

Web Hosting: Hope for the Best and Plan for the Worst

Conduct due diligence; avoid “classic” mistakes

Last month we discussed web development agreements. Next question: Who is going to host your site? My advice is to know whom you are dealing with, and then make sure that if something goes wrong you have an exit strategy. In other words, do your due diligence. Then hope for the best and plan for the worst!

Have you searched the web for comments about each prospective web host? Have you included searches in Google groups? Have you asked for references? I understand that no one is going to give you references that are negative. But try to locate some clients online for comments and insight. Have you looked behind the company to see who it is, where it is located, and what they (the company and principals) have to lose if your site disappears or is stolen? Consider pulling a credit report through Dun and Bradstreet and have someone who understands business credit reports review it for you. I would ask permission to do so from the web host and if they refuse...well, that tells you a lot. Move on!

Once you have a comfort level with a company and you are willing to stake your business on the web host's performance, then plan for the worst. And, by all means, avoid the following classic mistakes.

Make sure your service level guarantees have real penalties attached. I recently saw a deal with 99.9999% up time guaranteed. Hidden in the contract was the penalty provision: 5% of the monthly cost! If you pay \$1,000 per month for the service you get a credit of \$50! Do you think that would compensate you if your site were down 50% of the time for that month? And what is “up time”? How is it measured? Do they ping your site constantly to detect this? What if your site is up, but the pipe to the site is down? And do you honestly believe this web host was getting the same guarantee from its upstream provider? Not a chance. Insist upon real service level guarantees, and make sure you can terminate the contract upon material breach so you have an exit strategy.

What do you do when you are ready to cancel an agreement and move your site? You kindly ask (beg?) the host for cooperation. Have a provision that details the host's responsibility if you decide to move your site, or you may find that it



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is very expensive and time consuming. Consider agreeing on the cost, if any, for the host to assist with the move, because at some point the contract will end and you will lose your negotiating leverage. I have seen many sites “held hostage” because no one ever thought about the exit strategy.

The good news is that quality due diligence is something you can do on your own. And the web host may have a reasonable contract. But here is a little secret...we draft contracts to our client's specifications, and some want fair and balanced contracts, some want very favorable contracts, and some want both. I don't ever recall a client asking us to draft a contract favorable to a client's interests! The differences can be difficult to detect for even the seasoned business person or lawyer. But the differences are there. Understand that when you get a “standard” contract from your web host, it may not be so “standard” after all! If you really want to sleep well at night, simply hope for the best, and plan for the worst. ☞

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

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