

Contracts - Part 2 - What every online business needs (S3E63)

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00:07 Autumn Witt Boyd (AB): Welcome to the Legal Road Map® podcast for online and e-commerce entrepreneurs. I'm your host, lawyer Autumn Witt Boyd. I am an experienced copyright and trademark lawyer. With my team at the AWB 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 Road Map® 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.

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00:52 A(: Hi everybody, lawyer Autumn Witt Boyd here. I am delighted to be with you guys today. Thank you for understanding last week when I had totally lost my voice from being sick. We brought back a podcast episode from the archives, and I skipped doing the Facebook Live because I literally could not talk. I was whisper-yelling at my children. I've still got a little bit of a cough so you may notice that my voice is a little bit raspier than usual, but I'm feeling much, much better. So glad to be back with you guys today, and we are going to just adjust this month's calendar a little bit.

01:23 A(: We're still talking about contracts all month long in November. Today, we're going to dig into what contracts or really documents does every business with a website need. You probably have a business for your website, if you're an online business, your website is your store-front and there are a couple of really key documents that your website must have legally and a couple of things that are just a great idea. And we'll give you some extra protections. We're gonna dive into all things, terms and conditions, Privacy Policy, disclaimers, disclosures, what are the differences and what do you actually need versus what is nice to have. We're gonna dig into all of that today.

02:01 A(: And we're going to kind of squeeze in some of the content that I was going to do in the rest of the month into what remains in the month, since we missed one week. Last week, I did a replay from the archives of an episode about whether you need to form an LLC or corporation for your business. So hope that was helpful. Go listen to it if you haven't. That was from season one. So it's been a while since it originally aired. I make my standard disclaimer which is that I am a lawyer, I am not your lawyer, unless you decide to hire our law firm and work with us one-on-one. So, everything I'm talking about today, please take it just as information. It is meant to be... Get your wheels turning. But it's certainly not individualized legal advice. So if you have questions about your specific business or your specific website, definitely talk with your own lawyer, whether that's me, somebody with our firm or someone else. And everything I'm talking about today is gonna be based on US law, since I am licensed in Tennessee, and we work with US-based businesses.

02:52 A(: Alright, so I gave a little preview of what we're gonna talk about. We've got one, two,

three, four, five main topics today that we will run through talking about what you might need for your website. And we're gonna start with really what is the most important, crucial, critical part of your library of documents for your website, and that is your privacy policy. And that is because this is required by law, it is not optional. If you have a website, unless it is just basically a totally non-interactive kind of billboard. If you are collecting any information from people who visit your website, so that means if you have a place where they can sign up for an email subscription, if you have a Contact Us form, if you have any way for people to purchase products, so you're gathering their name, shipping address, payment information, if you have any of that kind of interactive part on your website, you are required by law to have a privacy policy. And so this privacy policy really is just telling people how you are going to use that information, that personal information that they are giving to you when they interact with your website.

03:58 A(: This is in the United States. It's required under California law, but since most of us, if we are running an online business, we are really working with customers in all 50 states. So this is going to apply to every online business unless you are never touching anyone from California or you prohibit them from giving you their information. This is going to apply to you.

04:18 A(: You may have also heard about a new European Union regulation called the General Data Protection Regulation. It's been shortened. Most people refer to it by its initials which are GDPR. And if you have, if you wanna learn more about GDPR, I did a whole series about GDPR, will link to those episodes in the show notes, back in May, went into effect in May of 2018. This is going to apply to any business even a US business, if you are interacting with customers or if people are giving you their information, again, it could just be something as simple as collecting their email address for a newsletter sign-up, you are governed by that EU regulation and you have to comply. That regulation also requires that you post a privacy policy on your website. And it's going to have much more particular requirements than even the California regulation.

05:06 A(: So I'm not gonna go through all of the different things that a privacy policy might need to say, but I am gonna drive you to a free resource that we have. I put together a worksheet back in Season one of the podcast, so you'll find it linked under episode three of the podcast. If you go to the show notes page, it's awbfirm.com/podcast3, I'll link to that in the show notes and I'll put it on the Facebook comments as well. If you go download that free worksheet, it is going to guide you through all the different documents you might need on your website and it's going to outline what must be included in a privacy policy.

05:43 A(: Now, it's not gonna hit on every single thing that every single business might need, it's gonna kind of hit the high points, but go download that free resource. It's super helpful as you're working through this question for your business, what do I need to have on my website? It's going to go through all of these different things that we're talking about today in a little bit more detail than I'm going to go through during this Facebook live.

