

# Nuts and bolts of selling online

I'm super excited that you are joining me for this second session of the summer workshop series!

In this session, we are going to cover the basics of selling your products or services online.

Before we dive in, a couple housekeeping items...

First, in a minute, we'll switch over to the slide presentation and I'll walk you through the content. At the end, I'll have some action items for you (and a resource to help you prioritize any tasks that get added to your list based on the session materials).

Second, as you are going through this, down below is a link to the live Q&A session we'll be hosting on Thursday, June 27th. Click the link to head to Crowdcast where we are hosting the session. Once you hit the "Save my spot!" button, you'll be able to leave your questions. And then you can use the "Ask a Question" button to leave your questions while you are watching (or later)!

Finally, if you've been around for a while, you probably have heard me mention that there are five tasks that I think are must-do tasks for every creative business. If you haven't heard me talk about these, [you can see what they are and how to execute them in this course for members of the artist's Courtyard](#) or if you aren't a member of the artist's Courtyard, [here's the free workshop where I talk about them](#).

- If you've done these five must-do tasks, huzzah!
- If you haven't, then you should take care of them *before* you start executing on the action items in this session.

Because for this session, we are going to assume that you've already gotten:

- a business bank account
- an EIN from the IRS
- a business license
- doing business as (DBA) or fictitious business name (FBN)—where required
- business liability insurance

You'll need this information as you start to execute on the action items in this session, so I'd encourage you to pause and cross these off the list first.

The other item that we won't be covering in detail in this session is what *exactly* you'll include in your shop policies, wholesale terms, or privacy policy. These will all be covered in detail in a later session.

With that housekeeping out of the way, let's dive in!

## If you haven't already, assure your business name won't land you in legal hot water

A couple of times a year, I have to tell a client she has to re-brand her business.

- Sometimes because a creative project turned into a business.
- Sometimes because she didn't realize the need to do a trademark search.
- Sometimes because she wanted to capitalize on a trend.

Regardless of the reason, if you name your business something that close to someone else's trademark, sooner or later you'll find out. (Usually, in the form of a nasty lawyer-drafted cease and desist letter.)

And when it happens, you'll have to re-brand. You'll have to start over from scratch. You'll have to rebuild brand recognition, rebuild goodwill in your business, rebuild everything.

### **Which is why it's critical to do the proper research ASAP.**

Because just because the URL or social media accounts are available, doesn't mean that it's not going to be too close to someone else's trademark to use.

The reason I want to emphasize the importance of doing this research in this session is that selling your products or services online increases your chances of getting that nasty cease and desist letter.

Why?

Because you want Google to find you. Which means the other business owner with a similar name can easily find you too. And when they do, they'll likely either send you an email asking you to change your name (or if they are a bigger company, immediately sic their lawyers on you.)

## Can your business name *get* a trademark?

First off, not every business, product, or service name is capable of getting a trademark.

So you first have to decide if your business name falls into the bucket of being something that qualifies for trademark protection.

Contrary to popular belief, trademarks don't exist to benefit us, the business owner. Trademarks exist to benefit our customers. They exist so that consumers know when they see a specific phrase that they know who is providing them that product or service.

So between this and the fact that having a trademark means you can stop other businesses from using the phrase to trick consumers into thinking their product is yours, what doesn't qualify for trademark protection makes sense.

You can't get a trademark for:

- generic terms (like quilts, jewelry, or photography)
- phrases that merely describe the product or service you are offering (like modern quilts or Not So Corporate Headshots)

(You also can't get a trademark for government symbols or insignia, vulgar or disparaging words or phrases, or immoral, deceptive, or scandalous words or symbols.)

And while it can be done, it's also harder to get a trademark when it includes:

- your name or the name of a living person
- a geographic location
- a generic or descriptive term even when paired with a non-descriptive term

(And when you do get a trademark for these terms it usually comes with some caveats about how similar the name must be, in order for you to stop them.)

Which means the strongest trademarks are:

- made up words (e.g. Google)
- words usually used to describe something else rather than the business/product/service it's being used for (e.g. Apple for computers)

If your business or product name doesn't qualify for a trademark, then you won't be able to stop your competitors from using a similar name, but they won't be able to stop you either.

