



## Lifetouch Portal Site Help

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## Lifetouch Portal Help

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## Lifetouch Portal Terms of Service - United States

### LIFETOUCH PORTAL TERMS OF SERVICE - United States

Thank you for registering for a Lifetouch user account. Your ability to create an account and to use the websites, products, and services you are authorized to access (collectively the "Lifetouch Service" or "Service") is conditioned on your acceptance of these Terms of Service (the "Terms"). The Service is brought to you by Shutterfly Lifetouch, LLC ("Lifetouch") on behalf of the school or school district that has engaged Lifetouch to provide portrait-related products and services (the "School"), including those Service(s) the School has authorized you to use.

By accepting these Terms of Service and using or downloading information from this Service, you represent and warrant (i) that you are an authorized representative or member of a school or school district that has engaged Lifetouch to provide portrait-related products and services, including access to this Service (a "User"); (ii) that you received authorization to use the Service from the School's designated administrator or from a Lifetouch representative; (iii) that you have read and understood these Terms of Service and agree to be bound by them; and (iv) that you will use the Service in a manner consistent with all applicable state and federal laws, regulations, School policies and these Terms of Service. If you are an administrator agreeing to these Terms of Service on behalf of the School, you represent and warrant that you are authorized to bind the School to the legal agreement that results from your acceptance of these Terms of Service (the "Agreement").

These Terms of Service may be revised from time to time. In the event of a material change, your School's designated Primary User will be notified via email or by posting an announcement on the affected Service. Please also note that the usage of various Services, Service features or websites or Services accessible from the Service may be subject to supplemental terms and policies, and you may be asked to accept such terms and policies before you can use such services. For example, if you are authorized by the School to download Lifetouch ImageStream® software, you will need to accept the license agreement that governs your use of that software product.

**ACCESS RIGHTS:** The School and its Users will access the Service through their own regular Internet provider(s), equipment and telecommunications lines. Lifetouch will provide a unique administrator-level access credential to the School's designated Primary User. The School, through its Primary User (or his or her delegates) is responsible for the distribution of User-level access to its authorized Users. Users are required to register for access to the Service by entering their name and a Password. Users are responsible for protecting their access credentials from disclosure and unauthorized use. Lifetouch collects and uses registration information from Users of this Service only to the extent reasonably necessary for the operation and administration of the Lifetouch Service for the benefit of the School. As between Lifetouch and School, School is solely responsible for all activities that occur through the use of the Service by Users, including unauthorized use. Lifetouch will immediately deactivate User access to the Service upon written request by the School's Primary User.

#### LIMITED USE

**Use of Service.** Subject to the terms and conditions set forth herein, Lifetouch hereby grants the School and its authorized Users during the Term of this Agreement a limited, nonexclusive, nontransferable license to use Service, including the associated software, data, templates, Lifetouch Content (as defined below) data and other tools and options made available through the Service from time to time for Permitted Purposes as defined herein.

**Permitted Purposes.** The Service is for use by Schools and their authorized Users for legitimate educational and school-related administrative purposes, and only in a manner that complies with all applicable laws, regulations and School policies. A Permitted Purpose includes any routine function or activity incidental to the administration or daily activities of the School such as Picture Day notifications, preparation of the school yearbook, class rosters, seating charts, identification cards, class schedules, activity and event passes, student directories, general record keeping and database management. The Services may allow you to copy or download certain content; please remember that the above restrictions apply regardless of whether this functionality exists.

**License to Lifetouch Content.** Lifetouch retains ownership of the copyright in all photographic images captured by Lifetouch photographers, and reserves all rights in such images. Your use of Lifetouch copyrighted images and the templates, artwork, designs, software and other Lifetouch proprietary works made available through the Service (the "Lifetouch Content") is limited to Permitted Purposes as defined above. Except as specifically authorized by Lifetouch, Lifetouch Content may not be used in connection with any commercial activities, fund-raising efforts and/or preparation of any materials intended for sale to third parties (including, without limitation,

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students and their families), and no license is granted for any such use. For example, but not in limitation, Lifetouch Content may not be used for the sale or production of portraits or portrait products to or by third parties, in alumni yearbooks, multimedia products, CD ROM products or in preparation of or incorporated in any other products for sale, such as announcements or greeting cards. Except in connection with the Permitted Use, the Lifetouch Content may not be copied, reproduced, distributed, sublicensed or transferred in whole or in part or in any manner nor altered, merged, manipulated, modified, translated, adapted, disassembled, decompiled or reverse engineered in any way.

