

Mike Young Interview

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CB: Hello everyone, this is Craig Ballantyne from internetindependence.com. And I'm here with a very special call for everyone today with Mike Young, the author of *Internet Laws*. Mike, welcome to the call.

MY: Thank you, Craig. I appreciate it.

CB: Why don't you tell us a little bit about yourself? And then also, as you mentioned before the call there's something that you have to say to everybody just to clarify about your answers here.

MY: ***First of all, I wouldn't be a lawyer if I didn't tell you that this is not legal advice. This is going to be some very good information. It's going to be general information, but we're going to give you some practical guidance here. But if you've got specific questions based upon your unique facts of what you're doing yourself on your individual website you probably ought to talk to your own internet lawyer about it. But we're going to give you some fundamental building blocks here to help protect you.***

In regard to my background, I started representing my first internet business back about 1996 and kept adding to it and got to a point where I started doing it full time. And in addition to that, I own multiple websites and do some significant business online with those as well.

CB: Okay, great. And then you have an association. Is that one of your websites, the Internet Marketing Attorneys Association, or something like that?

MY: Yeah. We have the Internet Attorneys Association, and also the Internet Ethics Council.

CB: Okay, great. And is that a place where the end user who has their own website would go to get more information, or is that for attorneys?

MY: There's actually going to be more and more stuff added to those sites, but there is some stuff that you can get at those sites. The user, somebody that's listening here today can. They could also go to my blog at USInternetLawfirm.com.

CB: Okay. So I basically found you because one of my friends sent me one of your newsletters. And then I noticed you had a book that I bought off Amazon. So just before we get into all the questions, just tell people where they can get more information from you. Should they go to the blog and that's where they'll get the weekly newsletter, whatever?

MY: Yeah, you can go to the blog. You can sign up for the weekly newsletter there, that's great, at USInternetLawfirm.com. And there's also obviously a regular blog post there as

well with good information, kind of updates of what's happening now and where things are headed.

CB: Okay, great. All right, so let's get into the meat of the questions here. Like I said, I finished your book and there's a lot of great information in there. So I know it's kind of hard to summarize a lot of the book here, but what are some of the things that we must do in order to avoid attracting lawsuits from our internet websites?

MY: Generally speaking, before we get into some of the detailed questions you've got here, one of the things we really need to do is treat it as a business instead of a hobby or a get rich lottery. Unfortunately, many people because they see things like Zuckerberg and Facebook, "Well, if a 23-year-old kid can do this from Harvard or something and drop out, or that type of thing, and make all this money then if I throw up a website with a good idea I'll make the riches and then I'll worry about it later. I can hire the lawyers or the accountants, or whatever, to get me out of trouble."

But as a practical matter it generally doesn't work that way, even despite what you see in the news stories. You really do, just like in an offline business, you really need to treat this like a business instead of something that you can put anything you want up there and hope that you make money and will be forgiven for what you've done wrong after the fact. It usually doesn't work that way.

CB: Okay. That's a very good way to start things out there. Starting with someone's website, what needs to be there in order for them to best protect themselves? And I guess also, maybe even just mentioning what kind of company they should form in the first place when they're serious.

MY: I wouldn't start their website personally unless I put a business entity in place that would actually own the website. And that's just my view on it. If you have any assets at all of your own that you'd like to protect personally, such as a house, a car, personal bank accounts, heirlooms or stamp collection. Any of those things, if you don't want somebody coming after you individually and suing you personally for what you've done online, you're probably going to want a separate business entity that will shield you from most types of liabilities individually. There are some things it won't, but almost all things it will. It won't on taxes if you don't pay your taxes. It won't on environmental claims, but that's really not a big issue with online unless you're doing something with environmental products.

But as far as the ideal types of business entities, I would say for entrepreneurs that are starting out probably a good 95% of them, in the United States at least, are using either a limited liability company or a Subchapter S Corporation. They're both relatively easy to set up. In many instances an LLC offers you the same amount of protections you're going to get with a corporation. They're just a lot easier to operate from a legal standpoint.

Following up on that with a question as far as what needs to be there in order to protect yourself, I would say probably the second most important thing you're going to need on there is the right website legal documents.

CB: And those are going to be your privacy policy and disclaimer terms, conditions, that type of stuff?

MY: Absolutely, those are the types of things. Not only that, but you also build trust with your customer that way. A person comes to the site and doesn't see any of those things they're going to kind of wonder what's going on here. It makes it look like amateur hour if you don't have the stuff up there.

CB: And then those are the types of things that you'll need to consult a lawyer on?

MY: Yeah. I'm a little bit bias, because I've got do-it-yourself legal forms for entrepreneurs who can't afford a lawyer. And they can go to legalformsgenerator.com if they want to take a look at those. But that's not a substitute for an internet lawyer. As a practical matter, I know a lot of startup entrepreneurs can't afford to pay \$5,000 or \$7,000 or \$10,000 for customized legal documents.

CB: Yeah. And you also make a great point in your book not to just go and copy somebody else's legal documents.

MY: Yeah. In fact, there was a guy who started selling another internet lawyer's forms on there. And the internet lawyer went out there and said, "I own the copyright to this." And made the guy publically retract it, apologize, and then went after every one of the guy's customers and said, "You need to pay me anywhere from \$3,000 to \$5,000 a piece or I'm going to see you for \$150,000 for copyright infringement. So these people who thought they were getting a good deal by paying \$47 for some legal documents ended up spending \$3,000 to \$5,000 to keep themselves out of court.

