

EP 35 - Solo Collaboration Partnership

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00:06 Autumn Witt Boyd: Welcome to season two of the Legal Road Map® podcast. The legal podcast for creative and online entrepreneurs. I'm your host, lawyer Autumn Witt Boyd. This season I'm featuring case studies of successful entrepreneurs. You'll hear about how they've grown their businesses and the legal lessons they've learned. Plus, I'll be sharing how you can grow your business to the next level. Helping you navigate issues like book deals, licensing and certification programs, copyright and trademark copy cats, and collaborations and partnerships.

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00:39 AB: Hi, everybody. I'm so glad you're here with me today. This is episode 35 and today we are going to be talking about what you need to know to make your collaborations and partnerships successful. I know we have all probably heard at least one or two horror stories about a partnership that went terribly wrong or a collaboration that ended up being way more trouble than it was worth. I actually just attended a Tuesday's Together meeting about this very topic and heard some terrible stories. So I am gonna share with you all of the proactive positive steps that you can take in the beginning to make sure that your collaboration or partnership is a success. Go check out the show notes for this episode and every episode, they're on my website www.awbfirm.com/podcast in the episode numbers. So today that's www.awbfirm.com/podcast and the number 35. You can always click on the podcast link at the top of the website, get there the same way. We'll have a transcript there and links to anything that we talk about in the episode. Alright, let's dive in. I'm gonna start with my standard disclaimer. Now today, we are going to mostly be talking about contract law and that is going to be a little bit different in every state.

01:45 AB: So, I will give you my disclaimer that I am a lawyer. I'm licensed to practice law in Tennessee. Everything I'm gonna talk about today is gonna be based on Tennessee law. If I'm mentioning intellectual property concepts, those are generally federal, so they're the same in every state. They're all gonna be based on United States law. To be clear, this is information, this is not legal advice. So if you have a question or you need some information about your specific situation, definitely reach out to your own lawyer. Whether that's me or someone else. I'm not giving you legal advice unless you hire me and we decide to work together one-on-one. So let's get started talking about successful collaborations and partnerships. Now, I think a lot of people use these words interchangeably, but it's important to know that they are different. So, a collaboration can be anything from working with someone on a project, maybe you're selling your items side by side or you're creating something together, that can be a collaboration. Sometimes people call those joint ventures or a joint project. There can be lots of different names for them. But, in general, a partnership is a legal term. We call it a term of art.

02:47 AB: So it's a term that has a really specific definition under the law. And that is going to be a type of legal entity that is formed under your state's law and there's going to be laws in every state that are gonna govern how partnerships work. You are going to be responsible to each other for certain things. You can be on the hook, what's called liable, for anything that goes wrong with the

partnership or if you take on debt as part of the company or other liabilities. And partnerships are generally what we call common-law entities. So you could have a partnership under your state's law without ever going to the Secretary of State and actually forming an LLC or forming a corporation. So, I am not going to dig into the ins and outs of all that today. As I said, there are different rules in every state, so definitely check out your own state's laws and rules if you are interested in that. But I just want to make you mindful of using the word partnership because that does come with some very specific rules and obligations under your state's law.

03:44 AB: So unless you really are forming a partnership where you want to be basically business married to someone and they are not necessarily easy to get out of, it's just like, actually it can be harder than getting divorced. Be careful when you're using that word in any agreements or any formal documents that you're using with someone else. If you're not really wanting to be a partner, if you're more just wanting to collaborate or do something fun together, be careful about using that word partnership. Okay, so I am gonna go over my one biggest tip for collaborations. And I'm gonna go over four things that you want to think about when you're collaborating or forming a partnership with someone. So my biggest takeaway for today, if you don't remember anything else from this episode, my biggest takeaway is to get it in writing. And I understand that a lot of collaborations and a lot of partnerships start out very informally and you don't have any money, you're not making any money, you don't have really much money to invest. And so, I am not suggesting that everyone run out and hire a lawyer as soon as you're thinking about working with a friend, or putting together a product with someone.

