

EP 40 - GDPR Mini Training 3

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00:06 Autumn Witt Boyd: Welcome to the Legal Roadmap podcast for online and ecommerce entrepreneurs. I'm your host, lawyer Autumn Witt Boyd. I'm an experienced copyright and trademark lawyer. With my team at the ABB firm, I leverage, grow and protect multimillion dollar online businesses. My goal in every episode is to teach you about the sophisticated legal and business strategies to build your own seven or eight figure business. If you're a new business owner, go back and listen to episodes 1-12, you'll learn the basics to set up a strong legal foundation. The Legal Roadmap podcast is sponsored by the AWB firm. You can find show notes for every episode, and learn more about how we help our clients achieve their next level goals at awbfirm.com.

00:52 AB: Hi, friends, I'm lawyer Autumn Witt Boyd here today to do our third in our series of mini trainings on GDPR. This is the new EU privacy law, the General Data Protection Regulation. It's a mouthful. I'll give my standard disclaimer before I jump in. I am a lawyer, I'm not your lawyer, unless you hire me, and we decide to work one-on-one together, and everything I'm talking about today should be considered information. It is not legal advice unless we are working together one-on-one, so if you have individual questions, please consult with either me or your own lawyer to make sure you get the best advice for your particular situation.

01:30 AB: So today what we are going to be covering is the second big change that is going to affect most online businesses, and that is what happens if you use cookies in your business. Now, if you are like me and you're not particularly tech savvy, I'm not a web designer, I'm not a web developer. You may not have known what cookies were, but you may be using them in your business even if you didn't know what they were. Cookies are a little piece of code that lives on your website, and when you have visitors come to your website, it then follows them around the internet. So the most common ones that I know of, the Facebook pixel is a cookie or uses cookie technology. I'm not even sure if I'm saying the right phrasing. Clearly not a web developer here. The other really common, and the way that a lot of people are using this, in addition to the Facebook pixel, is Google Analytics.

02:19 AB: So, these give you insights about people who visit your website and they also allow you to target people with advertising, and that is how most of us are using them in our online and ecommerce businesses, we collect data about who is coming to our site, and then we use that over on Facebook to target ads to those people, so we know that they're kind of a warm audience. Same thing with Google Ads. So that is what a cookie is.

02:44 AB: I'm not going to go back and do a total overview of GDPR, but I am going to give just enough background so that if you have no idea what I'm talking about, you will at least be able to follow along. So GDPR is the EU's General Data Protection Regulation, as I mentioned. It is a new regulation that will be in effect on May 25th, 2018 in all of the EU countries, plus the UK, which for now is still in the EU.

03:10 AB: So this is going to make huge changes to how companies must handle people's data. It is

a big change to how you get people's consent for what you were going to do with their data, it gives people control over their data, it updates the privacy laws which are now not necessarily up to speed with the pace of technology, and it also standardizes these laws across the EU. Right now, there are 28 different regulations when it comes to how you can handle other people's data.

03:38 AB: Go back and listen to my first training if you are not sure if your business needs to comply. There's a lot of confusion on this point, where people may think that because they are not targeting EU citizens or EU residents with their marketing that they don't have to comply, and that is simply not true. Most online businesses are going to have to comply with GDPR, and frankly, most US businesses that have a website are going to have to take steps to comply. In my second mini training I went over in detail some changes that you might need to make to your email marketing campaigns, both in your forms, in the way you are collecting people's information and what you might do with your existing lists of people who you're already marketing to via email marketing. So definitely go back and check that out, that is available on my Facebook page, on the Autumn Witt Boyd Facebook page, or also I'm turning all of these Facebook lives into podcast episodes, so definitely go back and listen to that. That was just the last episode that we did.

04:36 AB: So when we're thinking about what we need to be concerned about under GDPR, we're talking about personally identifiable data, and when we're talking about cookies, that could be something, including an IP address, and so it doesn't have to be what we think about as necessarily personal data, your Social Security number or your address. It can also include things from which an identity can be derived, so that is going to include an IP address, and then there are specific rules about if you're going to use cookies to track people around the internet, you now have to get their permission to do so.

