

EPISODE 3

[00:00:00.0] AWB: You're listening to the Legal Road Map Podcast episode three. Today we're talking about all the documents that you need on your website if you are running an online business. So those are the terms and conditions and privacy policy you've probably seen on other websites but have no idea what they mean.

[INTRODUCTION]

Welcome to the Legal Road Map Podcast with lawyer, Autumn Witt Boyd. She's bringing creative entrepreneurs the copyright, trademark, and business info you need. Learn how to navigate legal issues for your business and protect your rights so you can confidently build your dream business.

[EPISODE]

[00:00:45.0] AWB: Hi everybody. This is Lawyer Autumn Witt Boyd. If this is your first time listening to the podcast, I am so glad you've joined us. Thanks for coming. The first season of this podcast is going to be 12 episodes that will walk you through all the steps you need to take to get your business legally legit. Please go to my website to check out show notes for each episode. For this episode, it's going to be awbfirm.com/podcast3.

You can always just click on the podcast link on the top menu if you can't remember which number of episode you are listening to. We'll have a transcript there and links to everything that's talked about in each episode. We'll also have links to a really useful download that you can use for your business with action steps to put into work what you have listened to in that episode. So let's dive into your online business website documents.

Now, I always start out with my standard disclaimer. Everything I am talking about today is just meant to be information, it's not legal advice. I only give legal advice when you hire me and I work with you one-on-one. I am a lawyer licensed in Tennessee, everything that I am talking about today is going to be mainly, not necessarily based on Tennessee state law, but it's just a general overview. Laws in contracts differ in every state. So if you've got a specific question, it's

a great idea to talk with a lawyer who is licensed in your specific state who can answer your questions.

So the first website document we're going to talk about today are your terms and conditions. Now, we're going to talk about a couple different documents today. These are usually found, people usually put a link to them in the footer of their website. So you may have seen that before on other websites, you may have one on your website. It's nice to put it on your footer because people can always find them, no matter where they are in your website. So that's a recommended best practice.

The terms and conditions for your website are basically the rules of the road for people who visit your website. So it just tells people how you expect them to behave when they're on your website. It tells them that you own the copyrights and trademarks to everything that is on your website, assuming that's true. Or if you don't own it, you might say who they do belong to and it's where you can tell people what is okay to do with your content.

So are you okay with someone copying an entire blog post and putting it up on their website? If you're not okay with that, which I am not okay with that, then that's a great place to put something as simple as "I own all the copyrights to the content on this website and no unauthorized copying is permitted. If you would like to reproduce part of this content, please contact me at XYZ email address." Or you can just put, "No reproduction permitted without permission."

It's up to you how you want to write your terms and conditions, what kinds of rules of the road you want to have for your visitors. It's also a great idea to have on those terms and conditions if you have a comment function on your blog where people can leave comments for you, you might want to say there what kind of comments you allow. If you allow cursing or if you don't want people to make comments that are disparaging to other people or use ugly language. You can put that there and you can also reserve the right that you can delete comments if you don't like them.

You can also put there that you own the rights to all of the comments. So if someone leaves you a really interesting comment, you can copy that and use it elsewhere, because you can say that

by visiting your website and leaving a comment, they are giving you that permission. And what are these terms and conditions are, they are basically a contract between the visitor to the website and you the owner of the website and you would put in there that they are agreeing to all of these terms by using your website, by reading your content and interacting with any features you have there.

Another great thing to have in your terms and conditions if you have a private area of your website or a membership area, anything that requires a password or a username, you can put the rules for how you expect that to work. Again, it's totally up to you what you want to put in your terms and conditions because they're your rules of the road. So anything that you want your website visitors to know or to be aware of or any rights that you want to assert to your content, those should all go in your terms and conditions.

That terms and conditions document is optional. There's no law that requires it, it's a good practice because it helps you protect your content. It lets people know that you are the owner and that you are going to take action against them if they use your content in a way that you don't approve, or maybe if you're okay with people copying all your content, then you can let them know that too.

