

## Agency for Change Podcast: Sharon Toerek, Principal Owner, Legal + Creative

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### **Sharon Toerek:**

Start with the end in mind.

### **Announcer:**

Welcome to Agency for Change, a podcast from KidGlov that brings you the stories of changemakers who are actively working to improve our communities. In every episode, we'll meet with people who are making a lasting impact in the places we call home.

### **Lyn Wineman:**

Marketing agencies like KidGlov often have to get really creative about how we help our clients launch their campaigns. Sometimes that means filming a really impactful video, designing an eye-catching digital ad or even hiring a social media influencer, but here's where things can get complicated. So let's say KidGlov writes a script for a brand then that brand hires an influencer to read the script on video and post that clip to their Instagram account, who owns that content? Is it the influencer? Is it the brand? Is it the marketing agency, the social media site where they posted it?

### **Lyn Wineman:**

These are the types of challenging questions that can arise when working with intellectual property like videos or brand logos or images, and at the center of helping others define who owns this content and how it can be used are people like the one you're going to hear from today, intellectual property attorneys. Hey, everyone. This is Lyn Wineman, president and chief strategist of KidGlov. Welcome to another episode of Agency for Change Podcast. Today's guest is Sharon Toerek, principal owner at Legal+Creative which helps marketing and ad agencies protect their assets and turn their intellectual property into revenue which is a good thing. Sharon, welcome to the podcast.

### **Sharon Toerek:**

Lyn, I'm so excited to be here. I'm really looking forward to our discussion.

### **Lyn Wineman:**

I am too, because you work on such interesting things, and just to be clear for our listeners, can you talk a bit more about what Legal+Creative does and who you help?

### **Sharon Toerek:**

Certainly, I'd be happy to. So Legal+Creative is our name to the trade. My firm is Toerek Law, and we work with independent, creative, digital advertising, digital marketing firms across the United States.

Typically, they're small and mid-sized, in three areas essentially. One is intellectual property, clearance, protection enforcement, so trademarks, copyrights, licensing. The second is your day-to-day agency, client or agency-contractor business transactions and all the contracts that you need to support that. And then third, marketing regulation compliance, so for those influencer marketing firms out there who need FTC guidance or digital firms who need data privacy guidance, some marketing regulatory specific things that we help agencies with. And I personally am an IP lawyer by training and have been narrowed into the marketing space for about 15 years, and then agency specific for about the last eight.

**Lyn Wineman:**

Fantastic. I woke up this morning and I was excited to talk to you because I fit your target audience. I know a lot of our listeners fit your target audience.

**Sharon Toerek:**

Oh, good.

**Lyn Wineman:**

So I'm interested to hear what you have to say. Before you dive in more though, I'm always curious about people's career paths. Sharon, were you on the playground one day saying, "I think when I grow up I want to be an intellectual property attorney," how did you get down this path?

**Sharon Toerek:**

I wish the story was that cute. It really was more like, "Mom and dad, I want to major in political science for my undergraduate," and my father just raising his eyebrow at me and saying, "What are you going to do with that, go to law school?" I thought, okay, because he was an easy sale at that. He gave me a soft path, which was not like him, he gave me a soft path into it. So I'd always been interested in the law and in public policy, and so I probably, at one point in my career could have gone either way, but I chose law and then I was able...

**Sharon Toerek:**

My first job was in Big Law, and I just happened to be working with a lot of intellectual property attorneys, first as a paralegal, and I fell in love with IP (intellectual property) first. And when I launched my first firm years ago, it made me unique and made me stand out amongst other small law firms because it's not an area that... And I started meeting more marketers, and I saw that nobody was helping them particularly in the agency community unless you were a really large agency, maybe in a holding company and worked with one of the large law firms on one of the coasts. There wasn't a lot of help out there, and so I really saw an opportunity to serve the niche, so that's my pathway. It wasn't a little girl's dream. It was somewhat strategic in terms of picking my undergraduate choices, but beyond that, I think it just progressed naturally from there.

