



TRELLIS

Trellis Legal, LLC

3803 Butler St., Floor 2, Pittsburgh, PA 15201

www.trellispgh.com

The Social Media Legal Protection To-Do List

DISCLAIMER: This outline is a general guide. Be sure to contact an attorney if you have questions or specific issues that need to be addressed.

For many small businesses, social media has become a near necessity. It's a place to build relationships, spread the word, and make sales in corners of markets that may not have even been possible without it. Trellis, too, loves being able to meet and interact with small businesses in our community [on our Instagram](#) and other accounts. (Give us a follow if you haven't already!) In a space that allows you to share so much – your story, your art, your products, your services – it's important to understand the legal considerations around sharing, engaging, and posting to ensure your rights and the rights of others are protected.

This resource includes a non-exhaustive to-do list of legal concepts, policies, and considerations worth mulling over for your business:

Develop a social media communications policy for official company accounts and employees.

Especially if you have more than one employee using your social media accounts or sharing on behalf of your company, having an internal social media communications policy can help establish guidelines and procedures surrounding posting, commenting, sharing, and more. One example would be to create a policy to never share client or customer spotlights (such as a client review or work you did for them) without their express permission. Another might be a policy for how to respond to customer reviews or negative comments. You can also use your policy to establish ground rules around the type of content you want to share, such as never sharing anything discriminatory or negative. Even if you are the only user of your business's social media accounts, having a set of guidelines you follow can be a great way to really think through your goals and what you want to get out of your accounts.

If you do have employees, consider a social media policy in your employee handbook or a [confidentiality agreement](#) that outlines what they can and cannot share while at work (for example, maybe they are working on something proprietary at the office subject to confidentiality) or related to work outside of work hours. Also, check out our blog for some other [insight around the first amendment](#) as it relates to commercial speech, employee speech and your rights as an employer. And download our [Intro Guide to Onboarding Employees](#) in the resource library!

Establish procedures around paid advertising, including written contracts when using influencers or brand ambassadors.

If you want to have other social media producers promote your brand (like influencers or brand ambassadors), we definitely recommend having a contract with them that outlines your terms and conditions surrounding their ability to promote your product or service. For example, you will want to have terms surrounding your ability to approve or ask for content to be taken down if it violates your

terms, and making sure the language they use is not discriminatory or inflammatory. There are also advertising and consumer protection laws surrounding disclosures for paid promotions or even giveaways you will want to make sure any promoters follow and include.

Know your intellectual property rights and how you can protect your creations.

Anything you create, whether that's a piece of writing, a video or photo, or your business name and logo are [your intellectual property](#) (IP). Copyrights apply to creative works, and Trademarks apply to marks that identify your brand or product (think, logo, name, phrase or symbol). Both copyrights and trademarks can be registered with state and/or federal offices, but they do not have to be filed and claimed to be yours (although registering provides greater protections and opportunity for monetary damages in the case of infringement). Putting your work on social media often means balancing the value of promoting your brand with protecting your creations.

Having your content copied can be incredibly frustrating, and enforcing your own intellectual property in something as vast as social media can be challenging. Social media sites often have procedures you can follow for reporting abuse and removing infringing content, however there are other ways you may be able to protect your works. Intellectual property is definitely an area that it's worth speaking to an attorney about as there are various nuanced protections you can establish for what you publish on social media, and there are potential courses of action you can take against those who steal your creations, including seeking damages for infringement in some circumstances. [Check out our intellectual property toolbox](#) resource to learn more about the different types of IP and a few ways you could start protecting this ([Download it directly here](#)).

Honor the intellectual property rights of others and understand what is safe to use.

The other side of the intellectual property coin is respecting others' intellectual property as well. Using another's music, images, and other IP for business purposes without the IP owners' permission (including other forms of consent to use like licensed music and images or royalty-free options) could lead to legal trouble, including hefty fines. There are many types of permission, including express written permission, and licensing. Additionally, some uses of IP do not require permission. For example, a person cannot have any copyright ownership of specific facts or generic ideas or genres, among others or you can use photos and videos from sites that allow their use commercially without additional permission. Additionally, using copyrights or trademarks may fall under what's called "fair use" when you're using it to add to the conversation (although this may be limited in business promotional purposes). All of these uses are very situationally specific so it's definitely worth speaking to a lawyer to better understand the nuances surrounding when you can and can't use another's intellectual property.

Understand the regulatory requirements surrounding advertisements for your specific type of product or service, or any paid advertisements related to them.

There may be specific laws and regulations surrounding your business and the types of claims you can make in social media or other advertising posts. Laws regulating commercial speech of businesses include bans on false and misleading advertising, regulations surrounding product labeling to ensure product safety, or statutes that require specific language or disclosures on advertisements relating to specific industries, such as home improvement contractors (see our [resource page](#) for our home improvement resource!), lawyers, and pharmacies.

Review your social media website's terms and conditions.

When you create a social media account, you're doing this subject to that social medium's terms and conditions. While this may seem long and boring, reviewing and reading the terms and conditions you've signed up for can help you understand what you've given them the ability to do with your data or content, and the rules you're expected to follow to use their app or website.

Carve out the ability to share your work and images in client agreements or customer terms.

If applicable, make sure any [client agreements](#) include your ability to share the work you do for them in your portfolio or online before doing so. Having clear intellectual property and sharing language in writing will help you establish what you can and can't share and during what stage in a project. Similarly, if you do in-person services, for example fitness classes, where sharing images from your day-to-day work and special events, you'll want to make sure you have a clear [photo release](#) or customers and clients so you can share any images from your work.

Establish a clear chain between your social media accounts and the legal protection provided by your entity.

If you have an LLC or another type of entity, you want to make it clear on your social media accounts that they are tied to the entity and set up protections so that any type of liability you may incur through your social media is connected to the business. [Entities help build protection](#) so you cannot be personally liable for things you do within the scope of your business so if you don't have one, it's worth talking to an attorney about their benefits! (Check out our free resource [Forming a PA LLC in the resource library](#).) If you're using your own social media account to promote your company, still make it clear that this is within your role as the owner or partner in the business. It is also a good idea to connect your social media account to your company website, where you've set up protections for your entity and IP, by making sure your company website also has the legal protections required of it ([check out our blog on this!](#)), which may include a privacy policy, terms and conditions, copyright language, and any necessary disclaimers setting out the limits of your liability.

What next?

There is a lot to think about when it comes to legal protections and responsibilities on social media. The world of social media is very big – and constantly developing – so we definitely recommend meeting with an attorney about the specifics as they relate to your business and industry. Give us a call today to help you develop an employee handbook, start an LLC, or make sure you're fully protecting your intellectual property and your business on and off-line!