



JAMESSCHRAMKO

Protecting Yourself Legally with Heather Pearce Campbell

Is your online business safe from legal issues? Legal Website Warrior's Heather Pearce Campbell addresses potential problems and how to avoid them.



Heather Pearce Campbell

James: James Schramko here. Welcome back to my podcast. This is episode 970. Today, we're talking with Heather Pearce Campbell from legalwebsitewarrior.com. Welcome, Heather.

Heather: Thank you, James. Happy to be here.

James: We got introduced through a mutual friend, [Ron Reich](#). He's a repeat guest on this show, he's a partner of mine in some ventures. He's a lovely guy. And when he says, Hey, you should have a chat to Heather about legal matters, at first, I was concerned. I'm like, What legal matters, right? Because some of us, you know, when you mention law, legal, lawyer, solicitor, attorney, etcetera, it can set the red flag off.

But then he explained that you've been helping a lot of online business owners and that you're across quite a great range of topics that could be super relevant to my audience. And I thought, well, that's something worth exploring. So here you are.

Heather: Here I am. I'm glad you trusted your instincts. I tend to do the same when people say, Oh, you should know so and so. And I'll also point out, I don't think you'd be human if you didn't get ruffled feathers a little bit at being told, like, you should connect with this lawyer, right? Not everybody loves to do that. Most people don't.

A couple of legal run-ins

James: I remember getting a phonebook-sized, cease and desist letter from a pharmaceutical company because I did inadvertently register a domain that was the exact same formula of their cancer treatment that they'd patented. And they basically wanted my first and second-born kids, everything I'd ever created.

It was like, really scary for a moment there. So basically I just unregistered the domain. And I didn't respond to them. I just turned it off. And that was the end of it. It went away, thankfully. I mean, I didn't register on purpose. It's just, I had 2000 domains at the time, it was just one of the unlucky ones.

Heather: Oh, my gosh, I had 2000 domains at the time. So I'm stuck on that. But also, your story is so similar to what many people feel when they get any kind of correspondence, letters, cease and desist. And often, like your experience, they can actually be resolved relatively easily. It's a scary thing to receive, but one, they're not always sent appropriately. Right? And two, they're often meant to just intimidate people to take a certain action, which obviously you took, and it went away.

James: I remember, and on that related matter, I had a trademark infringement, someone infringed my trademark. And we had to let them know about it. It turned out it was just a student doing some school project. And they'd registered a domain and put up a prototype for something that I had a trademark for in the same market.

So I'm sure it was inadvertent, it was not malicious. But the lawyer at the time, they said, You've got to go in with a heavy hand with this stuff. You can't just send a, Hey, do you mind stop doing that? You've got to hit it hard, and send the right message, otherwise, you're not protecting your brand or your trademark, and it could come back on you if you go in too soft.

And I thought all that, it went against my natural tendency, and it seemed harsh. And the person who got it was obviously very apologetic and said that they'd cease and desist or whatever. But what is the best practice in that regard? Will they ride, or is that a little bit savage?



Heather: I love that you asked this question for a couple of reasons. One, I feel really strongly that people should connect with legal counsel that are really representative of their own values as well. And I think sometimes we can get this wrong, because whether we're hiring legal counsel or some other professional or somebody else, we can tend to also outsource the decision-making in that regard.

And I love for people to take that back a little bit, because I always feel that professionals, including attorneys, really need to partner with you on decision-making, on outreach. So as one example, I have a client and we've had to do a ton of similar stuff, right? He has a brand that he's built up over the years. It's a phenomenal story. But basically, he created a system as a kid to help him manage his ADHD.

And it's turned into a book and a whole empire of people that follow him, and he's got a following around the world. And just like in your scenario, people who really are not intending to do harm to his brand or infringe anything, so we've had to do a ton of outreach. And he's a really thoughtful person like yourself and was like, Look, I don't want to quash people, right, I do not want people to feel really poorly about my brand. So please handle this carefully.

And we've had to do a variety of like, a little stricter messaging depending on the use, and depending on what we can suss out about the person online, to like, really gentle messaging to somebody like that, that you can tell is not really in for, like, intentionally infringing, they just love the brand, they put up a blog, they used his business name in the blog name, right?

Legal realities of owning a trademark

And the other interesting point that this raises is that once you are the registered owner of a trademark, it's so unfortunate that this is the reality, but you actually don't get to sit back and do nothing about it. Right? And I think that can smack people in the face a little bit, too.

James: I think that was the main point, isn't it? She said, If you do nothing about it, or if you don't have a record of doing something about it, then you can't hold that trait, you can be contested.

Heather: Yeah. You can lose the rights to that mark. That's absolutely true. And so that's kind of a painful reality for businesses sometimes when they realize like, oh, it's not in this process where you obtained a registered mark, and then you're good to go. You put people on notice, and...

James: Oh god, and it doesn't finish there, does it? Later on, like halfway through the trademark, the lawyer will start preparing you to renew and to show continued use of that trademark, right? And then you have to pretty much reapply and keep it alive. So you've got the cost of getting it, the cost of defending it, the cost of renewing it, that's if nobody infringes on it, right?

