



**PURPLE FOX LEGAL**

**THE LEGAL**

**RISKS OF**

**SOCIAL**

**MEDIA**



# HELLO AND WELCOME,

**Thanks for downloading our guide! We are happy to provide this resource to entrepreneurs wanting to learn more about the legal risks they may encounter while using social media.**

Social media has become an integral part of doing business. It helps all-sized companies acquire and connect with their target audience, attract new team members, run promotions, and build overall traction for their products and services.

Due to the popularity of social media, running a business today, without using it seems nearly impossible. However, while social media has opened up a world of opportunity for entrepreneurs and businesses of every size, it also comes with a variety of risks.

Unfortunately, legal risks common in daily life are often overlooked online, as companies and business owners do not understand the possible implications of their actions when working within and navigating the online world. This, matched with the potential for content to go viral, means that undoing a mistake can get complicated pretty fast, resulting in costly mistakes that could have been avoided with a little more insight and guidance.

Within this short guide, we will take you through some of the legal risks you should consider before you make your next post, or even like someone else's.



# PUBLICITY RIGHTS

As a business owner, you likely have a base understanding of copyrights and trademarks. However, as a business owner operating online with the intent to market and advertise, there is another category of intellectual property rights of concern, namely, the **right of publicity**.

In short, this right grants any individual the right to control the commercial use of their name, image, likeness, or any feature that “unequivocally identifies” them.

While this may seem like a newer law created for our modern digital world, its roots can be traced back to 1888, with one of the first cases being brought to court in 1902.

It's important to know that publicity rights have become more complicated in the world of social media.

## EVERYONE HAS A RIGHT OF PUBLICITY

When it comes to using a person's image or identifying features, especially in the cases of advertising, the individual's morals, beliefs, and values deserve some consideration. Not only can the overstepping of these rights have economic consequences, but it can also leave a lasting impact on their reputation.

Reputation has economic value, and that is part of what the right of publicity helps to protect.

While some may argue that only the reputation of people in the public eye (celebrities) are important, the sheer increase of influencers and micro-influencers has demonstrated how every individual's publicity rights have economic value. This also means that every person's publicity rights can be protected and enforced.





## PUBLICITY RIGHTS AND SOCIAL MEDIA

Understanding and navigating publicity rights can be a minefield for businesses when it comes to social media. However, knowing how to mitigate your risks and protect your company will save you a lot of hassle (and money) in the future.

User-generated content (UGC) is a great way to market your business and connect with your audience. It helps companies create organic traffic to their profile by having followers post about their company or share content that can be furthermore shared on the company's account. However, when it comes to intellectual property, UGC can be tricky to use correctly.

Often, UGC displays individuals within images and videos. By using this content for your business, you are commercializing those individuals' publicity rights. To be able to share this content without risk, you should seek permission from each individual, as violating publicity rights can result in expensive litigation and hefty court judgments.

It is essential to ask for written confirmation that each individual agrees to their image or video being reshared to your account. The good news is that gaining this permission is pretty straightforward as you can ask them via messenger or potentially include this license grant in your website's terms and conditions.

# COPYRIGHTS

Copyright is another type of intellectual property. Copyright law protects the original works of an author with minimal creativity fixed in a tangible medium. Copyright protection exists over anything a person can create, including paintings, photographs, software, poetry, and music.

It's important to note that copyright protects expression in its tangible form - not ideas, inventions, or procedures.

When it comes to social media, there are two vital things to consider:

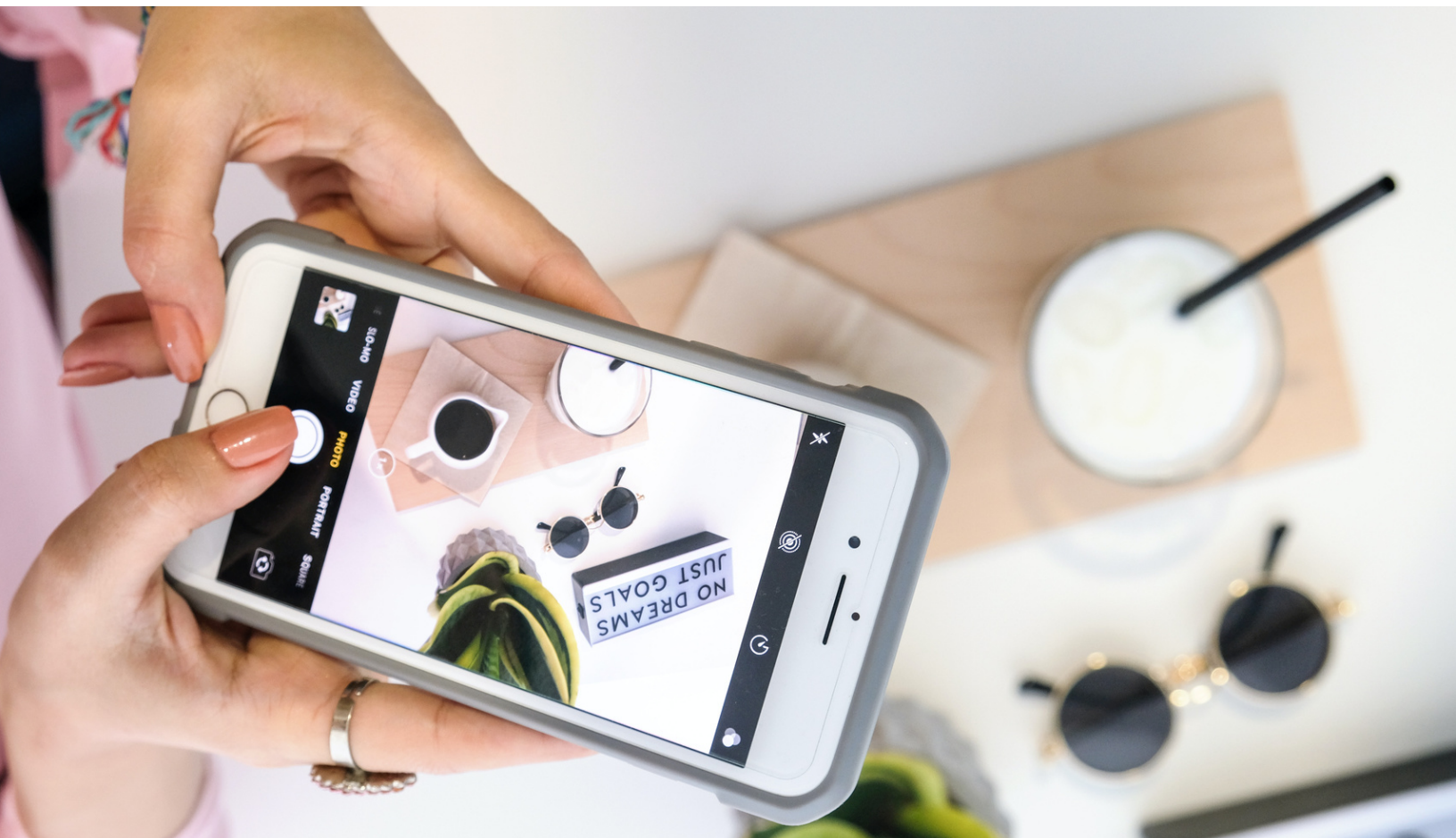
- Images (i.e., photographs, art)
- Music

If you're seeking to use someone else's images, photography, artwork, or music, the first question should be:

Do I have the permission or rights necessary to share this or use this content?

To be able to use something that someone else has copyrighted, you need to obtain permission by way of a license of use.

Another important note is that a license of use does not mean ownership. Instead, it's permission to use a copyright under terms that are agreed upon.





## IMAGERY

While many "free" stock image libraries can be utilized on your company's social media, it's vital that you read and understand the terms of each purchase or subscription you use. This varies quite a bit from platform to platform.

In some instances, images and photographs can only be used for personal use, not commercial purposes.

Therefore, if you wish to use an image in an advertising campaign, you may need additional licenses and permissions than you initially thought.

## MUSIC

With the growing popularity of TikToks and Instagram Reels across the internet, music is everywhere. Unfortunately, this can be confusing to navigate as a business, often resulting in the question, can I share the same music for promotional purposes of my business?

Again, often what can be used for personal use cannot be used for commercial purposes like advertising a product or promoting a service.

When in doubt, seek permission to use it.





# TRADEMARKS

Trademarks can be a variety of symbols, such as words, logos, colors, or sounds.

However, it's important to realize that trademarks serve to indicate a specific source of goods or services.

When a trademark is registered in the United States, the owner is granted exclusive rights to use it nationwide. Trademarks are used to keep companies unique, competitive, and identifiable to consumers, which is why no other business can use that mark for commercial purposes without risking infringement.

With millions of trademarks in existence, it can be a real challenge to navigate as a small business owner.

Because infringement could realistically bankrupt your business, you must conduct clearance searches before mindlessly posting content that may contain others' intellectual property.

Adding to the confusion, there are some circumstances in which a party can use another's trademark for commercial purposes, but you need to be extremely careful in doing so. For example, it may be acceptable to use another's trademark to compare your product's features with the features of another brand.