**Yearbook Content.** The Service you are authorized to access may be a Lifetouch Yearbooks® website, provided by Lifetouch to schools for use in creating the school yearbook. The School is solely responsible for the content of its yearbook and any materials submitted to Lifetouch via the Service for printing. Upon request, the School agrees to obtain such written authorizations as considered necessary by Lifetouch. The School releases Lifetouch and will indemnify and hold harmless Lifetouch, its affiliated companies, employees, agents and representatives from any and all claims, demands, costs, expenses and reasonable attorneys' fees arising out of or in connection with the hosting, transmittal or reproduction of any materials submitted by the School, its faculty, administrators, students, employees, representatives or agents.

**Acceptable Use.** Without limiting the foregoing, you agree not to use the Service: (a) to upload or otherwise transmit or communicate any material (i) that is obscene, unlawful, threatening, an invasion of privacy or publicity rights, defamatory, libelous, or otherwise illegal or objectionable or which contains nudity, lewd or lascivious acts, or any act, costume, design, action or other matter which is not appropriate for families or in violation of School policies, (ii) that you do not have a right to transmit or communicate or which infringes any copyright, trademark, patent or other intellectual property right or any moral right, or (iii) that is likely to cause harm to Lifetouch or anyone else's computer systems, or allow unauthorized access to the Service, which may cause any defect, error, malfunction or corruption to the Service; (b) to harm minors in any way; (c) to transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation; or (d) to impersonate any person or entity, or otherwise to misrepresent your affiliation with a person or entity.

#### DATA PRIVACY, SECURITY

**School Data.** As between Lifetouch and School, all educational records (as defined pursuant to the Family Educational Rights in Privacy Act, 20 U.S.C. § 1232g; 34 CFR Part 99, "FERPA") stored, transferred or accessed within or through the Service remain the exclusive property of the School, subject only to Lifetouch's ownership of the copyright in the Lifetouch Content as defined above. All use of this Service is subject to and limited by the provisions of FERPA and other applicable laws, regulations and School policies.

Schools may use the Service to (a) securely transfer certain directory-type student and staff information such as names, grades and homeroom or subjects taught ("EDT Data") to Lifetouch and (b) send Parent Notify emails to authorized parents/guardians in partnership with Lifetouch pertaining to the school's scheduled Picture Day(s) and/or yearbook sales event(s). EDT Data and parent email addresses uploaded to Parent Notify are deemed School Data. Lifetouch acknowledges its FERPA obligations as a service provider to the School with respect to School Data. Lifetouch uses School Data solely to the extent and for as long as it is needed to facilitate the School's Picture Day and to produce and support the portrait-based products and services Lifetouch is engaged to provide to the School and permitted to offer to the parents of children photographed. Lifetouch will not disclose such information to any third party other than to its service providers as necessary to fulfill the services to be performed by Lifetouch for the School, in such cases, pursuant to contractual obligations of confidentiality and security. Lifetouch may also be required to share information provided to us through the Service in other limited circumstances, for example, to respond to judicial process, to comply with state, federal or local laws, to operate and protect the security or integrity of its databases or website, to take precautions against liability, in the event of a corporate reorganization or, to the extent required by law, to provide information to law enforcement agencies. Ownership of School Data remains with the School and subject to the School's control at all times. For the avoidance of doubt, "Student Data" does not include (a) information collected from customers who opt to purchase products directly from Lifetouch and/or establish a Lifetouch family account; or (b) Lifetouch photographs sold to such customers. In all cases, Lifetouch is and remains the copyright owner of its photographic images.

Lifetouch will host the Service during the Term of this Agreement and will provide, maintain and manage all servers, facilities, software, hardware, technical support and operations within its control necessary to facilitate reasonably continuous and secure access to the Service. Lifetouch will notify the School and provide reasonable assistance to support notification of affected individuals in the event of a breach of the security of the Service pertaining to School Data in compliance with applicable legal requirements to provide such notification and, regardless of such legal requirements, whenever in its reasonable belief there is a substantial risk of harm from the breach. Authorized School representatives may obtain further information regarding Lifetouch information security practices by contacting their Lifetouch account representative or by email request to [privacyoffice@lifetouch.com](mailto:privacyoffice@lifetouch.com). Please note: for security reasons, Lifetouch will reply only to inquiries sent through a verifiable School email address.

**Children.** Lifetouch does not knowingly collect personally identifiable information from children under the age of 13. A School, through its authorized Lifetouch Portal Primary User or yearbook adviser, may elect to allow students under 13 to contribute to the school yearbook using a Lifetouch Yearbooks® Service. In such cases, Lifetouch will collect the same account registration information it collects from all Users of the Service (name and email address). Lifetouch uses account registration and login information solely for the use and benefit of the School and for no other commercial purpose. The School, not Lifetouch, is solely responsible for obtaining any necessary authorizations and releases from parents of Users of the Service who are under the age of 13 pursuant to the Children's Online Privacy Protection Act (COPPA), other applicable laws and School policies. The School is also solely responsible for obtaining any necessary releases from parents of children whose personally identifiable information appears in the yearbook.

