



Onyx
Legal

The Ultimate Guide to
Memberships for Online Educators

Part 1



Creating and delivering online courses is a booming industry. And fascinating. Find a passionate niche, something topical or a new skill, and you've found a cohort of people who want to learn more about it.

If you offer education or training online and you currently use, or would like to use a membership model, then this is the ultimate guide to help you feel confident about your business.

Because we set out to create the 'Ultimate Guide', it turned out a little too long for one sitting. We've broken it up into 3 parts for you, together with a checklist you can download at the end.

This first part looks at setting up your membership business. The [second part](#) sets out what your terms and conditions should include. The [third part](#) looks at the all-important aspect of membership payments and refunds.

Learning online

Back in the 1990's, distant education meant buying expensive textbooks, written requests to the library for photocopies, and lectures on cassette tape.

With the increasing use of technology, education is no longer limited to classrooms, rows of desks and taking notes by hand, and for some of you, you never set up your business that way in the first place.

But for traditional educators it might still be a challenge to recognise that now, people can learn from the comfort of their home and access courses delivered from anywhere on the globe, and that a student's expectation of online delivery is now a long way from the old-fashioned model.



What is a membership business?

From our perspective, every business is about relationships, and one of the best types of relationships you can create for a long-term engagement with your clients is membership.

Why?

Because membership gives a sense of belonging and common purpose.

Membership is more than the benefit of being a mere subscriber. Membership promotes engagement and involvement and being part of something bigger. Although, for some people it's the kudos of being able to say they are a member that keeps them involved, rather than any tangible benefits of membership.

If you have ever signed up to a gym, then you know how a subscriber-based membership works. You make a purchase for a monthly, quarterly or annual deal, and you get access to the gym for the whole of that period...whether you use it or not.

"More than half of all gym members never actually go to the gym - yet year after year, they continue to pay for a service they don't use. Why?"

Zachary Crocket

Your gym membership is only about access, not results. Software subscriptions are another example of 'users' rather than 'members'. There is no sense of belonging, just an on-going obligation to pay if you want access. Again, with software, you may or may not use it.

Professional organisations tend to do membership well.

Professional bodies might support their members through representation and advocacy, provide up-to-date relevant information about the industry and the politics affecting it, and usually offer opportunities to meet with other members in one forum or another. That networking, through the meeting of members, is what helps to build a community where members can learn from the different experiences of each other. Member only forums and Facebook groups are one way to do this.

Sporting clubs are also all about the members. And winning, of course.

Have a look at the different types of organisations that offer membership and what drives people to become a part of that membership to help you work out what benefits you want to offer to engage your members. If you already have members, survey them to find out what is most important to them.

What is important to your members can help frame how you build your membership and the terms and conditions around becoming a member.

How to legally set up a membership business

1. Personal Information

Firstly, think about the personal information you need from members to be able to deliver to them what you are promising. For example, if you are offering a certificate of completion, or attainment, then you need at least their full name to include on that certificate.

If you are only offering access to a resource library for example, you might not need more than an email address to enable a member to set up a login for access. If you want to send out hard copy workbooks, you will need to request a postal address.

We've seen examples of education providers who provide time released education without the offer of a certificate of completion, and all they require is a username, email address and password so that they can send a weekly link to new content, and the purchaser can login to access that content.

It will be your online membership application form (at the point of purchase), where you want to request all the information you need to be able to deliver your course and the promises you have made around that course.

What about protecting your customers' personal information?

When you ask your customers to complete your membership registration, you are collecting and storing their personal information (for example, name and address).

If you are an Australian business with an annual turnover that is more than \$3 million, you will be bound by the Australian privacy law (with some exceptions). You have many obligations under the privacy law which include having a privacy policy for your business.

Your privacy policy needs to specify for example, what personal information you collect, how you use that information, what you do to protect that information, and many other matters.

Be aware that people located overseas can also purchase courses and materials from your website, so you may be collecting personal information from them as well. It is important for you to make sure that you are also complying with international privacy laws such as the General Data Protection Regulation (GDPR) for individuals located in the European Union, or the California Consumer Privacy Act (CCPA) for individuals located in California.

It is crucial for you to have an appropriate privacy policy for your website. You should consider getting a lawyer to prepare one for your website to ensure that you are complying with your privacy obligations.

2. Application Forms

You have options for your application forms. Forms can be online with click-wrap agreements for terms and conditions. What this means is that after an applicant fills in all the information you need from them, they are required to tick a box next to words like “By checking this box you agree to our terms and conditions” with an active link to the terms and conditions.

Your applicant should not be able to progress to payment unless they have checked that box. The box should not be pre-ticked for them.

You want your applicant to think about and either take the opportunity to read or make the choice not to read your terms and conditions. If you pre-tick the box for them, you have no way of demonstrating that they made that decision. An applicant will be bound by your terms and conditions even if they didn't read them if you can demonstrate that they had to take a positive action to tick the box before they could proceed to payment.