06:03 A(: But as just a kind of high-level, what kinds of things are in a privacy policy? I will be honest, most people will never read your Privacy Policy, but it is required by law. So this is something once you become an online business owner or just a business with a website, you now are subject to some oversight and you have some compliance requirements. So these are some of the things that are going to be required. So it's going to require you to have things like what

personally identifiable information do you collect? Is it just an email address?

06:32 A(: Maybe you are offering health services, and so you're getting some health information from people that's gonna have some other requirements, and handling regulations around that. If you're collecting payment information, are you collecting people's addresses? Certainly, if you're collecting personal financial information like a Social Security Number, or bank account information that's gonna be highly sensitive that's gonna require that you take more care with it. So you're gonna have to disclose what kind of information are you collecting, and who are you sharing it with? Are you just using it for your own business basically to provide your own goods and services to your customers or to people who are interacting with your website, or do you maybe have another company that's associated with your company, and you also market through that company?

07:15 A(: Maybe it's associated, maybe it's somebody you're an affiliate for, maybe it's just someone you advertise with. There could be all kinds of different relationships, but you just need to tell people. Once I sign up, once I give you my information, where is it gonna go? Is it gonna stay with you or are you gonna provide it to anybody else? There's also gonna be some other requirements around if someone wants you to delete their information, how do they request that? How long are you going to keep their information? If you change your privacy policy, how do you tell people about that? These are all the kinds of things that are going to be in your privacy policy. Again, not hitting every single point. This is just a brief overview, and usually, you will see the privacy policy linked in the footer of a website page.

07:58 A(: Now, if you are one of those businesses, which really I think, are most US businesses that are online businesses who are now subject to the EU regulations, the GDPR regulations, there are going to be more places that you have to link your privacy policy. It is not good enough to just have it linked in your website footer, you are now going to need to link it also every place you have an opt-in form, a place where you are collecting someone's information either to sign up for a newsletter or participate in a webinar or get some sort of resource if you like. I just talked about my downloadable worksheet about all of your different website documents, I ask for your email address and then I send that to you by email. So now, under GDPR, there are new rules that you have to have your privacy policy very close to wherever that opt-in form is. Your privacy policy is probably going to be linked in your footer of your website. So they're at the very bottom, on every page and then probably it may need to be in some other places as well.

08:53 A(: The second thing I wanna talk about is your terms and conditions. I think there is a lot of confusion about what terms and conditions are. You often will see these also linked in the footer of a website at the bottom there, and there is no rule that says you have to have terms and conditions. This is really optional, but it's kind of a best practice. It's a good idea for your business. And what the terms and conditions of your website are, are it's just how you tell people, this is how I am going to interact with you. These are the rules of the road for visitors to my website. You may have some things like, if you have a blog on your website that allows commenting and maybe you have some rules for how people are allowed to comment or what kinds of comments they can leave or under what circumstances you might edit a comment or delete a comment. You could have also information about your intellectual property rights in this terms and conditions. This is often where people will put that. So you might see things about that "I own the copyright to everything that's on

this website."

09:49 A(: Or maybe I have licensed some of this content from someone else. So you might use your terms and conditions to give credit to people whose content you're using on your website. You can also tell people how they are allowed to use your content. So let's say you have a blog with really useful information, are people allowed to copy that and share it or do you only allow that to happen if they give a link to your blog or is that not allowed at all or are you happy for people to use it because you would love for them to share the word about whatever educational content you have on your blog? The terms and conditions are really a lot more loose. There's kind of some standard things that you can include, but it's not required by law, it's just a good idea.

10:28 A(: The other thing that you might think about with your terms and conditions is think of them as putting people on notice about your intellectual property rights. So the great thing about putting people on notice that you own something, maybe it's a trademark or a copyright. It could be your creative content, your photos, your blog articles, those are gonna be protected by copyright.

10:47 A(: It could be your business name, your logo, your slogan, those are the kinds of things that are gonna be protected by trademark. Once you have planted your flag in the sand and told people I own this, this is my intellectual property, it is owned by my business. And you've told people, whether they can use it or not, now all of a sudden, you have taken away the ability for someone to claim that they were innocent when [chuckle] they take your stuff and use it without your permission.

11:11 A(: This kind of gives you an advantage when you're trying to shut down copy-cats. If you have a nice terms and conditions that really lays all that out very clearly, you can shut someone down from trying to say, "Oh I had no idea that you owned that. I never would have thought that you would have a problem with me using all of the photos from your website on my website to compete with you." you could just kind of shut that down right in advance.