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**USER SUBMISSIONS:** If the Service allows Users to contribute content such as text, comments, graphics, images, designs, illustrations or other works of authorship (collectively "User Submissions"), the following terms and conditions apply to such User Submissions.

**Ownership and Responsibility.** You (or your School, as the case may be) retain the copyright in your User Submissions. You are responsible for all of your User Submissions. By uploading any content to the Service, you represent and warrant to Lifetouch and the School that you have the legal right to do so, that you own the copyright in the content and/or have the right to license and do license Lifetouch and the School to use, copy, print, distribute and display the content in connection with the Lifetouch Service, that your User Submission does not contain any content that violates any applicable law or regulation and that the image is not defamatory and does not invade the privacy or other rights of any third party. If the content is a photograph of a person, you further represent and warrant that every identifiable person in the image (and, if the person is a minor, the person's parent) has consented to the use and disclosure of the image for the intended purpose of the applicable Lifetouch Service.

**User Conduct.** You agree to use the Service only for lawful purposes. You agree not to take any action that might compromise the security of the Service, render the Service inaccessible to others or otherwise cause damage to the Service or any content accessible from the Service. You agree not to use the Service in any manner that might interfere with the rights of third parties. You agree not to provide any information to Lifetouch that is false or misleading, that attempts to hide your identity or that you do not have the right to disclose.

**Content Monitoring.** While Lifetouch is not responsible for the content of User Submissions, Lifetouch reserves the right to reject or delete submissions that it, in its sole discretion, deems abusive, defamatory, obscene, in violation of privacy, copyright or trademark laws or otherwise unacceptable. Lifetouch may request confirmation of the copyright or trademark ownership from the submitter. If Lifetouch does not receive any such confirmation or if there are continued claims of copyright or trademark infringement, Lifetouch reserves the right to share certain account information with governmental organizations or other third parties. In the event of any such dispute, Lifetouch reserves the right to suspend your account access until the issue has been resolved. You agree that Lifetouch may at any time without notice: move, change, or suspend any part of the Service. Lifetouch may terminate your account and delete any content stored in your account if, in Lifetouch's sole discretion, you fail to comply with any these Terms of Service, or if requested or required by the School or by law enforcement or another legal or regulatory authority.

**YOU UNDERSTAND AND AGREE THAT THE SUBMISSION OF ANY DIGITAL CONTENT TO THE SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK AND THAT LIFETOUCH IS NOT RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR USER SUBMISSIONS THAT MAY RESULT FROM YOUR USE OF THE SERVICE.**

**Claims of Copyright Infringement.** Lifetouch is committed to protecting copyrights. If you believe that material or content residing on or accessible through the Services infringes your copyright (or the copyright of someone whom you are authorized to act on behalf of), please send a notice of copyright infringement containing the following information to the Designated Agent identified below:

- a. A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright that has been allegedly infringed;
- b. Identification of work or material being infringed;
- c. Identification of the material that is claimed to be infringing including information regarding the location of the infringing material that the copyright owner seeks to have removed, with sufficient detail so that Lifetouch is capable of finding and verifying its existence;
- d. Contact information about the notifier including address, telephone number and, if available, email address;
- e. A statement that the notifier has a good faith belief that the material identified in 1(c) is not authorized by the copyright owner, its agent, or the law; and
- f. A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the copyright owner.

**Once Proper Bona Fide Infringement Notification is Received by the Designated Agent.** Upon receipt of a proper notice of copyright infringement, Lifetouch reserves the right to:

- a. Remove or disable access to the infringing material;
- b. Notify the content provider or User who is accused of infringement that Lifetouch has removed or disabled access to the applicable material; and
- c. Terminate such content provider's or User's access to the Services if User is a repeat offender.

**Procedure to Supply a Counter-Notice to the Designated Agent.** If the content provider or User believes that the material that was removed (or to which access was disabled) is not infringing, or the content provider or User believes that it has the right to post and use such material from the copyright owner, the copyright owner's agent, or, pursuant to the law, the content provider, member, or User has the right to send a counter-notice containing the following information to the Designated Agent:

- a. A physical or electronic signature of the content provider, member or user;

- b. Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or disabled;
- c. A statement that the content provider or User has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material; and
- d. Content provider's or User's name, address, telephone number, and, if available, email address, and a statement that such person or entity consents to the jurisdiction of the Federal Court for the judicial district in which the content provider's or User's address is located, or, if the content provider's or User's address is located outside the United States, for any judicial district in which Lifetouch is located, and that such person or entity will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Designated Agent, Lifetouch may send a copy of the counter-notice to the original complaining party informing that person that Lifetouch may replace the removed material or cease disabling it in ten (10) business days. Unless the copyright owner files an action seeking a court order against the content provider or User accused of committing infringement, the removed material may be replaced or access to it restored in ten (10) to fourteen (14) business days or more after receipt of the counter-notice, at Lifetouch's discretion.