And if someone does something, then it's now going to start racking up fees in defending it. And even worse, if someone's not going to just lay over and give up on it. I actually had someone infringe on my other brand as well. They were actually passing off. They were really intentionally creating the impression that they were under my umbrella, that they cut and paste my website copy, they used the same images, they were really just siphoning off my traffic, bidding on my own brand name, etc.

So that one, I had no qualms about being forceful and direct. All my listeners will know, I've been challenged with the trademark thing by not having it when I should have had it. Now that I've got them in force for my three major brands, it's definitely put me in a more comfortable position. But it's certainly not cheap or easy. And that's what people should be aware of.



“It's really **important** that people have **awareness** about what it takes to **build and enforce** the **rights of a brand.**”

HEATHER PEARCE CAMPBELL

Heather: Yeah, it's really important that people have awareness about what it takes to build and enforce the rights of a brand, right? And part of it that I talk with my clients about is like, what's your end strategy? Is your end strategy that you really want to create a business for yourself that allows you - because a lot of my folks, they're not trying to create the next Google, they're not trying to build a brand that they want to spin off and create a startup out of, right, and make 80 gazillion dollars in five years, right?

Like, yeah, let's make some good money. But most of them are actually building a business through which they're developing or delivering their personal mission in the world, right? They just want to do really meaningful work. And the reality is that a trademark registration can protect you on that path and allow you to build a really thriving business that stands apart and does all these amazing things.

And some of those folks, whether it's a personal brand or not, are also working towards building a business or a collection of business assets that become sellable at the end of their business life. And that is where brand strategy, IP protection, really can play a central role.

James: Well, it's true that a lot of the people I've coached had not had trademarks in place, or registered their processes or anything. And when they do go to sell it, it's not going to be as valuable to the buyer, because the buyer could actually just look at their books, have a look at their business model, and just start doing it, you know, if they were extremely unlucky, because they don't have such a robust protection.

So on the topic of trademarks and brand protection, I think we can tick that box off and say, at the point where you want less drama and more security in your business, it's something to consider. It is a little bit of effort, but it certainly has a big payoff, has for me, at least. But it does bring up some related topics.

If you venture out of the office as an employee, and now you start up your own business, even if you want a little business, a little lifestyle business, a small business like a lot of the businesses that I'm helping, they might be doing a few \$100,000 a year or a couple of million dollars a year, you know, they're not Microsoft or Google.

However, so much stuff comes up. Like even today I was speaking to someone, he and his partner developed a software service, and they went out to market, and one of the big players in the market sent him this hostile telephone call and raging email like, Hey, how dare you copy our usability process, and etc., etc.?

And they're like, Woah, hang on a minute, like, yes, we know you exist and you're probably part of our research, but we're certainly not copying you, we're not pretending to be you. And there's only like three or four ways you could actually do this sort of process. Step one, step two, step three. Like, there's a lot of similarities in the marketplace. So it's very easy to trigger a reaction from someone if you're out there competing.

And one of the first questions I always ask is, you know, are they right? Did you guys sit down and rip them off? Or did you come at this thing all by yourself? Or is there some middle ground where it was part of the research because they're a big player and that you've emulated or modeled - there's lots of words around this - some of their things?

The matter of litigation trolls

But I guess the first thing is, we've got to be very careful when we go out as an entrepreneur not to trigger landmines. And I want to talk about a couple of them today, but one of them we can't do that much about, or maybe we can, and that is online and litigation trolls.

We're in a [cancel culture](#), we're in a sense of environment now where you could be just ticking along nicely doing your thing, and then someone comes at you. They come in inbound with a hot missile, and you didn't see it coming. Let's talk about that.

Heather: Yeah, well, this really underlies the point that you just made about the importance of entrepreneurs, even what we call lifestyle entrepreneurs. And many of those, let's be clear, are building really important businesses. They're small, but they're mighty. And I remind people regularly, at least here in the United States, I'm sure that numbers are similar, or at least comparable in other places, as well, but 99.9 percent of all businesses in the United States are small businesses, right?

And that's any business making \$3 million dollars a year or less, right? And they employ a massive number of people, they're responsible for a massive percentage of the annual GDP. Right? So together, we are not inconsequential, right, we are the marketplace. And I think small businesses tend to forget that. They tend to, by and large, underestimate themselves and also do a lot of minimizing when it comes to, what legal support do I really need?

And so one of my jobs is to remind people that like when you become an entrepreneur, a small business owner, you go online, you know, basically turn on that business, understand, it's like driving down any freeway in the United States, where you're presumed to know the law, you're presumed to know the speed limit, regardless of whether you do.

And that is really step one, where people get it wrong. And it also is a huge part of my mission, to help educate people, because it feels like such a big world of, you know, in the business world, there's so many things that people have to know when it comes to their businesses. But really, for the types of businesses that you and I serve, it is a limited universe.



You do need to be able to issue-spot, right? You don't have to be an expert, you do need to be able to issue-spot. But you also need to be committed to your business enough to take care of it in the right ways. And it includes getting either a little legal support or legal education for entrepreneurs under your belt so that you can issue-spot.

