

PEPPER LAW GROUP, LLC



STARTING AN ADULT ENTERTAINMENT BUSINESS

THE TOP 6 CONSIDERATIONS YOU MUST KNOW



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You're thinking about taking the plunge into the adult industry and are now wondering what you need to do to get started – and *protect* yourself.

I've seen adult businesses come and go, but the ones that have real staying power – and make the real money – are the ones that have done their homework. They've researched, studied, and built a solid business and legal foundation – **from day one**.

So below are the most common items that I address with people like you who are interested in getting started in the adult business industry – **the right way**.

1. What's your business plan?

Every week I get a call or an email from someone who figures she'll start an adult website and the dollars will just start rolling in. The adult business is just that – a *business* – and you need to think like a businessperson. That means building a business plan which acts like a roadmap for your adult business. What is included in a business plan? Each can be very different, but I always recommend addressing the following:

- What is your target market (i.e., what is your niche)?
- How would you specifically describe your product or service?
- How does your target market compare with other markets?
- What is your marketing strategy?
- What is your sales strategy?
- How do you plan on developing your product or service?
- How much time will it take to develop it?
- What are the risks involved in developing it?
- Who are your competitors? How will you deliver better than them?
- Who is part of your business ownership or management team? What will their roles be?
- What are your financial assumptions and forecast? How much money will you need now and in the near term?
- Are you familiar with the various federal, state, and local laws that will affect your business? How are you effectively dealing with them?

Yes, this is a big list. And they aren't easy questions. But taking the time to create your business plan which addresses these crucial areas can mean the difference between a costly, failed venture or a ridiculously successful and profitable one. Keep this in mind: approximately **80 percent of new businesses fail within the first year**. Ouch! But if you need some help figuring out answers to some of these questions, and want some **great** business advice about producing your films, as well as marketing and distributing them, I *highly* recommend the great information you can find in Ray West's guide at www.theadultbusinessformula.com. Remember – *research, research, research* is the name of the game, and this is a GREAT place to get it. It simply makes the difference between the unhappy 80 percent or the smiling 20 percent.

2. You must create a separate business entity.

Speaking of that depressing percentage, what would really add insult to injury is being personally liable for your business failure. That means putting your house, car, savings, and other personal assets on the line for your business losses - or a lawsuit. It is absolutely vital that you form a corporation or a limited liability company for your business. To get a detailed understanding of how these business types operate, and other crucial information on other ways to protect yourself by starting an online business, I strongly recommend viewing my DVD – [The Legal Considerations of Starting an Online Business](#). But hey, don't take my word for it. Check out the great reviews from the people that bought it. This is a **GREAT** way to get your feet wet without completely jumping in – yet!



3. **If you're shooting your own content, solicit and advertise for your talent LEGALLY.**

Pandering and solicitation of prostitution charges are serious. If you plan on finding talent for your adult film by scouring the local colleges, strip clubs, or by advertising in the local papers or on Craigslist, it is very easy to say the wrong thing. Remember, "prostitution" is generally defined as the act or practice of engaging in sex acts for hire. "Pandering" is soliciting others for prostitution. If you solicit others to perform sex for payment, even in the context of producing an adult film, you walk a very fine line between exercising your First Amendment free speech rights and pandering. It is *imperative* that you understand the **right** and **wrong** ways to advertise and hire your talent.

Now, the one exception to this issue is if you are soliciting your talent in the State of California. In the case of *California v. Freeman*, the California Supreme Court found that the California pandering statute was not intended to cover the hiring of actors who would be engaging in sexually explicit but non-**obscene** performances. Additionally, the Court found that such a reading would violate the First Amendment right to free speech. Recently, however, courts and state governments in Nevada, Rhode Island, and New Hampshire have provided *some* breathing room for producing adult films **provided that you follow very specific guidelines.**

4. **Is your content "obscene?"**

Now, just because you successfully produce your content, and don't violate your state's pandering laws, you now need to be concerned with whether your content is considered obscene. This is important because obscene content is *not* entitled to First Amendment free speech protection – and is therefore subject to criminal prosecution. What is obscene? Well, former Justice Potter Stewart of the United States Supreme Court famously wrote: "I shall not today attempt further to define the kinds of material I understand to be embraced . . . [b]ut I know it when I see it."

Well *that* clears it up, right? To make it a bit more complex, the U.S. Supreme Court in the case of *Miller v. California* established a three-tier test to determine what was obscene - and thus not protected, versus what was merely erotic and thus protected by the First Amendment:

"The basic guidelines for the trier of fact must be: (a) whether 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest, (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value."

There has been a significant uptick in the number of obscenity prosecutions in recent years, so taking the time to research the types of cases that have been targets is crucial. At Pepper Law Group, we use several strategies that we employ with our clients that may help reduce the risk of becoming one of these targets.