However, it is extremely important that any assertions made are truthful and can be scientifically proven. If they are merely opinion based, you may be forced to face the consequences of liability.

# DATA PRIVACY

With the rise in social media, privacy has become more important than ever before.

However, if you're a small business that deals with new data daily, it can be challenging to know how to deal with that data in a way that respects and complies with data privacy laws.

So, what exactly is data privacy and how does it relate to social media?

## What is data privacy?

Data privacy is the practice of handling sensitive and personal data appropriately - this is generally concerning an entity (i.e., your small business) that collects data and the individual who expects it to remain private.

## What has this to do with social media?

When it comes to social media, there are many instances when a business will need to protect its customer's data. A straightforward example could be when you receive messages or requests via messenger channels on your social media pages or if you were to run a competition to win something from your company.

In these instances, you, as an entity, are trusted with sensitive information like names, phone numbers, and addresses.



Having systems in place to protect this data isn't just recommended; it's essential. Data leaks and infringements impact businesses globally every single day.

Having systems in place to protect data, no matter how small your business, is essential for modern business. In addition, you have a legal responsibility to keep data secure, so training your staff to categorize and protect data is one of the most critical steps to your success.

When in doubt about your data collection systems, it's helpful to conduct a data protection impact assessment (DPIA) to help improve your systems moving forward.



# DEFAMATION, LIBEL, AND SLANDER

What you say online matters. And, when it comes to defamation, libel, and slander, you don't even need to be the primary person or company performing the violation to be deemed liable. Liking and sharing defamatory content or engaging in conversations publically on the topic can be just as dangerous as creating the content yourself.

As a quick overview:

**Defamation** is a broad term used when harmful speech is conducted intentionally (damaging a character).

**Libel** is a type of defamatory statement made in writing.

**Slander** is spread orally.

Due to the nature of social media today, small businesses and all types of public content creators are at risk of falling into the defamation trap.

Speaking publically about another person always poses risks, and with the wide spread of "fake news," small businesses fall into this trap quicker than you may initially think.

As a general rule, always research your content thoroughly before resharing and avoid public statements that could harm a person's reputation or cause harm to their character. Furthermore, stick to sharing your own opinions over anyone else's.



# TERMS AND CONDITIONS

Every social media site has a set of terms and conditions regarding the use of its platform. Reading and understanding these terms of use, especially as a business, is vitally important to avoid complications in the future.

Most social media platforms have specific provisions explicitly directed at commercial use and advertising. Knowing these provisions is essential for a business, as violating these terms and conditions could lead to a ban from a platform. Bans can be temporary or long-term depending on the level of violation to the platform's terms of use.

While a ban may not cost you any money, it will prevent you from making money in the future as you need to navigate a world of advertising without social media. This is something that will become all the more challenging in the years to come.

Furthermore, getting banned from a public platform can hugely damage your reputation.

## **Best way to avoid it?**

Understanding the terms and conditions of each social media platform you utilize as a business.

Welcome to Chrome



By using this application, you agree to Chrome's [Terms of Service](#) and [Privacy Notice](#).



Help make Chrome better by sending usage statistics and crash reports to Google.



# WHEN IN DOUBT...

When it comes to social media, one of the best ways to avoid any issues is to seek as many permissions as possible so that you know the content you're sharing is permitted and implication free. The more you know, the better.

- For UGC, **always ask participants for permission to reshare** their content or provide detailed terms of why and when you'd reuse the content in the future generated by users.
- Always **ask permission for content** you'd like to reshare from another page.
- For music and imagery that may be copyrighted, **seek licenses** or other grants to be able to use that work for your commercial purposes.
- Find ways to protect data and **remain compliant** with international data protection laws. Perform a DPIA if needed.
- For trademarks, **do your research** and know the rules about sharing content about something that is trademarked.
- Avoid speaking or sharing something publically that could be defamatory. Instead, **stick to your own opinions** and disengage in conversations that could lead to legal issues.

If you have any doubts or questions, seek legal advice to help clarify and bulletproof your approach to social media content and advertising.



**EVERY ENTREPRENEUR NEEDS TO ASK HERSELF TWO THINGS. FIRST, HOW DOES SHE WANT CUSTOMERS TO FEEL WHEN THEY ENCOUNTER HER BRAND? SECOND, HOW CAN SHE MAKE THAT A REALITY?**

**ALYSSA J. DEVINE**



**PURPLE FOX LEGAL**

Alyssa J. Devine, Managing Attorney  
Purple Fox Legal, PLLC  
3820 Charlotte Ave, Ste. 146-1  
Nashville, TN 37209  
Attorney Advertising Material

**[purplefoxlegal.com](http://purplefoxlegal.com)**