James: So what is the issue with litigation trolls that we can spot?

Heather: Yeah, so litigation trolls, so you know, in the old days, I tell people like, you used to do business face to face with everybody, right? Pre internet, you knew who was walking into your store, you knew, because you were standing face to face with whoever you were doing business with. And unfortunately, in the world of online business that face-to-face contact is removed for the most part.

You often don't know who has eyeballs on your online real estate, your site, your business, etc., which also makes it really easy just from a numbers perspective to cross paths with a few people who can be unethical...

James: Bad characters.

Heather: Bad characters. Yes. And it's like, you know, my dad was an entrepreneur, and throughout my years of childhood and growing up, but it was really brick-and-mortar-based businesses, right? And he would get the random lawsuits of like, somebody putting a bug into the food and you know, or weird things and suing him, and then he'd end up in litigation only to find out this person had a history of doing it to other restaurants up and down the West Coast, right?

People have to remember, there are those same people in the online world of business who have eyeballs on your business and see you as a target, and repeatedly do certain things as a way to take advantage or attempt to take advantage or get some monetary gain, right? And so that's really an awareness piece of just understanding that there is that out there, it is unfortunate, but that it is just a risk inherent in doing business.

James: I've experienced it when I was a sales manager, and I was interviewing candidates for a sales role in the Mercedes-Benz dealership. There was one candidate who arrived late, had a bad attitude, was evasive with the questions, he was just a really crap candidate. And so I said, Look, I don't think this role is going to be suitable for you. And I let him go. Because I always believed in letting people know as soon as I know.

And next thing you know, he's on the phone to the owner of the business complaining about me. And he sent in a long letter, basically, it got me called up to the upstairs ivory tower, having to explain myself. And then as I researched this guy, I found out he's selling recruitment training. And his whole shtick was to sell the dealer principal, the owner of the business, on hiring his agency to teach them how to recruit well.

And the whole thing was an act, he just basically played the role of a crappy candidate to create gaps that weren't there that normal people wouldn't have been. So I was both shocked by it, and also, in awe of the ingenious nature of some of these criminal types.

Heather: Well, like right very Machiavellian. And I think most of us don't think that way. So it can be hard to spot it when it's happening.

James: I also remember, it was in my very first office job, proper office job that wasn't with a relative or whatever, and a girl had accidentally dropped some cash between the elevator and the door, when she went to the bank. And she lost some cash. And we had to call the engineers, and we were looking for the money at the bottom of the stairwell or whatever, the elevator shaft. We couldn't find it.

But we later found out she was like, a career criminal. Just basically, she'd stolen the money or gambled it. And this was her modus operandi. And I saw this repeat through every job I ever had, I saw fraud. So there are people inside your business who will rip you off. There's even research papers showing that if people think they can steal a pencil from the stationery cabinet and not get caught, then most people would. Right?

So there's people in your business sometimes if you're big enough, there will be, if you haven't worked with people long enough or you haven't had opportunity for them to fail, then they're probably there. But certainly outside, yes. And I always say to my customers, like at least one in 100 of your customers will probably be batsh*t crazy and push you to the brink.

That's why the first test is, are they right? You know, is there any truth to what they're saying? And sometimes the answer is, you know what, they've got a fair point. But often it's no, they're actually a lunatic. And we need to create a mechanism to filter ourselves from this risk. So some of the things that I do, and let's bring it back to the online context, I'm pretty clear on who I do not work with.

Can we still decide who we want to work with?

So I have a very clear exclusion on my website before someone is able to purchase, of who is not a good fit, and who I'm not going to be able to help, you know, slash don't really want to or whatever. And that's my right, right? But maybe there's some breach of a disability guideline or whatever, accessibility guideline, because we see this now, we have people suing Twitter for banning their free speech, because some pharma executive or a government agency has told them, get this guy off the platform, and then banned him. And then he's got it reinstated through a court case.

So that's where it gets fuzzy for me. I used to think, if you have your own business, and you didn't want to deal with a customer, you could just decide that you don't want to deal with the customer. But you know, you see these cases where a cake company refused to make a gay wedding celebration cake. Twitter bans someone because someone asked them to and then they get taken to court and have to reinstate it. So is it possible now that in your own business, you can't even decide who you deal with?

Heather: It is possible, right? My advice to anybody is if you have a scenario that you've been alerted to or is developing, right - and usually you spot the first thing happening, like huh, and most people have an instinct about how to respond - before you actually respond, this is the point where I need people to pause and really think through, if there is an option for a legal ramification related to that thing, quickly go get yourself location-specific advice. So for example, the rules in Australia, right, around a certain topic might be quite different than over here in the States.

James: And they usually are, because they're mostly UK-based, right?

Heather: Right. And then even in the States, right, the rules in Washington might be quite different on a particular point than the rules in California. So your example about the online trolls, and it's a really relevant example, it's timely, there's a couple here in the states that have been underway for years, is we have a series of lawsuits happening against women-owned, women-led businesses that serve largely women.

