

Terms and Conditions of Use (last updated: 28 Sep. 2007)

Recital

Pixelio is a multi-media platform (hereinafter referred to as "PIXELIO"), which enables its Members to upload their own images - such as photographs, illustrations, drawings (hereinafter referred to as "Images") - into a data bank, and to offer these Images for use by other Members.

The Members on the one hand are the photographers, illustrators and other persons who register with PIXELIO and upload Images into the data bank (hereinafter referred to as "Authors").

The Members on the other hand are individuals or legal entities and associations who register with PIXELIO and download Images from the data bank (hereinafter referred to as "Users").

Authors and Users shall hereinafter be jointly referred to as "Members".

1. Scope of Application

The General Terms and Conditions of Use hereinafter regulate the conditions under which the Members may use PIXELIO, and also the contractual relations between the Members of PIXELIO.

Upon registration with PIXELIO, you expressly approve of these terms, and acknowledge to have read and understood the Terms and Conditions of Use.

2. Retention of Right to Modifications

PIXELIO shall have the right to modify the contents of these Terms and Conditions, with the Members' approval, if the modification is reasonable for the Members, taking into consideration PIXELIO's interests. At the latest 2 weeks prior to such modification, PIXELIO shall inform the Members of a modification of the Terms and Conditions of Use via e-mail to the address stipulated by the Member.

Modifications of the Terms and Conditions of Use shall be deemed to have been approved of if the Member does not object to the modification within one month from receipt of the modification notification, nor terminates the contract within this period of time.

PIXELIO undertakes to specifically inform the Members in the notification on such modifications of the possibility of objecting to the modification or terminate the contract, of the deadline and the legal consequences, in particular the consequences of not submitting an objection.

Should the Member object to a modification of the Terms and Conditions of Use, PIXELIO shall have the right to terminate the membership extraordinarily.

3. Provider

The multi-media platform PIXELIO is operated by
pixelio media GmbH
Friedrichstr. 171
10117 Berlin
Germany

as a service provider in compliance with Section 12 TMG (Telemediengesetz - German Act on

Telemedia).

4. Registration

In order to use PIXELIO, the Member will have to register and open a member's account. The only features available without registration are the search and display of the thumbnails of the Images placed on PIXELIO, and the access to articles in the forum.

In order to place or download Images, or to write articles for the forum, you first need to register with PIXELIO.

The Member is obligated to truthfully and correctly complete the boxes in the order form. Successful registration is only possible if the obligatory boxes have been truthfully and correctly filled in. If changes occur after registration regarding the collected data, the Member must immediately update the information in the member's account.

Upon registration, the Member defines a user name and a password for his/her login to PIXELIO (hereinafter referred to as "Login Data"). User names violating third-party rights, in particular trademark rights or name rights, are not admissible. Illegal and immoral user names are not admissible either.

Members shall be obligated to keep the Login Data secret and store them in such a way as to protect them against access by unauthorised third parties. If a Member loses the Login Data, or if he/she finds out or suspects that his/her Login Data may be being used by a third person, he/she shall immediately inform PIXELIO thereof. PIXELIO shall not accept any liability for damages caused by Login Data falling into third-party hands. PIXELIO will never ask for your password, with the exception of the termination, when you will have to provide the first three letters of your password.

Upon sending the data in the registration form, the Member submits an offer to PIXELIO for the conclusion of a utilisation contract for the multi-media platform.

PIXELIO reserves the right to refuse registration of a Member without having to state reasons for the refusal.

Utilisation of PIXELIO as an Author is not permitted for minors or other persons without, or with restricted, legal capacity. Uploading Images requires a declaration of consent issued by the legal guardian.

As soon as PIXELIO accepts the Member's offer for registration, the Member will receive a confirmation e-mail containing the registration data and an activation link.

Upon receipt of this confirmation e-mail, the user contract for the multi-media platform is concluded between PIXELIO and the Member.

5. Granting of rights by the Author

The Author grants the User a non-exclusive, non-transferrable licence, without restrictions as to time and place, for the utilisation of the Images uploaded by the User, for all admissible types of use in compliance with the corresponding licences (see A or B below).