Some of our clients require prospective members to scroll through their terms and conditions before they can tick the 'I agree' check box. This is not a bad idea for higher value memberships, but probably not necessary for a program at the lower end of the scale.

For higher cost programs, you might incorporate a vetting process into the application process so that you can reduce the chance of people asking for a refund.

By way of example – we have clients who offer limited space annual programs with a value over \$20,000 per annum. Those courses are not transferable to another student and not refundable if the applicant decides to drop out, partly because they took one of a limited number of spaces and partly because their decision to drop out has nothing to do with the quality of the course. We'll cover refunds in [Part 3](#).

To ensure that the limited available spaces are only taken by applicants who genuinely want to participate in and complete the course, our clients go through a process where they:

- require applicants to agree to terms and conditions before submitting their application
- review every application (received electronically)
- remove anyone who doesn't meet their minimum requirements
- then hold interviews with all remaining applicants to check compatibility.

The process of applying and having to back up the application goes a long way to removing risks under consumer law that the applicant could say they were induced to participate through misleading advertising, or that the terms and conditions were unfair, or that they didn't know what the terms and conditions were, or that they did not agree to payment terms and should be entitled to a [membership refund](#).

3. Access Levels

The next step is to work out what access you are providing, and at what cost. This is your business model. Access levels should match your payment terms.

Examples are:

- Membership (free or paid) gives access to library of short courses, some free some paid, all charged up front.
- 9 week course, paid up front, fixed price, weekly delivery of content, 10 week access then locked out.
- 12 month course, paid up front or by instalments, discount if paid in full up front, immediate access to all content but makes sense to step through, 18 months access.
- Limited access, application only, mixed mode offering largely delivered online with optional face to face 'intensives' offered periodically throughout the course, paid up front or by instalments, not completed until paid in full.
- One on one high level coaching access, annual fee paid up front or by instalments, with free access to other program resources.

There are many more examples on how people offer education through membership, the main thing is that your membership offering is explained to a potential member clearly and unambiguously before the point of purchase. More on payment terms [later](#).

We recommend that your membership terms and conditions either contain terms specific to your offerings, or link to a page (your landing page) where you spell out what is included, and what is excluded for each price point.

We also recommend that, where possible, you have one set of membership terms and conditions with the flexibility to include or remove specific provisions for specific courses if appropriate. This is to simplify your set up process and to ensure that at any point in time, you know what you are asking people to agree to.

4. What if you engage other people to do the work?

You may decide that you want to engage contractors to help design or deliver your courses. They could be content writers, graphic designers, or tutors. No matter what type of work they do, you should have a contractor agreement to adequately define each party's obligations and protect your rights, especially addressing the ownership of intellectual property (IP).

Business owners often assume that they automatically own all IP rights in the work their contractors create for them. Unfortunately, that is not true. The creator of the work (ie. the contractor) is the owner of the copyright. So, if your contractor agreement does not expressly transfer ownership in the work from your contractor to you, the contractor is entitled to claim their copyright and produce the same material for one of your competitors.

Be particularly careful if you engage a contractor who later becomes an employee, or vice versa. Employee copyright work automatically belongs to the employer, but where there are blurred lines in the type of engagement of that person when the work is produced, you may have problems.

You should also consider behaviour management and retain the right to remove a contractor if their behaviour adversely impacts your business reputation or operations.

Just like terms and conditions and privacy policies, a contractor agreement also needs to be carefully drafted to protect your rights. You should get a lawyer to prepare one for you.

Protecting your content

Content theft and plagiarism is a huge risk for you as an online educator because you are putting a significant amount of intellectual property online.

Examples of your intellectual property (IP) may include your audio or video recordings, PowerPoint slides, worksheets, practice exams, course design, learning objectives or other learning materials. Even your website itself including the text, design, graphics layout, images are protected by copyright. The name or logo that you use for your courses or learning materials may also be your trade mark which can also be protected.

If you don't want other people to exploit all your creations and hard work, or use them in a way that could be damaging to your business, you need to think about what content you want to protect and how you can protect it.

Some quick examples of content theft:

1. Participant loves the course and copies all the content, re-brands it and tries to deliver it as their own creation.
2. Participant likes the course and thinks it is missing something so adopts some of your content and re-frames it and launches a course in competition to you.
3. Participant starts promoting their own stuff inside your closed Facebook group or forum to leverage your customers.
4. Participant takes a couple of core learnings from your course and promotes it as their own idea.

In the [next part](#) we will look at some of the strategies you can put in place to protect your content, as well as covering what to include in your terms and conditions to protect your business.

We'd love to work with you to review the way you are offering education online and areas where we can help better protect your business and limit your liability to being sued.

Contact us to find out how we help get organised and feel confident in what you offer.

Check out our [website](#) where you can book a short advice appointment or [get in touch](#).