CB: Wow. That is something I'm sure nobody on the call wants to go through. All right, so now we've got our site up. We've got the legal forms generated. We've got the business entity in place. Nobody likes to do any of this stuff, but we've done the stuff that's really serious that we need it to be on there.

Now let's say we have a website up. And we have website copy. Where can we get in trouble with that by making claims? Let's say somebody has some outrageous claims which are true, at what point does someone get in trouble for these and what evidence would someone need to prove that their claims are in fact true?

MY: We'll go a little bit into this as we go more detailed to this interview with some of the questions I know you wanted to talk about. That's part of it, but what is important to understand is truth is not what you or I think it is. Truth is what a judge or a jury in a courtroom thinks if you're getting sued, or a government agency like the Federal Trade Commission or the FDA, the Food and Drug Administration, think if they decide to go

after you as well and investigate you. You can yell into their face all day, "It's true, it's true, it's true." And they say, "No it's not." Well guess what, you've lost.

That being said, the evidence includes you really ought to have stuff that can verify the claims. It's unfortunate that many of the claims you will see out there that appear to be true are in fact not. People do not take the time to verify it. When a happy customer writes in and says, "Guess what, I took your product and it did A, B, C and D for me and it just made my life so much better." Your first gut reaction is to say, "Well, great. Can I use this as a testimonial?" And you post it.

Well unfortunately, you have people out there who will lie in order to become your friend for a bit of notoriety online, or simply to get a testimonial on your website. So you really can't take these claims at face value. What you need to do is make sure that you do some background check on what's gone on and you get at least some paper documentation you can point to.

If you were to suddenly get in the mail what they call a CID from the FTC that says, "We looked at your site. And we're doing a civil investigative demand of the following documents. Please provide us the evidence about what you've said here." What would you be able to turn around and provide them? And then the fact that you got an email from a customer who promised you this is what occurred. If you've got nothing to back it up, it looks pretty bad. Does that make sense?

CB: Yeah, it makes total sense. I think probably less than one percent of the people listening to this call will have ever thought about that. I certainly never had. One of the reasons I brought this up, I'm just looking through a fitness magazine. And so we're going offline. But they have one of those fitness offers in there with before and afters. And what they have is before and after photos, and then at the bottom they just have an asterisk that says "Results may vary. Exercise and proper diet are necessary to achieve and maintain weight loss and muscle definition".

So that kind of leads into our next question, which is with the new FTC guidelines for testimonials and endorsements, how much protection is offered by this atypical results disclaimer?

MY: It's interesting, the FTC says, "We're not going to really give it much credence anymore." But don't put an atypical results disclaimer up there and expect us to say that it covers you if they decide to come and investigate you.

But there are a couple of things they didn't say there. They didn't say that it covered every other agency the federal government has that can investigate you, for example the FDA. They also didn't say that if a state attorney general came after you it wouldn't be good to help you out to have that on your site. Nor did they say they wouldn't take it into account that they factor in whether you were engaging in something in bad faith or good faith when you're putting things online and trying to make full disclosure. If you couple

that with other things making a disclosure, it couldn't hurt. They're just saying that by itself it's not going to give you a get out of jail free card so to speak.

So my feeling on it is you put the atypical results disclaimers on there, but you can't rely upon them to protect you. As you were giving an example, of making these claims with the pictures and stuff and then turn around and hope that just putting an atypical results disclaimer by itself will protect you, at least as far as the FTC is concerned.

CB: Okay. Just a bit of a question I didn't prepare you for. But in the case of a government taking action against you, what tends to be the steps taken? Or do you just all of a sudden out of the blue hear from somebody who says, "Okay, we're going to court with you."? Or do they give you warnings, or how does that tend to go with the government agencies?

MY: Well, it's kind of interesting. They claim, at least as far as the small ones, they'll probably at least approach you and you'll probably get a slap on the wrist type thing. It seems to be that that's the way they're heading for the smaller marketers. As a practical matter, what you're seeing out there is you really don't know what's going on.

For example, they get complaints about the FTC may decide they're going to become your customer. Or your state attorney general's consumer protection bureau may decide they're going to become your customer. You won't know who that person is. You may never know who it is. They will simply go through your process and buy your product and see what happens, both with regards to what you've delivered and what the claims that you're making and what you're doing on the backend as well to promote upsells, cross sells, etc. And your billing practices if you have a monthly continuity program.

Probably the next step if you're going to at least as far as the FTC's concerned is that CID I mentioned to you, which is basically you get it in the mail. And you don't even know if you're the target of the investigation, which makes it intriguing. They will request a bunch of information from you and can try to fight it and go to court if you want. I don't advise that, unless you've got a lot of money to blow because they're probably going to get a court order to get what they want from you. And they may decide that everything's fine and good, or they may decide that some things need to be done to correct what's occurred.

The more outrageous things that occur tend to be situations where they actually have to go in because the sheer amount of fraud involved, or the number of consumers being harmed by something, they just march into court and file a lawsuit. But that's intended to be the progression as to how they go. And if they do file a lawsuit, more often than not if there's a pot of money there and they think people have been defrauded they will ask the government to freeze the assets. So if you're on the receiving end of that suddenly you've got no money to defend yourself by paying a lawyer.

CB: Okay, great. Now let's say it's a civil lawsuit. So a customer claims damages from your product or your advice or something like that. How does that usually happen? What are the steps that usually someone should expect that way?