**Lyn Wineman:**

Yeah. I've got to think too, marketing people are kind of fun and colorful people to work with, so it makes your day a little bit more interesting.

**Sharon Toerek:**

Well, and not to sound too corny or so boxy about it, but I'm passionate about working with marketers because I believe that marketing moves our culture and it moves our economy, and agencies are a huge part of that. And so I get to have a front row seat to all these massively creative ideas, campaigns and see the results, not only artistically and creatively, but in dollars and cents.

**Lyn Wineman:**

Oh, for sure.

**Sharon Toerek:**

And the jobs that all of that creates because economic development is also a passion of mine, so it's not all Mad Men. There's a lot of commerce, a lot of jobs that depend on marketing being successful.

**Lyn Wineman:**

Absolutely. You have just hit my hot button because I really think right now at this point in time, agencies have the power to really use our own voices and to help our clients use their voices, and at KidGlov we focus on putting a megaphone in front of those who are doing good, and really that's the key because it is a culture driver and a culture influencer for sure, but yet a lot of us got into marketing because we love marketing. We love the creativity of it. Many of us didn't get into marketing because we are thinking about making money or because we're thinking about protecting intellectual property, and I know our businesses could use a lot of help. I'm curious, what are some of the most common things agencies don't realize when it comes to protecting intellectual property?

**Sharon Toerek:**

I think that there are a few things, first of all, in terms of your relationships with your clients and particularly with your perspective clients, I think agencies tend to undervalue the leverage that they have in those negotiations, in those conversations. And so they don't necessarily take all the steps they could be taking to protect their intellectual property when you're all still dating before the MSA is signed, and then once you're working together, they don't necessarily pay as much attention to when they time the transfer of the ownership of the intellectual property. So I would say the first thing is just a simple, the ownership issue and understanding and harnessing the leverage that you have as an agency so that the IP is transferred at the right time on your terms and when you've been paid. I would say next is once you're in the thick of it with a client and you are working on campaign development, strategy development.

**Sharon Toerek:**

Frequently, I see the next misstep is not enough time devoted to the due diligence for clearance of brands and trademarks or the clearance works a little superficial, not maybe as deep as it needs to be to avoid a problem, and we see a lot of agencies and their creative teams, maybe not crossing all the T's and dotting the I's on rights clearances for third party works like stock photography, software. And then finally, making sure that when the campaign launches and goes out into the world, that you haven't misappropriated any third party IP in whatever the final product is, so I think those are three of the main junctures at which intellectual property and understanding how it works are key for an agency and their creative team members.

**Lyn Wineman:**

Wow. All good stuff. I've also heard you on your own podcast and on other podcasts, I've heard you talk about how agencies should be using intellectual property as a revenue generator. Can you talk a little bit more about that? Give us all some ideas on how we should be taking a look at this.

**Sharon Toerek:**

This is one of my favorite topics, and it is something that I was actually surprised in a pleasant way about the amount of energy I was able to get agencies to focus on it during the pandemic when some of their main lines of business were a little slower, but if you're an agency that has developed an area of expertise whether it is a product category, whether it is an industry niche or whether it's a horizontal expertise, maybe you're an awesome influencer agency or whatever it is, you've seen patterns over and over again as a result of working in that niche. You've got all kinds of intellectual property that you've created and all kinds of potential turnkey solutions that you have created that can be productized and packaged up together either into a self-delivered option or into a done with you option that doesn't rely as much on the billable hours inventory that an agency has on a day-to-day basis.

**Sharon Toerek:**

And that you can use to build additional revenue streams with, and I call this my triangle approach looking at agency IP, there are brands usually you can associate with that separate and apart from your agency brand. There are definitely copyrights created as a result of all the content that you create to get that product in a sellable state, and then there's transactions that are also IP related licenses and user terms, things like that. And so this is a way to take what you already know, package it up in a format. It isn't dependent on your team to deliver to the end user and client, and that you can create a separate stream of revenue to diversify the income streams of the agency, and it's all pay dependent.

