

## **Contracting for Web Development Services by Stuart Adams**

**Let us presume you want a new, or perhaps first, Web site for your business. After all, how can you be an “E-business” without a Web site. Let’s also presume you’re not able to accomplish this yourself for some reason. Don’t be embarrassed if you can’t do it yourself. Sure, it may seem that every nine year kid can do that, but then again, you’re not nine years old. I think they teach Web site development classes in second grade now. You just graduated a little before your time.**

**It could be worse. You might have tried to do it yourself, and, like the old saying about a lawyer who represents himself, you could have a fool for a client. Actually, with the help of my then teenage son, I did create my own Web site initially. He did all the heavy lifting, creating a small site with just a few pages and some funky graphics; scales of justice and all that. My job was to lay out what I wanted and to critique everything he did. That was pretty easy, since I had no idea what he was doing. All I had to do was suggest we needed better clip art.**

**My son got the site “published” to the address my Internet Service Provider had given me, meaning people could actually see it on the Internet. Pretty cool! My son and I tweaked the site periodically, but since there was just some basic stuff there, it didn’t seem to need much attention. Every once in a while, I would write an article or decide something else could be added to the site. I would then type it in my word processor of choice, and my son would “magically” get it on the Internet. Still pretty cool, but things rapidly fell apart.**

**My son got a real job with a local computer consulting company and had less time to help me with my site. The site had mysteriously grown, as I added a copy of my firm brochure, materials from seminars I had given, and other materials I had developed for clients over the years. The problem I knew about was, I didn’t always know how to fix problems. At first, it was little things that went wrong. Then I realized, I didn’t even know what all the problems were.**

### **META TAGS: CALLING ALL SUCKERS**

**I got a call one day from a Web developer. She and I discussed some legal issues she had run across in contracting to perform services as a developer of a Web site for a client. After we concluded our discussion of those issues, she mentioned that she had “nosed” around my Web site. As she was accustomed to doing in such situations, and as I often have since, she “right clicked” on my home**

page. When you click the right button of your mouse, some browsers will bring up a menu. In that menu you may find the option to view the “code,” in this case HTML, of the page you are viewing.

When this potential client viewed the HTML on my home page, she noticed something a little unusual. My meta tags were a little cryptic. Meta tags are little scripts of HTML, or Hypertext Markup Language, which generally describe the page and provide keywords for Internet search engines to index or “inventory” the page. These “tags” are not seen when you view the page normally, while browsing the Internet. They are absolutely critical for many search engines to find, however, to enable them to accurately report the location of Web sites matching the criteria keyed into the search engine by someone using it in an attempt to locate such a site.

In the case of my Web site, anyone looking for “Hey sucka” would have been rewarded. That was the sum and substance of my beacon to the world, as contained in my meta tag. Upon inquiry to my Web developer (i.e. my son who was now away at college) he informed me he had meant to tell me about meta tags. Having gotten busy with other things, he had left that “place marker” so he could remind me later. Oops! For several years, at that point, I had apparently been unknowingly advertising for suckers. Looks like I had found one. Me!

I won't belabor my other trials and tribulations in trying to maintain and improve my Web site. Suffice it to say, hours of classes, scores of books and innumerable late nights tweaking HTML resulted in me finally calling in a Web developer. Just recently, I submitted to the realization my time was better spent practicing law than trying to tweak my site. FrontPage or any of the multitude of other software programs out there, designed to make it “simple” to create and manage your own Web site, can definitely be useful in getting a site up. There are lots of companies which have a pretty nice looking site, designed in just a few minutes with one of these programs.

FrontPage and other similar programs use templates and “wizard” type learning tools to walk you through the “customization” process. Ideally, this allows you to rapidly design a site from the ground up. You can pick a “look” from their menu of pre-designed pages and then add more pages with that same look, as you add material. Now, you can even add credit card sales and other more advanced features.

The main problem comes when you either don't want a “stock” look for your site or you want to do some other things, which are not necessarily part of the

system provided by these programs. There certainly is no shortage of cute animated icons and Flash™ graphics, which can be downloaded for free from many Web sites, or for pay from many more. They can also be created from templates or scratch using software like the Macromedia's Flash™. These products provide more and more "wizards" of their own, allowing you to insert some fairly sophisticated graphics and animation in your site.

