

GET IT IN WRITING: CONTRACTUAL ISSUES FOR WEB PROFESSIONALS

WordCamp Miami

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DISCLAIMER

- ⦿ 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



SPECIAL ISSUES- PRIVACY

◉ 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



COPPA

- 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

CALOPPA

- ◉ 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**

- <http://www.business.ftc.gov/documents/Complying-with-COPPA-Frequently-Asked-Questions>

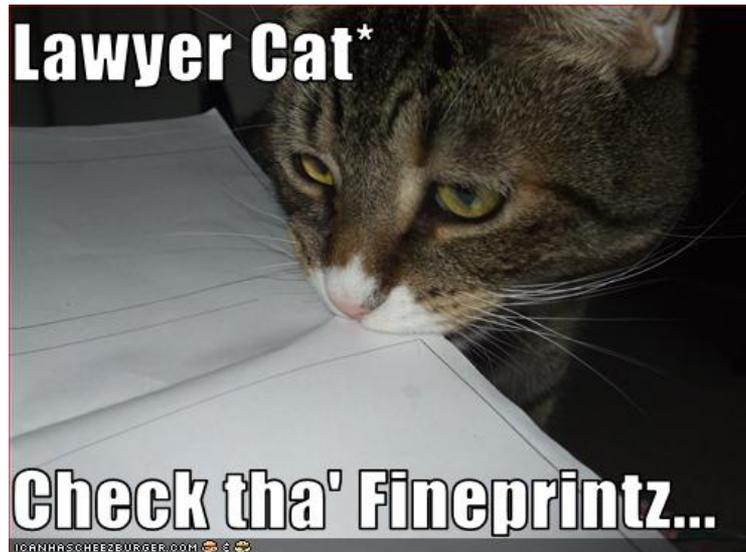
- **FTC COPPA Guidelines for Schools**

- <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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