Usually, there's a public accommodation element, meaning that they hosted a public event or they had a private party in a public space, right? And men would show up just knowing about this event in advance and wanting in, like showing up at the door and being like, Hey, we're here for this event, and being turned down and then bam, lawsuit, right?

And so anytime you have something that feels a little out of the ordinary, or like, hmm, this could potentially be a red flag, one, trend towards inclusivity until you can figure it out, right? So do not turn somebody away or say something in writing or even verbally that could potentially cause you a problem until you've bought yourself the time to go get an answer on whether or not that's an actual legal issue. Because it really can mean the difference between not having a problem, not creating a problem, or having a very expensive problem on your hands.

Why people do chargebacks

James: Yeah, and I think I want to raise another related problem to this, because where it ends up next is often the chargeback, right? If someone's not happy, there are cases, and I actually coach a couple of people and they have very cliquey circles; there is a trend where people are just so lazy, they will just do a chargeback rather than even contact support, right?

They just feel entitled to buy a product, consume it, and then lodge a chargeback as if that's kind of like putting something on layby or whatever, like it's just become a normal behavior. I think you use the word, friendly fraud. Back in the day, you know, back in the old days, when we had checkbooks in Australia, which we haven't had for decades, you know, it used to be against the law to write a check if you didn't actually have funds in the account, right? I still can't believe that they have checks in America.

Heather: Right, I'm holding one out for people who are not watching the video.

James: Blows my mind. At least here, is someone does send us a check, which is very, very, very rare, like, we don't even have credit cards anymore, everything's on a phone, but you can actually take a picture of it to your bank app, and it's put into your account instantly, which is great. But anyway, it used to be illegal to write a check if you didn't have the funds to cover it.

In some cases, with the chargebacks, if they're intentionally buying something to just charge it back and not giving the seller the opportunity to remedy it or answer a dispute in any way, that seems a little bit unfair.

Heather: Yeah, well, it's a really - this also is a timely topic, and particularly for people in online business where they do international business as well. The frustrating part about chargebacks is that for small businesses, once the process is started, it can't be stopped. You can't call that person and say, Hey, call your bank or call your credit card company and undo what you just did.

James: I think you can, you can. I know with Stripe and PayPal, they can actually go back to them and say, Oh, sorry, I didn't recognize the name of the business, or they've been able to sort it out. However, it's a very slow machine, it can take six months or seven months. Like, I've had one lady did do a chargeback because she didn't recognize the name of my trading entity, which is plastered all over the website and in all the terms and conditions on every receipt, but it's possible, right?

Heather: It could have been a spouse, this happens where somebody's spouse reviews the statement and they initiate it.

James: Yeah, or maybe when I called her up, she just, you know, that was a very easy way to explain it. And it's fine. Let's say that happened. I always encourage and always lodge my side of the dispute, because I want to have an impeccable reputation with my provider. Because what people don't realize with a merchant facility, it's a credit facility. The bank is lending you the money while they go and collect from the end user. So you've got to keep a good reputation.

And thankfully, this only happens like once every four or five years. This is very, very rare. And I always lodge my side and then I wait. And even when I got the money back, in this case, she wanted the product. In one other case, they didn't want the product. But they decided to do a chargeback because they did ask at very surface level the possibility of a refund.

And we said, We generally don't do refunds once you're in the program, but we'd love to help, you know, let's do a call, let's see if we can help you work out, you know, what was the reason you joined the program, and reconnect you. We heard nothing, then there was a chargeback.

So, in that case, I ended up refunding the money after the bank refunded me, because it was about, okay, she didn't really understand what she was buying and wasn't going to get the value from it. And that's okay. But she didn't really give us a fair process.

But I imagine there's some people out there who are intentionally purchasing products and then charging back, and putting you through that pain of a payment dispute. And no matter how good your books are, or how great your records are, and how good your terms and conditions are, you still have to go and screenshot stuff and lodge it and then wait, and your account, you know, they take the money out of your account while they're figuring it out. Of course, that gets suspended. So it can be inconvenient, at the very least. What can we do to protect ourselves against that?

Heather: Yeah, well, it is very inconvenient. And typically, on average, the chargeback process costs small businesses two to three times the amount of the original sale in lost time, productivity, having to refund it, even sometimes when they're in the right, right? And often it's over a service or a product that's already been delivered.

So you've already delivered the thing, like I had clients during COVID, the second year of COVID, in particular, who showed up and they were not facing small chargebacks, like an online digital product, they were facing like a \$20,000 chargeback or a six or ten...

James: Like service products where you've actually expended costs on team and fulfillment, like cost of goods sold. I see that a lot. It sucks.

Heather: It's terrible. And so people often assume, well, somebody's paying me for it, they trust me, they like me, they're not going to engage in any of this funny business. And unfortunately, I have to come in and say no, people absolutely do engage in this funny business, especially if there's other stuff going on in their life that's really applying pressure, and they're making some poor decisions, and they're just going to take it out on your business.