The type of licence (A or B below) will be determined by the Author at the time of upload of the

Images; the corresponding information is provided separately for each Image.

All other rights to the Images, including copyrights and other industrial property rights relating to the Images, remain with the Author of the Image.

Permission for types of utilisation which exceed the utilisation permitted under the licence contracts below, will have to be obtained directly from the Author in each individual case.

[A. Licence for editorial utilisation only \(http://www.pixelio.de/lizenzvertrag_redaktionell_en.php\)](http://www.pixelio.de/lizenzvertrag_redaktionell_en.php)

[B. Licence for editorial and commercial utilisation \(http://www.pixelio.de/lizenzvertrag_redaktionell_und_kommerziell_en.php\)](http://www.pixelio.de/lizenzvertrag_redaktionell_und_kommerziell_en.php)

The User shall be solely responsible for the valid transfer of the utilisation rights.

The User is obligated to observe the publishing principles of the Deutsche Presserat (German Press Council press codex).

Furthermore, the Author grants pixelio media GmbH a non-exclusive, non-transferrable licence, without restrictions as to time and place, for the utilisation of the uploaded Images for the operation of the platform PIXELIO. The Author in particular grants the right to copy the Images and to make them publicly accessible on PIXELIO.

6. Author' guarantee and liability

By uploading Images, the Author guarantees towards the User and PIXELIO that he/she is authorised to grant all licence rights to be granted under this agreement, and that he/she has not granted any rights or licences regarding the Images which may contradict the present agreement.

The Author furthermore guarantees towards the User and PIXELIO that the Images and information he/she makes available on PIXELIO do not violate any copyrights, trademark rights, privacy rights, publicity rights or other third-party rights, and that they do not offend or disrepute any third parties.

Model release: To the extent to which the uploaded Images contain images of persons or groups of persons, the Author guarantees that he/she has obtained a valid and legally binding release declaration with regard to the utilisation of the image. This release declaration must permit the utilisation of the Image at least to the extent described in the licence agreement granted by the Author (see 5.).

Property release: To the extent to which the Images show third-party property, the Author guarantees that - if this is required by law - he/she has obtained a valid and legally binding release declaration with regard to the presentation of this property from the holder of the corresponding rights. This release declaration must permit the utilisation of the Image at least to the extent described in the licence agreement granted by the Author (see 5.).

The Author indemnifies and holds the User and PIXELIO harmless from any claims by third parties, including costs of legal action, which may have been incurred due to the culpable violation of the terms and conditions hereunder and the above granting of rights.

7. No granting of rights by PIXELIO

PIXELIO as the service provider pursuant to section 12 TMG only makes the multi-media platform

itself available for utilisation by its Members.

PIXELIO therefore does not grant any utilisation rights or licences to the Images uploaded into the data bank by the Authors.

All rights to the Images will be transferred directly from the Author to the User under the licence agreement in No. 5.

8. Naming of author and source reference

The User shall be obligated to name PIXELIO and the Author (with his/her photographer's name as stipulated during the upload of the Image from PIXELIO), in such a way as is usual for the corresponding utilisation and - as far as this is technically possible - in close proximity to the Image itself or at the end of the page, in the following form: '© Photographer's name / PIXELIO'.

If Image Material is used on the Internet or in digital media, a reference to PIXELIO must be placed in the form of a link to the site www.pixelio.de.

9. Prohibited types of utilisation

PIXELIO may only be used for legal purposes.

PIXELIO may not be used to disseminate defamatory, pornographic or other illegal material, to threaten or harass third parties or to violate third-party rights (including personality rights).

The utilisation of PIXELIO in a way which impairs the availability of the data bank or other PIXELIO services for other Members is prohibited.

The Members are responsible to ensure that Images placed by them and the forum articles written by them are free of viruses, worms, Trojans or other damaging programmes which may endanger or impair the functionality or the inventory of PIXELIO, or of the Members' websites.