05:08 AB: So let's start talking about this critical change, and how you can make sure that you are complying. So the big change under GDPR is that you now have to get affirmative consent to be able to use cookies to track people and to target them with advertising. There's a couple of different options here. You could have a banner or a notice on your website. This is what we're seeing a lot. And if you want to see some visual examples, I can't do it on a Facebook Live, but I did a longer training on GDPR that's available at my website, and I clicked over and used slides and so I have some screenshots and some examples of what some of this looks like. You can find that at www.awbfirm.com/GDPR, so it's very easy to find. I've also got a checklist there for GDPR compliance and you can find a link to our privacy policy, which is now GDPR-compliant.

06:00 AB: And so again, that first example of how you might get someone's affirmative consent to use cookies is going to be a pop-up, a banner, some sort of notice, but it has to be dismissed for them to move through your website, so they have to click on a box that says to X out of it or something like that. Another choice is just moving beyond a banner or a notice, so that is also permissible. That means you have a banner or notice that pops up and it can say, "If you continue browsing this website after reviewing this banner or notice you comply, you agree that we can use cookies with you." Or you can have a button that says "I agree." So couple of good choices there on how you can get that affirmative consent to use cookies. This is not something that can be just buried in your terms and conditions, which I think is where most of us had this. It cannot just be in the bottom of your footer on your website, you have to be getting some sort of action taken after being put on notice that you are using cookies with people.

07:00 AB: And there are several plugins that are going to work with WordPress. I know that Squarespace has some functionality already built into it. So this sounds like a really big change that you need to make to your website, but it's actually fairly simple. So a couple of plugins that I have seen suggested, there's one called GDPR, for WordPress, these are all WordPress plugins, there's one called Cookie Consent and there's one called WP GDPR Compliance. Again, I'm sure there are more. If you do a little Googling, I'm sure you can find some and see what the different ones are rated or what they cost, and you can find a good option for your website.

07:34 AB: So again, you are going to have to make some changes if you are using things like the Facebook Ad pixel or Google Analytics to use cookies with visitors to your website. And here's some suggested language that you might see. IAB Europe, which is a trade organization for digital business and advertising, they suggest language like this. So it's not enough to just say, "I use cookies. Do you agree?" You need to tell them what you're doing with the cookies. So here is their suggestion. "We use technologies such as cookies to customize content and advertising to provide social media features and to analyze traffic to the site. We also share information about your use of our site with our trusted social media advertising and analytics partners."

08:15 AB: So this is important because if you're using the Facebook pixel or Google Analytics, you are not only using this cookie for your own purposes, but you're really sharing it with a third person, and you have to let people know that, you can't just transfer their data without letting them know exactly what you're going to do and getting their consent to that exact thing.

08:37 AB: So the other thing to know with your cookies is, and I mentioned this in detail in the first mini training, is that you need to probably have this cookie notice showing up for all visitors to your website. So I have heard people saying that they might try and use IP address to geolocate so that they can figure out where people are living and only show the cookie banner to those people or something like that. And that is going to be an issue, because the geolocation is not 100% accurate. I think you'll find a lot of, and this is well known, that people will bounce the IP address, so that they falsify that IP address, so it's not really giving you the data about where people are located. So that's definitely a risk.

09:23 AB: And then the second thing to think about if you're trying to use an IP address to geolocate someone. If you are discriminating against people in the EU, so let's say you block them from your website, that itself actually is going to violate GDPR, so that is not a great idea. Trying to opt out of these requirements by using tech is going to be risky, because it's not going to be very accurate and it also likely is going to violate GDPR. So, unless you are 100% certain that you don't have any EU visitors to your website, the cookie change is probably going to be one you're going to need to make, again, unless you're not using any cookies, Facebook pixel or Google Analytics.