**Lyn Wineman:**

That is really nice because we've all seen through the recent years of the pandemic and changes in the economy and changes in technology, agency business tends to ebb and flow. So the other thing that happens, what I love about what you just said is as somebody builds their career in an agency and they become more efficient, more knowledgeable and more efficient about what they do, a lot of times we do tend to trade hours for hourly rates, and as you become faster because of the knowledge that you have acquired and built, you have a tendency to then want to lower your rates when in fact, you're delivering something that's much more valuable and you should in fact increase your rates, so thank you for the reminder on that.

**Sharon Toerek:**

Yeah, absolutely. We've got to get paid for all the years of learning and experience, not for the hour that you've put into solving a problem that it used to take you 10 hours to solve.

**Lyn Wineman:**

Yeah. So great advice there, so I'd love to talk about your podcast because it's become one of my new favorites.

**Sharon Toerek:**

Oh, thank you.

**Lyn Wineman:**

Yes. And a mutual friend of ours, Corina Ludwig from FunctionFox introduced the two of us because we're both in marketing and we're both podcasters, but it's called the Innovative Agency, and you're talking to a lot of creative marketers, agency people. I'd love just your quick take on, what are you hearing now from marketers and agencies?

**Sharon Toerek:**

Well, I think we're hearing a lot of exciting reset ideas about agencies, so there's opportunity in every crisis, I personally believe that's-

**Lyn Wineman:**

I love that saying by the way, "Never waste a good crisis," just go for it, figure out what your angle would be.

**Sharon Toerek:**

Our agencies love that in particular, but I agree with you for lots of reasons, and I think that they took this opportunity because they didn't have a choice. And so to take a look at what are the different ways we have to think about the solutions we recommend to our clients to help them achieve their business goals or the solutions we, as an entrepreneurial company ourselves and agency might have to build our fortunes. And so fresh ideas like productization as we just talked about, creating specific virtual events or community building opportunities in the industries that they serve, getting those folks a chance to learn from each other as much as they learn from the agency.

**Sharon Toerek:**

Creating all that good will, that goes along with it, and when we were all sitting in front of our computers during the pandemic, we had lots of time to participate in things like this, so another fresh idea. I'm hearing that it is very challenging to be the middleman in the Chamber of Commerce these days because of all the direct to consumer, direct to end buyer even in the B2B world, strategies that marketers are using. And so a little bit of disintermediation, if you will. I hate that word, but it is the correct one in this case.

**Lyn Wineman:**

I'm going to write that down. I might have to look, you might have to explain that one a little bit more.

**Sharon Toerek:**

No, it's kind of collapsing a flat name, the structure or the pathway between seller and buyer, so it affects agencies who work with retailers. It affects agencies who were distributors in the B2B world, and so it's eliminating a lot of the middle ground and just the way we buy is different and therefore the way agencies have to help their clients' market is different. I'm hearing a lot of that, and I'm hearing a ton about the explosion of influencer marketing and the opportunities and also the challenges that, that creates for brands.

**Lyn Wineman:**

Sure. And that in itself is a whole... You could, I'm sure, talk hours and hours and hours, so we'll save that for another specific podcast.

**Sharon Toerek:**

Awesome. Yeah, definitely.

**Lyn Wineman:**

How about that? But last time I looked you have over 170 episodes, we just hit a hundred episodes and we're like, yay.

**Sharon Toerek:**

That's great.

**Lyn Wineman:**

But 170, wow. I'm curious after all of those episodes, are there any in particular that just stand out or stories that you particularly enjoyed, Sharon?

**Sharon Toerek:**

Oh, my gosh. I've had a number of... I would have to say a couple of the earliest ones stand out for me because the episodes themselves were good, but there was such a lot of good will. My way shown by some other titans in terms of consultants in the agency world who were willing to come on and be guests in early days, Tim Williams from Ignition Consulting-

**Lyn Wineman:**

Oh, wow.