The things you can do to protect yourself

But the things that you can do in advance to help support yourself is one, plan for this process to happen, be ready for it, which will change the way that you handle certain processes in your business. Right? So having the terms of purchase in place is critical. And I want to distinguish between general website terms and conditions and terms of purchase that are specific to a sale.

You can have website terms and conditions in place that anybody who shows up to visit your website, whether they purchase or not, those terms are going to apply to that visit, different than when they click through and they're actually getting ready to give you their payment information. Right? Everybody's familiar with like, the iTunes check-the-box style checkout, I have read and agree to these terms of purchase.

You need something that documents the fact that they were provided with, the legal term is constructive notice, they were given notice that those terms apply before the sale, before they could actually give you any money. And you need to have that process not only display the terms, but track their consent, right?

So whether you're using Infusionsoft or Kartra, or some other CRM or something to run your online business, make sure that you've got a tracking mechanism that shows what the process is. And I also prefer that people take screenshots themselves of their whole checkout process when they're setting up the sales page, the online sales funnel, save yourself the time, you're already in the building process, just document it once it's complete, save those screenshots by date, and like the product or service title, so that you have really clean digital files, where you know from a legal standpoint....

And I have a whole training when I deliver my website protection package for my businesses around not only having the right documents, but implementing them the right way, right? And again, it involves saving copies of the documents, or screenshots of the terms once you get them uploaded to your site, having them dated so that you can show to anybody that's doing an audit, whether it's a credit card company, a merchant account, here's what was in place, here's the process somebody goes through to checkout, here's the terms that I had, here's what the sales page looked like, here's the box they have to check before they can even give me any money, right, requires their consent, because so many people claim after the fact like, oh, I never saw the terms, or I didn't know about this, or I didn't know about that, that's why I need a refund.

James: Right. I do believe that because when we were selling Mercedes-Benz, every single car got a full tank of fuel. And one of the questions on the post-purchase survey from the manufacturer was, did the car have a full tank of fuel? And a percentage of people would tick no. Like, it's impossible, it'd be like triple checked, no car got delivered without a full tank of fuel.

So people do get forgetful. I have that little tick box on my site, the purchase terms and conditions, and it spells out everything for the dispute resolution process, who to contact, if they're using a portion of a service, if there's an admin, all that stuff's spelled out, also for when I'm running events. And this is particularly important for a lot of our listeners.

If you have in-person events, you may want to have something like, and I'm definitely not giving advice, because I'm not the lawyer here, like a disclaimer form or something, a liability disclaimer about them attending the event and making sure that they're aware of risks, and that it's all up to them and etc., etc., I'm not going to go through the wording, but that's a tick box, no one can come to the event unless they agree to that.

And if you are submitting chargeback disputes from your side, you'll definitely want to pull out from whatever you can from Stripe or PayPal or your shopping cart or your email system, you want IP addresses, you want support tickets, where the customer has interacted with you or access to your products and downloaded them, you can see all of that.

And I don't think some of these friendly fraudsters know just how much is visible, and that you are putting in your privacy in terms of use what you're tracking and how you track it. So it's all above board. But there is actually a lot of information available for you if you want to spend 15 minutes researching, and you'll be able to tie this person to the consumption or the interaction, especially if you get a screenshot of them in the support they're saying, I'm so sorry, I just didn't recognize the name of the company. That will get you over the line pretty much every time.

But it's also worth telling them, Hey, do you mind letting your bank know that? Because at the moment, they think we're criminals, and we took your money without permission, and they usually will go back and say, I've told them, and they're aware of it. But it's just such a slow machine.

Heather: It's such a slow machine. And what you've highlighted even just now is again, some things that people can think about when they're setting up their process is, like talking with your payment processor, or your merchant account that runs all the payments for you, turn on IP tracking, turn on, like, all of the ways that you obtain those different levels of authorization, right? Like, even including collecting people's mailing addresses, zip codes, like gathering more information than just the credit card and some basics. Like, you've seen the difference between a really simplified form, and others that collect a bit more information.

James: For example, anyone who joins my membership, I send them out [my book](#). And so we do collect their full details, their address, their phone numbers, everything else. And I actually will know within three or four days if that's real or not, because I'll get an Amazon delivery notification, right? So if they go to the address, can't find it, the book comes back to us, I go, okay, there's something interesting going on here, I better check in and see what happened.

We used to get a lot of fraud with our search engine optimization company, because the first one was they'd all sign up as an affiliate and then go and make sales from stolen credit cards and then try and bank the affiliate commission. So you've got to hold back the commissions. Sometimes the chargebacks would come months after you pay the affiliate commission.

The other one was they would use a stolen card to buy traffic to try and rank sites selling testosterone or estrogen, all these semi-illicit substances or spammy sites that they will try to rank and make fake sales to rip people off. So definitely, you will encounter fraud. Do what you can to protect it and screen against it. I think that's a good tick on this topic.

It kind of leads me to the next one, because it's kind of related, the friendly fraudsters kind of trying to buy but then take back, seize their money.

When your stuff is out there for free

What about people who are just taking your IP just straight up, coming in and grabbing it, you know, accessing your hidden bucket on Amazon's AWS server, or sharing it in forums, or taking it and giving it away themselves?

