GET IT IN WRITING: CONTRACTUAL ISSUES FOR WEB PROFESSIONALS

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This presentation is not intended to be legal advice, and is for informational purposes only. The following slides are not intended to be a substitute for the advice of an attorney licensed in your jurisdiction.
ANATOMY OF A CONTRACT

- **Parties**
  - Individual vs. Company

- **Effective Date**
  - Specified?
  - Date of signature?

- **Services to be provided?**
  - Who is responsible for what?
ANATOMY OF A CONTRACT

- **Milestones**
  - Time?
  - Completion of certain phases?
  - Time to approve?
  - Standard for approval?
ANATOMY OF A CONTRACT

- Show me the money
  - When are payments due?
  - Refundable?
  - Effect of non-payment
ANATOMY OF A CONTRACT

- Changes and revisions
  - When to revise costs, timeline?
  - Get it in writing!

- Pause Clause
  - At what point can developer pause work?
  - At what point can you terminate?
ANATOMY OF A CONTRACT-TECHNICAL ISSUES

- Support
  - Who is responsible?

- Training
  - Provided to client?
  - Third party?

- Compatibility
  - What browsers are you supporting?
ANATOMY OF A CONTRACT-TECHNICAL ISSUES

- **Testing**
  - Who does it?
  - Time limit for client to report bugs?

- **Developer’s tools**
  - Who gets them?

- **Updates**
  - Who is responsible?
  - How long do you support module updates?
ANATOMY OF A CONTRACT

- Right to hire third parties
- Representations and Warranties
  - Licenses
  - Will it work?
CONTRACTS AND IP

- **Copyright**
  - Who is responsible for licensing content?
  - Assignments
  - Work for hire

- **Trademark**
  - Who is responsible for licensing?
  - Brand standards

- **Software licenses**
  - Explaining licenses potentially in play
  - Explaining requirements of those licenses

- **Droit moral**
ANATOMY OF A CONTRACT

- Insurance
- Indemnification
- Governing law
  - “Law of the good old U.S. of A”?
    - Local
    - Based on who sues?
- Venue
  - Consider convenience
- Alternative dispute resolution
Privacy obligations

- COPPA
  - For sites collecting data from minors under 13
  - Need verifiable parental consent to collect
  - New definition of data

- Recent COPPA Enforcements
  - Yelp
  - TinyCo
  - BabyBus
COPPA

- Original definition of personal data
  - First and last name
  - Home address or other physical address including street name and name of a city or town
  - Telephone number
  - Social Security number
2013 Amendments to Rules: Personal information now includes:

- Online contact information
- Screen or user name that functions as online contact information
- Persistent identifier (e.g. customer number in cookies, IP address, device identifier)
- Geolocation information
- Photograph, video or audio containing child’s image or voice
- Information concerning child or parents combined with an identifier
SPECIAL ISSUES- PRIVACY

- **CalOPPA**
  - Requires commercial operators to **conspicuously post privacy policies** on websites
  - Plan design accordingly!
  - Recent enforcements
    - Delta Airlines

- **New requirements eff. Jan. 1, 2015**
  - ‘Delete button’ for minors
  - Notice of ability to delete
New requirements effective January 1, 2015:

- “Delete button”: Require retailer to allow minor who is registered user to delete or request deletion of any content posted by the minor
- Operators must provide minors with notice of ability delete online content and instructions
- Operators prohibited from marketing or advertising certain categories of products or services to minors
SPECIAL ISSUES- PRIVACY

- FERPA
- HIPAA
  - Healthcare records, EHR
  - Business associate
    - Requires special contract
    - Adds security obligations to the BA
    - Can delegate to 3rd party w/ contract
HELPFUL LINKS

- FTC COPPA FAQs

- FTC COPPA Guidelines for Schools
  - https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions#Schools

- California Attorney General’s Office Guide for CalOPPA
  - https://oag.ca.gov/making_your_privacy_practices_public.pdf
QUESTIONS?

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