**Sharon Toerek:**

... was one of my very first guests, and it's still one of my favorite episodes because Tim is a firm believer in the value of agency IP.

**Lyn Wineman:**

Yes, he is.

**Sharon Toerek:**

And that's way before he and I ever knew each other. David C. Baker who has got no shortage of things to do with his time, was one of our early guests. James Carbary who owns a firm called Sweet Fish which is a podcast production and content creation group, production partner of the podcast at one time. So just the generosity shown, I think he stands out more than anything else in terms of people saying, "Yeah, I'll sit down and talk with you for 30 minutes and trust you to make it into a decent looking and sounding episode and I'll share it with the world for you too." And so I think that for me has been the notable thing about all of this, and then content wise, gosh... Honestly, it's hard to pick my favorite baby. I've had a couple of guests on for repeat performances and repeat conversations about new topics but same guests, and I think those are some of my favorites because you can kind of pick-

**Lyn Wineman:**

Developed a rapport a bit, right?

**Sharon Toerek:**

... definitely.

**Lyn Wineman:**

Yeah. Sharon, I had one, it was during the pandemic. I was working from home. It was a blizzard. I had my podcast microphone at home, but I also had several other people working from home in my house and it was quite noisy, so I literally did go into my closet to do this podcast. And the guest was looking around and going, "Huh, you color code your closet," so it was just kind of... And his dog started barking, it was a very fun conversation and all the things happened.

**Sharon Toerek:**

A comedy of situations. You must have a really tricked out closet if you could sit in there and do a podcast episode. I'd feel a little, I think, claustrophobic doing that, so good for you.

**Lyn Wineman:**

I don't know about that, but it worked, it was quiet. So here's another question for you because we've just started to dabble in NFTs, and we actually have sent NFTs to some of our podcast guests. I know it's a field that's really rapidly growing, but do you have any advice for those of us that are getting into this area? Any legal considerations that we should keep in mind with NFTs?

**Sharon Toerek:**

Yeah. Well, I mean the first thing I would say overall at a high level is that the law is never going to be able to completely keep up with business which is never going to be able to keep up with the technology, and that's a truism that's as old as time when it comes to law and tech. NFTs raised a lot of interesting intellectual property issues because at the end of the day, there's still IP in the underlying work that the NFT... The NFT is really functioning these days so far as a certificate of authenticity, if you will, and a way to record the transfer of original creative work from person to person, owner to owner.

**Sharon Toerek:**

So I guess, my biggest piece of advice is don't forget that fundamentally trademark and copyright law protection principles have not changed whether or not an NFT is attached to your work or it isn't. It is a matter of digitally recording ownership of a particular asset. And so, because the initial novel use cases we've seen with NFTs have been so silly in many cases, it's difficult to separate owning the NFT from owning the actual work that it attaches itself to, but remember, an NFT could just as easily be attached to a property deed as it could to a painting of a dog.

**Lyn Wineman:**

A really good point.

**Sharon Toerek:**

So copyright is still copyright, and trademark is still trademarked. The due diligence you need to do is still the same, and then I'll wrap that up with just saying that there are a lot of smart contract considerations that have to go along with NFTs so that the transfers are proper down the line and so that the owner of the IP is properly compensated as the NFT changes hands. So I'll make sure you're talking with somebody who understands how smart contracts work.

**Lyn Wineman:**

We're just going to put your link into this, so anybody who's listening that needs to talk to you can. I went down the wormhole of that conversation with a colleague recently about, who owns what with an NFT? And it was a little bit like, this is another layer. So Sharon, I also know your commitment to advertising and marketing, are you the president of the Ad Federation in Cleveland?

**Sharon Toerek:**

Well, I'm not currently, but I am a past president.

**Lyn Wineman:**

Past president.

**Sharon Toerek:**

And Hall of Fame member now.

**Lyn Wineman:**

Woo, congratulations.