5. **Complying with 18 U.S.C. 2257 – the federal recordkeeping and labeling laws**

One of the most often discussed, yet most often misunderstood area of running an adult business is compliance with The Child Protection and Obscenity and Enforcement Act of 1988. This federal law places stringent record-keeping requirements on the producers of sexually explicit materials. The guidelines for enforcing these laws (colloquially known as **2257 Regulations** (C.F.R. Part 75), part of the United States Code of Federal Regulations, require producers of sexually explicit material to obtain proof of age for every model they shoot, and retain those records. Federal inspectors may at any time launch inspections of these records and prosecute any infraction.



While the statute seemingly excluded from these record-keeping requirements anyone who is involved in activity that "does not involve hiring, contracting for, managing, or otherwise arranging for, the participation of the performers depicted," the Department of Justice (DOJ) defined an entirely new class of producers known as "secondary producers." According to the DOJ, a secondary producer is anyone who "publishes, reproduces, or reissues" explicit material.

The regulations define the terms "primary producer" and "secondary producer". A primary producer is defined in the set of rules as any person who actually films, videotapes, or photographs a visual depiction of actual or simulated sexually explicit conduct. A "secondary producer" is defined as any person who produces, assembles, manufactures, publishes, duplicates, reproduces, or reissues a book, magazine, periodical, film, videotape, or other matter intended for commercial distribution that contains a visual depiction of actual sexually explicit conduct. Different record-keeping requirements exist for primary versus secondary producers. One may be both a primary and a secondary producer.

The regulations also spell out requirements for the maintenance, categorization, location, and inspection of records, as well as legal grounds for exemption of these requirements. They require that records be maintained for five years after the dissolution of a business that had been required to maintain them.

28 C.F.R. Part 75 requires that, prior to producing a visual depiction of actual or simulated sexually explicit conduct, a primary producer must examine a government-issued picture identification card belonging to each performer in the visual depiction that demonstrates that the performer is 18 years old or older. The primary producer must then record the legal name, any aliases, and the date of birth of the performer, record the date of production of the depiction, and make a copy of the picture identification card. Once production is complete, a copy of the visual depiction must be maintained along with these records. All information on a performer may be redacted other than the name, date of birth, and information that identifies the type and validity of the picture identification card (e.g., drivers license or passport number). All of the primary producer's records for all its visual depictions must also be cross-referenced by name and alias of the performers. If a secondary producer produces a copy of the visual depiction, the secondary producer must obtain from the primary producer the records associated with that depiction. Finally, the visual depiction must be labeled with the producer's name and address of the records.

These regulations do not currently apply to explicit drawings (i.e, adult cartoons, hentai) as no actual humans are involved in such production.

Recent updates to the regulations now permit third-party custodians, rather than producers themselves, to hold required records, and permit records to be maintained digitally. In addition, the updates permit the labeling requirement to be complied with through hyperlinks on Internet depictions. Pepper Law Group now offers these custodian services to producers, allowing producers to maintain their privacy and allow a qualified law firm to maintain and categorize these records on their behalf, including dealing with the Department of Justice if there is an audit. To learn more, visit our [website](#) and see "Third Party 2257 Custodian Services."

6. **Contracts you need for the adult business**

I'm often asked – what contracts and documentation do I need for an adult business? Depending upon the nature of the adult business you wish to start, there can be a variety of documents you'll want to put in place. As an example, you may need:

- Model release agreement for your talent
- Content license agreements, if you are licensing your content to affiliates or other third parties



- Affiliate agreements for the third party websites you use to promote and drive traffic to your website
- Advertising agreements for the third party advertisers on your website
- A location release agreement, if you plan on doing shoots at third party locations
- Contractor agreements with your crew
- Website terms and conditions, including a privacy policy for the information you obtain from your users
- Synchronization licenses for music you may use for your films
- 2257 Notices
- And many other agreements or documents, depending upon the type of business you'll be running

Of course, this is just a broad outline - there may be other requirements your particular operation may require. Other matters like copyright and trademark protection (which can give you ammunition against content piracy), and other corporate governance matters have not been discussed.

Hopefully this "cheat sheet" gives you a good starting point and some things to think about. Remember, at **Pepper Law Group** we're in the business of helping you succeed – early and often. The investment you make with us can help pay **HUGE** dividends down the road for you. Getting it wrong at the beginning and then trying to clean up the mess later can cost you several thousands of dollars more – or even worse, jail time.

Contact one of our professionals by calling us at (908) 698.0330, and let us show you why dozens of **Pepper Law Group** clients continue to work with us to help grow their businesses.