It is prohibited to publish Images, forum articles or other content of the following kind on PIXELIO:

- content which may violate third-party rights, in particular third-party copyrights, performing rights, name and trademark rights, design rights, property rights and personality rights;
- pornographic, obscene, sexist, defamatory, libellous or racist presentations, or presentations offending minorities or religious groups;
- discrimination, defamation or insults;
- false allegations;
- abusive criticism, libel, speculations or slander;
- vilification of the Author or the person(s) shown;
- political content or advertising for political parties.
- calls for boycotts or deletion requests of any kind
- Members' private data (e.g. address, telephone number, bank details)
- quotes from private e-mails/text messages from other Members, PIXELIO or third parties (privacy of mail)
- links to internet sites with illegal content
- utilisation of content for editorial purposes without showing the following information in close proximity to the content: "© Author's member name /PIXELIO"
- unauthorised communication measures, neither direct nor indirect (e.g. spamming)
- advertising

- if it must be assumed that the Author or the person shown would not approve of the publication (in spite of the existence of a model release!).

[For purposes of clarification: This refers to all images which show this person in a situation which may violate his/her personality rights, including, without limitation, mental or physical health or social behaviour, sexual or insinuated sexual activities or preferences, use or abuse of drugs, crimes, physical or mental abuse or suffering or any other situation which would probably be offensive for any person shown in the content (e.g. dating pages, escort services, erotic offers, pornographic offers, pages with content which is harmful to minors)].

10. Deletion of Images and forum articles

PIXELIO reserves the right to delete Images and forum articles without providing specific reasons for this deletion.

A right to place or maintain uploaded Images or forum articles on PIXELIO is not guaranteed.

11. Author's liability

Should third parties assert claims against PIXELIO due to a culpable violation of the Author's obligations, in particular due to violations of copyrights, personality rights, property rights or industrial property rights, the Author shall indemnify and hold PIXELIO harmless from any liability and costs, including the costs of legal proceedings.

The same shall apply if claims are asserted against a User by a third party with regard to the transfer of utilisation rights, due to a culpable violation of the Author's obligations existing towards such third party.

12. PIXELIO's liability

PIXELIO shall have the right, but not the obligation, to editorially examine any Images or forum articles placed. We would like to expressly state that PIXELIO, due to the quantity of the Images and forum articles placed, neither has the technical nor the personnel capacity to examine all Images and articles for infringements of third-party rights.

The Author shall be exclusively responsible for the lawfulness of the Images and forum articles as well as for his/her right to grant utilisation rights to the Images. Any liability by PIXELIO in this context is hereby expressly excluded.

PIXELIO's liability, as well as the liability of its vicarious agents, for violations of contractual duties and based on tort shall be limited to intent and gross negligence. This shall not apply for cases of death, injury or violations of health, claims based on violations of cardinal duties and compensation for default damages (section 286 BGB - Bürgerliches Gesetzbuch, German Civil Code). In these areas, PIXELIO shall be liable for all degrees of culpability by itself and its vicarious agents.

Liability for the violation of cardinal duties is limited to the foreseeable damages which typically occur in cases of this kind.

13. Freeze of access for Members

In the case of a violation of the present Terms and Conditions of Use, PIXELIO shall have the right to freeze the Member's access to PIXELIO or parts thereof with immediate effect. The affected Member is prohibited from re-registering under a different user profile or using PIXELIO in any other way. PIXELIO reserves the right to initiate measures under criminal law and to assert claims (in particular for damages) against the Member.

14. Termination

Membership with PIXELIO may be terminated by the Member or by PIXELIO at any time, without the necessity to state reasons for the termination, by means of termination of the utilisation contract which is not subject to a termination period.

15. Data bank rights

The Images and forum articles accessible on PIXELIO as a whole constitute a copyrighted data bank. It is prohibited to completely or partially take over or edit the structure of this data bank without PIXELIO's consent.

16. Final provisions

This utilisation contract is governed by the material law of the Federal Republic of Germany exclusively, excluding the UN Convention on Contracts for the International Sale of Goods.

In transactions with businesses, legal entities under public law, or special funds under public law, Munich, Germany shall be the exclusive place of jurisdiction.

However, PIXELIO reserves the right to file action at a Member's general place of jurisdiction.