There's all various forms of this, and I get asked this a lot. You know, Hey, James, someone's got my eBook, and they're downloading it on these torrent sites. How concerned should I be and what can I do about it?

Heather: Yeah, so a couple of things. And you know, starting at the beginning, put your name, put your copyright notice, like, put your information on the content that you create. Because one, it's harder for thieves to like, scrape that off of every - let's pretend they get their hands on your PDF, right - it's just more work, it's an extra layer...

James: Eighty pages of removing.

Heather: Yeah, having to go through and trying to scrape a watermark or a copyright notice. So starting at the beginning, be aware, again, that this is likely to happen to you. And the better you are at your topic of expertise, your business, the more likely it is to happen to you.

James: Basically, you're nobody until you've had people steal your stuff, right?

Heather: Right? Celebrate it. I'm not exactly saying celebrate it, but definitely plan on it and create your content from the start as if this will happen.

James: This makes me laugh a bit. At one point, my friend, Dave Wooding, created a software for me that when someone purchased my PDF - I was selling an eBook at the time, it was like \$79 - it would automatically take the customer's detail and inject it into the document as a watermark diagonally across the page of every page, very subtly.

And then my book turned up in a torrent site and illegal download site. And it's got the guy's name all over it. Right? His IP address, his name, and email. And then I approached him about it. I said, Hey, wouldn't you believe it? This book has turned up, and it's come from you, your purchase. He goes, Oh, I think I've been hacked, my laptop got hacked, I left it in the office, and it's been hacked.

So he just gave me a very instant flimsy reason how it had happened that, you know, basically made it not worth pursuing. So I knew who did it. And I knew exactly where it went. But there was very little I could do about it. Later on, I was reading about Tim Ferriss, and so forth. He'll go and inject his book into torrent sites, I think I heard him say or whatever, to get distribution and awareness.

And you do hear anecdotal evidence of people who have gone to those sites, got stuff, but been frustrated by the never ending process of signups and misleading Trojan horses and clicking on wrong ads, and they end up going and buying from the actual product creator. And sometimes sending an apology years later. I'm so sorry but I stole your stuff years ago, I felt guilty about it. But I've now purchased your product. Those things actually, I've seen a dozen of those.

Heather: Well, the funny thing about that - and first of all, it's so true, people just do nefarious things and not everybody, but a certain percentage do - you can do certain things about a certain percentage of them, you cannot probably handle all of them, depending on where the person is based, what rules apply, your willingness to really pursue them, right? So It partly depends on all of those factors.

The awareness helps, and I initially will have people just sign up for a service like Copyscape, like copyscape.net, if you just go there, it's a service that will scan the web for you and track certain pieces of your core content. So especially if you've got it hosted somewhere like on a live website or page or something that can be tracked. And then every couple of weeks, it runs a scan and sends you results.

So if you're somebody that is concerned about this happening in your business, there are ways that you can get help tracking that. Then what to do with it once you have the results really can vary, right? You can get help from an attorney handling a certain number of those, especially if there are, let's call them legitimate folks in the online space that are using it. And this does happen, right?

I have to, not only for my own business, but on behalf of many of my clients, issue takedown notices, or cease and desist type of communications. And it is so shocking to see the number of...

James: How often do they say, Oh, I'm so sorry, that was my assistant? That's like the number one go-to excuse. That was a contractor, or that was my assistant. They didn't realize.

Heather: It was my website designer.

James: I will say though, culturally, some places, they're not as aware of copyright infringement. Like I had to have a good conversation with my own team who are Philippines based because in that market, there's a lot of pirated software, it's just normal. Like you download, copy, use, watch whatever you want, in a lot of those Asian countries, and I'm sure it's in place in other places.

They're not as sort of the general level of litigious savviness not quite there compared to the USA. Like, try getting a business insurance policy for the US market. It always costs more than it's probably worth pursuing because it's such an expensive place to be sued. But yeah, some cultures or some team members in your team, if you're listening to this, and you have a team and they're in another country, make sure you have that conversation about what you can and can't do.

You can't just take a picture from Google Images and stick it in your PDF, that's going to come back on you. It does actually remind me of a very good scam that someone's got, where they have found a whole bunch of royalty-free images that you can use. And then they go and use TinEye or reverse image search, and they find everyone who's published them. And then they send them a scam letter saying, Hey, you're using our image illegally, you can link to our website, that will be okay. And deleting the image doesn't resolve this issue. And so they're basically forcing people for backlinks for their, sometimes, but not quite related website.

And we got one of those. And I said to my team is, like, I can't believe we would have used an image that we're not allowed to use. We don't do that. And when I looked at it, we found it in the royalty free images that we were allowed to publish, no issue, not even have to link to, and then I looked it up and sure enough, it's part of this scam, so it's a very sophisticated one. But some of the big royalty image companies do avidly pursue image thieves.

Heather: Oh, it's terrible. And it's a really common issue in the States, because you still, even in the States, even with the amount of litigation that we have, you still have a lot of unsophisticated people on the internet. And I don't mean that as a derogatory term. I just mean...