04:47 AB: But, I still want you to get it in writing. So, even if it's just the two of you sitting down over a notepad or write... Hopefully you'll do something slightly more formal than the back of a napkin but I would even take the back of a napkin over nothing. The reason this is so, so important to get it in writing, even if it's not drafted by a lawyer, is that you are going to have a different memory than the other person or people who are involved. That is just the way our minds work. There are studies that scientists have done about lots of people watching the same event and they all remember it differently. So, those are studies in a lab where there's nothing very important going on. This is, hopefully, going to be something really successful or it could be something where if things go wrong and you might be in an argument with someone later. So it's so important when everyone is calm and collected and friendly that you put your agreement in writing so that if there are any questions later, everybody can go back to the same piece of paper, you'll all be looking at the same thing and you've all agreed at that time that this is what your agreement is.

05:47 AB: This is how you're gonna do whatever the thing is that you're gonna do together. Again, it does not have to be fancy. You do not have to get a lawyer involved. But there are four topics that I think you should talk about with whoever you're collaborating with not matter how big or small the project is.

06:00 AB: Obviously, if you are starting a new company together, if you were taking investment from other people, if this is gonna be on a big scale, then yeah, you probably wanna get a lawyer involved because there's more money at risk. Any time that there is more skin in the game, then you wanna be a little more careful about how you're setting things up, but a lot of my clients when they're just starting a new project and it's really just an idea or a side hustle, there's not really much at risk, and so it doesn't make sense to invest a lot of money in legal services on that front end. And

you'll know when you get to the point where either you're starting to have disagreements, and you do need to sit down and formalize things, or hopefully you're making lots of money. And so, it does make sense to invest in working with a lawyer at that point, but no matter how you are setting things up, I want you to get it in writing.

06:47 AB: So, here are the four things that I want you to think about. Who's doing what, is number one. Second is, who gets paid what? So, what money is going out. The third one is who's paying expenses or bringing something to the table. So, who's investing in the business? And the last one is what happens if you break up. Who owns the intellectual property or any other assets in the business? So, we're gonna go through those one by one. So, the first one is who's doing what. This is really a simple split of responsibilities. I like for people to sit down and think about... You don't have to write down every single task that's gonna be necessary to get whatever your project is off the ground, but there are certain big categories of things that no matter what you're doing, are going to have to be done. So, whether that's creating the thing, if it's a physical product, if it's a digital product, if it's a course you're doing, whatever you're creating, someone's got to do the creating. And so, if there are different people taking different pieces of that, it's a good idea to just write down what everyone's area of responsibility is going to be.

07:45 AB: You don't have to have job titles or job descriptions. This does not have to be super specific, but I think it's helpful in the beginning for everyone to realize what their responsibilities are going to be because I think a lot of conflict happens around people stepping on each other's toes or... Well, I thought she was gonna do that. Oh, I was relying on him to do that and no one knew that they were supposed to be doing that. So again, the goal here is just to talk about all of the main things that are going to make a collaboration successful. Get them in writing so that if there are questions later, we can all go back to the same document. So who's doing what? That is gonna be our first thing to talk about. The second is who gets paid what. So, what money is going to go out of the business? And this is really fun. It's almost like thinking of winning the lottery. So you think, "Okay, you know, in year one, you might set a small goal." So you might say, "Okay, whatever your goal is for year one, I'm just gonna throw out." Let's say we wanna make \$10,000. So, start thinking about what expenses are you gonna have to... What do you do have to spend to make that \$10,000, or you gonna have to do marketing or advertising? What's it gonna actually cost to make the thing if it's a physical product? Are you gonna have to buy inventory? So, just run some numbers and this is really... It's all made up.

08:58 AB: I was listening to a podcast recently talking to some startup founders and they were like, "Yeah, we did financial projections, but they're all made up numbers." And your numbers are all gonna be a little bit made up in the beginning, but there are some hard costs that you can research and you can figure out, especially for physical products. What kind of capital are you going to need to actually get the thing done? And then you can figure out, okay, well, if we hit our sales target, what kind of numbers are we gonna be looking at, as far as profit, after we take out our overhead and any expenses. So, looking at... How are you gonna distribute that profit? Is anybody gonna take a salary along the way? Are you going to reinvest the money in the business? So, you agree that you're not gonna take any money out for a little while. There's a million different ways that you can structure who gets paid what. But when there is really no money at issue is the best time to talk about this, because nobody's getting greedy, it's all just this hypothetical scenario. So, everybody's friendly, there's no risk of someone losing something because it's all just... It's pretend money.