11:35 A(: So some of the other things that I'm gonna talk about in a minute, might also be in those terms and conditions, some of these disclaimers, and disclosures. So those are some other things that we'll circle back and touch on in the terms of terms and conditions.

11:48 A(: Okay, so the next thing that you might want to have on your website with your online business, this is if you are selling online products. It could be an e-course, it could be like my contract templates, it could be a digital download, it could be an e-book, any... Think of anything that you are... That is not a physical product, but is a digital or online-type product. You are going to wanna have what I call terms of use, that go with that sale.

12:13 A(: So this is basically the contract between you, the seller of this digital product, and your purchasers. It is going to outline all of the same things that you would have in a contract, if you were working with a client or if you were selling something more directly. So this is where you're gonna put what exactly are you providing, what are they getting? Let's say, it's an online course, what is included in the course? Is it just the videos, and maybe some worksheets and materials online? Do you include some phone calls, or do you do Q&A from time to time? Is there an online community that's part of that course? Online courses can take lots of different shapes. So you can

have lots of different things included or not included. So you wanna be really clear about that there.

12:55 A(: Also in your terms of use, you're gonna wanna have things like what's your refund policy? If you are offering a payment plan you wanna outline that. You wanna make that really clear in those terms of use. I do sometimes hear people talk about terms and conditions with an e-course or an ebook, a digital product, and I like, just because the website terms and conditions are totally different than what this is, I like to use these different terminologies. So you'll hear me if you listen to me talk about these things, I talk about website terms and conditions and E-course or ebook digital download products, we talk about terms of use. Because I think of that, it's more telling people how they can use your digital product once they have purchased it from you.

13:35 A(: So again, we're gonna have what we're providing, any payment terms, what happens if someone is late to paying or their credit card expires, or they do a charge-back with the credit card company? There's all kinds of things that could happen when you're selling a digital product and you wanna really think through how you're gonna handle that. One advantage to not releasing all of a course content in the beginning. If let's say you have eight week... It's an eight-week program and maybe you allow two or three installments, if you release all of that content right at the beginning and then someone flakes and doesn't make the rest of the payments, they've already kind of gotten everything. You don't have any leverage to try and get them to pay in the future. Yeah, they could really just suck all that content in or download all the materials, watch all the videos, do all the work and then never pay you again. And you know, they've gotten it at a fraction of the price that you intended.

14:25 A(: So that is one advantage that some people who release their content slower, if you are on a payment plan, you can then cut off access if someone is not paying and they don't get access again until they pay or if they are gone forever, then they don't get any more access. So that's one way, something to think about as you're picking through payment plans, and how you might wanna set that up. You can also include late penalties. There's other things that you can think about there.

14:52 A(: The refund policy is super duper important again, whether you give refunds or not, I see a lot of people who maybe offer refunds if someone has gone through all of the materials and done all the work, but didn't get the right result that they were hoping for. Or you may have other caveats that are required before you'll give a refund, or hoops that people have to jump through evidence, that they have to show you that they did the work or some people have no refunds at all. And so, however you're setting up your refund policy again, you just wanna be really clear about that in this terms of use.

15:22 A(: And then again as I mentioned, similar to your terms and conditions, you definitely wanna include some terms about who owns the intellectual property in the content, so in your e-book, in a digital download, in an e-course. And what are people allowed to do with it? Can I share it with my friend? Can I send her a copy of this e-book 'cause I thought it was awesome or is it only for my personal use and my friend needs to go buy her own copy. So all of those kinds of rules and regulations can be in your terms of use. And again, it is a contract between you and the person purchasing your digital product.

15:53 A(: So even though it is an online transaction, it still is a binding legal contract. And we do

see some of these products sell for thousands of dollars. In that instance you definitely wanna have a legally enforceable contract and that can be done in an online setting. This is where you've often seen it, check out, there may be a box that you have to check. That says, I have read and agreed to the terms and conditions or I've read and agreed to the terms of use that go with this product or by clicking pay now, I certify that I have read and agreed to these.

16:25 A(: So when you're thinking about your check-out page, and how you wanna make sure that people have a chance to read the terms of use before they purchase and you want them to take some sort of affirmative action before they purchase. So whether it's clicking or whether it says, if I click the purchase button then I am agreeing to these terms, whatever they're doing, it can't just be enough that there's a link and they can look at it if they don't... If they want to, but if they don't. You wanna think about if you had to go in front of a judge and he says, "How do I know this person agreed to these terms? You wanna be able to say, "Well, they had to click this box, that said, Yes, I agree. Or they saw... Before they clicked purchase, there was a scroll and they could read them all right there and they couldn't click Purchase until they scrolled." there's lots of different ways you can do it. But you definitely want some sort of affirmative action before they are purchasing so that you can make it really clear that they are agreeing to those terms of use.