James: No. I mean I was wondering, I think one of the first websites I made, I used a picture of a location on a website. And I got contacted by the guy who took the picture. He said, Listen, I noticed you're using my picture on the website, you could buy the image, or you can link to me, but you can't just use it. I'm like, Oh sorry, I just didn't realize.

Heather: Well, that's right. And for any number of small businesses where they have hired help, they've hired a virtual assistant or somebody who does some basic web design, but is just getting started, there are plenty of folks who don't know what they're doing from a legal perspective online.

And it's like you said, build your business systems. Like, your team has a process, and you know, like, No, I wouldn't have done that, we wouldn't have done that. You just got to build your systems the right way.

Checklists and policies that help

James: One thing I found when applying for business insurance, they have a pretty handy checklist of questions like, do you have written agreements with your contractors? Do you have website terms and conditions? Like, if you were to tick all the boxes that minimize their risk, you're a long way down the track to not even needing them, right?

So that's a good start, like, go and find your local insurance broker and ask them for a policy. It'll probably fall under IT or some kind of service-provision thing, and then they'll tell you a quote that will make you fall off your chair. But they might have a checklist of questions that they would want to know to be able to submit the policy that would be a great guide. But I'm sure you've probably got some stuff over there at legalwebsitewarrior.com, Heather.

Heather: Absolutely. Yeah. So I have a training that I do, it's my free legal basics boot camp, and inside of it are a bunch of resources. But even understanding the framework really gets people a long way towards understanding the categories of risks and where you should be looking for certain solutions, right? So that's a great place to start. I'm either happy to talk about it, or we can share links, but there are certainly things that you can do that will increase your awareness. And like I said, your ability to issue-spot on these things.

James: Yeah. And look, the reason you're here on this podcast is because this touches every single entrepreneur at some point. You're going to have a legal challenge, or a legal question. I'm not an affiliate with Heather Pearce Campbell. I'm just having this conversation because, you know, in the time I've been online, which just seems like forever, I've seen it all. I've seen every possible thing play out.

Disputes that cross international borders

But one thing that I do get asked about a lot, and it'd be crazy not to ask you while you're here, it's the final question, I promise. International disputes. I have, let's 45 percent of my audience is USA based, the other half plus a little bit are Australian, UK, some Asia, etc. Mostly English-speaking places.

But we get asked a lot. There's a lot of Aussie businesses who are selling to the United States. And they're like, concerned, do I need an insurance policy against the American market? What is my risk of them suing me and losing my home? I get American customers selling to the Australian markets or whatever.

A lot of us have teams internationally. What is the risk profile of cross border? You know, are they going to come and get you, or is it too difficult? Like, what kind of situation are we dealing with here?

Heather: Yeah, it's a great question, and something that every small business should be thinking about. A couple of things. And the answer to your question like, is it difficult? Yes, it can be difficult to pursue people internationally. Right. But what are some things that you can do? One is having your contracts in place, right?

So in the framework that I teach, the first bucket is that actually contains your business, this is partly how you help contain your risk, right, is actually having a formal legal entity.

James: Firewall.

Heather: Totally. In most countries, regardless of what the entity types are, you don't separate out your business liability from your personal assets unless it's contained in its own legal entity. So start there.

The second bucket is contracts. And this is where I spend a lot of time with people, right, is inside of the contracts bucket. Make sure you've got proper documentation. How many of your clients, and I'm sure a huge number of them have pretty high-dollar, one-on-one arrangements that involve international clients, right?

Those tend to be some of the ones where the biggest problems come up, something goes wrong, somebody's unhappy in the service, there's enough value and dollars at stake that people actually are thinking about, do I need to pursue this? How do I recover on this? Right? I was done wrong.

Heather: It's reflected in that one exchange or that situation. So have what's called a governing law and jurisdiction clause that's properly done.

James: Yeah, like it's basically, who's the governing place? Where will this be resolved, and which court will it be disputed in?

Heather: Totally. And the other thing I recommend, particularly for small businesses, is what's called a multi-step - because you've got governing law, you've got jurisdiction, but then you also have generally a separate dispute resolution clause - I really highly recommend what's called a multi-step dispute resolution clause, where you have the parties consent to mediation first, right, and I'm sure you know the difference, James, between mediation, arbitration, and litigation.

The neutral process that is mediation

The quick overview is that mediation is a process that is a neutral process, parties have to consent to it. But it's handled, it's basically a dispute that is facilitated, the resolution of which is facilitated by a neutral third party. It's non-binding, right? People don't have to agree, they can. But when you're dealing with responsible parties who are of sound mind, it is effective 95 percent of the time, right?

James: It is. I find myself in that role a lot, especially when I have a joint partnership. These 50:50 deals, they often go south, and I'm more often than not the mutually trusted person who's sane and rock solid, who could give them fair facilitation. I mean, I've even got books on mediation up there, I've been involved in a lot of mediations.