MY: Something like that, probably the first notice you're going to get of that is either a demand letter from the attorney that's trying to shake you down for that customer for X amount to get you to do something, or simply maybe you get served with a lawsuit if they already believe that there's going to be a good enough claim to go after you and that you've got the assets to pay for it.

It's important to note that in civil lawsuits, particularly if you're selling consumer products, there are things like deceptive trade practices acts. They vary by state. Most states have them. And they typically give up to triple damages in attorneys' fees and court costs. So what you're looking at there is attorneys that are willing if they think you've got the money on the other side, to go after you and sue because at the end of the day they can get a court order that makes you pay their fees in addition to your own fees, plus all the court costs and etc.

CB: That is not good. All right, so the first thing that someone should do if they get any of this stuff is go directly to a lawyer. Right?

MY: ASAP.

CB: Yeah, okay. And then any other advice you can give somebody there, or just simply you've got to deal with a lawyer.

MY: It depends on what it is. For example, if you get a copyright infringement complaint sometimes you can – if you've got a DMCA notice on your site and somebody's filed through to you saying, "Hey, you've infringed on my image or text," or whatever. You can sometimes informally handle that and make it go away without admitting any liability. And it may be a simple matter of taking it down and apologizing. Sometimes it's more than that where you have to pay something out. And it's cheaper to do that than actually go through the legal system.

CB: What are some of the riskier things in the internet marketing world these days that are getting attention? So, you mentioned recurring – imagine that is definitely something that will raise some eyebrows, trial offers and we talked a little bit about the testimonials. Is there anything of those three that is really on the watch of whatever government agency's taking a look? Or is there anything else that is also something that people really need to be careful about when they implement their business?

MY: Well, the recurring is a big one. That's almost a red flag these days. Anything that possibly looks like a group of people are getting allegedly cheated out of money on a monthly basis. That's a big one as far as going after it and trying to shut it down. The claims themselves and the testimonials, particularly anything that mentions things like

cancer cures or, "I had kidney disease and it went away." Things of that nature, that's a major red flag with any government agency as far as what's being promised online.

The other thing as far as it's concerned are the cooked up fake testimonials. You see those all the time, where you've got the same image of the same lady who was 400 pounds and suddenly is a size zero wearing a bikini. And her name changes on every page that they've got it for and there are 50 domain names that they're using it. Those are the types of things they tend to look at with intense scrutiny as well, whether the names change, the picture stays the same, the story changes and it's a bunch of hidden continuity or deceptive billing practices go with it. But yeah, anything to do with claims whatsoever as far as health results is a big thing to be concerned with. Obviously income claims and stuff as well, but I assume at least in your field you're probably more concerned with health claims.

CB: And then is there any distinction between info products and hard goods? People that sell supplements, are they typically under the radar more than people that will sell information online, or is it all –

MY: Actually, info products, unless you're pretending to be Dr. Joe when you're not a medical doctor to market your info product, that's actually less of an issue than the actual supplements because with the supplements you've got multiple health agencies that are taking a look at it in addition to the consumer protection agencies in general. So you have things at the state and federal level that handle food and drug health issues in addition to those such as the FTC or your state attorney general's consumer protection bureau that were focusing solely on any claims that affect consumers and protecting their rights. And nutritional supplements are high on the radar of things you have to be careful with what you say, and more importantly what you don't say.

CB: Okay, great. Just going back to something that you mentioned about the fake testimonials and stuff like that. Among my group of friends we all have legitimate info products. And we've actually had some of our before and afters stolen and used by these companies. And it's really frustrating to us to see that a lot of these companies, they're still in business. We're still having our testimonials stolen and stuff like that. So it kind of is frustrating because we don't see the action taken that we thought would be taken. Is it just a matter of there being too many people to hunt down?

MY: That's pretty much where it's at. What you have out there is you have limited budgets. Yes, the government is huge and there are a lot of lawyers – the Department of Justice I think has 10,000 lawyers – but they've got a limited budget to go after people. And so they start with the big fish and they work their way down. They start with the things that can have the biggest effect and work their way through it that way.

And there are also the issues of how easy is it to get somebody. If you've got a person operating the scheme entirely within the United States, and they can identify where they're at, where their bank accounts are at, where their hosts are at and they're able to

shut it all down that's pretty easy to go after them and get court orders and march in and do what they need to do.

On the other hand, if the hosting happens to be, for example, offshore. They're setting up multiple business entities in the Caribbean or in Eastern Europe and they're floating things back and forth between them it's playing whack-a-mole, it's going to be tough to get them shut down on a permanent basis, particularly if they're based in countries that do not think kindly about the country, for example the United States. An Eastern European country that does not have warm diplomatic relations, good luck trying to get somebody arrested and extradited to the U.S.

CB: I see. That makes a lot more sense now. All right, I appreciate that information. Going back to the testimonials now, so on page 110 of your book you give an example about a woman who lost a lot of weight. And in her testimonial she goes into great detail about all the work she did. And as I understand it, you're saying that that is a much better testimonial or endorsement to have on your website where people see that she did all this work. Is that correct in how I'm interpreting it?

MY: Absolutely. One thing they want is you to provide transparency and all the key facts so that the customer can make an informed decision. What we're talking about here is everything a person would really need to know about this unique situation that may be unique for her to be able to lose that amount of weight. For example, does she go to the gym and exercise five days a week or does she drop herself down to a 1,500 calorie a day diet? Was she 23 versus 67, so her metabolism was probably a little bit different? There are a lot of key factors that the person would want to know in order to be able to make an informed decision. The better the case study you've got as opposed to a one or two sentence blurb the better.

