

# Web Development Contracts

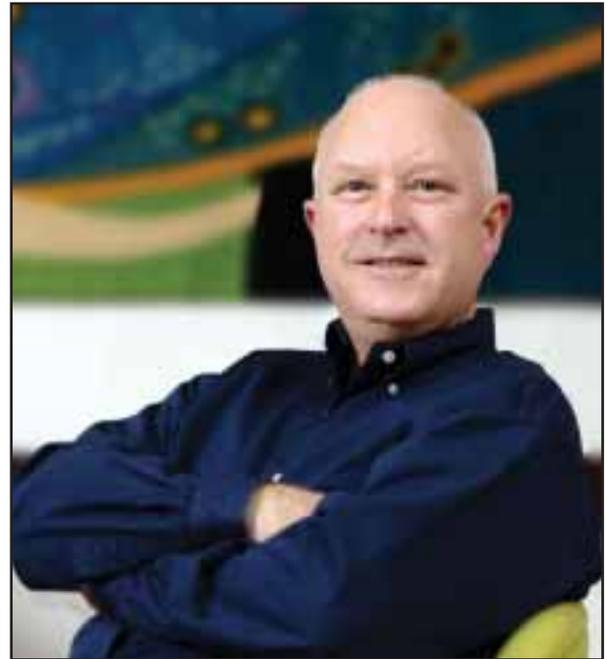
## Who owns your website code?

**W**e get an interesting mix of client inquiries each week. Sometimes we are asked to draft a “simple” or “basic” contract, neither of which really exist in the online world. We don’t even attempt to do that. Or, in the other extreme, we are asked to review and provide a legal analysis of the website, affiliate program, systems, processes, vendors, and all contracts and issues related to the business. In almost every instance, this request comes because something has happened, and the client feels like its business is at risk.

As Internet law litigators we have a unique perspective on the legal risks and liabilities of doing business online; what will get you in trouble, and what will not. And it is incredibly complex. Over the coming months I will be discussing the law of your web site and web business. Each month I will focus on one aspect of your business, explain the issues, identify the problems, and hopefully offer some suggestions that you can actually implement yourself.

We refer to a review of a website and web business as a “website audit”, even though it is more properly an “e-business legal audit”. Our work sometimes focuses on a particular area such as an affiliate program, or data policy and protection, or online advertising, but more often is broader in nature. Let’s start with a rather universal issue: website development.

I’ve been immersed in the online world since 1994, the first seven as a founder and CEO of venture backed companies. As the chief architect of a suite of banking industry ecommerce and software applications, I saw a lot of interesting things from our programmers and vendors. It is now twelve years later, and little has really changed. Developers still “borrow” code, under-estimate jobs just to get them, try to own all of the intellectual property of a project, and create barriers to attrition. If they steal code for your site, your business can be pulled down with no notice or sued by the owner of the code for copyright infringement. If they underestimate your job, and you won’t pay up, then your site can be held hostage through a form of extortion. If you don’t get ownership of everything in a particular way, they can license your site functionality (and sometimes even the appearance!) to a competitor for pennies on the dollar. And, if you ever try to leave them, they may resist giving you the source code. Of



John Dozier

course, even source code is of limited value without the code documentation, which is supposed to be detailed in the coding as a road map for the next developer or programmer.

Not all developers pull this stuff. Most don’t. Some do. And you will never really know until problems arise. So, the answer is a carefully drawn web development contract. It will address these issues, establish protocols for change control, create economic incentives tied into delivery of the site and related code and intellectual property, tie up the developer and its employees (a huge, and overlooked, risk factor) to avoid theft, and not only establish contractual rights, but also contractually mandated processes, so that in the end you have managed, and minimized, the risks. You will find out a lot about the developer by its reaction to your contract proposal. I would like to be able to tell you that you can do this yourself, or that this is simple or basic or easy. As we progress through the coming months there will be instances in which I give you “do it yourself” advice. This isn’t one of them. Find a very good computer or Internet lawyer, and get it done right. ☑

*The information in this article is not intended to be legal advice. Always consult your attorney when faced with legal issues.*

John Dozier is President of Dozier Internet Law, PC, a law firm representing small and mid-size online businesses.

## PREVIOUS ARTICLES



FEBRUARY 2006  
“Your eCommerce Activities Could be Criminal”

MARCH 2006  
“Affiliate Marketers”