09:57 AB: So you need to think about... If different people are contributing different amounts of energy or bringing different things to the company, should they get different percentages of payouts? Again, it doesn't have to be complicated, but you want it to feel fair in the beginning. I think the second area of conflict that I see a lot is where people feel like they were doing more for the company, but not being paid out what they felt was fair. And so in the beginning, at least you need to figure out if everybody's doing about the same amount of stuff, then everyone should probably be getting paid about the same, unless one person is bringing something different to the table. So, second thing to think about is who's getting paid what.

10:37 AB: And the third thing to think about, I already touched on, is who is paying expenses or bringing something to the table. Now, with different collaborations or partnerships, this could look a lot of different ways. So, if you are doing a physical product, maybe you have some real startup costs 'cause you've got to produce the thing, and then you've got to have some inventory to sell the thing. So sometimes one person may have more cash or capital that they're investing, or you may have someone who's just investing money. They're not actually helping with the day-to-day building of the thing or selling the thing, but they've got some money to put it. Maybe you have a family member or a friend who just wants to be a silent investor. There's lots of different ways that this can look.

11:15 AB: Often in the beginning, nobody has any money, everyone's just bringing sweat equity and so that can be really easy, but where you do have someone contributing something different, you definitely want to write that down. Make sure everyone knows what everyone is bringing to the table, especially if it's money, or equipment, or something tangible. You might have someone who's got a building that you're gonna use, so you wanna definitely include that and you might want to research what would it take to lease a building like that so you can put a value on that. You can research what our market lease rates if you had to go out and find that somewhere else. Often times also with creatives, I will see someone bringing intellectual property to the table, so maybe someone has written a book that is going to be part of the project.

12:00 AB: Or they've got an online educational program, or a way of doing things maybe they've got an invention that's going to be part of what you're working on, especially for physical products. So whatever that intellectual property is that someone is bringing to the table, you definitely wanna get that in writing. And whether they are basically giving ownership of it, to a new company or to your collaboration are you all gonna own it? Are they gonna keep it? But they're gonna let the company or the collaboration use it. Are you going to pay them for use of it? Sometimes the company or the collaboration is actually gonna pay what we call a license fee to be able to use it. Again, there could be a million different ways that this can be set up, but the really important thing is that you talk about it upfront. If someone is bringing intellectual property that you're not all just creating together but that they already did or that they've done on the side or it was a different project. That definitely needs to be in writing so that everybody's really clear about who owns what, and that you have permission to use it in whatever way you're wanting to use it.

12:58 AB: Something to think about here also is if one of your collaborators is bringing something into the collaboration that maybe they did as a collaboration with someone else, you maybe got some other people involved who've got ownership issues. You wanna make sure you've got their

agreement in writing also. And again, I am a lawyer, so I always am looking down the road from my experience of worst case scenarios, and so I've always got that in the back of my mind. And I try not to be a negative Nelly and tell people about all of the doomsday things that can happen when things go wrong, but it's my experience from having to clean up things that go wrong that has made me such an advocate for getting these things sorted out on the front end, because you will save yourself so much time, energy, money, headache by ironing it all out on the front end rather than creating something together, where you got some fuzzy rights or some unclear agreements and then later, when it becomes a big hit, then everyone gets very greedy and if you have a disagreement, someone wants to take their toys and go home, and it's part of what you've built, that can be a big mess. And it can basically ruin your company, or your collaboration.

14:08 AB: So it's much, much easier and better to go and get all that cleared up on the front end, when everyone's friendly and there's no real money at issue. So who's bringing what to the table, that's our number three. Who's paying any expenses, who is maybe have this equipment or space that you're using. And who's got intellectual property that they are bringing into the fold.

14:29 AB: The last thing to think about is what happens if you break up. Now again this is another one of those words at scenarios, but I really like to think about what would happen if you split up on the front end, because the fact is most collaborations most partnerships even the most wonderful companies you don't necessarily last forever. People get opportunities to do other things, their interests varies maybe they have a move, maybe they have a big life change. I mean, life happens. You cannot predict what things are going to look like in the next two, five, 10... Gosh, 20 or 30 years. Things change. And so it's really smart to think about your exit strategy on the front end.

15:08 AB: Is this something everyone thinks that they wanna do forever and then give to their children, or is this something that you might all do for a little bit, and then move on to other projects? Depending on what your short-term and long-term goals are, you might set up those exit strategies differently. But it's important that everybody talks about that in the beginning, because what can be really another source of conflict is if one person is ride or die, they want this to be the thing they work on for the rest of their life, and the other person is like... Yeah, I might give it a year or two and get it going, then I might turn my attention elsewhere, that can be a big problem.