I don't know if you're familiar with the cartoon South Park or not, but there was an episode on that where one of the characters in there kept referring to a certain sub franchise spokesperson who had lost a lot of weight as having AIDS, and everybody was appalled by it until it finally was explained that by aids he meant he had physical fitness assistance that would go to the gym and help him lose the weight.

And I think that's part of the thing that you don't see out there, is people saying, "I lost 400 pounds by eating subs every day," but not disclosing the fact that there were physical fitness trainers involved and there was a lot of extra effort that went into it, as opposed to just eating those sub sandwiches.

In fact, if you note for that chain is that you don't see commercials like that, even when the spokesperson makes his appearances he talks about maintaining his weight and his lifestyle afterwards and how good he looks now. But you never hear those claims being made today because of the way the rules are today.

CB: And that kind of brings up another question here in terms of what if someone's simply telling their personal story? I know a couple guys who basically do that with their marketing. So instead of them having any before and afters, they're just essentially telling their own personal story in their long sales copy. How does that change how someone might view that in terms of judging it?

MY: I think part of it is you're essentially providing your own case study when you're telling your own story. As long as you're providing all the key facts, that's great. What you've got there is you don't want to make the jump there that says, "Here's my story. Here's everything I did." And then explicitly say, "And if you buy my product X you'll get the same results."

If the customer wants to jump to that conclusion in their mind more power to them, but you can't sit there and say, "I did this, and then," with all these key facts disclosed, and then make that next jump along to a conclusion. The customer will make it for you, you don't have to. I would also put in the disclaimers too, "Hey, I don't know. This is my story. This is how it worked for me. I don't know how it will do for everybody else, but I wanted to show you here this because it was just too good not to share."

CB: Okay, that's good. I really appreciate that. In your book you also mention that the FTC only will take action when they receive a large enough body of complaints. Any idea what level of complaint action that might be?

MY: They don't disclose it. I've talked with them. It's kind of fun, you can poke and prod and they will hint to you things that they will do. It's even tough to tell when you're dealing with them whether you're dealing with them representing a target or whether they're on a fishing expedition to get information from you so they can go after somebody else, because obviously that's giving away the farm so to speak. They'd rather have everybody assume that one complaint could trigger a reaction, the same as if there are ten complaints so that you get nine free before they'll go after you.

As a practical matter though, they do tend to go for the bigger fish. If you take a look out there, you could go to FTC.gov and take a look at their press releases for the past year. And if you see the dollar amounts that are involved you get a pretty good idea as to who they're going after right now. Chances are it's not the startup entrepreneur who's making maybe \$1,000 a month, or a couple thousand dollars a month. We're generally talking significant figures, six and seven figures that are changing hands before the FTC's actually weighing in and stopping. But that doesn't mean they won't go after people that have smaller businesses than that. And probably more importantly is the fact that you have the state and local governments that can go after you.

I'm not going to name names here, but I think you could probably recall, there was a well known internet marketer who was arrested in Tennessee a couple of years ago for selling fake medicines online. The FTC had taken a look at him. The state had taken a look at him. But when push came to shove, the final investigation, the people that showed up on his doorstep was the local county sheriff's office. And he went to the

county prison. He put out and took a ten year deal, but he still got a criminal record because of what he did selling fake medicines online.

So if it's not necessarily a big enough business for the FTC to go after with their limited budget you may very well find a state or local agency that can still go after the same complaints. In fact, it may be referred by the FTC to a local agency to take a look at it.

CB: Okay, that's really helpful. I appreciate that. So I think we've covered most things there. Just be conservative, be smart. Let's move on to email now. So a quick question. What are your opinions on double opt-in versus single opt-in in terms of building an email newsletter list?

MY: I have to say, I know it hurts conversions but double opt-in is really the way to go. Everybody's with the single opt-in is where you need to go because you have a higher conversion rate as far as people that opt-in obviously. You don't have them get that extra step of verifying. But from a spam standpoint and the potential risk of being accused of spamming and getting in trouble either with your host or with the government because of it, the double opt-in works much better because you don't have the risk of people messing with your single opt-in system.

If you've got a disgruntled customer who doesn't like you they can throw in a bunch of different emails in there and opt-in different people into your list. And then have them start complaining against you. You can have somebody as a joke pack all of their buddies into your list. There's lots of things that can be done mischief-wise that can get spam complaints against you through no fault of your own if you set up a single opt-in list because somebody else put in email addresses.

CB: Okay, great. Yeah, that's something I don't think a lot of people think about when they're putting that together. All right, now we'll talk a little bit about affiliate promotions here. When promoting a product as an affiliate with email marketing, and based on those FTC guidelines that want disclosure of the relationship, what is your advice for making that affiliate relationship known? I don't know if you're familiar. There's an internet marketer out there. And he does basically these really heavy joking affiliate disclaimers that he'll make a billion dollars if you click on the link and make the sale. Is that a fine way of disclosing a relationship?

MY: Absolutely. The key is to make the disclosure so the reader knows of the affiliate relationship. You can have fun with it. I do. If a person subscribes to my newsletter at my law firm site it's got a list of them there. I've had people ask for permission to republish it just because of the nonsense that I throw in it. Things like don't eat lead paint chips.

There are a bunch of things you can put into these disclaimers so that people actually know, "Hey look, we think it's kind of ridiculous, but we're giving you the facts here." And one of the things that you need to know is that I'm an affiliate here for this product or

service that's being promoted. And if you click the link I'm probably going to get paid something for it. But I wouldn't promote it unless I thought it was something worthwhile.

