

NET MAN

Business Websites That Work!

“Ask NET MAN” Column
Author: Samsunshine Levy

New Mexico Internet Professionals Association Educational
Foundation’s Internet Informer

Q: I had a company design my Web site, so who owns it?

A: Excellent question, though you really should have asked before having a Website designed. This is a question which needs to be answered before you sign a contract with a web developer. You do have a contract for your Website, don’t you? With the Albuquerque Web Women, NMIPA was fortunate to have a presentation from a New Mexico intellectual property attorney at the February 2001 public monthly meeting in Albuquerque. At that meeting, we learned several important items on this subject from the then-to-be-adopted New Mexico legislature version of the United States Uniform Commercial Code (UCC), which I’ll paraphrase below.

For any work performed for an amount of \$500 or greater, a written contract is required by the UCC in order for either party to enforce the work or payment thereof. Now that your Website is built, and if ownership, copyright or intellectual property are not defined in any contract that you may have, you’re stuck as to who owns the various portions of it, by the rest of the relevant clauses of the UCC. Assuming that your Website was not created by a direct employee of yours, the design of your Website primarily involved the creation of copyright material by the designer, and whether or not the right to that material was transferred to you. Referencing the US Copyright Act (Section 201), while the Website designer did use content you provided, the act of transforming it into HTML code and creating the Website layout was a new medium of expression to which the designer has sole and exclusive rights. We further understand, in conjunction with Section 204, that without a Website contract, you may own nothing more than a non-exclusive right to the work as a Website.

So, get a contract, even retro-actively if you have to, the benefits should be painfully obvious to both the designer and the “owner.”

This question can also be viewed slightly differently,

- Your Website’s domain name(s) – The listed registrant of a domain name is considered the “owner.” The registrant is not the entity performing the domain name registration (that’s the registrar and could be your designer, which is fine). The registrant is the entity which is manually entered separately for each domain name when it is registered. Especially if you have (or could have) a less than professional relationship with your designer, it is in your best interest that you be listed as the registrant of a domain name. It is also a good idea to have you as at least one of the Administrative, Technical or Billing Contacts for the domain.
- The files that comprise your Website – Typically, all of the files necessary to create your Website in HTML form, with all related images and internal referenced documents are the “product” which you are purchasing in Website design. Many

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(505) 984-9879 Fax (505) 820-6334 info@TheNetCave.com <http://TheNetCave.com>

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Website designers will provide you with a copy of all of these files on floppy disk or CD at the conclusion of work on your Website. If you don't have them, you should ask. You can obtain any static files from your Website itself by using a program such as WebSnake, but you will not obtain any programming, source files or database files this way.

- Programming – Most Website designers provide you a *non-exclusive* license to use programming which makes your Website work (contact form handler, shopping cart, database). This license can be provided either for the time you work with a designer or in perpetuity, to be specified in your contract. While an *exclusive* license to the programming on your Website (giving you the options of ownership or resale of the functionality) can be negotiated, it will significantly drive up the price.
- Design Source Files – If you have a good relationship with your professional Website designer, you can usually ask and obtain the source files for graphic design and development (such as a layered PhotoShop files or DreamWeaver Templates). These files are needed if you want to easily later make changes to the visual design and layout of your Website, not necessarily with the original designer. It is always better to specify in a contract that the designer will deliver these files to you and that you will obtain ownership of them when paid in full.

Samsunshine Levy is an Internet Superhero and CEO of NET MAN Inc.(www.TheNetMan.com), a full service Website design and development company in Santa Fe. Mr. Levy is not a lawyer, he doesn't play one online, he doesn't represent anybody's opinions, your mileage may vary and all of that. Email him at NetMan@TheNetCave.com

References:

The New Mexico legislature adopted version of the Uniform Commercial Code can be found at lexis-nexis.com:

http://198.187.128.12/newmexico/lpext.dll/Infobase2/d98/20e86?f=templates&fn=document-frame.htm&2.0#JD_ch55

Copyright Law, Chapter Two (Contains section 201):

<http://www.copyright.gov/title17/92chap2.html>

Peacock Law's summary of intellectual property:

<http://www.peacocklaw.com/ip.htm>