If your product or business name does qualify for a trademark, and you don't have an existing registered trademark, then you'll need to do a trademark search.

Sadly, a trademark search isn't a quick and easy process. In fact, I usually set aside an entire morning to do them. But they are the best way to assure that you won't have to change your business name once you finally start landing those big accounts or getting press mentions. ([You can see my step-by-step process for doing a trademark search here.](#))

# Which state's laws apply

Back when most sales were made at brick and mortar retailers, a business owner only had to worry about the laws of the state where their shop was located.

But today, when you sell online, you likely will have to worry about the laws of several states.

Luckily, it's pretty easy to decide which state's laws apply:

- anytime it has to do with the day-to-day aspects of running your business (e.g. business license), the laws of the state your business is in apply
- from the time a purchase is made through the life of your product/service, the laws of the state your customer is in apply (unless you use your TOS to change this)
- any time you do an in-person show, the laws of the state the show is in apply
- if products are being shipped from a state other than where you are located (e.g. drop shipping/Amazon FBA), the laws of the state the products are shipped from apply
- from the time a visitor lands on your website or signs up for your email list, the laws of the state they are from apply

## Your state matters for the day-to-day stuff

For most of the day-to-day running a business stuff, the laws of the state your business is based in will apply.

As I mentioned in the beginning, your business will likely need a business license. (Yes, you probably need one even if you only do business online.)

And this business license will come from the local government in the state you are physically located when you create your products/services.

You'll also need to pay income tax to your state for the net revenue you make in your business. (Although if you live in Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington or Wyoming there is no income tax.)

*Note:* income tax and sales tax are different things and your business might be subject to both. Income tax is the tax on your net business revenue, paid both to your state and the federal government. Sales tax you charge your customers for each purchase made of an item subject to sales tax. (More on when you collect sales tax in a minute!)

## Getting a sales tax certificate

Finally, if your state charges sales tax then you might be able to obtain a sales tax certificate that lets you buy items without paying the sales tax. (Every state but Alaska, Delaware, Montana, New Hampshire, and Oregon have sales tax.)

The sales tax certificate might go by a different name in your state, they are sometimes called: reseller's certificate, reseller's license, or tax-exempt certificate.

And it allows you to purchase items that you'll resell or components you buy to incorporate into what you sell without paying sales tax.

These items that you purchase sales tax-free must be incorporated into the final product that you'll charge sales tax on.

The goal of this certificate is to prevent the same item from being charged sales tax twice.

For example, if you make quilts, you might be able to buy your fabric, thread, and batting with your sales tax certificate because those items go into the final product that you'll charge sales tax on.

But you won't be able to buy your sewing machine, needles, or rotary cutter with it, because these aren't part of your final product.

Sadly, every state has different eligibility requirements and procedures. So head to your state's tax agency's website to discover if you can get one.

## Sometimes other state's laws matter

In addition to your own state's laws, there are a handful of times that you'll need to care about other state's laws.

These primarily are related to:

- sales tax
- California's Proposition 65
- online privacy and email marketing laws

## The sales tax minefield

Up until a year ago, figuring out if you did or didn't have to collect sales tax on an online order was straight-forward. You collected sales tax on an online order if you answered yes to any of these questions:

- Was the product being shipped to someone in your state?

- Was the product being shipped to someone in the state where your warehouse/drop shipper was located?
- Was the product being shipped to someone in the state where your employee was located?
- Was the product being shipped to someone in the state where your affiliate was located?

These questions are all aimed at deciding if you had a “physical” presence in a state.

And since for most creative business owners they only had a physical presence in the state they were based in, they only needed to collect sales tax for a single state. (And occasionally for the out-of-state shows they participated in.)

However, this all changed a year ago when the Supreme Court handed down its decision in [South Dakota v. Wayfair](#).

This decision said that states could require online sellers to remit sales tax if they had a physical presence in the state OR significant economic ties.

Since this ruling 39 states and the District of Columbia have passed laws outlining what significant economic ties means. And when these thresholds are met, online sellers are required to collect (and remit) sales tax for all sales made in that state.

