



Onyx
Legal

The Ultimate Guide to
Memberships for Online Educators

Part 2



This is the second in our series of articles talking about setting up your online membership business and what you need to have in place to protect it. In our [first part](#) we covered some fundamental concepts for setting up legally, and in this part we're just finishing the topic of protecting your content, then looking at what you need to have in your membership terms and conditions. Our [third part](#) looks at the all-important aspect of membership payments and refunds.

How to protect your content

You can manage membership access by:

- Making membership access terms and conditions available for reading before the point of purchase and inside the membership area.
 - Including a specific copyright licence or intellectual property licence as part of your terms and conditions.
 - Adding watermarks or branding to all your materials.
 - Using technology so that materials can only be viewed within the membership area and not downloaded.
 - Having a paid membership.
 - Requiring each member to login with their username and password, with terms and conditions requiring the protection of that username and password.
 - Using technology to track and restrict the number of internet addresses or devices that can be used to access the membership area using a member's details.
 - Including webinars or other events that require the attendance of the member.
 - Delivering some materials only to the email addresses used for setting up the member account.
 - Delivering materials by post.
 - Removing access if membership comes to an end, or at the end of a course access period.
 - Requiring members to download their course content within a specified time before it expires or lose it.
 - Using gamification to require successful completion of a level before advancing to the next stage.
 - Enforcing your terms and conditions consistently.
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It is difficult to protect your intellectual property 100% because there will always be someone who thinks the rules do not apply to them, or who hasn't read your terms and conditions, or who would exploit your content regardless because they don't think you'd do anything about it.

That does seem like quite enough for this session - see [part 3](#) for Membership Payments and Refunds.

Why do you need membership terms and conditions?

It's your playground and you get to set the rules, provided the rules don't contravene any law that applies to your business.

Membership terms and conditions are the contract between you and your members. It is legally binding. If someone fails to follow the terms and conditions, that contract should be written in a way that enables you to take action against the offending member for any damage you suffer as a result of their breach.

A simple example - you might specify in your terms and conditions that you are the owner of all content contained on your website and that no one is allowed to reproduce your content or trade mark without your written consent. Then, if a member copies your content, or enables someone else to do so and as a result your business suffers loss, you may take action against the member seeking to recover that loss. Unfortunately, it still is not automatic. You must take legal action to enforce your rights.

Some things we expect to see in your terms and conditions might include:

- Membership policies
- Access timeframes
- Content storage
- Payment terms
- Refund policy
- How your customers can give feedback or seek guidance
- Limitation of your liability
- Disclaimers, and so on.

Your website terms and conditions provide protection for you and your business. You should get a lawyer to prepare them for you to make sure that they are tailored to your situation and can effectively protect you, rather than copying someone else's and hoping for the best.

Can you update membership terms any time?

You can update your membership terms and conditions at any time, but you may not be able to make them binding on your members, depending on the changes. We always recommend a notice period, and that period could be until the expiry of the current billing period, or something else.

To ensure that changes are binding, you need to demonstrate agreement. You do that by offering to allow someone to exit with no penalty - not feasible in a 12 month program paid by installments. You could update terms and let your members know that if they want to renew their membership at the end of their current term, they can, but it will be under the new terms and conditions.

You have to give people the chance to opt-out as a result of the changes to the terms if you make changes.

Customer Service

"70% of buying experiences are based on how the customer feels they are being treated"
McKinskey.

Customer service can be tricky. A lot of people develop online education programs to move away from the one-to-one service delivery method and shift to a one-to-many model, which is more profitable.

However, it is important to understand how you will deal with different issues. The Pareto principle suggests that 20% of your members will generate 80% of your problems and dealing with those problems will consume your time.

We have clients who propose a hard line 'no cancellations or refunds' in any circumstances approach. We also have clients who look at people's circumstances and make their decisions on a case by case basis. We also have clients who will not accept some people as members.

You need to develop policies for managing different enquiries from members. Sometimes, a quick refund is the absolute best response. Other times, it might be worth arguing.

Establish systems and methods for responding to client queries. Every large enterprise – think banking, telecommunications, power etc. all have knowledge bases and generate automated responses to questions based on words used in the search string. A good system should help you manage some issues, but there will always be some people who need personal attention.

The more personal attention a person needs, the more likely it is that accepting their cancellation and providing a refund is going to solve your headaches quicker and more easily than having an argument.

Never ignore member problems. Always deal with them, as quickly as you can.

Don't create unreasonable expectations for your customers

When you advertise your business, you need to be very careful not to make any misleading or deceptive representations. This is why we recommended defining what you mean by 'lifetime access' if that is what you plan to offer.

Another thing that you should pay particular attention to as an online educator is how you name and describe your courses and materials. You may want to stay away from using words such as 'diploma' or 'degree' unless you are accredited and authorised to deliver these courses. The delivery of accredited courses is protected by law and heavily regulated.

