

# Website Legal Checklist

## Ownership – Who owns your website?

- If created by another, is it a work “made-for-hire” agreement?
- Does the hosting agreement include your right to access your website?
- Alternative Domain Names:  
Have you considered registering alternative domains (.net, .org, .info, .biz, etc.) or similar domain names (common misspellings, nicknames, portions of a name, etc.)? If you do not register alternative domain names, you run the risk that a third party will register them instead.

## Intellectual Property - Do you have the right to use the material?

1. Copyright: (writings, photographs, and graphics)
  - Are your original materials protected?
  - If a work of an employee, do the rights belong to you?
  - If the work of another, have you obtained the rights to use? (Public Domain?)
  - Did you remember to copyright your own material, including the website itself?
2. Trademark/Service Mark
  - If using another’s trademark or service mark, are you properly acknowledging who the owner of the mark is?
  - Is your own mark properly designated?
3. Patent
  - If you designed your own site, did you use any patented processes?
  - If designed by another, are you protected (indemnity or hold harmless) from claims of patent infringement?
4. Linking and Framing
  - Links to content on other websites is generally not considered to infringe on copyrighted material on the linked-to website.
  - Do you “deep-link,” e.g. link to a picture or other content on another’s website? If so, do you have permission?
  - Do you frame a page or content from another’s website? If so, do you have permission?

## Terms of Use – Rights and restrictions on Internet users.

1. Notice
  - Are there links to terms of use in the header or footer of each page?
  - If you solicit information or sell products on website, is link to terms positioned in proximity to the “Submit” button?
  - If an eCommerce site, the buyer must affirmatively assent to the terms of use. The assent should a mandatory portion of the order process, such as a required checkbox.
2. Content
  - Will visitors be submitting information via the website? If so, explain what happens to the information and whether merely submitting information creates a business relationship.
  - Will visitors be posting comments which may be publicly seen? If so, explain the extent, if any, that you control their posts. Also explain how they can remove posts.
  - Will donations or purchases be made via the website? If so,

- State all terms just as you would in a regular paper contract, e.g. disclaimers, controlling law, return policy, etc.
- Require verification that visitor is competent to contract.
- If visitor is covered by COPPA (federal children’s protection), include compliance clause.
- AND California visitors have their own eCommerce requirements, especially for children in addition to the FTC’s COPPA requirements.
- If selling to children, consider pre-approval by the FTC.
- Will the website provide advice? If so, state legal effect, if any, of the advice.
- Does the website target children? If so, both FTC COPPA and California’s heightened rules will apply to the site.
- Does the website contain advertising by third parties? If so, advise and disclaim any responsibility.
- Does the agreement link to other websites? If so, advise and disclaim any responsibility.

**Privacy Policy – What do you do with data you collect?**

- Does the privacy policy accurately reflect your company’s policy and practice?
- Is your policy readable? Does it avoid technical or legal jargon, and use a format that makes the policy readable?
- Does your policy include an explanation of any online tracking, i.e. logging where a viewer goes in the website?
- How has your website been programmed to respond to a Do-Not-Track signal?
- Does your policy explain how you use the personally identifiable information you collect beyond what is necessary for fulfilling a customer transaction?
- If you share the data you collect with other third parties, do you provide a link to the privacy policies of third parties with whom you share personally identifiable information?
- Does your policy explain the choices a consumer has regarding the collection, use and sharing of his or her personal information?
- Does your policy tell your customers whom they can contact with questions or concerns about your privacy policies and practices?

**Comments and Postings – Forums, blog replies, etc.**

- Do you allow visitors to post on your website?
- Do you spell out clearly what the rules of the posting are, and do you enforce them?
- Do you explain your policy concerning whether you monitor the postings?
- Do you disclaim any responsibility for the content of the user-provided content?

**Contests or Sweepstakes – Giveaways.**

- Do you run contests or sweepstakes?
- Do your contest rules comply with all applicable state and federal regulations?
- Do you require anything (and I mean anything) if a person wants to participate?
  - “Likes” on Facebook, mandatory re-tweets, Pinterest endorsements, and the like have been considered payment, making it gambling.
  - If you allow entry by “Liking” on Facebook, do you provide an alternative way that does not require the participant to endorse or promote you?