## **LEFT BRAIN - RIGHT BRAIN**

Nielsen stated the principal of Web design pretty succinctly in his classic book:

There are essentially two basic approaches to design: the artistic ideal of expressing yourself and the engineering ideal of solving a problem for a customer... While I acknowledge that there is a need for art, fun, and a general good time on the Web, I believe that the main goal of most web projects should be to make it easy for customers to perform useful tasks.

Jakob Nielsen, *Designing Web Usability*, New Riders Publishing, 2000, Indianapolis, Indiana, p11.

The important thing to remember is that some people have a talent for this stuff and some don't. Keep in mind, the most important thing in a commercial Web site is what the customer thinks of it. The tendency among many of us is to go with what is glitzy. If you are intent on your own business, and not necessarily artistic, you might be better off hiring someone to at least get the site designed for you initially. It's the whole left side of the brain vs. right side thing.

When I estimate how much time I've spent on my site, only to become dissatisfied with it later, it must have cost me about eight billion dollars in lost billable hours, the fuel source of lawyers. Your time is obviously worth something to you too. Rather than perhaps squandering it trying to figure out why you can't get a paragraph to justify, you might think about hiring someone to at least set up the basics for you and to be available to assist if you get stuck.

## **ALL THE TYPICAL MISTAKES**

Frankly, my initial Web site wasn't that bad, at the time. At that time, merely having a Web "presence" was enough, since hardly any local lawyers in the region had a Web site at all. One reason I became less satisfied with it was that it took the course of many "home grown" sites of the day. In other words, I made many, if not

all, the typical mistakes. I spent more time on what I thought were cool graphics, than on clear navigational aids for my visitors. I spent quite a bit of time looking for “cool” wallpaper to use as a background, rather than optimizing the pages, so they would load faster. I flooded the site with material that was sufficient for clients to read in paper form, but didn’t study how this “brochureware” looked as part of a Web site. The other reason was that while my site remained fairly static, in terms of quality and functionality, the competition, as well as the Web generally, had greatly improved.

As noted by some experts:

In Web language, *brochureware* is a dirty word. It refers to sites that are collections of static pages, often with little more than recreations of print promotional materials. These sites don’t take advantage of the medium’s strengths, such as interactivity, personalization, and dynamic content. They’re time-consuming to update, and they’re difficult to expand if a company’s online presence grows.

Deke McClelland, et al., *Web Design Studio Secrets*, 2<sup>nd</sup> ed., IDG Books, Foster City, Calif., 2000, p 155.

## VIEW YOUR SITE AS YOUR CLIENT WOULD

That being the case, let’s examine how to get it done. First, you need to determine what the purpose of your site will be. Write down each of the things you want to have your company Web site accomplish for you. Then, imagine you are a potential client who might want to do business with you. Write down all the things you would like to be able to do if you were inclined to visit a site run by your company. Now compare the two lists. Cross out, or at least severely challenge anything on your list, which is not also on your potential client’s list.

(You might also check the September 2000 installment of Louisville Computer News for installment 5 of this book, *Determine What Your Business Will Accomplish by Being on the Web*. This is also available at my Web site: [www.juristechology.com/BookWebAccomplishments.htm](http://www.juristechology.com/BookWebAccomplishments.htm) )

Second, you need to select someone to assist you. Web developers do seem to grow on trees, in this area, at least. The difficult part is finding one you can afford, who will get you what you want, on the timetable you want. Word of mouth is always a great way to select someone to help you. You can also, of course, spend some time browsing online to find a Web developer. I’m not suggesting you plug your Web

site developer criteria into a search engine and hope your results will be a list of perfect, or perhaps even marginal, developers. I am suggesting you spend a substantial amount of time looking around at what is out there, what you like, and what makes sense for your site. Always keep in mind your checklist of what your customers want or can use at your site. The quicker your Web visitors can access the information they want, the better they will like your site.

It would be helpful to any Web developer you interview, if you already had copies of Web pages you've found, demonstrating specific functions or the "look and feel" you want at your site. Navigational elements are also critical, as well as general layout of a site. While browsing the Internet, make notes on what seems to satisfy your needs, or download some pages, so your developer of choice can take a look at what you think you want. The final product may be far from samples you've collected, but as they say, a picture is worth a thousand words. If you're paying for the developer's time, you'll probably want to shorten the learning curve.

