

# WilhelmGilliéron

## AVOCATS



Auteur: Wilhelm Gilliéron Avocats | Le : 8 February 2021

## Website development : ouch, I don't even own the copyrights !

Whatever your activities are, it is difficult to conceive today that you deploy them without having created a website.

Whether this site is a simple showcase or whether it is intended to enable e-commerce, its development will generally be entrusted to an agency or a freelance. It is then better to take the time to read the terms and conditions of your subcontractor to avoid unpleasant surprises.

Among the points to which attention should be paid, one deserves particular caution; that of the ownership of rights, which can play a role on multiple accounts. Let us take three examples that are frequent in practice:

### First case: copyright on the site itself

*You entrusted the development of your website to a company X. A few years later, you wish to make it evolve and learn that in reality the company X holds all the rights on your site, making any evolution by a third party impossible. You find yourself stuck with a site that is now outdated.*

To avoid such a situation, it is important to ensure that the general terms and conditions of the agency in question include a clause relating to the "assignment of rights" or "transfer of rights" on the result of the work carried out by the agency, in other words on the website. In the absence of such a clause, the developer may then argue that the rights to your site have never been assigned to you and, by the same token, refuse to disclose to you the source code necessary for any update, upgrade or new version. Whether this argument is well-founded or not (one can doubt it), you now have to face a dispute that could easily have been avoided.

Therefore, make sure that the applicable terms and conditions contain a clause assigning to you all rights, in particular copyright (including the source code) on the result of the work carried out by the agency!

### Second case: the copyright on the content of the site

*You entrusted the development of your website to a company X. The review of the general terms and conditions assures you that the rights on the site have been transferred to you. However, you did not realize that the agency in question had used various images and multimedia content belonging to third parties. One day, you receive a letter informing you that the license on the content in question has expired and that your use of this content now infringes upon the copyright of the owners; in other words, it's time to pay again.*

The development of a website is likely to involve the use of multimedia content. Either you have to ensure that the agency in question represents and warrants that it owns all the rights to such content, or you must make sure that it has the necessary licenses to use such content and inform you about any restrictions related to the use of this content.

Ideally, it would obviously be desirable to have a perpetual license upon such third-party content. Such license may however well be temporary; in other words, at its expiration, it will be up to you to pay for its renewal (kind of subscription if you prefer) to be entitled to further use these contents. In this hypothesis, it is then important that you become aware of the limits that this license contains, so as to ensure that you comply with such restrictions and, if necessary, approach the right holders to negotiate those terms as you wish.

### Third case: the ownership of the domain name

*You entrusted the development of your website to a company X. It carries out the work in a way that does not satisfy you. Unhappy as you are, you do not want to pay for the last installment, until the developer remedies the noticed deficiencies. In the absence of any improvement, You now wish to take over, but realize that the domain name to which your site is attached, which corresponds to your name (whether it is a trademark, a trade name or an unregistered distinctive sign that you use) has been directly registered by the company in question. Given your dispute, the agency refuses to transfer it to you.*

In such a hypothesis, unless you reach an agreement with the agency in question or settle your last installment notwithstanding your dissatisfaction with the way the services has been performed, you will have no choice but to take action or lose the site in question.

Losing the site means that you will have to start all the work over again. Some online dispute resolution methods (ODR) will enable you to recover your domain name within two months for a reasonable amount, but it will still cost you at least CHF 4'000.-, an amount that you would certainly have preferred to invest differently. Worse still, if the requirements for these ODRs are not met, you will then have to take action in the civil courts, with all the negative consequences in terms of costs and time that it will take you to recover your domain name.

To avoid such an unfortunate situation, always make sure that the domain name to which your site is linked is registered in your name.

What should one conclude from the above? That it is better to take a few minutes to read the general terms and conditions and make sure that the above-mentioned points are covered, rather than neglecting this reading and finding yourself in one of the above-mentioned situations. No matter how uninviting this reading may be, you may well regret it!

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**Source : <https://www.wg-avocats.ch/en/news/intellectual-property/website-development-dont-own-copyrights/>**