**Sharon Toerek:**

Thank you. No, I have to say when they called to tell me, I said, "Thanks, isn't this for people who are closer to retirement or who are..." And they said, "No, you're good." I said, okay. So AAF is an awesome organization.

**Lyn Wineman:**

It really is.

**Sharon Toerek:**

I was proud to chair the board of it here in northeast Ohio, so definitely-

**Lyn Wineman:**

That's fantastic.

**Sharon Toerek:**

... yeah. Thanks for mentioning that, and yes, it's been a while since I thought about that. I'm in the Hall of Fame now as well.

**Lyn Wineman:**

I think that's fantastic, and I think what's great about it is you don't have to wait in our field to retire like you do in sports or some other things.

**Sharon Toerek:**

This is true.

**Lyn Wineman:**

There you go. So as a marketing agency, we certainly spend a lot of time in creative pursuits. I'm curious, Sharon, how do you use your creativity in your role as an attorney?

**Sharon Toerek:**

That's an interesting question. I think our firm, I have to say, punches above our weight in terms of the creativity and the way we do business development and the way we put out helpful content to our client industry, and just in the way we approach relationship building as a firm. And so we really lead with helping first, talking about ourselves last, and I think some of the things that we've been able to do as a result of that, some of the content pieces, some of the events that we've put together, presentations we've made are definitely where I get to stretch my creative muscles. I love marketing on behalf of the firm. It's probably one of the favorite things that I do as the owner these days, and it's the thing I will probably fire myself from absolutely last as the founder and owner of the firm. And then in my personal life, I think I'm a good curator. I'm not a particularly strong artist -

**Lyn Wineman:**

Curation is a creative talent, I believe.

**Sharon Toerek:**

... I think so. The way you put your outfits together, the way you put your home together, the way you make collages.

**Lyn Wineman:**

For sure. Sharon, one thing I love, what you said, lead with the idea of helping first. I mean, that's actually a really great marketing principle as well. When we talk to people about their websites or different things that they're working on, you always want to focus on making sure your audience sees themselves in the work, so it's not about we do this, we do that. It's about what your audience can do as being part of that initiative. So I love that you just intuitively tied that together, so I'm going to ask you for some intellectual property now. I've never led into this question in this way, but it's my favorite question, Sharon. I'm really inspired by people's quotes, and I feel so lucky to get to talk to so many interesting people on this podcast. And I would like an original Sharon Toerek quote to inspire our listeners.

**Sharon Toerek:**

Oh, this is one that's from me.

**Lyn Wineman:**

From you, yeah.

**Sharon Toerek:**

Okay. I'm going to go with this one, and this may be an amalgam of things I've heard other people say but, start with the end in mind.

**Lyn Wineman:**

Ooh, good one. Tell me more about what that means to you.

**Sharon Toerek:**

I think it means being intentional about why you choose to do what you choose to do and when you choose to do it. Are you watching television on the couch at night because you are just burned out? And we've all been there. Or did you decide to sit down and watch that program? Both are valid, but I'd say, start with the end in your business. Are you launching a podcast because you want to get your brand out there or are you launching your podcast because you want to illuminate your client industry? Both valid, but be intentional and once you know what your end goal is then you can design your strategy as a work back from there, so I think start with the end in mind is a good principle in our personal and our professional lives.

**Lyn Wineman:**

If you decide to give up law, I think you are a marketer at heart because I think that's the thing. A lot of times people will come to us and say, "I need a social media campaign. I need a TV commercial, I need a video," and the first question is always, "Why do you need that? What do you want to accomplish?" Because maybe it's not what you think it is. Maybe something else will get you to that goal more effectively and more efficiently.

**Sharon Toerek:**

Yes, and I can tell you if you're an agency owner or leader, I've seen this as an outsider, if you don't ask your client or your prospect that question, you're going to be three or six months into the relationship and they're not going to be happy and you're not going to know why.