15:42 AB: So you definitely want to talk about what will happen if one person wants to leave or if one or more people want to kick out another person if there's a conflict or if something goes wrong with your relationship. I mean, this is just life, people do not always stay friends the way they think they're going to. People react differently to changes in the world changes in your business, it's really hard to predict how that's all gonna play out. So again, when everyone is happy, it's a great idea to sit down over a glass of wine, a beer, a cup of coffee and hash all this stuff out. And again, going back to... I don't like to be negative and look at all the downsides, but I want to give you an example of what could happen if you don't get all this in writing. So one of my very first clients that I had after I started my own law firm three years ago, was an online business, it was two partners.

16:32 AB: They had nothing in writing, not even back of the napkin, I mean nothing. Their entire agreement was verbal. And they had a very, very successful online education company. They were making five figures a month in sales over six figures a year, their relationship broke down, they had different interests, they decided that they couldn't work together anymore their relationship got very

ugly, and so one of them sued the other. And it was a lawsuit in Federal District Court here in Chattanooga; Federal court is very expensive. So they had nothing in writing, so it was very unclear who owned what, especially the intellectual property. And because this was an online education business, the intellectual property, which is the copyrights in their course, and the trademark in the name of their course, in the name of their company, that really was the only asset that the company had that was helping it produce those big five-figure months, and six-figure yearly revenues. So, it became just an absolute nightmare for them as they were in Federal Court, both of them were arguing that they owned all of the intellectual property, of course. That they had done more than the other person that they had brought all the value to the company and they each spent well over \$10,000 in legal fees in a matter of weeks.

17:47 AB: It was very, very expensive for both of them, and if either of them had consulted an attorney on the front end, it would have cost a fraction of what they ended up spending in Federal Court. They were able to negotiate a settlement, but I can tell you, I've done lawsuits like this. If it had gone all the way to trial, each of them probably would have spent well over a \$100,000 in attorneys' fees just to try and take apart the partnership that they had put together kind of carelessly. So it is always going to be worth your investment if you figure out that you have a company that is making money, that is really up and running, it is profitable, you are going to definitely find value in working with an attorney to sit down with both partners or however many partners you have, and put it in writing in a formal way, so that you can go over all of these different things that I've been talking about. There are going to be state laws that will apply if you don't put it in writing. And those state laws may not be what you want.

18:46 AB: I'm gonna go over just really briefly a couple of intellectual property concepts that come into play here, and this is what was at issue in that lawsuit that I was just talking about. I've touched on this in prior episodes, but I always like to hammer it home, because I think a lot of people don't understand that this is how copyright law particularly works. So in the United States, our default rule, so this is the rule if you don't have anything in writing, this is just how the law works. If you create something with your hands, or with a computer, or a camera, then you own it, you are what's called the author under copyright law. If you are an employee of someone else, then the company will own it, but that's only true for employees, it's not true for independent contractors. So if you're an independent contractor creating something, even if the person who hired you told you what to do, gave you the vision, gave you guidance, paid you for it, provided you everything you needed to get it done, you would still own it as the independent contractor. The law only provides that the company will own it if you are an employee.

19:44 AB: Now you can change that in writing by what's called a work for hire agreement. And a lot of people have heard the word work for hire tossed around. That's what this means, if it's a work for hire, if you have it in writing, it has to be in writing, it cannot be verbal. If you had it in writing that the work is a work for hire, then the company that hires you, even as an independent contractor, is gonna own the work. And that's true, there's no transfer. The company owns it from the second you create it. Now what becomes tricky with collaboration, is you're not really independent contractors, you're not really employees. It's this very, very weird gray area. And so, it's critically important that you put it in writing. The other tricky thing under copyright law is we have co-ownership. So if you are creating something with another person, you're working together, maybe to create a book or a course or a video. As long as both of you are contributing something to the work,

it doesn't have to be equal contributions. As long as two people are both contributing something to a joint work, then they both have copyright ownership in it, and there's no really good way to split up percentages. Under copyright law, you both basically own the whole thing. It's kind of this crazy concept.