10:08 AB: So here's another example that I pulled up from Zara's website. Zara is a clothing retailer that primarily is in the EU. So they have a little box that pops up and it says, "We use our own and third party cookies to improve your experience and our services." So you're telling them why you're using cookies. They say, "By analyzing how people use our website. By continuing to use the website, we understand that you accept their use. Click here for more information on our cookies policy." So this is the other thing, in addition to adding this cookie functionality, some sort of pop-

up or banner or something where you're getting affirmative consent, you're going to need to be making some changes to your privacy policy to comply with GDPR.

10:48 AB: There are a lot of them, and frankly, I think, rather than trying figure that out, your best bet is just going to be to find either a lawyer to work with you on a custom privacy policy or purchasing a template from a lawyer that you trust who has gone through and made sure that they've made the right changes so that you're compliant with GDPR. But the big change here is after you've updated your privacy policy, you are going to need to start posting it in a lot more places, so it definitely is going to need to be posted on any of these cookie pop-ups and it can't just be in your footer in a link. It's the same thing as trying to bury this in your terms and conditions. One of the big things about the GDPR is they want everything to be really visible, really easy to see, easy to find. So, that cookie notice is going to need to now be, or your privacy policy is going to need to be linked right from the place that you're asking for affirmative consent. So if you've got a pop-up, if you've got a banner, you're going to need to include a link to the privacy policy right there.

11:45 AB: So, most US companies should have already had a privacy policy, it's already been a requirement under California law. If you were doing any business or interacting with website visitors who live in California, this has already been a requirement, but the GDPR ups the stakes on this, for sure. So a privacy policy is now no longer just something that's nice to have, it is a really essential element of any business website if you are interacting with EU visitors at all. And again, you're going to need to link to that privacy policy from that cookie pop-up or the cookie banner, however you're letting people know that you use cookies, and ask for their affirmative consent.

12:26 AB: So let me pull up one other cookie banner. So this is from MailChimp, from their website, so it is a little banner across the bottom of the screen and it says, "We use cookies to offer you a better browsing experience, analyze site traffic, personalize content and serve targeted advertisements." So they're telling you, we are going to advertise to you, which is great, this is very transparent, it's very clear. And then they go on to say, "Read about how we use cookies and how you can control them by clicking cookie settings," and that's a link. "If you continue to use the site you consent to our use of cookies," but they do have an X out, so if you want this banner to go away, which it is blocking part of the content on their website, you have to click that box and that is considered affirmative consent, so that is going to be compliant there.

13:13 AB: Alright, so before I close out, I want to give a couple of steps that I suggest that you take right now to start getting GDPR-compliant. Again, go back and listen to the mini trainings number 1 and 2 if you want more details on any of this, but this is my suggested next steps so that you can start getting compliant before the May 25th deadline. And I've heard a lot of people freaking out that they're not going to be totally compliant by May 25th or maybe, like for me lately, life has been really busy and work has been busy and you just haven't had a chance to wrap your mind around all of this. You know, I don't think that they are going to start issuing 20 million Euro fines on day one. I could be wrong about that, but I think as long as you have a plan in place, you have started thinking about this, you have started taking steps to comply, you're making a good faith effort, and you're compliant fairly soon, I think that that is probably going to be good enough. So here are the steps that I suggest you take right now.

14:08 AB: So the first one is auditing your technology, what websites, what apps, what plugins do

you use in your business, what vendors are you sending client data to. I think you need to set aside an hour and just look at your business. If you're like me and you have all kinds of recurring subscriptions, maybe pull out your credit card statement, and help you see what you're using in your business. You need to evaluate these probably at least now and then again once a year to make sure that you're GDPR-compliant. So just look at how you and other people are handling data, other people's data. A lot of us are using systems in our businesses like Asana or Trello for project management, maybe we're using credit card processors to process payments.