**Lyn Wineman:**

And they're not going to be... Sometimes people have a hard time articulating. I think one of the things we do for our clients, it's almost like a therapy session. It's like, "Let's really, really talk about what you want because increased engagement, more sales, more money, always more donations is always on the list, but let's really talk about what we can do that can lead you in that direction." So for our listeners who've been listening, maybe they have questions about their own contracts, their master service agreements, intellectual property, how can they find you Sharon, for more information?

**Sharon Toerek:**

Well, I appreciate that. Thank you, and this has just been an awesome and wonderful conversation. A couple of ways, our firm website is Legal and, A-N-D, creative.com. We also have a legal toolkit which is a membership-based product for agencies.

**Lyn Wineman:**

Nice.

**Sharon Toerek:**

And that's [agencylegalprotection.com](http://agencylegalprotection.com). I'm active on LinkedIn, so it's @SharonToerek, T-O-E-R-E-K.

**Lyn Wineman:**

Fantastic.

**Sharon Toerek:**

And a little bit on Twitter as well, so reach out to me in any of those places. My email is visible on our website, so reach out there.

**Lyn Wineman:**

Nice. Very bold and accessible of you to do that.

**Sharon Toerek:**

I used to put my cell phone on my business cards, and now I don't do it anymore.

**Lyn Wineman:**

Yeah. That's a tough one. It depends on how many spam calls you want.

**Sharon Toerek:**

Yes, exactly right. And I love talking to agency owners. I find your industry fascinating. I find the things that you're able to accomplish for your clients just amazing, and it is a fun niche to serve.

**Lyn Wineman:**

Yeah. Thank you for that. I am noting too that you do have an intellectual property product that you are selling to people, so I always have higher respect for people that take their own advice like that.

**Sharon Toerek:**

Thank you.

**Lyn Wineman:**

Sharon-

**Sharon Toerek:**

It's a learning curve.

**Lyn Wineman:**

... yeah, it is. Product development is different than custom development, but I also think, Sharon, from my perspective, every time KidGlov as a business does things like that, we rebranded ourselves nine years ago. We do our own marketing campaigns. Every time we do things like that, it helps me have more understanding as we work with our clients. Now, I can understand what it feels like to be the person in the chair on the other side of the table when somebody presents a brand or all of that, so I think that's really good. So Sharon, as we wrap up this time together today, what is the most important thing you'd like our listeners to remember about the work that you're doing?

**Sharon Toerek:**

What I'd like agency leaders and owners to understand about legal affairs and probably their operations in general, is that they are profit centers agency. I would love for you all to think about the amount of money that addressing legal proactively puts in your pocket whether that means another employee or two, whether that means more owner compensation, whatever that means to you. Legal is a profit center, and I think that's a paradigm shift that we're working hard at the firm so that agency owners can

see that the value of that and many other areas of your operations, we could probably say the same about finance and things like that, but it's so tempting to look at it as a short-term cost or midterm investment. Think of it as a profit center, and I think then you start seeing the possibilities a little bit more clearly.

**Lyn Wineman:**

Such good advice. I think when our CFO hears this episode, it's going to be his favorite one.

**Sharon Toerek:**

Thank you very much. This was such a fun conversation.

**Lyn Wineman:**

It has been. Sharon, I am going to say, I fully believe the world needs more people like you, more law firms that are helping really focusing on helping niches. I know marketers can use a lot of help in this area, so thank you for joining me today.

**Sharon Toerek:**

It's my absolute pleasure, Lyn. Thank you.

**Announcer:**

We hope you enjoyed today's Agency for Change podcast. To hear all our interviews with those who are making a positive change in our communities, or to nominate a changemaker you'd love to hear from, visit [KidGlov.com](http://KidGlov.com) at [K-I-D-G-L-O-V.com](http://K-I-D-G-L-O-V.com) to get in touch. As always, if you like what you've heard today, be sure to rate, review, subscribe, and share. Thanks for listening, and we'll see you next time.