

**EPISODE 10**

**[00:00:00.2] AWB:** You are listening to the Legal Road Map podcast episode 10. Today we are talking about licensing. This is how you can get paid by letting other people use your content or your brand.

[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]

**[00:00:40.9] AWB:** Hi everybody, this is lawyer Autumn Witt Boyd. Thanks for joining me today. If this is your first time listening, I'm excited you're here. Thanks for joining us. The first season of this podcast is a 12 episode guide to help get your creative business' legal ducks in a row. So you can see all of the different steps you need to think about or things you need to put in place for your creative business.

Go check out show notes for every episode, they're on my website. For this episode it's going to be [awbfirm.com/podcast10](http://awbfirm.com/podcast10). I've got a transcript there, links to any resources that I talk about and also we'll have a downloadable tool that you can use in your business, something really actionable that you can use to help put into place what we've talked about during this episode. Now let's dive into licensing.

I'll give my standard disclaimer which is that this is just meant to be information to get your wheels turning, this is not legal advice. Everything I talk about today is going to be based on US copyright and trademark law. I'm a lawyer licensed in Tennessee, I'm not licensed in any other states. Most of what we talk about today is governed by federal law, so it's going to be the same in all 50 states. But if you have a specific question about your situation, your scenario, it's

always best to talk with a local lawyer or someone who specializes in the area that you have questions in.

So diving into licensing, what is a license? A license just means you are giving someone else permission to use your stuff. We've talked about copyrights and trademarks; if you haven't listened to those episodes, go back. This episode kind of builds on the prior episodes, so I'm going to not go into what is a copyright and what is a trademark. If you need that background, hop back and listen to those episodes on Copyright and Trademark 101 and that will get you up to speed.

So a license, again, is just granting someone else permission to use either your copyright or your trademark. Could be a patent also. I'm not a patent lawyer so I don't really talk about patents but same thing, it's called a license in the patent world also. So a license is basically just a contract between you, the owner of the intellectual property and intellectual property is a term we use as kind of a catch all.

You, the owner of either a copyright or trademark, are giving someone else permission to use your work, the contract is going to set out how you're going to do business with the person that you're giving permission to. The most important thing with a license contract is that you want to be really clear on what that person is allowed to do and what they are not allowed to do with your stuff.

So terms that you will often see in license contracts and things to look out for. You will often see the word "exclusive". Whether it's an exclusive license or what's called a nonexclusive license. What that means, if it's an exclusive license then you are giving that person the right to use your work and they are the only person that can use your work. That means you cannot use your own work unless you do what's called a reservation of rights. So an exclusive licensee, it's almost like they're the owner of the work because they are the only ones who can do anything with it.

And under copyright law, especially, an exclusive licensee, that's what they're called. A licensee is the person who is getting the license. The licensor is the person who owns the work and is granting the license. In the copyright realm, an exclusive licensee gets a lot of goodies under

the copyright law and they can take a lot of actions. They can even file a lawsuit if someone infringes that work because they are almost like the owner. They have so many rights, the law treats them as kind of like an owner.

So you want to be really careful about giving someone an exclusive license, because like I said, you're really giving them the right to keep you from using your own stuff unless you include a reservation of rights. So what you'll see more often is what's called a nonexclusive license and that just means that you're giving it to this one person but that you can also let other people use it.

Now, when would you want to do an exclusive versus nonexclusive license? Nonexclusive is going to be your standard — let's say you're a photographer and you've taken some beautiful pictures of the Eiffel Tower and you want to put them up as stock photos that anybody can purchase a license from you to use on their website. So standard, you're going to have a nonexclusive license that you might let 10 or unlimited, really, number of people get the rights to use that picture of the Eiffel tower.

But let's say there is a tour company that is operating in Paris and they want to have that photo because they think it just really idealizes what they are all about and they don't want anybody else to use it. They want it just to be the photo that really identifies their brand or their tour company. So they might want to get an exclusive license from you. If you're going to do an exclusive license, you should charge more because you only have that one shot to get your license fee. If you're doing a nonexclusive license, you might want to charge a little less because you're going to give that license to lots of different people.

I get asked a lot how much should I charge for a license and that's really up to you, it's totally negotiable. There are some standard fees and there's some resources you can Google it. Or I have a book, it's a little bit outdated now because the online world has kind of changed things but I have a book called *Negotiating Stock Photo Prices*, that used to be a really great guide for the different scenarios you might want to think about and what's some standard pricing is for let's say if someone wants to use your photo for a billboard or if they want to use it in a text book, if they want to use it in a calendar. There's lots of different ways that people can use images and there are different standard pricing that goes along with that.

The thing you want to think about when you are writing a license agreement, if you're doing it yourself, this is an area where a lawyer can really help make sure you're not getting taken advantage of. So especially if you're like a stock photographer where you have a standard agreement, it might be worth talking to a lawyer who can help you setup a template because you're going to have the same license contract pretty much for all of your clients. But you want to make sure that you outline really clearly what rights they're getting.