The second thing and this is really a requirement, this is not an optional thing for your website to have is your privacy policy. Now you've probably seen these privacy policies and websites and you don't understand what they mean and I am here to open your eyes. So this is how it works: in California there is a state law that requires if you are collecting any kind of personal identifying data about people, so that can be someone's name and email address from opting into your email list or it can be the customer information if you are selling something. If you have an e-commerce platform on your website.

Anytime you are collecting people's personal information, you have to tell them what you're going to do with it and under California state law, there are all kinds of requirements about what your privacy policy has to say. And since most of us, if we're doing business online, we're doing business across the US and maybe even around the world. So it has become kind of a nationwide requirement, because if you are doing business online, you're probably doing business with at least one person in California.

So this is why this is really important for your business. You are violating California state law if you don't have a privacy policy that has all of the different items that I am about to run through. It is a little complicated, so this is why I really recommend that you find either a great template or you work one-on-one with a lawyer to make sure that you are in compliance with that California state law.

Here are all the things that your privacy policy must say, under California law: You have to tell people what personally identifiable information you're collecting. So is it their name, their email address, their credit card information, mailing address? You just have to tell them what you're collecting. You have to tell them who you're sharing that information with. So are you just using it for your own business or are there advertisers that you share that information with, or other third parties?

It doesn't matter, there's no rule about what you can do with their information, but you have to tell people what you are doing with it. You have to tell people whether third parties can collect their information on their own. So do you let your advertisers have access where they can pull the information from visitors without you even having to give it to them. So it's kind of how much direct access to third parties have to their information and the goal here is just disclosure. It doesn't matter if you do this or not, you just have to tell people whether you're doing it.

The next one is what process do you have? And you don't have to have a process. So if you don't have a process you can just say, "I don't have a process." What process do you have for the visitor to review and request changes to any personal information that you have? So if they changed their email address or if they changed their mailing address, is there a way that they can contact you and tell you "Hey, I changed my information." Again, you don't have to have a process but if you do, you have to let them know.

The next one is how you notify visitors of any changes to the privacy policy and usually for this, I suggest just having a note in there that you may change the privacy policy from time to time and you will not give notice, but if they're using your site, they should check your privacy policy from time to time to make sure that they are aware of any changes.

A new requirement under California law is that if you use tracking software as part of your website and these are those little things that follow you around the web. So if you've ever noticed like it's usually something embarrassing like let's say I searched for a new bra and then I go to another website two days later and in the side bar, there's all the bras that I was looking at and I am always so embarrassed by that because if someone is pulling up a website and a client is next to me, they're seeing that I was searching for a bra.

There are tracking software that you can put in your website and that's how those things will follow you around other websites where you weren't searching on that website but there were those bras that you were looking at. So if your website uses those tracking devices so that search results will follow someone around the internet, you have to tell people that you're using it and now web browsers have a way that you can broadcast to website that you don't want to be tracked and so there's a requirement under this California law that you have to tell people what you do if your browser has a do not track signal.

That is going to be more complicated than most new businesses are going to have to worry about, but if you are doing this, then you need to talk with your web designer or your web person and find out how your website responds to do not track signals. And again, it doesn't matter what you do, you just have to let people know what you do if they've got a do not track signal how does your website handle that?

The next thing is if the visitor has any choices regarding how you are collecting, using and sharing their information, you have to let them know. Often, we don't really give people a choice. It's just that they sign up, we have their information and we do what we want. But if you do give people choices you just have to let them know what those choices are and then the very last thing is the effective date of the privacy policy.

I hope that you've seen as I have gone through all of these, this list of information that you have to include that it's a pretty exhaustive list and it's important to do it right. You could be subject to penalties, fines, you could even be sued by the State of California or by a visitor to your website if you don't do this the right way. So it's really important that your privacy policy is in compliance with this law.

The next thing I'm going to talk about is if you're selling an e-course or digital products, online products, anything that someone can download or access online that they're learning or reading, not really so much with your blog content, but if you are selling something that people are accessing online or through a download, you should want to protect your rights in those because if you create it, then you or your business are going to own all of the copyrights and trademark to all of that great content.

