

# Legal Checklist for Operating an Online Dating Site

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[www.OnlineDatingLaw.com](http://www.OnlineDatingLaw.com)



The following checklist is intended as a starting point for legal compliance pertaining to the operation of an online dating site. This checklist is not intended to substitute for competent legal advice, and the operator is strongly encouraged to consult with the site's business attorney when utilizing this checklist in any way.

While operating an online dating site does not generate the same high degree of legal risk as, for example, an adult website, online gaming site or online pharmaceutical sales site, an online dating site can create its own unique set of legal concerns. Some of these concerns are common to all Internet businesses while other items pertain specifically to the online dating industry itself.

Therefore, the online dating webmaster should be aware of the following:

1. Corporate Structure. The starting point for any business is its skeleton, or corporate structure. Operating as a sole proprietorship is strongly discouraged, and some form of corporate entity must be utilized when operating the online dating site. The type of corporate entity will vary, depending on a number of factors, including tax considerations, local legal climate, anticipated revenues and asset protection concerns. In some cases, the owners should consider offshore incorporation, given the potential for reduction of legal liability and tax exposure. Various options exist for incorporation, including Subchapter "S" or "C" Corporations, Limited Liability Companies (LLC's), Limited Liability Partnerships (LLP's), trusts, etc. Sometimes, more than one corporate entity is necessary to accomplish the goals and objectives. In consultation with your CPA and general counsel, the proper corporate structure should be discussed and implemented.

2. Business Plan. Unfortunately, many Internet entrepreneurs begin without some form of organized business plan. The days of being able to throw together a website and hope for the best are long since over. Various online resources exist to assist in creating a formal business plan, which should consider elements such as the operating budget, promotional tools, target market, niche, website structure, legal concerns, investment capital, growth and development of the site. Many times, the creation of a business plan will help identify the strengths and weaknesses of the business model, and may result in critical alterations before the site is launched. The single greatest reason why most Internet businesses fail is the lack of a coherent business plan, along with insufficient capitalization.

3. Online Agreements. Implementation of well-drafted online legal agreements is critically important for the protection of your business investment. Users and members should be required to adhere to a set of Terms and Conditions which outline the relationship between the site and the user/member, and address such issues as disclaimers, waivers, limitations of liability, assumption of risk, dispute resolution, attorneys' fees, intellectual property, and a host of other legal and practical issues. Online dating sites, in particular, should include a comprehensive waiver of claims resulting from inappropriate and/or illegal behavior by and between individuals who met through the online dating site. One jury verdict can destroy a successful business, however, a comprehensive set of Terms and Conditions, implemented in a legal manner, can save the site operator significant grief in the event of a claim. Other online agreements should be considered including privacy policies (now required for all websites doing business in California), spam policies (necessary if promoted by bulk email or affiliate marketing), affiliate agreements, DMCA designation, warning page, etc. With proper online agreements, an ounce of prevention is truly better than a pound of cure.

4. Age Verification. Online dating sites are generally only appropriate for individuals over the age of 18. The Child Online Privacy Protection Act ("COPPA") also restricts the manner in which certain websites can interact with children. Therefore, some form of age verification should be implemented to screen minors prior to accessing the site. This author's [BirthDateVerifer.com](http://BirthDateVerifer.com)<sup>TM</sup> technology or some other form of age verification should be considered to avoid use of the site by children.

5. Copyright Protection. Your text, graphics, design and images, along with overall look and feel of your website, are all capable of protection under copyright law. Generally, computer programs can also be copyrighted. Therefore, online dating site operators are encouraged to protect their business assets by registering all available copyrights with the United States Copyright Office. A relatively new procedure exists for registering copyrights, which allows the registration to include changes made to the site on an ongoing basis. You should familiarize yourself with the ways in which copyright laws can help protect your business, and prevent competitors from infringing on your intellectual property.

6. Protect Your Trade Name. Your trade name, generally your chosen domain name, is also your business brand, and the name by which you will be known in the industry. As your business grows more successful, that brand name increases in value, given the goodwill associated with it over time. Popular businesses are often imitated, and you can expect competitors to attempt to trade off of your established business name. In the event you select a distinctive brand name, any competing use that causes consumer confusion may be a violation of our trade name or trademark rights. You should consult with an attorney early in the process, to choose a business name that is capable of trademark protection so that you can prevent competitors from using similar brand names. Due consideration should be given to state and/or federal trademark registration and continued zealous enforcement of trade name rights, including protection against cybersquatters or typosquatters.

7. Promotional Liability. The Federal Trade Commission ("FTC") is the federal agency with jurisdiction to enforce laws pertaining to unfair competition and/or deceptive trade practices by websites. The scope of what might be considered an "unfair" trade practice is broad, indeed,

and websites have been a favorite target of FTC enforcement actions. Information pertaining to such enforcement activity can be found on the FTC's website [www.FTC.gov](http://www.FTC.gov). Special consideration should be given to "free" products or services, along with any consumer transaction where the user is surprised by some activity or charge. Experienced advertising counsel can help identify concerns for promotional activities and your marketing plan in general. In the event that any promotional activity occurs using unsolicited bulk email, advice should be obtained regarding compliance with the CAN-SPAM Act regulating such activity.

