission from TwitPic, not you, and credit TwitPic.

LinkedIn

2.2. License and warranty for your submissions to LinkedIn

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. 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. Any information you submit to us is at your own risk of loss. By providing information to us, you represent and warrant that you are entitled to submit the information and that the information is accurate, not confidential, and not in violation of any contractual restrictions or other third party rights. It is your responsibility to keep your LinkedIn profile information accurate and updated.

- ▶ Your grant to LinkedIn never expires, and LinkedIn may commercialize your ideas, concepts, and techniques.

Now...Second Life Terms

2.3 You grant Linden Lab certain licenses to your User Content.

You retain any and all Intellectual Property Rights you already hold under applicable law in Content you upload, publish, and submit to or through the Servers, Websites, and other areas of the Service, subject to the rights, licenses, and other terms of this Agreement, including any underlying rights of other users or Linden Lab in Content that you may use or modify.

- ▶ Translation: if you already have any rights in the works you upload, you keep your rights in them. **YOU OWN YOUR CONTENT.** ...but that doesn't mean much if you license away your rights in it.

In connection with Content you upload, publish, or submit to any part of the Service, you affirm, represent, and warrant that you own or have all necessary Intellectual Property Rights, licenses, consents, and permissions to use and authorize Linden Lab and users of Second Life to use the Content in the manner contemplated by the Service and these Terms of Service.

- ▶ Translation: you may only upload content if you have the permission to do so. You may not upload unlicensed content.
- ▶ These two sections have not changed from earlier versions.

Second Life Terms

Except as prohibited by law, you hereby waive, and you agree to waive, any moral rights (including attribution and integrity) that you may have in any User Content, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration or remuneration for any of the rights granted in this Section.

- ▶ Translation: Linden Lab will not pay you for the use of your works.
- ▶ Moral rights are common in copyright law outside the United States.
- ▶ This has not changed from earlier versions.

Linden Lab has no obligation to monitor or enforce your intellectual property rights to your User Content, but you grant us the right to protect and enforce our rights to your User Content, including by bringing and controlling actions in your name and on your behalf (at Linden Lab's cost and expense, to which you hereby consent and irrevocably appoint Linden Lab as your attorney-in-fact, with the power of substitution and delegation, which appointment is coupled with an interest).

- ▶ Translation: LL may sue third parties in your name, at LL's expense. You appoint LL as your attorney for these actions.
- ▶ This section is new.

Second Life Terms

Except as otherwise described in any Additional Terms (such as a contest's official rules) which will govern the submission of your User Content, you hereby grant to Linden Lab, and you agree to grant to Linden Lab, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), modify, display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise exploit in any manner whatsoever, all or any portion of your User Content (and derivative works thereof), for any purpose whatsoever in all formats, on or through any media, software, formula, or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. You agree that the license includes the right to copy, analyze and use any of your Content as Linden Lab may deem necessary or desirable for purposes of debugging, testing, or providing support or development services in connection with the Service and future improvements to the Service. The license granted in this Section 2.3 is referred to as the "Service Content License."

- ▶ **Translation: You grant Linden Lab the right to use your content.**
 - ▶ That right does not only belong to Linden Lab; more people can use your content. The right has no limitations. It is worldwide and you cannot take it back even if you delete your content. You will not be paid for the right.
 - ▶ Linden Lab can use your content *for any purpose whatsoever*, including advertising and marketing.
- ▶ **Do not be freaked by the mention of “sell, resell.”**
That's not what's wrong with this section.

How do we make it better?

- ▶ Limit the **purpose for which content can be used**
 - ▶ For example: to provide / promote services; for the purpose for which the content was submitted
- ▶ Limit the **term of the license**
 - ▶ For example: by ending the license when users delete content, unless the content has been transferred
- ▶ Limit the **scope of the license**
 - ▶ For example: only content uploaded to Linden Lab's services is within the scope of the license



Where does this leave us?

- ▶ **Every man for himself**
- ▶ **An Instagram situation**
 - ▶ December 2012: ToS change
 - ▶ Jan 2013: 16.35mil users dropped to 7.42mil
 - ▶ Instagram revises ToS (?)
- ▶ **A hostile solution**
 - ▶ Complaints to FTC?
 - ▶ Lawsuit?
- ▶ **A peaceful solution**