CB: Okay, great. I personally will write my email. And then at the bottom of the email will just say that I'm an affiliate of XYZ. It's at the bottom of the email. It's not before my signature, it's after the signature. Is that something that I might want to reconsider?

MY: If you're using the same text font. Obviously if you're just not texting emails, as opposed to html you're going to get them the same size and whatnot. Disclosing that you're an affiliate is great. I would probably take the extra step and disclose that you'll be compensated if they buy in to your link, because there are many people online who have no clue what the term affiliate means unfortunately. You can make it as simple as you want to and have fun with it. But you've got to let people know really what an affiliate means, beyond just the word affiliate, because some people simply don't know.

CB: Okay, great. I appreciate it. And then again, with respect to the government agencies tracking people down, are there any precedents taken so far in terms of affiliates getting in trouble for not disclosing?

MY: Right now what you're seeing there is very few precedents in the new endorsement testimonial rules as far as what they're going after. So far what they've got for any types of things in the new guidelines have been a few big online retailers to make a point. Things of companies that have large brick and mortar stores that have big corporate websites, they were putting things up there like, "Blog about something for us and you'll be rewarded with a prize. We'll give you a \$10 gift certificate," or whatever. They're paying for the reviews. And so far that's been the biggest place that the FTC has really been hitting as far as the new endorsements and testimonials are concerned.

To the effect they're going after any of the deceptive endorsements and testimonials they've been going after the ones who have just really hit people hard in the pocketbook. We're talking six and seven figures a month, the ones with the deceptive billing. There's one gentleman out of Utah they went after. I think they erupted \$300 or \$400 million, him and his buddies raked in using 60 different companies in like 40 different states to run their racket. So they're going after these things, but I think they're making their points with the headlines with the large dollar amounts and the most outrageous cases. I think slowly but surely it will trickle down to the smaller cases once they get the biggest bad eggs out of the picture.

CB: Okay, good. One thing that I've always wondered about is with Facebook and Twitter I see a lot of people still doing affiliate promotions. With Twitter there's no room to convey a connection, so those would almost be like no-no's if you really wanted to be as strict as possible and not step over the rules, right?

MY: Yeah. Again, FDC, it's one of those things with walking. Keep up with the technology. Which is kind of funny, because Twitter was obviously around when these rules came

into place. But what they're doing is they're trying to take things from the network market and MLM industries and trying to rate it to online. Things they did to regulate and bring MLMs into control so that outrageous claims weren't being made. They're trying to take it and say, "Well, how can we really apply that to the online industries?" Well, you really can't with some of the technology that's come along.

What I am seeing with some disclosure, the best I've seen out there so far is using the abbreviation spon, S-P-O-N, for sponsored or A-D for ad in tweets, so that there actually is some disclosure being made. Obviously, ideally if you're driving somebody to a site for sales there is some disclosures as part of the actual sales process as well, that what they clicked through is a compensated link that would note a deal. But I've not seen the FTC actually coming up to that level yet.

But I will say this, and we'll go into it a little bit, as far as them going after the big people. I have seen in recent years them going after people who have had affiliates they've already had trouble with. So if you're running a small program relatively speaking and you have an affiliate that's been a bad egg, that's been caught by the FTC before, that puts you on their radar no matter how big or small you are if suddenly that person becomes an affiliate of you.

CB: Let's look at the affiliate stuff through the vendor's eyes, which is an important topic to some of my friends who are doing quite a bit of sales and use a system called ClickBank. Are you familiar with that?

MY: Yes.

CB: Okay. So ClickBank anyone can technically be an affiliate of a product and it's not through the process of approving the affiliate. So in your book, and from what I understand, is that we're responsible for these affiliates' actions eventually no matter what. Is that correct?

MY: You're responsible for your affiliates' actions where you're able to control your affiliates. And in this case, my argument would be, and the FTC hasn't weight in one way or the other yet, they are in fact ClickBanks' affiliates, not yours. You just happen to be offering the products and they're getting paid through it. ClickBank stands in between you for the liability hit if something goes horribly wrong. That being said, I would still monitor and try to reduce it.

Where it is heading and what they're trying to do is, like I said with the MLM industry, where they really restrict what can and cannot be said. Just like if you had a down line in your network marketing. If you were, for example, working for Amway or Primerica or Mary Kay, if your down line was saying horrible things you'd be responsible for making sure that they weren't saying horrible things. If you were the company you'd be making sure that all of your people were trained and not saying wrong things about your products.

Well, that's what they're trying to do with regards to the products and services online. If you're running your own affiliate program I have seen it where they've come in and said, "Look, we've got an issue with one of your affiliates. We've gone after them before. Now explain to us what exactly he's doing as an affiliate for you." And it costs a lot of legal fees to go in there and go through and provide all the discovery of everything they're requesting to keep yourself out of trouble so that you're not tied in guilt by association with what a bad affiliate's been doing. Not only in your business, but what they've done before for other people because it's a situation where the FTC already has them on their radar because they know that they've been making sleazy claims about other products.

With ClickBank I really do think the issue with them is, once again, it's going to be ClickBank that's primarily on the hook for a lot of this, but I would still to the extent you can identify it monitor the sites that are promoting for you as an affiliate through ClickBank. And if you see something wrong tell ClickBank about it. And in all likelihood, ClickBank is going to terminate their affiliate and get them out of there because ClickBank doesn't want the liability.

