



Cut-and-pasting legal language vs. hiring a lawyer

June 13, 2011 | [Curtis Smolar](#)

(Editor's note: Curtis Smolar is a partner at Ropers Majeski Kohn & Bentley. He submitted this column to VentureBeat.)

A reader asks: I have a website and can't afford a lawyer to draft up essential legal notices. I have decided to cut and paste all necessary legal language from a similar website for my site. Is there a problem with this?

Answer: Given the staggering number variables that can play into this, it's unwise to simply cut and paste terms of use, disclaimers and other legally binding documents on your own website. Covering them all would take several columns, but here are four things to consider:

It may be copyright infringement – Simply cutting and pasting content from one website to another is often copyright infringement. In this case, you're not copying pure facts, you are copying the creative expression. For example, there may be specific language that is necessary for terms of use that have independent legal significance. Those sections may have been drafted by an attorney (or not) and the rights to the copyright may be with the website or with the original attorney, depending on their contract.

You can also have problems if you do not tailor the content you have cut and pasted carefully. You may, by mistake, copy the company's trademark or other

protected intellectual property. That not only makes it easy for the other website to identify your potential theft, it could lead to other problems down the line.

Tread careful in this arena, as many companies have paid a lot of money to their attorneys to have their legal documents drafted and may not take kindly to that content being copied and placed on an unrelated site.

It may also be inapplicable – When you are copying legal terms of use, you are assuming that all the language therein is applicable to your site, its content, and the services offered. This may or may not be the case. If it is not applicable, having it on your site will not help you at all. Instead, you're lulled you into a false sense of security that you are protected when you're not.

It might cause liability – Some terms of use may not only be inapplicable or unenforceable, but may create liability for a company. For example, [as discussed in a previous column](#), a term providing for automatic renewal of a user's payment obligations in the terms of use may create liability for your company if it is an opt-out, instead of an opt-in requirement. So, you need to review your terms carefully and make sure there are not terms that are illegal or unenforceable. This becomes increasing problematic in websites that cover multiple jurisdictions.

Some disclaimers may be unenforceable – Even if the legal agreements you copy do not cause liability, they may not be enforceable. For example, in California a required jury waiver will be unenforceable in a 'terms of service' policy. In other states, a purported waiver of liability set forth in the terms of use may be unenforceable. The danger is that if you do not have a severability clause, a clever attorney could claim that the entire agreement is void and there may be nothing you can do about it.

Lawyers come in all shapes and sizes and you should be able to find one that fits your budget parameters. Some will even work for equity or for deferred compensation based on the deal you make with them. So instead of just winging

it and risking potential legal liability down the road, get a professional to do it for you up front.

Startup owners: Got a legal question about your business? Submit it in the comments below or email Curtis directly. It could end up in an upcoming “Ask the Attorney” column.

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