Using accredited course titles is likely to suggest to your customers that by completing your course they will receive recognised qualifications. If that is not the case, then you could get into trouble for misleading your customer by creating unreasonable expectations and be required to refund fees paid and pay fines on top.

If you are a provider of an accredited course, be clear about who provided the accreditation and what value that has. For example, a course accredited by the Australian Skills Quality Authority (ASQA) is nationally recognised, meets quality assurance requirements, provides appropriate competency outcomes, and has a satisfactory basis for assessment.

A professional body might accredit your course for continuing professional development (CPD) for a particular profession or industry. If so, that accreditation will need to be kept up to date.

Something you've accredited yourself will need your members to promote it to build a reputation of quality and value, which doesn't mean it won't have value. Think of all those Google certified or Salesforce certified trainers.

Understanding how long to make a course available for students

Let's look at access time frames for a minute.

Fixed time frames are easy to understand. You might offer your members monthly, quarterly or annual access, or any other period you feel is appropriate. We have clients who offer courses on a per semester basis, matching with school terms.

Then there is 'lifetime access.' But what does that mean?

We recently saw a Facebook post where a purchaser was complaining that they purchased a course for not a small sum of money and didn't have the capacity to complete it at that time, then came back some time later to complete it, and found it had been discontinued and was no longer available.

The course provider offered to speak with the purchaser to tell them all about their new replacement course. Naturally, this annoyed the purchaser because they did not want to be upsold, they just wanted what they purchased in the first place.

Now, as a course provider, you might think there is nothing wrong with the provider's actions. If we had more facts, you might be right. But it does depend on the facts and whether there are clear time frames in your terms and conditions.

If you are offering courses to Australian consumers, you must comply with Australian Consumer Law. This is something Valve Corporation, a US based online video game retailer discovered to their \$3m detriment, not to mention the court costs of a Federal Court hearing and unsuccessful Appeal.

When offering courses to Australian consumers, don't leave in question any terms and conditions that might be interpreted based on consumer expectations, instead of what is reasonable in your business.

Whose lifetime are we talking about for lifetime access?

So, coming back to 'lifetime access'. What this means is you need to define it, or spell it out in your terms and conditions if you are going to use it in your marketing. If your 'lifetime access' means until you decide not to offer that course anymore, or decide to upgrade or replace that course, then you need to spell it out. You could say it means "10 years from the date of purchase or 12 months after notice of discontinuance of the course, whichever is sooner".

If you rely on this notice period, then you need to be sure that your member details are up to date and you need to give them notice, more than once. If you are decommissioning a course that had lifetime access, then your notice to members should include:

- The name of the course
- When it will be decommissioned
- What replacement, if any, will be made available and any options to take up that new course
- What the member has to do with any information they have stored within your system in association with that course if they want to keep it, eg. download it before it is deleted.

Notice should go out with a long lead time before decommissioning, and then with increased frequency before the decommissioning date arrives, to get your members the best chance to get their data out, or complete the course, before the end.

It is essential to give notice to enrolled students before decommissioning or removing access to a course.

We often get asked, "How much time should I allow?"

Well, how much time does it usually take someone to complete your course? If the worst students could, with persistence, complete the course in 15 months, then that is how much time you should allow after starting to send out notices before you take it down.

If it is a short course that most people complete within say, six weeks, then you might only provide three months of notice before taking it down.

How long should you make courses available?

Your courses should be accessible by the purchaser for the length of time that would be reasonable for them to complete the course. The easiest way to manage this is to set a time frame and include it in your terms and conditions.

Many online education providers offer 12 month courses. Those courses are usually structured and supported in such a way that people can complete them within that time frame. If you are offering a course that is more like a 21 day challenge, then you need to consider how it is structured and the work required of participants and whether it is feasible that everyone could complete it within that timeframe.

Cost will also influence how long the course should remain accessible. We've come across one provider who offers a 9-week challenge scenario and locks people out if they haven't accessed the course within the first 10 days. With the price point of that course, that action was a breach of consumer law, and had to be amended. The course is now accessible for 12 months from the date of purchase with notifications sent out regularly from 6 months after purchase reminding the consumer to use it or lose it.

Why wouldn't you just let members access course content indefinitely?

Indefinite access to course content runs the risk of creating unrealistic expectations in your members. Your course content might become dated and need updating. You might want to restructure the way you offer a course so that it naturally leads into a second course. There might be new developments in the subject that require changes to content, or you might decide a course doesn't have enough traction to make it worthwhile to continue to pay for storage space to make it available.

You also increase the risk of having members who change their mind about doing the course after a long period and expect a refund because they never started the course, or didn't complete it.

Set limited timeframes and include them in your marketing materials and terms and conditions. Encourage members to complete their courses in a timely manner.

In our [next part](#) we will wrap up this series by looking at payments and refunds, because refunds are often a point of contention.



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](#).

