Purpose

Brands can use collect Instagram photos and videos that are relevant for reuse in marketing or advertising, using Instagram Content Streams in Wyng. There are some key guidelines and considerations for brands planning to repurpose content from Instagram, based on Meta and Instagram's Terms of Use, Developer Policies, and consumer privacy law. This document summarizes our analysis and recommendations.

For reference:

- Meta Developer Policies: https://developers.facebook.com/devpolicy/
- Instagram Terms of Use: https://help.instagram.com/581066165581870/
- Instagram Copyright FAQ: https://help.instagram.com/126382350847838
- Content Ownership: https://help.instagram.com/354736791367645
- Branded Content Policies: https://help.instagram.com/1695974997209192

Content Ownership and Reuse

According to Instagram's Terms of Use, users retain ownership of their original content. While users grant Meta a license to use their content, this license does not extend to third parties like brands. Consequently, Meta Developer Policies states that brands / developers must not use data obtained from Meta's platforms to display content without proper authorization.

Therefore, brands do not have the right to reuse user-generated content without permission.

However: As users explicitly retain ownership of their content, if they grant permission to the brand, that becomes a direct relationship between the user and the brand. Meta Developer Policies also require any use of content complies with applicable laws and regulations, which means in addition to getting consent from users, the consent must be requested in a form and manner that is consistent with applicable privacy law, e.g. GDPR, CCPA, COPPA, PIPEDA, etc.

Best Practices for Requesting Consent

Brands should obtain clear, documented consent from users before using their content, and comply with any requirements or restrictions imposed on usage of the content by the user. Consent can be requested via any channel of communication between brand and user, e.g.,

reaching out to the user directly on Instagram via a comment on a post, or via a DM. The interaction should be documented and timestamped. Brands should clearly communicate how the content will be used and ensure use complies with applicable privacy law.

Allowing Users to Revoke Consent

Brands should have a discoverable, easy, and reliable mechanism for users to ask for content to be taken down, and a reliable process to honor these requests promptly. These requests may come from users who want to revoke previously granted consent, or users who want to report content that should be taken down (e.g. due to rights infringement or because it is objectionable). Example mechanisms can be a takedown email address shared with the user when consent is requested, or a visible takedown link or button when content is displayed on the brand website.

Deleting Content Sourced using Wyng

Wyng is available 24x7 at privacy@wyng.com to respond to requests to take content down. Action taken by Wyng removes content from Content Library, Flex Grid Gallery, and API calls to the Content API. The deletion can also be done directly by Wyng customers using the search and delete features in the Content Library. In cases where a brand or Wyng ISV partner is using Content API to maintain a copy of content, e.g., using non-Wyng galleries or displays, the brand or ISV partner needs to define a process to respond to requests to take content down, and delete those copies of data or disable them from public display.

GDPR Considerations

When using content from EU Data Subjects for marketing or advertising purposes, some key considerations:

- Lawful basis: Consent must be explicit, informed, and freely given. Consent must be specific to the purpose, unambiguous, affirmative (not passive), and documented.
- Articles 12-14: Users must be clearly informed about what content will be used, how, where and for how long it will be used, and who will access it. Brands cannot reuse the content later for different purposes without obtaining new consent.
- Users must have the right to revoke consent at any time, and the process for doing so must be easy and discoverable. If revoked, brand must stop using the content.
- Brand can only retain the content for as long as it's needed for the declared purpose.
- If a child is under 16, consent must be obtained from a parent or guardian.

Examples of compliant requests may include a specific term of applicability, e.g., "We'd love to feature your photo in our marketing for the next 12 months. If you are OK with that, reply #OK".

The 12 month usage window in this consent can be automatically enforced in the Wyng Content Library using the Scheduled Archiving feature. Or alternatively, for more flexibility, requests can be open-ended, e.g., "We'd love to feature your photo in our marketing. We may use it indefinitely to promote our brand or products unless you tell us otherwise. You can withdraw permission at any time by contacting us at [email]. If you are OK with that, reply #OK."

Special Case: Instagram Embeds

Instagram policies do reuse of content without first getting permission from the user who posted the content via the oEmbed feature, which allows embedding a specific Instagram post on a web page or in a mobile app. Only content from public accounts can be embedded, and Instagram users have the option, when posting content, to disable embedding of their content. When these conditions are met, embedding without consent is technically possible and permissible based on Meta / Instagram's policies, even in stricter privacy regimes like GDPR.

Special Case: Branded and Paid Influencer Content

Meta's branded content policy relates to posts that feature or are influenced by a business partner in exchange for something of value, such as a monetary payment or free products. This policy includes content posted directly by the brand. Meta requires creators to use the "Paid Partnership" label and/or Meta's Branded Content tool to tag featured content, and clearly indicate the commercial nature of the content. This needs to happen when the content is posted, and does not impact collection of content using Instagram Content Streams.

Note that reuse of content posted by business partners or influencers is permitted and governed by whatever agreement is in place between the brand and the business partner or influencer, with regards to ownership of the content and rights. In Wyng, content from business partners or influencers can be automatically tagged as permitted for use, by adding a Content Rule, based on the relevant Instagram usernames.