CB: Okay, that's good. And that really just covers stuff with the government. On a civil level anybody could come after the vendor for an affiliate doing something wrong. Is that correct?

MY: Yes, absolutely. If you have a product, for example, that happens to improve somebody's let's say mental state but you haven't made any claims about it or anything like that. And suddenly you've got an affiliate out there that says, "Get rid of your psychiatrist. You don't need it if you're suicidal. Take these pills instead." Those are the types of things. If somebody committed suicide after taking your supplements the family's probably going to end up suing you even though you weren't the one that did it. It's unfortunate, but you can sue anybody for anything.

And often some of these sleaze ball affiliates. One, you can't track them down to find out where they're at. And two, if you do track them down they really don't have much money. And so they're going to go after a lawyer that's going to go after the deepest pockets they can find. And chances are that's the manufacturer.

CB: So let's look at protecting ourselves now. Something as simple as Google alerts. Anything else?

MY: Yes. I would prescreen affiliate applications. If you run your own program absolutely prescreen them. Have a good affiliate agreement in place that lets you terminate bad affiliates for violating any types of laws that might apply. And you do monitor your affiliate sites and emails. So I would go through and set those up so that you actually have Google alerts, so that you're actually getting them for those sites as well, any types of things that are coming out there. And if you know the affiliate site's promoting and they have an email list, go ahead and sign up. You may not want to use an email that

they know is tied to you, and just use an email that you monitor regularly to see what's being said about your products to their subscriber list.

CB: And then for people that do ClickBank where they're not going to be prescreening the affiliates, is there anything besides just keeping your eye out for your product name and all that sort of stuff? Some of my friends are dealing with thousands of affiliates.

MY: There's really not much more you can do about that. Where you can spot them and add them into Google news alerts that's great. You can do the best you can with what you've got to work with. And ClickBank, for obvious reasons it's in their financial interests not to give you all the information you'd like to have about each affiliate because they don't want that affiliate bypassing and working with you directly.

CB: And then you also mentioned a term "good faith compliance". I think you mentioned that in your book about tracking bad affiliates down. Is that pretty much everything you described in prescreening the affiliates if you're running your own affiliate program and doing all of that type of stuff? And just making sure you've documented all that sort of information.

MY: Yeah. Even to the extent ClickBank's not going to do anything with one of these bad affiliates. If you see a website out there that's selling cancer cures with your product as an affiliate via ClickBank, and ClickBank isn't going to take the time, at least you ought to document the fact you tried to contact this affiliate and tried to get it shut down. Tried to get them to stop it saying, "Hey, I don't know if you're aware of this but you can't really do this. The product doesn't cure cancer. If you say that you can get everybody in trouble, yourself and us, please stop it."

CB: Okay, great. All right, so that covers the affiliate portion. Now I just want to do some random quick questions here. First, do you have any idea of what's happening in the world of internet taxes and what we might be able to do to protect ourselves? Is this going to be something that we're going to see a lot more of in the future?

MY: We're going to see a lot more of it until the courts weigh on it one way or the other. It's going in sane is what it is. The governments are broke and so a lot of the state governments, and even local governments, are looking for ways to raise money through internet taxes and fees.

There was a 1992 case in the Supreme Court that involved mail order. But it eventually said in the Supreme Court case that for mail order that what the types of taxes that they're putting on the internet now is really an unconstitutional interference with interstate commerce. And so the Supreme Court struck it down and said, "You can't do that." Well, the states are going, "Oh, well this is different. This isn't quite the same thing as mail order."

So they're enacting the same thing and applying it to internet businesses. They refer to it actually as the Amazon tax because Amazon's one of their primary targets that gets nailed by it. Quite incidentally, this past week Arkansas just passed one of those into existence. You've got a half a dozen states, probably 20 more looking at it right now.

And you're going to see a lot more of it. But the New York attack is being challenged in court and it will probably end up all the way to the U.S. Supreme Court. And at that point either they'll uphold their old decision and say, "No, no, no, no. This is just like mail order. You can't do this." And strike them all down as unconstitutional. Or they'll say, "Hey, guess what? We changed our mind. The internet is different and it's constitutional. Go ahead and tax away." At that point you'll see taxes at the federal, state and local levels.

You're already seeing some of it on the local level. The city of Philadelphia this past year decided to assess a blogging fee. Whether you were doing blogging for business or not, they were fining people who have blogs that were based in Philadelphia and saying, "You can either pay us," I think it was \$50 a year, "for the privilege of blogging in our fair city. Or you can pay us a \$300 lifetime fee for the privilege of blogging in Philadelphia."

My advice to people is to follow this thing closely by looking at what the big retailers are doing. Ideally I would take a look at what Amazon and Overstock are doing, because they seem to have the biggest bullseyes on them and they're the most aggressive at dealing with this nonsense as it occurs.

What's important to know, there's a lot of these laws that they go into do have a large threshold as far as the amount that's being involved in order to trigger. You happen to become a tax collector for those states and you pay over the taxes for them. Generally speaking you have affiliates in their state, and most of them tend to be around the \$10,000 a year threshold. In other words, you've got affiliates promoting in that state and you've got \$10,000 of the business in that state in a particular year, and then congratulations, you can be a tax collector for that state whether or not you've ever visited the state before in your life.

CB: Okay, all right. Thank you, I appreciate that. All right, next up a lot of beginners who are listening want to perhaps create partnerships. What type of documentation is necessary, especially if they don't want to spend \$2,500 on legal fees right away? Is just a one page document enough to get started until they make some money where they can get something more lawyer-like in place?

