

On Your Terms Episode 103:
Three Legal Nightmares and How to Avoid Them

Sam Vander Wielen: Hey, welcome back to On Your Terms. I'm your host, Sam Vandder Wielen. I'm an attorney turned entrepreneur who helps you learn how to legally protect your online business. And today, I'm helping you hopefully sleep better at night because today we're going to talk about avoiding legal nightmare scenarios in your online business.

And don't worry, my signature style is to help walk you through this and really to learn how to avoid them entirely. I'm a very preventative person, so I quickly walk you through some easy, simple strategies today on how to best, not only avoid these scenarios, but then navigate them even if they happen. Because I truly believe that these worst case scenarios can become best case scenarios with the right kind of protection. So, with that, let's dive in to this week's episode.

So, when it comes to legally protecting your business, it's not really that different than a lot of other things in life. And the more that you can do upfront or whatever you do upfront is what's actually going to help you in the end. Because by the time something "bad" happens in your business, it's sort of too late, other than the fact that it's just a lesson and we can do better the next time.

But a lot of people put off legal protection or they think they don't need it yet. And then, something bad happens and they're like, "Oh, shoot. What do I do now?" And I'm like, "Well, where's your contract? Or do you have an LLC or do you have insurance?" And they're like, "No. Can I get that right now?" And it's like, "No, no. You needed to have that before this thing happened. That's what's actually going to protect you."

And so, you know, a couple months ago, I got into like - well, I wouldn't even call it an Instagram fight, but it was just a little bit of, let's say, a tense commenting moment on Instagram on one of my customer's posts because this guy was like writing to her saying how he's been a personal trainer for, like, 20 years and he proudly doesn't use contracts and it's never been a problem. And it's like, "Cool, dude. It's never been a problem until it is a problem. And then, the fact that you don't have contracts will really, really hurt you."

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So, it's like playing Russian roulette. And by the time you figure it out, it's too late. So, I don't know, maybe some people get a thrill out of that or something. You're probably more like me and you're just like, "No. I just like to sleep at night knowing that I'm not playing Russian roulette and getting around to the bullet in the chamber. I'd rather just know that everything is okay and approach all of my relationships that way."

Besides the fact that there's nothing wrong with getting legal in place - that was the other issue I took with this guy's comment - I was like, "What is the problem with having legal?" It was almost like he had pride in not having it. It was like this brazen, like, bravado approach. And I'm like, "There's nothing wrong with protecting yourself."

Again, this is where I think online businesses get treated differently, like we can get away with it. Or something like this where I'm like, "No. Dude, this stuff is not optional. A lot of what you're doing is probably not even okay." And so, great that it's working for you until it doesn't. You know, call me when it doesn't work out.

But that's why today I just thought it would be helpful to talk through kind of like three legal nightmare scenarios, but how we can very easily prevent them. Because, you know, I'm not about sitting here and scaring you. I don't want to prevent you from taking action in your business. Sometimes it helps me - if you're somebody who has anxiety as well, like maybe I have, I don't know. No. I'm just kidding. Yes, of course, I have anxiety. But if you have anxiety, sometimes I think it's helpful to play out that worst case scenario and then be like, "Oh. Actually, I would be okay. I have what I need in order to be safe and protected." And this stuff is scary and I understand that.

Okay. So, let's talk about the first kind of legal nightmare scenario. Let's talk about a client relationship going south. And by that, I mean it could get really ugly and tense. It could be that the client doesn't pay you. The client could complain that they didn't like working with you. They want their money back. They got bad results. They experienced some bad thing. They're disappointed in you. They didn't like what was provided. They thought you cut them out of something that they thought they were supposed to get.

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Whatever that means to you.

So, in general, let's talk about the legal nightmare scenario of a client relationship going south. So much of a client relationship going south can be avoided on the frontend. And then, we'll also kind of talk about the legal steps, like if there was only so much you could do.

So, on the frontend, I really believe in prequalifying clients as much as possible. When you have a coaching business or some sort of service providing business, I think you have a much easier time doing that because you can have a phone call or there can be some sort of checkpoint of a form they have to fill out.

And I actually have a freebie for you called Prequalify Before They Buy that I'll link to down below. It's a series of email templates that I give you for free that you can use to set up in an automation tool or a scheduling tool.

And you can send these emails to people to kind of like walk them through who you are, what you do, what you help people with, what you don't help people with, even how your free call is going to go, and what your call is for and what it's not for if you offer one. Because a lot of that is, I think, what leads to people working with "nightmare" clients or a relationship going south because often it's a matter of mismatched expectations, unclear expectations. And that can be avoided by being very clear upfront. And not to mention not wasting your time to get on calls with people who don't genuinely want to work with you.

So, I think prequalifying clients as much as possible is a great preventative measure to trying to keep relationships from ever even going south in the first place.

Another thing can be having disclaimers in place. So, having disclaimers on your website, on some of your content when it's a bit more educational, in your contracts, obviously, saying that they understand that you're not their doctor, their lawyer, their financial adviser, their therapist. And then, knowing your scope.

