

## VTubing: Legal Protections and Pitfalls

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While streaming has taken off as a new entertainment vertical, particularly during the pandemic, streamers face many challenges. When streamers take time off from their regular broadcast schedules, they lose viewers and subscribers (and thus earnings) that aren't quickly recovered upon return. Additionally, unlike other business ventures, streamers lack a clear exit plan because their primary asset is themselves. The public-facing nature of streaming also means that streamers, particularly women, often face intense scrutiny, harassment, criticism of their appearance, as well as stalkers and other hazards of online life.

Vtubing, an increasingly popular way to stream entertainment content, can help streamers solve these problems. Vtubing involves the use of animated avatars acting as a streaming personality. When viewers watch the stream, they see the avatar rather than the person controlling it. Often the person controlling the avatar (typically through motion capture) is anonymous, such as an employee of the company who owns the intellectual property (and revenue sources) for the avatar. More often, though, well-known individual streamers are creating their own vtuber personalities and expanding the range of entertainment they provide.

Since its introduction approximately a decade ago in Japan, vtubing has quickly risen in popularity around the world. The rise of vtubing provides new opportunities for streamers to maintain anonymity, commoditize streaming entertainment, expand business ventures and exit that business by selling off the vtuber and its associated products. With those opportunities, however, vtubers also need to be aware of potential legal pitfalls. Here are a few considerations for an aspiring or current vtuber to protect themselves and their avatar.

The primary benefit of vtubing is the privacy it offers creators. Vtubers generally don't have to worry about being criticized for their appearance, having to be "on" for hours at a time, or revealing their identities. Also, having an avatar as a public-facing persona provides some level of insurance against scandals that would otherwise be damaging to the streamer's personal brand. In the face of a damaging incident that results in criticism, embarrassment or backlash from viewers, vtubers can drop their avatar and start over again.

To maximize potential privacy benefits, current or aspiring streamers must plan carefully. Creating a legal entity, such as a limited liability company (LLC), in a jurisdiction like Delaware or Wyoming is a step in protecting that privacy. While many states require that the identity of certain corporate officials or interest-holders be made public, Delaware and Wyoming do not. An attorney's advice may be needed to establish a corporate structure that will best protect the privacy of the owner(s) and minimize the chances that they will be associated with the vtuber personality through searching public records.

In addition to the privacy benefits, the use of a separate legal entity can provide protection from individual liability and act as a vehicle in which to hold intellectual property and other assets associated with the vtuber's personality. If you create a successful vtuber but want to pursue other interests or stop the grind of

streaming, you can look for a buyer who will purchase the LLC (along with all of the intellectual property and other assets) and allow you to cash out. If the transition is planned carefully, the audience may not even be aware that control has changed hands.

In order to profit from the sale of any assets associated with the vtuber, though, you need to make sure you actually own them. Under United States copyright law, the rights to use and profit from most creative works belong to the person who created them. Many streamers can develop a great character but don't necessarily have the technical know-how to draw, program and rig the avatar. If you hire someone to help develop your avatar, you can make sure ownership vests in you via contract by specially commissioning the work as a "work made for hire," as defined under Section 101 of the Copyright Act (Title 17 of the United States Code). Such an agreement will ensure that you own the assets from inception and help avoid legal disputes over intellectual property in the future.

As an example of what can happen when intellectual property rights are disputed, consider Projekt Melody, a well-known vtuber who regularly streamed on Twitch. The individual or team behind Projekt Melody hired an artist named DigitrevX to design its avatar. After a dispute arose, DigitrevX filed DMCA takedown notices that accused Projekt Melody of copyright infringement, claiming that DigitrevX was the true owner of Projekt Melody's current avatar. While Projekt Melody was only banned from Twitch for a day, the incident shows that vtubers must be careful to protect their intellectual property rights.

Vtubing can provide an opportunity for a wide range of entertainment possibilities. Current and aspiring vtubers, however, must be knowledgeable about the legal pitfalls and risks that vtubing brings and take all the steps necessary to protect themselves and their intellectual property from legal peril.

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