You can reach these thresholds either by selling:

- A specific dollar amount within the state (ranges from \$10,000 to \$500,000)
- A specific number of transactions within the state (ranges from 100 to 200 transactions)

Which means there now is a crazy matrix of laws that you have to consider to decide *if* you need to collect sales tax on an online order. ([You can see all the current laws here.](#))

What do you have to do to navigate this minefield?

1. Verify if your products/services are taxable in each state.
2. Decide which states you have a physical presence in.
3. Decide where you meet the economic thresholds for states where you *don't* have a physical presence.
4. Register for a sales tax permit in those states.
5. Collect sales tax for all sales made to those states.
6. Report and file sales tax returns for those states.

Verify if your products/services are taxable in each state

Not all products and services are subject to sales tax and each state is different on what is and isn't taxable.

For example, in:

- California e-books aren't taxed, but they are in Colorado.
- California clothing isn't taxed, but it is in New York if it costs more than \$110.
- Minnesota, clothing isn't taxed but accessories are.
- In 41 states, services aren't generally taxed, but in four states (Hawaii, South Dakota, New Mexico, and West Virginia) they are generally taxed.
- In Massachusetts shipping isn't taxable, but it is in New York.

So your first step is to determine which states your products or services would be subject to sales tax. Because if it's not subject to a sales tax, then you'll never need to comply with that state's rules.

Decide which states you have a physical presence in

You are required to collect sales tax for any state where you have a physical presence.

This includes:

- the state where your studio is
- the state where your office is
- the state where your employees live
- the state where your drop shipper is located
- the state where your warehouse is located

Additionally, when you attend craft shows or other in-person events, you might be required to collect sales tax and remit it to that state, even if you are only temporarily selling there.

For example, if you sell at Renegade in both San Francisco and Chicago and don't live in either of those states, you are required to register for a permit in both California and Illinois to collect sales tax on sales made at these events.

You can see the [list of which states require you to collect sales tax for events here](#).

So you'll need to collect sales tax whenever you sell an eligible product and you have physical ties to that state.

Decide which states you have *significant economic ties* in

Since Wayfair, you are now subject to sales tax on those eligible products and services in states that you *both* have a physical presence and have significant economic ties.

Which means you need to set up a system to track both the sales volume and dollar amount of sales to each individual state.

Your bookkeeping or POS system will easily be able to spit out these reports. If not, it might be time to consider upgrading.

Of course, this isn't a one and done situation. It's something you'll regularly have to monitor because it will change over time.

In some states, you only need to determine this on a calendar year basis, but other states require you to calculate this based on sales over the previous several months.

These reports will allow you to determine which states you meet the sales tax thresholds for and are required to collect (and remit) sales tax.

[You can see the list of each state's thresholds here.](#)

### Register for a sales tax permit in those states

Now that you know which states you have both physical and economic ties to, you need to register with each state so that you can remit the sales tax you collect.

Once again, states don't make this easy! And each state has a slightly differently named tax agency (often the Department of Revenue) and process.

The good news is that there is a streamlined process in 24 states to make it easier for you to get, collect, and report sales tax. [You can learn more about the streamlined process this here.](#)

To obtain a sales tax permit you'll likely need:

- Your business contact information
- Your EIN
- Your business type
- Your NAICS code (you should be able to find this on your tax return!)

### Collect sales tax for all sales made to those states

Now that you know where you have to collect sales tax and have the permit, you have to collect it. To do this, you'll need to set up your shopping cart to collect sales tax on all sales made to those states.

### Report and file sales tax returns for those states

Finally, you'll have to report and file your sales tax returns in all the states you are collecting sales tax.

### Get help navigating the minefield

All these steps are often why my clients turn to [services like TaxJar](#) to help them deal with knowing when they need to collect, how much they've collected, when reports and taxes are due, and all the other little details! Their service connects right to your online shop so that it can do all this tracking in the background.



## California's Proposition 65

California requires that businesses warn consumers if their products contain chemicals that could cause cancer or birth defects.

While California recently changed the requirements around what the warning label must look like, they did not change the exemption for businesses with less than 10 employees.