21:02 AB: And you both have the right to use it however you want, or to make money off of it. The only requirement under copyright law is that if you do make money off of something that you created as a joint work, you have to share it with the other person, but neither one of you can control what the other person does with it. It's this very strange, the co-authorship and co-ownership under copyright law is not how most people would think it works. So just like with work for hire, you can change this by putting it in writing. So you can decide, I'm gonna own 25% and she's gonna own 75%, even if your contributions are not exactly 25/75. And you can say only the company can do things with the work, neither of us can use it on our own. You can set up all kinds of payment schemes, you can change all kinds of different things by putting it in writing.

21:49 AB: If you are dealing with something like that, especially if you're starting to make real money, that is another time when it is definitely worth speaking with an attorney who understands copyright law, to make sure that you are putting in writing things that are actually gonna be held up in court, and are actually going to work the way you want them to. Because, just like work for hire there, there are some kind of magic words here, and you wanna make sure that you're using the right terminology. This is where it gets a little bit past the back of the notepad over coffee, and you might need something a little bit more formal. So, I'm gonna recap. My number one takeaway again, I want you to get it in writing. If it's early, if it's just an idea, or if it's something where you haven't made a lot of money yet, putting it in writing on a notepad or in a Word document or even in an email, as long as you both, you have an e-mail trail back and forth saying, "Yes, I agree," or, "Yes, that's what we talked about." That can be fine. When you're thinking about how formal it needs to be, think about if, God forbid, you ever were sued, could you give it to a judge? Could a judge understand it even if they don't know anything about your industry? So you wanna just write it in clean, plain, clear language. You don't wanna have a lot of jokes in there.

22:57 AB: You don't wanna have... Hopefully no curse words. Just simple, clean, easy to understand, so that you both know what you're agreeing to. So get it in writing, that's my number one recommendation. And when you get it in writing, you wanna think about four things. So again, who's doing what, what is everyone's responsibility? Second is who gets paid what? Are you actually paying out salaries, profit sharing, are you reinvesting everything? Third, is who's paying expenses or bringing something to the table, whether that's equipment, whether it's a cash investment, or whether it's intellectual property? Especially if it's intellectual property, you definitely want it in writing. And what happens if you split up? Who owns the intellectual property? Does the company own it? Would either of you, I'm assuming we're talking about a two-person collaboration, would either of you get to own it? Would you both get to use it? If someone wants to leave, are you going to do a buyout, or do they just get to go? If someone wants to stay a silent partner, is that okay? There's lots of different scenarios here, but you wanna think about that, all the worst case scenarios on the front end when there is no money at issue and everyone is still friendly. Alright, those are my top tips for putting together a collaboration or partnership agreement.

24:09 AB: Obviously, I have not touched on everything that is going to be in my ideal collaboration

or partnership agreement, but this should hopefully get your wheels turning. As I said, if you find yourself in a collaboration or a partnership that has really taken off unexpectedly, it is definitely time to sit down with a lawyer, get everything in writing, formalize it, make sure that you are protecting everybody and that everyone is in agreement about how you're running things.

24:34 AB: I want you to definitely stick around next week and listen to Episode 36. I've got Jenny Shih as my guest. I talked with her, she is a business coach, she shared an incredible story about a legal lesson learned that you are not gonna wanna miss. It's really interesting. She had some things to share about negotiating, and standing up for herself, and fighting back, when faced with a legal issue. So it is definitely an unusual scenario that you are gonna wanna check out. She also talked about how you can change your mindset from the feast and famine launch and burnout cycle, to moderation and building a sustainable business. That is something that I'm personally working on, myself, in 2018. So I really loved hearing some of her insights about that and I know a lot of you, especially who are in years two, three, or four, may be at that point in your business where you're really tired of the launch burnout cycle, and you are ready to build a more sustainable business. So definitely come listen to our chat and I will see you back here next time.

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25:38 AB: Did you know that you could be making more money from your copyrights and trademarks? Intellectual property is probably the most valuable asset in your creative business, but most entrepreneurs don't know how to identify it. And you can't monetize what you can't find. Download my free, five minute IP Audit Worksheet at awbfirm.com/podcast. You'll find out what parts of your brand, logo, images, website, courses, digital downloads, or other content could be protected by intellectual property laws. And you'll create an inventory of your most valuable trademarks, copyrights, patents, or trade secrets, so you'll know what's worth protecting as you build a more profitable and sustainable business. Get your five minute IP Audit Worksheet now at awbfirm.com/podcast.

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