14:50 AB: These are not things that we necessarily think of as handling other people's data, but there's a new requirement under the GDPR that you have an obligation to make sure that your vendors are GDPR-compliant, so if you're sending people's data to someone else, you now have an affirmative obligation to make sure that they are taking the proper steps to protect that data, or you could be on the hook if there's a breach, if the data gets out and someone is damaged by that. So many of your providers will help with compliance, so for example, a lot of email marketing providers have a ton of helpful tools on this, they will help you get your opt-in forms and your contact forms all shaped up. And same thing with all those plugin providers for the cookie banner. It's just a step that you need to take, is to figure out how you're handling people's data and make sure that you're compliant.

15:38 AB: The second thing I suggest you do, and this is covered in more detail in my last episode, update your opt-in forms and landing pages and, again, those are also going to need to link to your privacy policy, very close to wherever you are requesting the information, so not good enough to have the privacy policy link buried in your footer. It needs to be on the box, or on the form, it needs to be very close to wherever you're asking for their information. This would also be true if you are selling digital products or physical products and you have a checkout process and you're collecting information that way, that is also going to now, if it wasn't before, it needs to link to your privacy policy and let people know what you're going to do with that information. And if you're wanting to add your customers to your email list, you're going to need to look at whether you have their affirmative consent, or whether you can rely on what's called legitimate interests to contact them further.

16:30 AB: The third thing to think about is, this is with your existing email list, if you have anyone in the EU on your list, or if you can't tell if you have anyone from the EU on your list, you are going to need to segment those people out and do a re-engagement campaign. And I've actually, I'm going to post these in the coming week because I have gotten a couple of really great emails with re-engagement campaigns, basically asking people to confirm that they want to stay on your email list, that they want to continue receiving whatever kind of emails you're sending them. I think this can be a really effective way to sell the value of staying on your list and encourage people that they're getting something great, and they want to stay on. So I'll post a couple of examples of those. But if you have not gotten the right kind of affirmative consent to contact people prior to GDPR going into effect on May 25th, you are going to need to either take those people off your email lists, stop contacting them or get them to opt back in.

17:29 AB: The next thing is what we've just been talking about, adding a cookie notice, a banner, a pop-up, some sort of cookie notice, with a link to your privacy policy. And then the next one, as I mentioned, update your privacy policy. There are helpful websites that you can point to that give

people more information. There's one called www.aboutcookies.org, there's another one called youronlinechoices.eu. These are available in multiple language versions for the different EU countries. So this is helpful, it lets people make a more educated decision about how they want you to handle their data, so that can be helpful to include in your privacy policy. If your business is at a point where it's worth the investment, you are worried about potential liability under GDPR, definitely meet with your lawyer or find a lawyer who is educated about GDPR and can help you with compliance.

18:19 AB: And then the last thing, this has really changed the way that I have been talking to my clients about liability protection. So if you go back and listen to the first mini training, the fines are pretty significant. It's either 4% of your revenues or 20 million Euros, whichever is larger. So I know if you're a small business, 4% of your revenues may not seem like that big of a number, but 20 million Euros certainly is. So this could be really significant exposure if you are handling someone's data and a breach happens, and their data gets out and they're damaged, you could be fined, or if you're just found not to be compliant, if you're handling people's data in the wrong way, you could be fined or you could have a lawsuit filed against you. So this has made me reevaluate the way that I talk with my clients about liability protection, so protection from being sued or having a fine issued against you.

19:06 AB: And also insurance. So this is a risk, but it is one that you can get insurance to protect yourself against. So I think evaluating both sides of that coin is really important to make sure that if you have some exposure under GDPR that you're taking the right steps to protect against it.

19:23 AB: Thank you guys so much for tuning in today. Again, if you have not already, feel free to go watch the full training, which has screenshots of different ways that you can comply with the different GDPR requirements, that is at awbfirm.com/GDPR. We have show notes for every podcast episode at awbfirm.com/podcast. And I am on vacation next week, so I will be taking a week off, but I will be back on Facebook Live and back on the podcast the following week, so first week of June, you will hear from me again. If you have GDPR questions, feel free to reach out to us, you can contact us through our website, awbfirm.com, you can also grab your GDPR checklist and find our GDPR-compliant privacy policy template there. So have a great week, and I will talk to you again soon.

20:14 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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