So as long as your business has 9 or fewer employees, you do not have to comply with this law.

Once you cross this threshold, you'll be [required to provide a warning meeting the requirements](#) for all products that contain chemicals that are on the current list of Prop. 65 hazardous chemicals.

## Online privacy and email marketing laws

I'm not going to dive deep into this topic, because we are going to be covering this extensively in two later sessions.

But the short version is: you have to care about the laws of the state/country your website visitors and email subscribers live in when it comes to collecting information on them and sending them emails.

Which means, you have to comply with GDPR for all of your EU website visitors and email subscribers.

You'll have to comply with the California version of GDPR when it goes into effect on January 1, 2020 for all California visitors and subscribers.

So when it comes to safeguarding the information you have on your website visitors, customers, and subscribers you have to care about the laws where they are accessing your content, not where you are creating it.

## Getting paid

Once a customer is ready to purchase your products or services, you have to get paid.

One thing that always surprises me is the negative attitude some creative business owners have for the fees associated with PayPal or accepting credit cards.

To me, these fees are something I happily pay. Why? Because I see them as a wise investment in allowing my business to thrive.

They allow me to run my business and quickly and easily get paid. And the business that's helping me run my business should be rewarded for taking the headache of waiting for and tracking down payment. (And running to the bank to deposit checks regularly!)

So to me, it's well worth the less than 5% of each transaction.

(Besides, they are something you can deduct on your taxes as a cost of doing business, so they help my tax bill come April as well.)

## Don't use this method to avoid paying them

Because many creative business owners don't want to pay these fees, they turn to some tricky methods to avoid them.

- They ask their clients to pay them using the Friends and Family option in PayPal
- They ask their clients to send them money using Venmo

Because neither of these methods involves a fee.

However, doing this is in violation of both of these services TOS and can result in the termination of your account (and the freezing of any funds in your account).

So it's not worth the risk to save a few dollars.

## Factor it into your pricing, don't add a surcharge

Another way that I see creative business owners trying to deal with credit card processing fees is by adding them as a line-item to invoices.

And I'd discourage you from doing this for two reasons:

- [it's illegal in 16 states to add a credit card surcharge](#)
- you are more likely to get pushback from your customers if it's a separate item

Instead, I encourage you to factor it into your pricing. It, just like the materials required to make your products, should be considered a cost of doing business.

So factor it in, and then do a happy dance anytime someone pays you cash or writes a check.

## Don't pay more than you have to

But that being said, you shouldn't pay more than you have to. So it's wise to shop around to see which processor will charge you the least.

When it comes to picking a processor you have hundreds of choices. However, there are four that I see most commonly used:

- [Authorize.net](#)
- [PayPal](#)
- [Stripe](#)
- [Square](#)

When it comes to picking a provider, you should consider three things:

- Which providers integrate with your shopping cart
- Which providers integrate with your bookkeeping system (this is a BIG one!)
- The costs associated with each provider

And while I don't think you should throw extra money away, I also don't think this is a decision that you should fret over for weeks. Pick one (or two) options and then run with it. (You can always switch it up later.)

## How can you add reviews or testimonials to your website?

The final topic I want to address in this session is how to use the stories of your happy clients or customers to generate more online sales.

Typically, there are two kinds of feedback that businesses use as proof that they have a product or service worth buying: reviews and testimonials.

What's the difference between the two?

Both are used to encourage the sale and might be used in your marketing materials, but who is in control of the content is the main difference.

Reviews express the experiences of both satisfied and unsatisfied customers. Reviews are often hosted on a third-party website and businesses don't have the opportunity to delete bad reviews, only respond to them. So in the case of reviews, the customer is in control of the content.

Testimonials, on the other hand, are curated by you, the business owner. Sometimes, they are solicited by you, but testimonials are hand-picked nuggets of goodness from your very best, most satisfied customers. So with testimonials, you are in control of the content.

## What laws are at play?

Because reviews and testimonials are generally short, copyright isn't the primary issue you should be concerned about when it comes to using them.

Instead, you need to be concerned about a little-known law called Right of Publicity.