17:17 A(: Alright, we are gonna talk about disclaimers next. So this is another thing that is not required by law, but is a good idea. So this is especially if you are in the health or wellness, if you are maybe a yoga teacher, or you have online videos teaching people how to do exercises or if you're giving nutrition or diet advice. Also, if you are in the financial industry, so if you're giving financial advice or helping people with money, mindset, or managing their finances and especially if you are in a really regulated industry like legal, or if you're a financial planner or you're an accountant, something like that, you are probably going to wanna have disclaimers on your website. Just like I gave at the beginning of this recording where I said This is information, not legal advice. You may wanna have similar disclaimers on your website.

18:04 A(: And those are also going to be in that downloadable, I have some examples in that downloadable worksheet on my website at awbfirm.com/podcast3. You are gonna see some examples in that document, as well. So definitely go check that out. These are gonna be things like check with your doctor before you start an exercise program, or results may vary.

18:26 A(: We don't guarantee that if you use this nutrition plan, you're gonna [chuckle] lose 100 pounds, or if you're using testimonials, you may want to include a disclaimer that these results are not typical, or everyone has their own results based on what they put into it. So these are legal disclaimers that protect you in the event that someone relies on your information and maybe doesn't get the outcome that they were hoping for.

18:50 A(: So again, not required by law, it just gives you a little bit more protection, and especially if you are in one of these professional fields, if you're a doctor, a lawyer, an accountant, a financial professional, you are definitely gonna wanna be using these disclaimers anytime that you are giving general information. You wanna make sure that people are not relying on it as if it were individualized advice, and then, if they have a bad outcome, coming and suing you. This is what we don't want. So those go a long way to just putting people on notice that this is general advice, it is not gonna necessarily apply in every situation. So those are gonna be what we call disclaimers.

19:25 A(: Not required, but a good idea. And then the last thing that I wanna talk about, the fifth thing, is disclosures, which are required by the Federal Trade Commission. So this is going to be for those of you who either are a blogger and you're receiving products to write about them, maybe you receive them for free, or maybe companies even pay you to write about their products. If you have a great audience, they wanna get them in front of the eyeballs of your readers, or your listeners, if you're a podcast.

19:52 A(: Anytime that you are either getting something for free, or being paid to talk about a product or service, you are required by the Federal Trade Commission to disclose to your listeners, or your readers, that you were compensated. So even getting something for free, even if you're not actually paid, but maybe you get a sample, or they pay for you to go check out a theme park, or somebody to come clean your house to try a maid service. It could be, it's not just physical objects, it could be services or experiences as well, but if you are not paying for receiving it, then that's considered compensation, and you just have to tell your readers that that happened.

20:27 A(: Now, of course, what the FTC thinks is that this might affect your opinion, that maybe you will be a little more favorable because you got it for free, that you will say nicer things because you didn't have to pay for it. Whether that's true or not, who knows? But I do think there is value in being transparent, and I think readers and listeners value that as well. I think they like knowing how the sausage is made, a little bit. So this is required by law, you cannot skip this. And so you've probably seen these, and you could be fined, probably won't start with a fine, it'll probably start with a mean letter from the FTC, but you can be fined, there can be penalties, you could even be sued, there could be really, really serious penalties if you do this the wrong way, so this is something that you need to take seriously.

21:09 A(: The disclosures, there's no magic language here, but there's a couple different things you might think about saying. So if you're on social media, and it's Instagram or it's Twitter, where you have a pretty limited number of characters, you can use hashtags, you can use #ad, is one of the most popular ones 'cause it's short. You will sometimes see #spon, S-P-O-N, short for sponsored, or even the whole word "sponsored." You could also, if you're writing a blog post, where you have a little more room to write about what the scenario is, I have some suggested language, which you can get in this downloadable on my website, but I'll read it for you. So something like, "This is a sponsored post, the company who sponsored it compensated me with a cash payment, or maybe by giving me the product for free to try it out. Regardless, I only recommend products and services I believe will add value to my readers."

22:00 A(: With the online businesses, so maybe you are not actually trying a physical product or trying out a service, but maybe you are, an affiliate for someone else, so maybe someone has a course and you are an affiliate, so you help promote it and you get a percentage of any income that comes from people that you send to that course or to that digital product. This is really common in online business. It might be a referral code or an affiliate code, affiliate link, you also have to disclose that because, again, you're being compensated in exchange for promoting something, so the FTC considers that the same as if you were sponsored, or if it were basically an ad. So they want you to tell people that you are being compensated.