MY: I guess I'd want to clarify first. Are you talking about ongoing partnerships, or are you talking about a JV?

CB: I would say an ongoing partnership. Like let's say me and Bob want to start a website together where we created a product together and we're going to sell this product for eternity.

MY: First of all, I think partnerships are a horrible idea. I think a joint venture where you have a stated goal at an end is great. Partnerships, if you were actually doing a partnership with somebody, you get all the joint liability for it. Let's say for your partnership, your partner decides to go out there and sign contracts committing you to dedicated server hosting and paying out a lot more money for bandwidth than you possibly ever wanted or needed. Well congratulations, you've found your partnership. He decides to go out there and get a loan in the name of your partnership and you don't know that he's forged your name to the paperwork. Congratulations, you get to prove he forged your name. But until he can prove that you may be on the hook as far as the loan if he disappears with the money and runs with it.

Partnerships I do not like in any way, shape or form. To the extent you do that or a joint venture for a single purpose, I would do it with having your business entity as the partner, not yourself as the individual. You never want to be individually on the hook for any of this stuff. So if you're going to do it, if you have a corporation LLC, you sign that agreement you're making with them, as for example managing member of your LLC or president of your corporation. But you never sign it as John Smith individual, because you don't want the individual liability if things go south.

Even the horrible things with partnerships. If your partner takes his car to go the office supplies for your business, he goes to pick up a piece of software you need from the local store, he gets in a car wreck and kills six people. Guess what? The partnership's going to get sued and it's jointly and severally liable. These are the things that do not make partnerships attractive. And to the extent that you do do them: one, you want business insurance in place; and two, you're going to want to make sure that the partner is not you individually. It's actually a business entity.

As far as the agreement's concerned, you want to make sure that it's long enough to contain all the key terms. And I understand people don't have \$2,500 to spend for legal fees. You could certainly do it for a lot less than that, even if you have to use your own documents if you can't afford to have representation and do it yourself. The \$2,500 documents tend to be something that's about 50 pages long and is set up for something much larger than probably what you're setting up for a single website.

CB: Okay. All right, great. Many bloggers copy and paste copyright images on to their sites. What type of punishment could they get, because everybody just seems to take pictures and put them on there?

MY: Yeah. If somebody's got registered copyrights to the image you just took, they can go sue you for up to \$150,000 per infringement, their attorney fees and court costs. And it's similar to that thing I talked about the attorney's forms being stolen and used on other peoples' websites. The same copyright laws apply to images. There's actually something they call copyright trolls. It's the new development. Copyright trolls are people who specifically go out there and look for people they can sue for infringement. Then they go and buy their rights to the thing they want to sue them for. So if there's an attractive image out there that they like and they see it's being posted different places,

they'll go buy the rights from the photographer for that image, then turn around and sue everybody that's got a deep pocket that used the image without permission.

CB: Oh wow, interesting.

MY: They do it with graphics too, like "buy now" buttons, that type of thing. They'll put something together that's very attractive for you to use in the web design work, register the copyright for it and then just troll around waiting for somebody to use it and then threaten them. And pretty much it goes down like these, "Congratulations, you've infringed and you could either pay us \$5,000 now or we'll see you in court and get \$150,000 attorneys fees," etc.

CB: Okay, I get it. The bottom line is people have got to be very careful about what they put on their sites then.

MY: Yeah. Use reputable stock photography when in doubt. They're going to have all their I's dotted and T's crossed. But I use 123rf.com. There's istockphoto.com, bigstockphoto.com. Try to go through one of the reputable agencies and get a license to use a photo, as opposed to just grabbing something that looks cool that you found in Google Images search.

CB: Okay, very good. How effective is a disclaimer in an eBook when it comes to protecting against the lawsuit? For example, in the health and fitness world we put out this information. And let's say Joe goes and does a workout and he hurts himself. There's a disclaimer in the book that says, "You shouldn't be exercising unless you have approval from your doctor," all that sort of stuff. But he goes and brings a lawsuit. I know that he can just bring the lawsuit, but does that disclaimer do anything, have any role, in this entire situation?

MY: It should because it puts him on notice. Once again, I would pepper it into the body text, particularly where there are risky exercises being done. Of course, don't do this unless you consult a professional first. But obviously, as you mentioned, you can sue anybody for anything. But disclaimers do play a role because you're putting people on notice. You should probably do it at the front of your books, saying, "Look, you really should, before you start any type of exercise regimen or health and fitness program, or take any types of nutritional supplements," or whatever you're promoting in the book. Make it very clear that they should actually go see what their medical professional thinks is right for them. Most people won't do it, but at least you've given them the opportunity to do so.

But books do get a lot more protection because of the first amendment than you're going to get for other things. For example, something you could say on a website actually probably has less protection than what you're going to get in a book because they really do lean over backwards to provide a lot of first amendment protections from a free speech standpoint for what you can put in there. But obviously, you can't lie and pretend to be a doctor if you're not a doctor, or violate a court order. The old Kevin Trudeau

thing, I don't know if your readers are familiar with him, but obviously the FTC took the position that his book in fact violated the order that they had against him as far as what he could or could not market anymore.

CB: Yeah, I've seen quite a bit about him. All right, I appreciate that. And then I've got three final questions here and then we'll finish off. This has been fantastic information.

So the first question is, what are the most common mistakes that website business owners are making in terms of not protecting themselves, and this includes experienced business owners. Because you mentioned that, I think on the back of your book, that there was a real big mistake that even experienced business owners were still making.