Right of Publicity says that we as individuals have the right to control how our name, likeness, photograph, or the like is used to sell someone else's products or services.

Now, of course, this makes sense when it comes to famous celebrities. I can't just slap Kim Kardashian's name on something. Because people will buy it because they say, "I love everything associated with Kim Kardashian. I'm gonna buy that product."

But the same thing happens when you see someone that you have a business crush on as a testimonial on someone's web page. The same thing happens when you see a review from a mom in your child's class about how she's using this product with her child.

While on a smaller scale, they still help sell your products or services.

And because of that, in most states, I have the right to control how you use me to sell your products or services.

Where this right of publicity thing gets a little bit complicated, is that it is controlled on a state-by-state basis.

Not every state says that it exists. And every state that does say it exists, interprets it just a little bit differently.

To add a layer of complexity, it's not about where your business is based. But about where the person who said it lives.

So even though I live in California, and my business is based here. If someone says something nice about my business and I want to use that testimonial and they live in New York, I have to care about New York law.

Now, this can get annoying—really fast.

So the easiest way to avoid all of this is to get permission.

Because every single one of these laws says it's not an issue if the person has given you the a-okay.

## How to get permission to add reviews to your website

You might add reviews in one of two ways:

- installing something on your site to allow customers to leave reviews
- using reviews left on a third-party site (e.g. Etsy) on your own website

If you've installed a plug-in or tool to your website that allows customers to leave reviews, then by leaving the review you have implied permission to post it on your website. (Because that's why they are leaving it!)

However, if you want to include some of your awesome reviews every few weeks on Instagram, then you'll need permission. Because you don't have implied permission to do anything else with it other than have it appear on your website.

Luckily, this is an easy fix. All you need to do is include how else you want to use these reviews in your terms of service and have them agree to it as part of the review process. (We'll cover this in more detail in the website policies session.)

A final note, they are only truly reviews if you don't hide, delete, or filter out the less than stellar reviews. You can respond to the negative reviews and try to solve the issue, but making it so that some appear while others don't mean you aren't really allowing reviews.

If the reviews are left on a third-party site (e.g. Etsy), then you'll need to dig into the service's terms of service to see if (and how) you can use them:

- sometimes you can post them on your website if you use the service's embed tools
- sometimes you can post them if you reach out to the customer via their messaging platform and ask permission
- sometimes you can't use them at all

## How to get permission to add testimonials to your website

If someone sends you an email, sends you an Instagram Message, or leaves a comment on your social media account that would make a good testimonial, then you need to get permission to use it!

But all you need to do is come up with a canned response that you can send off asking for permission.

Here's mine...

Hey [NAME], thanks so much for that love note! You totally made my day by telling me how much [WHAT THING] impacted you.

The law is a scary subject for creative business owners and sharing successful experiences, like yours, of tackling the legal aspects is a really powerful motivator to encourage others to do it as well.

So based on what you said I crafted this little blurb and I would love to [HOW I WANT TO USE IT]. Would that be okay?

[INSERT BLURB]

-kiff

That's all you need to do. It doesn't need to be something long and complex. You don't need them to sign a contract.

You just need to:

- tell her how you'd like to use it
- tell her what you'd like to use
- ask her if she's okay with that

If she never responds to your email, you just won't put it up.

If she responds, which she probably will, and says yes, then go ahead and use it.

## Your next steps

Whew! That was a lot. For some of you, this session might have created quite a few action items.

And it might be overwhelming to figure out what is and isn't most important. If so, then here's the order that I'd suggest tackling them:

- Do the 5 must-do tasks
- Update pricing to cover the cost of credit card processing fees
- Create a process to use reviews and testimonials in your own marketing materials
- If you make a physical product that you charge sales tax for, get a sales tax certificate for your state
- Go through the six steps to decide which states you must collect and remit sales tax to
- Do a trademark search for your business name
- Create warning labels for all products that must be Prop. 65 compliant

Here are your action items for this session:

- Leave any questions about this material in the live Q&A session
- Create a to-do list of any items that this session created and sort it using the list above.

- Block off one hour on your calendar to begin tackling your list