So as I am talking about this, I am going to talk about as if you're selling an e-course because I see that a lot. So if you have taken the time and energy to create an e-course, that is something valuable to your business and you are selling it for anywhere from a few dollars to many hundreds or thousands of dollars. So that's a valuable asset to your business and you should protect your ownership rights in that content. Of course, you don't want somebody to copy it.

So one of the ways that you can protect that content is by a contract that you requires anybody who buys the course to sign. Those are called e-course or digital product terms of use. So it kind of sounds like the terms and conditions for your website but it's a little different. These terms of use are basically is a contract between you the seller and the buyer that tells them how they can use whatever they are buying. So you'd want to put in there that you own all the copyrights and trademarks and then kind of like the terms and conditions for your website, you outline what they can do with it.

Maybe it's only for their personal use. So they are not allowed to share it with a friend or a business colleague. Maybe you are okay with them sharing short excerpts or publishing, let's say you have worksheets as part of your e-course, you're okay with them taking a snap shot of their completed worksheet and sharing that. So there could be ways that you're okay with sharing or with distribution, but if you're not okay with it, that's a great place to say that you are not okay with it.

You would also want to put a refund policy in there, pretty much anything that you would have in a normal contract when you are selling an item or when you are working with someone. If there is a one on one coaching component with your e-course, you would want to spell out how that works. You just want it to be really clear what exactly someone is getting, what they're paying, if you give refunds, if you don't, or if there's a certain time where you give refunds. Just outlining

really, really clearly and as plain of English as you can on how you want people to interact with that e-course.

One thing that I recommend that people put an e-courses is a penalty for unauthorized use of the content. So here is how it works under copyright law if you don't have this term in your terms of use: you, the business owner are the copyright holder and if someone rips off your stuff, say they decide they're going to sell their own e-course and you find out about it and it looks awfully similar to yours and you're pretty sure that they have taken all of your content. If you decide to sue them for taking your stuff, unless you have registered the copyright, your damages are going to be very low and you're going to have to sue them in federal court, which is really expensive.

You're going to have to find a lawyer who is competent to file a copyright law suit. There aren't a lot of those lawyers, it's just a very expensive proposition to try and go after somebody for copying your content like this. But if you do include this penalty term for unauthorized use of content in your e-course terms of use, then you can take someone to what's called a small claims court and that is going to be much less expensive. You can often do it without a lawyer. So you can do it on your own, usually the filing fee is very low, maybe a couple hundred dollars. Often less than that, and it just gives you another way to go after someone that is easier, cheaper and more effective than having to file a law suit in federal court.

So that is one trick of the trade that I definitely recommend and this penalty would just say, "If you use any of my content without my permission then you agree to pay me, maybe \$5,000," or whatever amount you think is fair. Sometimes I'll say, "You agree to pay me whatever the cost of the course was," if it's a high dollar course or you might say five times the cost of the course. Again, this is just a neat trick that will help you, something that you can put in place in the beginning in your terms of use that will give you some benefits down the road if you do find that someone has used your content without your permission.

The next thing I want to talk about for your website are disclaimers. Now a disclaimer is just where you have on your website where you say everything — like the disclaimer that I did in the beginning of this podcast episode where I say this is information, not legal advice. So if you are talking about something in the health realm, let's say you're a wellness blogger and you've got a

blog post where you're talking about what vitamins people can take and what the benefits might be, but you are not a medical doctor.

So you want to make really clear on that blog post that you are not giving medical advice and you don't want people to rely on your blog posts and make medical decisions. So you would have a disclaimer just basically saying that, saying, "I am not a medical doctor. You should always consult with a medical doctor before making any health decision and this is just intended as information not medical advice."

Same thing if you are in the financial industry, especially if you're a business coach or you're giving advice to people who are making financial decisions for their personal or business lives, this is really important that you tell people, "Your specific circumstances may change the decisions that you should make, and so everything that I am saying here is just information, it's not meant to be financial advice, it's not meant to be relied on." Because what you don't want to happen is someone who relies on your advice. But they had some specific scenario that you of course didn't know about when you are writing your blog content and it ended up being a terrible decision for them.