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And I have lots of good episodes for you on scope of practice. I know Episodes 2 and 69 off the top of my head. I think also maybe 86 and 94. I'll link to everything below, but we have a whole little series of scope of practice episodes.

When you know your scope of practice, then you only talk about things that you're legally allowed to help people with on social media, in your content, in your emails. And then, when people sign up for your free call and stuff, you're very clear about what your scope is. Or if you sell courses and programs and memberships, your copy is clear. You don't make promises about what this thing helps with. And then, that's what helps people to not say, "Hey, I didn't like your course" or "Hey, I didn't get a lot out of working with you."

Because if they have a mismatched expectation as to what you were going to help them with, that might have been a matter of not being super clear on our scope of practice and telling them like, "No. You can't be disappointed about that because I told you I can't even talk about that area."

So, for example, somebody bought my Ultimate Bundle and then they're like, "Hey, I want my money back because you didn't file a trademark for me." Well, there are, like, a hundred places along the way where I say that I don't offer any legal services. I don't perform any, like, registrations for you. I teach you how to do it yourself, and it's really easy, and it saves you a lot of money, and all that kind of stuff. And so, I'm really, really clear about it. I'm clear about it in my marketing. I'm clear about it in my emails. I'm clear about it in the copy on the pages. And then, yes, of course, it's wrapped up and nice and neat on the contract that people sign when they buy my stuff.

But that's, like, the last step in prepping them to buy my stuff. Because often, yes, we have some cold sales where people find my website, they buy the Bundle, and that's that. But most of the time people have joined my email list. They get my emails. They follow me on Instagram. They might listen to this podcast. And so, they are kind of comfortable with hearing me talk about here's what I do, here's what I don't do. And the

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contract is more just like confirmation of that, not the introduction of the idea.

So, that's why I think really knowing your scope of practice and embodying that throughout your business in many different ways and learning how to talk about that in a just normal business owner way and not just burying it in a legal policy somewhere is super, super helpful. That's where you're going to want to go back and listen to my scope of practice episodes because I really dig in as to how to embody your scope of practice and knowing what you can legally do and not do. I think, in general, just having a lot of that clarity around what you do is going to prevent a lot of these nightmare clients.

Another way that you can prevent a lot of these nightmare clients is by having really clear policies and boundaries in place. And so, a lot of times when I see people that have client relationships go south, it's like you didn't really have rules in place to begin with, and this person kind of saw that and then took advantage of it. And so, if they know that they didn't sign a contract and they know they can kind of behave badly, if you let them slide on some things that were in their contract at one point, and then don't hold them accountable in another, they might say like, "Hey. I thought I can just cancel my contract now."

I just see a lot of that kind of boundary pushing go on. And I know that it can be hard because you might feel like you're being too rigid or being a jerk or it doesn't have to be that serious or something like that. But you deserve to treat your business like the legitimate business that it is. And legitimate businesses have rules and policies. And you can bend where you need to bend and all that kind of stuff, but I would be careful with letting clients kind of set the tone off the bat because that tends to be what leads to some of these relationships going south down the line.

So, it might lead to somebody saying like, I'm not paying you any more and all that good stuff. Well, if you had that client sign a legitimate contract, for example, and the contract was sent and signed properly, meaning that they had access to the contract at the same time that they had to pay you - which I have an episode about below. I'll make sure

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that's linked in the show notes about sending and signing contracts properly - then you don't really have anything to worry about.

You might have this nightmare scenario in your mind thinking, "Oh, my gosh. What if I do all this work and someone doesn't pay me?" Well, there you go. That's how you avoid it by both prequalifying them then having the right contract in place that has the right payment policies in it. And then, because you had a legitimate contract, you're able to enforce that contract against them to seek payment and be made whole.

So, this is kind of how we go through the process of thinking like, "Okay, here's the worst thing that can happen. But I did all the right things on the frontend, and that's how I'm going to be able to save my tushy."

Okay. So, let's talk about the second legal nightmare scenario. I think the second legal nightmare scenario - and it's probably the biggest one for me - is somebody stealing one of your products, your course, your program content, something big, something that really means a lot to you. You put a lot of time and effort into probably something that's paid. And this is a legal nightmare scenario that can be avoided in two ways.

The first thing is that you want to have terms of use at checkout for anything that's like a course, a membership, a digital product, a program, something like that. If it's one-to-one coaching or a group program, you would use a one-to-one coaching contract or a group program contract for those. But for something like a course or a membership or a digital product, we want a contract that's called terms of use. And we're going to integrate that at checkout. So, it's something that people would check off a box at checkout saying that they've agreed to it.

And the reason that that's really important is because in that terms of use, you're going to have rules about accessing your content, about sharing your content, about how they get a limited license to your content, meaning you've allowed them to access and use your content for their own personal use, but not to resell it. They can't become an authorized reseller of it and sell it on Amazon or something, I don't know. Or sell it on

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one of those course sites where people resell courses. So, the reason that we have to do that is because that's where we establish the terms of people's access and use of our material, and we can even have a confidentiality clause.

