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GLASER & WEINER, LLP

ATTORNEYS AT LAW

WEBSITE DEVELOPMENT

Get What You Pay For

Whether you are an existing business or just starting out, an important part of your business identity is your company website. If you are considering engaging a professional web developer to assist you in creating your website, there are some important issues that you should consider including in your contract with a developer:

- ◆ Include a written description of what the website will look like and how it is expected to perform. It is important to have this starting point so that it can be referred to as the development process moves forward. If you agree to changes to the “look and feel,” they should be put in writing.

- ◆ Include a development schedule with specific dates for deliverables. Establish hard deadlines for a “go live” date, meaningful holdbacks in payments, penalties for delays, and adequate test / acceptance procedures for the project. Payment of fees to the developer should be tied to the developer’s timely completion of the milestones in the agreement. The milestones must meet the requirements of the agreement and be accepted by you.

- ◆ Specify who owns the finished website and its underlying work product. To the extent possible, you should make sure that rights in the intellectual property created in connection with the site’s development are assigned to you. This includes verifying that employees and contractors of the development company have written agreements whereby they assign the rights to intellectual property created by them in the course of their work to the company. In certain circumstances, you may not be able to obtain ownership of certain components of a site that are produced by a third party developer because the developer will insist on retaining the ownership of those rights. In that case, you want to be sure that your agreement states that you have a license to use such components. Ownership of any customized components that are created specifically for your website should be assigned to you, and the developer should be prohibited from using them or making them available to any other customer.

- ◆ Include representations that the developer owns or is authorized to use the technology he or she uses to develop the website. Also specify that the developer will indemnify and hold you harmless from all liability arising out of a breach of this warranty and any infringement of the intellectual property rights of any other party. Remember, if you plan to use content, photographs, music or anything else created by a third party, you will typically need to obtain that party’s consent.

Note that if you are developing your website in-house, it is a good practice to have written agreements with employees that clearly spell out the ownership rights of intellectual property created by your employees. These agreements should be signed before work begins.

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