22:41 A(: You're not just telling people about Marie Forleo's B-School out of the goodness of your heart, that you are an affiliate, you are making money off of telling people to go take her course. So similar language I would recommend, again #ad, #paid, #sponsored. You might include language if it's a longer form, something like, "This link is an affiliate link. This means if you click on the link and purchase the item, I will receive an affiliate commission at no cost to you. And again, regardless, I only recommend products and services I believe will add value to my readers." So again, there's no magic language here, but it does have to be clear, what we call clear and conspicuous. So I think, I always joke. I think the FTC would like for you to have flashing lights and fluorescent font and letters 3 inches high. It's not required, but you cannot bury it, it cannot be teeny-tiny at the bottom of the page, it should be the same size font as everything else, it should be easy to see. Maybe you wanna put in italics or bold, either at the front or the end. If we're talking about a blog post, or if this is in a podcast or something, you just wanna talk about it the same way you talk about anything else, you can't speed it up. You know, in those car commercials, how sometimes they talk really, really fast and you can't understand. You just wanna tell people in a way that they understand what you're talking about.

23:55 A(: Alright, so these are the five website documents that you might need, if you have a website and run an online business. So again, I'm gonna rehash, first one is your privacy policy. This is required by law for both US and EU businesses. Second one is terms and conditions, so that is not required but a good idea, it's gonna tell people who visit your website how they can interact with your stuff, whether they can use it or not, blog commenting, all of those kinds of things. If you're selling an e-course or other online or digital products, we're gonna wanna have a good terms of use, that's your contract with your purchaser. We're gonna have disclaimers, so that's where you tell people not to rely on you too, much make their own decisions. Health, financial, legal, especially in those areas, we wanna really think about a good disclaimer on our website. And then the last thing are these disclosures that are required if you are sponsored, if you are paid, if you are taking ad dollars, or if you are an affiliate, that is required by the Federal Trade Commission in the United States.

24:54 A(: So if this episode has left you thinking, "Oh my gosh, I need some of these things." Don't worry, we have got you covered, you can see a link right below me to the AWB Firm's contract store, awbfirm.com/contract-templates, and we will link that in the show notes. We are also having a sale, a Black Friday sale, this month, so get excited. So it's going to start Black Friday, which is November 23rd, it will go through the following Wednesday, because if you're like me, you're wanting to spend time with family that week and you may not be actually doing any online shopping until that next week. So we'll run the sale through that next Wednesday, November 28th. We are going to give a free privacy policy to every purchaser. The code is BLACKFRIDAY2018, it'll be on the website, you don't have to write it down, it's not a secret. So when you go to that contract templates page, it will be right there.

25:43 A(: If you wanna go ahead and window shop, feel free, check out what we've got, we've got pretty much any kind of contract you might need if you are running an online business, either services or products. So for products, we have a wholesale agreement. If you're a services, we have all kinds of different client agreements. We have a model release, if you're a photographer, we have some events planner templates, we have things for... I mentioned terms of use for your online digital products. We have affiliate program terms, if you're thinking about setting up your own

affiliate program. So we have lots of different templates there. They're super affordable, they're 149 to, I think, 349 is the highest one. And if you are on our email list, you will get a code for an extra 25% off. Now, I'm not telling you that one, but if you sign up for this worksheet that I've been talking about at awbfirm.com/podcast3, you will be on our email list, you will get that special code. So definitely go ahead and sign up for that email list, if you're not already, to get that extra 25% off your whole purchase. This is a great time to stock up. It's year end, maybe you're thinking about 2019, some things that you are planning, this would be a great time to go ahead and get those contract templates, so you are ready for a strong year.

26:51 A(: Alright, next week, I don't wanna forget, we are gonna talk about what contracts might you need to protect your revenue stream. This is what I think is really the most important. So whether you're selling products or selling services, what kind of contracts do you need with your clients or your customers? I'm also going to combine, since I had to miss one episode this month, I'm going to also talk a little bit about what contracts you might need as you're growing your team. So working with independent contractors or employees, and those are gonna be things like non-disclosure agreements, independent contractor agreements, non-solicitation or non-competition. We also often hear about non-competes, so we will talk about all of that. And again, don't forget about the Black Friday contract sale. I don't want you to miss out. I only put the templates on sale once a year, so this is the time to get them. Alright, you guys have a great week, and I will talk to you next time.

[music]

27:47 A(: 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 of 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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