Even in the car dealership, I used to have to go off to the Fair Trading tribunal when, like a customer would claim they had a ghost in their car that no one could ever replicate or find. They'd drive the car for seven years and 80,000 kilometers and then they want it replaced with a brand new one because of this ghost, and I would be the one sent by the company to represent our point of view.

I really learnt a lot. I got such a great education, you know, attending these sort of things. But mediation is great, if you can make that work. I found sometimes the rational part is the trip-up. Some people do get very illogical, super emotional, and no amount of reason will sort it out. And that's when you have to use other techniques, you know, reframing things, and getting a little bit deeper down. Like, what's driving that. And it's definitely a tricky place to be when people are fixed on their point of view.

Heather: Yes. Oh my gosh, I get so excited talking about this. And so I apologize, totally jumping in.

James: Yeah, I could tell. You've been there too. You're like a fellow warrior.

Heather: Right. Well, it is a really fascinating - the process of mediation, right, just is like its own little world of being able to study human communication. And you know, all of these emotional issues that come up. But if you've got books on mediation, you probably also love books then on communication, generally.

James: That's some of my favorite books. It means, that's my living is communication, especially when I was selling as a mentor to these business owners. It's essential that we get where we need to be. And you're right, it is fascinating. Often I'm having to mediate someone around themselves, like some of these ADD visionary types, they present a different person every week. Like, I have to just get them back on track themselves.

So a technique I'm often using is we're future-pacing the scenarios they're proposing, and we work it through even on a spreadsheet. And then what does that look like? And then we come back to where we're at now. It's almost like a hypnosis session in a way. And then they're very clear on what they need to do or they talk themselves out of it. Like, actually, You know what, you're right. I don't want that. I'm crazy. Why would I even think that? I'm like, Look, it's up to you what you do for me. [laughs]

Heather: Oh, my gosh, I love that so much. And the irony is that, so of the buckets, right? We talked on entity, contracts, but the final bucket is dispute resolution, but really, it's communication. So one of the things I coach small businesses around is having an effective communication strategy that will serve you in times where you're facing disputes, or you're in a dispute, right?

And mediation just really highlights the need for that and for understanding that skill in your business, right? And so back to the multi-step, international dispute resolution mechanism, highly recommend people start with mediation. Like you said, if somebody's highly unreasonable, super emotional, you know, saying things like, Well, it's not really about whatever, XY and Z, it's about the principle of the issue or whatever, they're going to be the kind that is more likely to try to trend towards litigation.

Arbitration as the next course of action

So I usually include an arbitration provision that follows mediation. If mediation doesn't work, either party could elect arbitration, but it has to be elected. You have to provide notice, and then go to arbitration. So that a couple things happen. One, arbitration is private, keeps a small business from being dragged through a public process where everything gets put on display.

That's important in those instances where you're up against somebody who just wants to wage economic warfare against the business, right? So that's where arbitration can really play a valuable role. It's like litigation, but it's less formal. It's designed to be less expensive. That doesn't mean it always is. But it is designed to be a less formal, less expensive version of litigation.

James: It can also activate their buddy, they get that support and reassurance that they're missing when they're a solo combatant, right?

Heather: Yeah, that's right, depending on how the mediation is done, because that can either be solo-represented, like you show up as yourself, or with the supportive counsel. But typically, the way I draft those provisions for my clients is that they can allow for an online dispute resolution process, right?

So you want to be working with mediators who are comfortable with that, who have a system set up, which nowadays, especially post COVID, so much more accessible than it used to be. And so you actually have a lot more options available to you now to support that process.

James: Yeah. And it's like, as I said, it's how I've ended up being that facilitator for lots of partners. There's one guy who's super famous now, and he's a legend, and he's done really well. He's running a decamillions business. But at the beginning, he had a partner. And that was the single greatest thing I did for him, was help him remove himself from that toxic situation, in a nice, elegant way, looking at everyone's viewpoint, catering for everyone's needs, without having to go legal.

Heather: That's a challenge.

James: Usually, the only person who wins in a legal scenario is the lawyer. There's so much downside. It's not worth doing if you possibly can avoid it. And a good lawyer will help coach their client through that preservation phase. I'm sure in any industry, there's bandits who don't really care about the customer, but they're the ones we hear about, whether it's car salespeople, real estate agents or lawyers.

Some of them have a bad reputation, but there's some really good ones out there. You sound like a good one, Heather. I think Ron was on point. He said we'd have a great conversation. And I feel like you've offered up some incredible insights today.

Heather: Oh, thank you.

James: So quick little recap. This is episode 970 on JamesSchramko.com. I'm chatting with Heather Pearce Campbell. She runs a website, legalwebsitewarrior.com. And I'm sure she's got all sorts of resources there.

We've talked about litigation trolls. We've talked about protecting against chargebacks, friendly fraud, payment disputes. We've talked about protecting your IP. We've talked about international disputes and a whole bunch of other stuff. Been an absolute pleasure. Thank you for sharing and I appreciate how fun you've made this.

Heather: Oh, thank you. I'm really glad to know you, James. I appreciate you having me here today.

James: Love it.

JAMES SCHRAMKO



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