8. Obscenity/ Indecency/ Free Speech Concerns. Many dating sites allow users to post risqué, or sexually explicit images in connection with their profiles, and some tend to appeal to more erotic view points. Any image depicting nudity or sexual activity that appears on an Internet dating site will implicate various legal concerns pertaining to obscenity, indecency, and the Records Keeping and Labeling Law, Title 18 U.S.C. § 2257. This is an extremely complex area of the law, and one to be evaluated only by a specialist in the area. Under current federal law, all images depicting sexual activity posted on a commercial website need to be accompanied by a disclosure identifying the custodian of age records pertaining to the model depicted in the image. Failure to comply constitutes a five year federal felony with no potential for sentence reductions by federal judge upon conviction. Any image that can be categorized as obscene, can result in a variety of charges under state and federal law; some with significant penalties, fines and forfeitures. Careful consideration should be given to any system that allows users to instantly post images of themselves (or others), particularly sexually-explicit images. Use of the Communications Decency Act, Section 230 Immunity, and the DMCA Safe Harbor should be considered in this instance, as well.

9. Employees, Wages, and Taxation. An online dating business is the same as any other business, in various respects. Those employed to perform services for the business must be properly categorized as employees, when appropriate, and paid wages with proper income tax withholdings performed. Careful considerations should be given to such matters as employee handbook creation, overtime, vacation and benefits policies, confidentiality and non-compete agreements and other typical employment matters. Sexual harassment concerns occasionally arise in any business focusing on intimate relationships between human beings. Therefore, a specific policy pertaining to workplace environment and sexual harassment complaints should be considered and implemented.

10. Website Development Issues. Another area of particular concern relates to the development of the online dating site itself. If an independent website development company is chosen to create and maintain the website, appropriate legally binding contracts should be executed dealing with issues such as who owns the copyright to the website content, how the developer will be paid, whose obligation it is to maintain/repair the site, or defects therein, dispute resolution, and what happens if the relationship is terminated.

11. Shareholder Issues. The final consideration on this legal checklist involves the relationship between the owners of the business. If one person is the sole owner of the business, this last consideration may not apply. However, to the extent that various individuals are operating as mutual owners, shareholders, or partners in a particular business venture, their relationship between each other must be clearly set forth and agreed to in an operating agreement

or a shareholder agreement. Inevitably, disputes will arise, and some method must be set forth in writing to address how those disputes will be resolved. The worst scenario is a corporation equally owned by an even number of shareholders, which allows for a deadlock in decision making to occur. In the event of a deadlock, the corporation or business entity may be thrown into receivership, whereby a receiver takes over the operation and decision making functions, so that the business can continue to operate despite the deadlock between shareholders or owners. This is all expensive, time consuming, and emotionally draining on the owners, and should be avoided at all costs. The development of an operating agreement between the owners is a critical part of the creation of the business venture, and the best time address difficult issues between business partners is at the beginning, when there are no disputes. Many issues typically addressed in the shareholder agreement are not often considered or anticipated by the owners, such as the event of death or disability of one or more of the shareholders, the desire to sell shares to a third-party, rights of a divorced spouse to all or part of the business, and other such uncomfortable matters. Many of these concerns can be addressed by simple legal tools like insurance, trusts or incorporation of rights of survivorship into the ownership structure. All of these issues should be considered and addressed before any disputes arise to allow for the smooth functioning of the business and the efficient resolution of disputes or major decision making.

### **Conclusion**

The above checklist represents some of the typical legal matters commonly encountered by online sites. Of course, many others are possible, and your general counsel can explore these numerous legal concerns in-depth. The best time to address of these legal matters is before a legal concern arises, forcing the business into “emergency mode.” Many legal emergencies can be avoiding with minimal preparatory activity, whereas failing to address important legal concerns can result in major disruption, or even destruction of, your online dating business venture.

For more information, check out: [www.OnlineDatingLaw.com](http://www.OnlineDatingLaw.com), by Lawrence G. Walters, Esq.

(© Lawrence G. Walters 2005). Noting contained in the forgoing article constitutes legal advice, and all specific legal questions should be directed to your personal attorney. Lawrence Walters practices in the areas of online dating, media and advertising law. The law firm of Weston, Garrou, DeWitt & Walters has existed for over 40 years, and has litigated media cases throughout the country, including 7 cases at the United States Supreme Court. Mr. Walters can be reached at [Larry@LawrenceWalters.com](mailto:Larry@LawrenceWalters.com), [www.FirstAmendment.com](http://www.FirstAmendment.com), or via AOL screen name “Webattorney.”