And then, if and when they steal it or they reshare it or they give other people access to it, we now have them on a breach of contract claim. So, we're building a case. So, we have this contract to check out. They have to check it off. And then, they purchase it. Their use of it is subject to those terms. And now they violated it. So, you have something on them. If you didn't have a contract at checkout, then there's not really any claim because you didn't have anything there telling people what the rules were. So, that's why we want to be nice and clear upfront.

Now, the second way that we would, not really avoid this necessarily, but really put you in a great position to do something about it, a very easy position to do something about it quickly would be copyrighting that content that the person stole ahead of time. So, this is another preventative measure.

So, if you create a course, a digital product, something like that, a membership that has a bunch of videos or downloads in it, you can submit all of that to the U.S. Copyright Office for registration. So, it's pretty easy actually. You can fill out a form. You upload the material. You pay a small fee. And you typically upload it in, like, medium type. So, if you have videos and PDFs, you would submit one thing with all the videos and one thing with all the PDFs. And it's actually a lot easier than getting a trademark. It's a lot faster, a million times cheaper.

And you do that because that's going to establish you as the presumptuous owner of this material. And it's also going to make it super easy to do something about it if someone steals it. Because, essentially, if you're able to then send off a copy of your copyright certificate, for example, it's going to shutdown that conversation very, very quickly. Or if you have to send it to someone's website or to Udemy, if they steal your course and post it there or something like that, it's going to be very, very quick to get that taken care of. It also gives you additional rights as a business owner to go after

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financial damages to sue in federal court. A lot of different things. So, it's a really helpful, smart move, I think.

Actually, I was just teaching a training the other day for Allison Tiny's Group program. I do paid legal trainings for people a lot for their courses and their group programs and masterminds. And I was talking with them about how I actually wish people would pay more attention to copywriting their content, and paid offers, then trademarking names of things. Trademarking names of things is important, but the content is really the meat of what you want to protect.

And so, it just always often surprises me that people are so adamant about protecting names of things that are kind of generic, but then the meat and potatoes of what you're actually selling is totally vulnerable. So, I would encourage you to spend a little more time thinking about this part.

All right. The third, but definitely not final legal nightmare scenario, but I think the most common one in our industry is being sued for something personally. So, being personally liable for what happens as a result of something in your business.

This often comes because people have not properly registered their business. So, they might not have registered an LLC, for example. They might have registered a sole proprietorship or they just might not have registered at all. Some people falsely think that having a DBA covers them. That doesn't cover you. Just having a DBA doesn't cover you. So, not having an LLC is a surefire way to make sure that you could be personally liable for things that happen in your business.

What that means is that if your business got sued and you didn't have an LLC set up properly or some other better kind of business entity, that you would be personally on the hook for whatever happens in your business. Even if you don't have assets or money to pay it, there would be a lien against you that you would have to pay it somehow, someday, someday. So, we don't want to do that.

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Now, on the flip side, you might have an LLC already, and even then you still need to be conscientious of not getting sued personally or being held personally liable for things that happen in your business. A lot of times people think that if they've gotten an LLC, then anything goes, they can do whatever they want as long as they have an LLC on the backend, it protects them. And that's not necessarily true. So, we have to act like an LLC as well.

So, what does that look like? That means using the actual LLC name of your business. Unless you've registered a DBA in your state that allows you to drop the moniker, or that's the literal term LLC or limited liability company, if you had it spelled out, or if you've registered a DBA for if you go by a different name entirely than what your business's registered name is, you would have to do that in order to be afforded the legal protection from your LLC if you're going by a different name.

Another thing would be not having clean and organized financial records, not having your LLC name listed in your contracts with your clients, not having your LLC name listed where your content appears, or on the bottom of your website, all of that kind of stuff. Or, actually, using your LLC's money, your business's money for personal use. So, paying for things directly from your business account or on your business card that are only for you personally and that don't count as a business expense is an easy way to what we call pierce the corporate veil and go beyond the LLC to go after you personally. So, even if you have an LLC, it's really important that you act like an LLC properly and we maintain the protection that you think that you're getting from it, the personal liability protection.

So, these are all things that can be easily avoided. I would say that if you want to dive deeper into these, the best thing to do would be to go down below in the show notes and watch my free legal workshop, Five Steps to Legally Protect and Grow Your Online Business. I go into what contracts you need and website policies. I talk about keeping copycats off your content. And then, I go into the process of forming an LLC and what the difference is between sole proprietorships and LLCs and how do you know which one you need and when you need it. So, I definitely would recommend checking that out

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below.

I hope that this episode was helpful. Send me a DM on Instagram, @samvanderwielen, or respond to my email that you got letting me know what you thought of this episode. Thank you so much for listening and I'll see you on Thursday.

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