Another basic rule in getting your Web site developed by a professional is to get it in writing. There is such a subjective feeling about one's Web site that there is typically little chance any developer can match the expectations of the business owner after the first interview between client and consultant. Web developers have pretty well learned to deal with this, perhaps after a few stop payment orders on the last installment of their fees. If you're the customer, you should make sure that what you are bargaining for is well documented as well. Here are a few bullets for your arsenal. The contract should, at a minimum, specify the following:

- The start date and end date for the project and insert the magic language: "time is of the essence" in completion of all aspects of this project.
- All "functionality" of the site when completed.
- All milestones in development of the site, including how much you must pay up front, upon completion of each milestone, and how much you can retain, until the site has been fully tested and in operation for a specific period of time.
- During the concept stage, the developer will provide not fewer than "X" number of screen shots of various aspects or functions of the site for you to decide upon in proceeding to the second phase of the site development.
- The grounds, if any, upon which you may reject any proposed aspects of the site, from screen shots to general look and feel.
- What will happen if you decide, after the developer has started work, that this just isn't what you want. Who owns what and who gets paid for what?
- All manuals or other deliverables the developer must produce to you in order

for you or a third party to maintain or modify the site after the developer completes its project work.

- Any training to be provided by the developer, including when, where, how often, as well as the additional cost and method of agreeing on reimbursement of expenses of the developer.
- The maximum load time for any page or function of the site at a specific speed and bandwidth.
- Maximum times allowable for developer maintenance of the site once it “goes live,” as well as maximum down time due to problems the developer could have avoided.
- The site will be compatible with various versions, including the latest, of browser software, such as those of AOL, Microsoft and Netscape.
- Alternate versions of the site, such as text only, .pdf files for ease in visitor printing of content, high or low resolution graphic versions, accessibility by those with disabilities, etc.
- Security safeguards to be employed by the developer during “construction” and after you, the developer, or a third party take over when the site is finished. This would include password protocols, firewalls, virus protection, etc.
- Integration of the site with any intranet, extranet, or other systems.
- How change orders or updates will be accomplished, and at what price.
- Any warranties or disclaimers of warranties by the developer.
- The duty of the developer to transfer or publish the site to your appropriate address on the Internet.
- The duty, if any, of the developer to host or accomplish hosting for the site.
- The duty to obtain, pay for and register, as well as specification of ownership rights, in any domain names related to the site.
- Duty of the developer to correct problems, including term of such duty, time frame for response, final correction time line and price.
- Specify that all Web pages, screens, graphics, the “look and feel,” as well as the object code, source code and all other material in your site are your property, and not merely licensed to you by the developer.
- All intellectual property created as part of the development of the site is owned solely by you.
- The developer will not (and include in any sign off at the end of the project - “did not”) infringe on or violate any copyright, trademark or other rights of any third party.
- Make the developer specify any exceptions to your free and clear ownership of all aspects of the Web site created for you.
- The developer will not disclose any trade secrets, proprietary information or

other confidential information of yours learned during or as a result of the process of developing the site.

- The developer will not use your logos, trademarks or anything else of yours without specific prior written approval by you, including as part of the developer's portfolio, nor link to your site without your permission.
- Dispute resolution procedure.
- Insurance or bond provisions with which the developer must comply, including the developer's duty to provide you with evidence of such insurance being currently in full force.
- The law of your home state will apply.
- All modifications of the agreement must be in writing, signed by both parties.
- The developer may not assign the contract, or any portion thereof, without your prior written approval.
- The identity of any particularly talented person who must be primarily involved, or who must perform certain duties for the developer.

If you follow these steps, you should be on the road to a Web site worthy of your company's reputation. Now, if you can just stop trying to tinker with it...

© 2001 by Stuart Adams. This is the 18th installment in the Author's online book. Your comments and input would be appreciated in helping the Author make this an "organic book," which will continue to grow and adapt to change, just as any business itself must do. E-mail your comments and suggestions to the author at [biz-law@juristechnology.com](mailto:biz-law@juristechnology.com).