So is there a geographic region where they can and can't use your work? Are there languages that they can and can't — like, let's say in a magazine, can they only circulate in the English language or can they circulate it in any language? You want to include if there's a number of copies that they can print, if there is a limit and usually there's going to be some tension here. The person who owns the license, the licensor is always going to want to give less rights and the person who is getting the license is always going to want what's called an unlimited license. So that means basically they can do whatever they want with your stuff.

So sometimes there's a negotiation that goes back and forth, and again, like so many things we've talked about, this is something where really — you can agree to whatever you want, it's totally up to you and the other person. There's not really a guideline, but if the more rights you're giving, the more permission that they have to do more things, you should charge for each of those additional things. If they can use it digitally as well as in print you should charge more for that. If they can use it around the whole globe and not just in the United States, you should charge more for that.

Like I said, a lot of this is changing very quickly. With the Internet, the price of content has just gone way down because there's so much more of it and especially in the photo industry. But the general rule is, the more things that someone can do with your work, the more you should charge them for it. When we're talking about music licensing, that is a whole different realm and I'm not going to get into that too much because it would take an hour to explain it all. Suffice it to say that under the copyright law, there are lots of rules about music licensing and there are actually set license fees for some types of uses of music.

So if you're looking for music, there are companies that specialize in music licensing and I suggest you contact one of them, and you can Google — you can find lots of reputable companies that can help you with that. But some of those fees are actually set by US law and it's not negotiable. It's just is what it is but that is only for music and for all other kinds of content, it really is you're just going to negotiate what the fees are with the other person.

Just to give you an idea, it can be a few hundred dollars to license the rights for a photo, or even less. Versus it can be many thousands if you are creating something specifically for someone and they're going to use it in a nationwide ad campaign. I mean that's just two totally different scenarios and of course one is going to be much more expensive than the other. The most important thing though with your license, you want to put it in writing. You want to be really clear on what the cost is for the licensee.

What they're going to pay you, what rights they're going to get and you want to have it in writing and signed by both sides. And if you are getting a license to use something, let's say you need some photos for your website and you are getting a license, you want to make sure you keep a copy of that so that if later on somebody does accuse you of using their image without permission or doing something that wasn't allowed that you have that evidence in your records that you can say, "No, here's what we agreed to, here's what I have permission to do and I am in line with it."

You want to make sure that you save that in a way that you can find it later, that you've tagged it somehow in the file name with what photo it relates to or what it is all about if it's not in the contract itself. On some websites like if you go on Getty, Getty Images, they have standard terms that you can download but they are not going to say in there what photo it was. So you need to keep that for your own records do that you can be really clear on that.

The other important thing in your license is it can be really helpful if you are the owner of the copyright, if you are the owner — or the trademark, and I have been focusing more on the copyright but this can be a licensing arrangement like if you've got a character that you have developed that's a trademark that is associated with your brand and somebody else wants to create products that have that on it, that's a really common scenario for licensing.

You want to include something in there that is going to give you a remedy if they use your work without permission. So if they do something that is not in line with the license that gives you away to go after them, to sue them, so that it's a breach of contract. So you want to put in a term for unauthorized use where it has a penalty and maybe it's just a couple thousand dollars or maybe it's a lot of money.

You might want to do five times the license fee or something like that and that gives you away to sue them for breach of contract and not have to sue them for copyright or trademark and I have talked about this a little bit in a prior episode. It just gives you another alternative way. It's a way to help your business have a mechanism where you can go after somebody. It gives you a little advantage, something that may pay off down the road if you do have to sue someone.

It just makes it a little easier for you. So this is something where a lawyer can help you with a little planning on the front end that's really going to pay off for your business by providing you something valuable later. I'm a huge fan of licensing. I think it can really add a lot of value to your business and it can help you build your brand if you do it in a smart way and you pick really good partners as your licensee.

People who are going to take care of your brand and your content and they are not going to use it in ways that are going to diminish your brand and you can set that all up in your license agreement. You can put protections in place about how they can use your stuff, if you have to give approval for how they can use your stuff. You know, really the sky's the limit of how you want to work with someone who is using your content. It's all up for negotiation. You just want to make sure you have it in your license agreement, in writing signed by both sides for the best protection for your business and your brand.

The free download for this episode is going to be some example swipe copy for you to use to write your own license. So that is going to be on my website at [awbfirm.com/podcast10](http://awbfirm.com/podcast10). So be sure to download that. It's going to be really helpful as you are starting to get into the world of getting paid for your brand and your content. So I hope this was helpful for you. I can't wait to talk to you again soon.

[END OF EPISODE]

**[00:12:10.9] 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](http://awbfirm.com) to sign up today.

[END]