So you want to let people know, "This is just information. Take it for what it's worth but you shouldn't make your decision solely based on what I am writing in this blog post," and that will be your protection if you are sued because someone makes a bad decision after reading your blog. Hopefully that will never happen, but this is one of those things that's really easy to do on the front end and it can protect you later. Again, if you're in the legal industry like I am, same thing. You would want to have a disclaimer saying, "Please don't rely on this. This is not legal advice that is specific to you. This is just general information."

The last thing I want to talk about is disclosure. Now I know disclosure sounds like disclaimer but it's a little bit different. The Federal Trade Commission regulates all kinds of trade in the United States and they have recently come out with guidelines for how blogs and websites should disclose to their visitors if they are getting stuff for free or if they are getting payment in exchange for covering a specific topic or product.

What you see this as a lot is if somebody's got a product to try and then they write a blog post about it. Or if someone is paid to feature some adorable clothing from a company in one of their blog posts. Maybe they're a fashion blogger, or maybe a cover of makeup if they're a beauty blog or they've got a bunch of samples and they're trying them out and showcasing them on their blog or on a video. This is perfectly fine. You are totally allowed to take money or take free stuff, but what the FTC requires is that you have to let the readers know.

So it's just one of those areas where there's no rule about how you have to do it, you just have to let people know. So the recommended language, if you've got a sponsored post, so let's say a company has contacted you and they're paying you to write about their product or service, the FTC requires that it be visible. So it can't be buried in teeny tiny font at the bottom of the post. It has to be visible and it has to be clear. So it can't be in legalese and it can be as simple as just saying, "This is a sponsored post. The company who sponsored it compensated me with a cash payment, a gift or something else of value."

This is where I like to add a little bit of your own personality so it's not too bland or legalese sounding. So I like to say something like, "Regardless, I only recommend products and services I believe will add value to my readers." Or you can put that in your own words, where you let people know that you're not just showing for anybody who will pay you money, unless you are and in that case, you would want to leave that part off. The same thing is required if you have an affiliate link.

So if someone clicks a link on your website and then you get a little kickback because they buy a product that you are advertising, this is perfectly fine. You just have to let people know. So you would say, "This link is an affiliate link. This means if you click on the link and purchase the item then I receive an affiliate commission at no cost to you" and then again, I usually include that extra little bit of language regardless, "I only recommend products or services that I believe will add value to my readers." And the social media age, they are also going after this. So a lot of times what I've seen is companies not only want to sponsor blog posts, but maybe they want to sponsor a photo on Instagram or something on Facebook or a tweet on Twitter.

So you do have to disclose those also if you are being paid to post about something you do have to disclose that. So they have given some suggested hashtags and one of them is really

short. It could be as short as #ad, #paid or #sponsored, and again, you're just giving people a heads up that while this maybe your own opinion, you did get some money for it or a free product. So again, the bottom line with disclosures is that there's no magic language, it just has to be clear and you have to let people know that you've got something of value.

So "clear and conspicuous" is the wording that the FTC likes to use. So they of course want it to be in bold and flashing lights. You can use your own judgement on what it means to be clear and conspicuous. But like I said, it can't be buried in teeny tiny font at the bottom of your post and I will say this, it's not enough to have it just on another page of your website. It has to be on each post where you're talking about a product or a service that you got money for.

So I hope this was all helpful and going over the kinds of documents you need for your online business's website. The freebie for this episode, if you go to awbfirm.com/podcast3, I've got a really handy list of all the documents that you need on your website, what's required, what's optional and what you need to include on each. I hope that would be super helpful to your online business.

Thanks for joining me today and I can't wait to talk to you again soon.

[END OF EPISODE]

[00:20:29.1] AWB: Has listening to the Legal Road Map Podcast opened your eyes to the legal holes in your business? I'd love to help. I work with entrepreneurs who need help navigating the legal issues in their business; bloggers, online entrepreneurs and influencers, authors, photographers, videographers, musicians, and designers just to name a few.

If you're ready to take your business to the next level, sign up for a one hour Get Planning legal planning session today. During our call, you can ask me lots of questions about specific issues or documents. I'll learn all about your business and we'll create a list of action items to build your dream business, legally. Go to awbfirm.com to sign up today.

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