Please contact Lifetouch's Designated Agent to Receive Notification of Claimed Infringement at the following address:

Shutterfly Lifetouch, LLC  
 Law Department Attention: Copyrights  
 11000 Viking Drive  
 Eden Prairie, MN 55344  
 Email: [copyright@lifetouch.com](mailto:copyright@lifetouch.com)

**SERVICE LIMITATIONS:** Lifetouch does not represent or warrant that Services will never be suspended, relocated, terminated, or temporarily unavailable. From time to time, Lifetouch may temporarily suspend the Service without advance notice to School or its Users for the purpose of administration, maintenance and security. Lifetouch reserves the right to suspend any and all Services without notice in the event of a violation of these Terms of Service. Service functions and features may be added or modified at the sole discretion of Lifetouch, provided that Lifetouch will provide prompt notice to School if there is a change in service that will remove any functionality of the Service.

**DISCLAIMER OF WARRANTIES:** LIFETOUCH WARRANTS AND REPRESENTS THAT IT HAS ALL INTELLECTUAL PROPERTY RIGHTS NECESSARY TO PROVIDE THE SERVICE TO THE SCHOOL AND THAT USE OF THE LIFETOUCH CONTENT AS AUTHORIZED HEREIN WILL NOT CAUSE THE USER TO INFRINGE THE COPYRIGHT OF ANY THIRD PARTY. IN ALL OTHER RESPECTS, LIFETOUCH PROVIDES THE SERVICE AND ASSOCIATED SERVICES "AS IS" WITH NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTY OF MERCHANTABILITY. LIFETOUCH SHALL NOT BE LIABLE FOR ANY LOSSES, DAMAGES, COSTS, OR EXPENSES OF ANY KIND OR DESCRIPTION RELATING TO THE SERVICE OR ANY CONTENT ON THE SERVICES PROVIDED BY SCHOOL OR ITS USERS, THE ACCURACY OF THE CONTENT, THE QUALITY OF USAGE OR OUTPUT, OR THE RESULTS THAT MAY BE OBTAINED. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

**LIMITATION OF LIABILITY:** IN NO EVENT SHALL LIFETOUCH OR ITS PERMITTED ASSIGNS, REPRESENTATIVES, SHAREHOLDERS, OFFICERS, DIRECTORS, EMPLOYEES, OR AFFILIATES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR INFORMATION OR LOST PROFITS, THAT RESULT FROM THIS AGREEMENT, INCLUDING THE USE OF, OR INABILITY TO USE THE SERVICE. THE MAXIMUM LIABILITY FOR DIRECT DAMAGES OF LIFETOUCH, IF ANY, ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT OR SCHOOL'S OR ANY USERS' USE OF THE SERVICE, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO THE GREATER OF (i) THE TOTAL AMOUNT OF FEES RECEIVED BY LIFETOUCH FROM THE SCHOOL HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE TIME THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY OCCURRED OR (ii) FIVE HUNDRED DOLLARS (\$500.00). SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE ABOVE LIMITATION AND EXCLUSIONS MAY NOT APPLY TO YOU.

**TERM AND TERMINATION:** The Term of this Agreement shall begin on the date upon which Lifetouch first makes the Service available to the School and continue for as long as Lifetouch is engaged by the School as its school photographer. The School may terminate this Agreement at any time by discontinuing use of the Service.

Notwithstanding the foregoing, Lifetouch reserves the right to terminate this Agreement at any time on thirty (30) days prior notice to the School in the event that Lifetouch elects in its discretion to discontinue offering the Service to any of its clients or in the event of a violation of the Terms of this Agreement by the School or its Users which, if such violation is capable of being cured, remains uncured throughout such thirty-(30)-day notice period.

In the event of termination of this Agreement, the School and its Users access codes will be deactivated.

GENERAL TERMS: This Agreement constitutes the entire agreement between School and Lifetouch with respect to the Service and supersedes all prior or contemporaneous communications and proposals, whether oral, written, or electronic. Except as provided herein, it may not be assigned, waived or modified by the parties except in writing signed by authorized representatives of both parties, nor shall the conduct or actions of any party be deemed a modification or waiver. A modification or waiver of a part of this Agreement shall not constitute a waiver or modification of any other portion of the Agreement. In the event any part of this Agreement is found invalid or unenforceable, the remaining portions of the Agreement shall remain in full force and effect. This Agreement is governed by and construed in accordance with the laws of the state of Minnesota, without regard to the conflicts of law provisions thereof.

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