MY: Yeah. I'll mention three that a lot of newbies make, and then I'll mention the one that a lot of experienced business owners make too. The three newbies tend to do is the business entity as a shield. They don't set that up right. And that really should be done and maintain it. That's something even experienced business owners don't. They set up a corporation or LLC. Then they don't maintain the paperwork on it. If you don't maintain it as a separate business then you've got a problem. You're mixing your personal money, combing it back and forth with the business money and not really treating it as a separate entity. Then you've got some issues.

The second issue is not putting the right website legal documents on your site.

Another one which is more common, even with some experienced business owners, is letting their web designer own the domain name. And many people don't have the technical skills but they've got a great business, they decide to bring it online. They let the web designer handle everything, and low and behold they discover they own nothing. The designer decided to become the registrant for the domain name.

But as far as all business owners are concerned that are from an experienced standpoint, I would say probably the biggest mistake I see these days is not using their company shield in their email signatures. If you're going to spend all the money and time and expense of shielding yourself online, even with your auto responders, you need to make it in there that your emails sent out aren't just from Bob or Jim or Craig or Mike.

It also needs to be that in your signature line you need to put in the capacity that it was sent. It was you, and then also the name of your corporation, the capacity president, your management number, etc. That gives them an idea that you send this email to them, you try to make it as personal as possible and you may have signed it, for example, Craig, but below it you actually put in your company's name, so that was the capacity in which the email went out the door.

CB: Okay. And then that should go for everything we do online, if you're posting on a forum, or if you've got a YouTube channel or something.

MY: Yes, absolutely. The most common place I see it is emails just because I'm inundated with literally hundreds of emails a day that I get screened into certain accounts to monitor what's going on online.

CB: Okay, great. There was also something on the back of your book. I think that it said the best way to sleep soundly at night when you have an internet business – what is the best way to make sure that everything is protected as well as it can be?

MY: We've already talked about the shield, but as far as operating everything based upon the guidelines in the scope we've already said. Let's say you put everything else into place. Really it has to be full disclosure. And never make unsubstantiated claims or let your customers do it either. If you put it out there it's like here's the facts. It's good enough when you take a look at this if you're the right person you're going to want to buy from me, that in and of itself is where you need to be at. Clever marketing does not mean deceptive marketing.

CB: Okay, good. A quick bonus question here. What should people have in place if they're just a lone entrepreneur running a website, or if something bad should happen to them and they become incapacitated. What documents do they need to have in place for a succession plan, even if they know somebody they want to give the business to or if they know they just want to shut the business down. God forbid something happens to somebody, what should be in place?

MY: Well, first of all you would want to keep a regular printed list of passwords, etc. somewhere safe that somebody would have access to that they would know where to look for it. It wouldn't be stolen. You're not leaving it in your laptop bag every time. You're not sitting it sitting it on a table when you go to Starbucks or something. And you would also want to reference where you're keeping this in a safe place at in your will. Your will is probably the best place to put your transition into place and let people know that's where it's occurring.

And if you have somebody that's a friend of yours – let's face it, many entrepreneurs online, if they gave it to one of their family members their family members would be clueless. Wouldn't know where to start, wouldn't know how to upkeep it, that type of thing. If you've got a friend that you're going to want to take it over, give him a heads up to expect it so that it can be taken care of. And if you've got the contact numbers and stuff in place then it works out well. Your friend can contact the lawyer that prepared your will, or whoever's got possession of your will, and get the ball rolling so that your website can be maintained and continue on without a problem. It may be a situation where you already put an agreement into place to sell it if you want to. Have it appraised and sold to somebody.

But the long and short of it is making sure that everybody has access to the passwords and stuff that they need to continue running operations. And don't give it to somebody that you'd like to have it because you think they need a business. Give it to somebody,

or sell it to somebody, that you know can continue it on if you want it to continue on. But your will is the best place to do that.

CB: Okay, great. And then final question, I really appreciate this, what is the number one rule that we must follow if we want to keep what we earn? I think that was on the back of your book as well.

MY: Yeah. And this is something you will not see so many so called gurus, particularly the make money online types, talking about it. But I would say probably one of the biggest failures I've seen over the past two years as the economy tanked, they were all taking the money that came in and spending it as fast as it came in. And they didn't do withholdings for either their affiliates or their taxes, primarily their taxes. If you burn your affiliates you won't have them anymore. But if you don't pay your taxes you lose everything. And the number one rule is as part of treating it like a business you do need to withhold from your gross income and pay your taxes, because you just get nailed. And that's at the federal, state and local level if you've got any local taxes to go with it.

CB: All right. Thank you very much Mike. I really appreciate that. One more time, just mention your book where people can get more information and more details on the stuff we've covered and your website.

MY: Okay. The internet laws book that came out this past month, it's called Internet Laws: How to Protect Your Business Website Without a Lawyer. You can go to internetlawsbook.com, internetlawsbook.com. And it will take you to the Amazon page where you can get it, either in paperback or Kindle. You can go to my blog for more information at USinternetlawfirm.com, that's USinternetlawfirm.com.

CB: All right. Thank you very much Mike, I really appreciate it.

MY: Thank you Craig, I appreciate it. Have a good day.

CB: Okay, you too. All right everyone, thank you for being on the call. I hope you got a lot of information and you're going to take action and start protecting your businesses. This is Craig Ballantyne for internetindependence.com wishing you a great day and we'll talk to you soon. Bye-bye everyone.

And REMEMBER – this is NOT legal advice. Please consult with your attorney for legal advice.