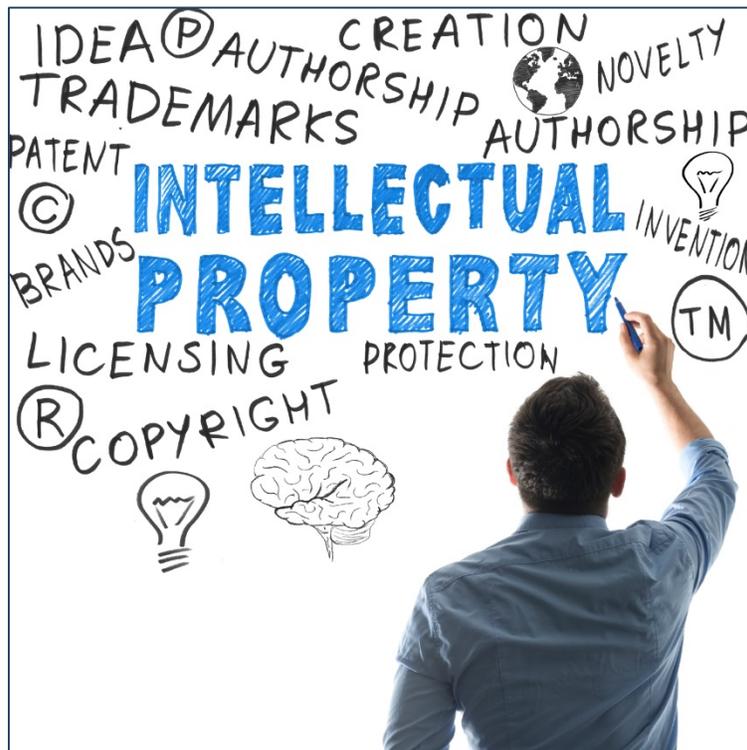


Realcomp II Ltd.

Copyright Best Practices

For Designated REALTORS®/Broker Owners and Agents



June 2015

Lippitt O'Keefe Gornbein, PLLC

A Letter from Lippitt O'Keefe Gornbein, PLLC

Dear Realcomp MLS Subscribers,

As many of you are aware, the importance of intellectual property in the real estate field has been increasing exponentially in recent years. Every time Realcomp posts a photo, a virtual tour or even a description of a property, intellectual property rights are implicated.

Recent case law has made clear the importance of Realcomp reigning in its intellectual property rights on listing content. The effect is twofold: First, doing so protects Realcomp against those who would claim that Realcomp is infringing upon their intellectual property rights. Second, doing so gives Realcomp greater power to prosecute those infringing on *Realcomp's* intellectual property rights.

The goal of this publication is to illustrate how best to document and assign intellectual property from homeowner to photographer to agent to Realcomp. By following the best practices we have suggested, you can help Realcomp, and the greater REALTOR® community, protect their investments in the multiple listing service.

Sincerely,



Brian D. O'Keefe, Esq.
Founding partner of Lippitt O'Keefe Gornbein, PLLC



A Primer on Intellectual Property in the World of the Multiple Listing Service

Intellectual property is a field that covers many legal mechanisms to protect creations of the mind, including photography, music, literature, inventions, designs, trade secrets and many other intangible but nonetheless valuable assets.

The multiple listing service, and this publication, is most concerned with copyright, which is a legal right grounded in the United States Constitution, giving the creator of an original work exclusive rights to its use and distribution. While there are some exceptions beyond the scope of this publication, this means that, for example, a photographer who takes a photo is the only person who may distribute and make copies of it, unless and until he assigns or licenses such rights to another person or entity.

Under the United States copyright system, the owner of a work (be it the original author or someone to whom he has transferred his rights), may register the work with the Copyright Office. While registration is not required for copyright protection, registration provides notice of a copyright claim to would-be infringers and makes the owner eligible for statutory damages and attorney's fees in a successful litigation. Realcomp files a copyright registration every quarter covering its MLS compilation.

In the context of the multiple listing service, the copyright in listing content transfers through several entities prior to Realcomp receiving a listing via RCO3[®]. With respect to photographs and virtual tours, the original owner of the copyright is generally the photographer or videographer. Ideally, the photographer or videographer then assigns his rights to the agent (who is operating on behalf of a Broker), who then can assign those rights on to Realcomp. Without Realcomp being the owner, Realcomp cannot, under US copyright law, prosecute infringers who take and copy photos from RCO3[®] or MoveInMichigan.

This publication is meant to provide suggested copyright assignments for distribution to agents and photographers in order to facilitate the ultimate transfer of copyrights to Realcomp. We have included additions to listing agreements along with separate assignment documents which should all be used in conjunction with each other.

Obtaining Privacy Releases from the Homeowner-Seller

A homeowner who has not taken his own photographs of the property does not technically have intellectual property rights in his home. He does, however, have certain privacy rights. While we could assume he would waive those privacy rights in the context of asking a REALTOR® to list his property for sale, the best practice is to have these rights waived in writing. In light of this, **we suggest the following be added to all listing agreements where the HOMEOWNER HAS NOT TAKEN HIS OWN PHOTOS:**

OTHER CONDITIONS

The Seller hereby consents to the taking of photographs and/or video ("Visual Media") of the Property and consents to the unlimited and perpetual use of such Visual Media by Broker or any of Broker's designees. "Use" shall include, without limitation, the reproduction, modification, adaptation, publishing, creation of derivative works from, distribution, and display of the Visual Media throughout the world in any format.

Obtaining Copyright Assignments or Licenses from the Homeowner-Seller or a Professional Photographer or Videographer

A copyright in a photograph initially invests in the person who took it. **If the photographs or video WERE TAKEN BY THE HOMEOWNER HIMSELF, add this paragraph to the listing agreement:**

OTHER CONDITIONS

The Seller hereby irrevocably assigns, transfers, sets over and conveys to Broker all of Seller's right, title and interest in and to certain photographs and/or video of the Property taken by Seller (the "Visual Media"), including, without limitation, all copyright and proprietary rights therein, and further including, without limitation, the right to grant permission to republish the Visual Media in whole or in part and the right to republish the Work in any format.

With respect to professional photographers and videographers, a separate assignment document is needed. The following language provides an assignment transferring all copyright from the photographer or videographer to the broker:

ASSIGNMENT OF COPYRIGHT

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the undersigned _____ ("Photographer") does hereby irrevocably assign, transfer, set over and convey to _____ ("Broker") all of Photographer's right, title and interest in and to those certain photographs and/or video of the real property located at _____ taken or recorded on _____ (collectively, the "Work"), including, without limitation, all copyright and proprietary rights therein, and further including, without limitation, the right to grant permission to republish the Work in whole or in part and the right to republish the Work in any format.

PHOTOGRAPHER:

Signature: _____

Name (please print): _____

Date: _____

Obtaining Copyright Assignments or Licenses from the Homeowner-Seller or a Professional Photographer or Videographer (Continued)

Many professional photographers or videographers may be skittish when it comes to assigning away their entire right in a photograph. While Realcomp is required to have copyright ownership in order to prosecute infringers, **at a minimum, Realcomp must have a license to use the photograph or video on its MLS.** Without this minimum protection, Realcomp is vulnerable to copyright infringement actions from others. Sample assignment language follows:

COPYRIGHT LICENSE

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the undersigned _____ ("Photographer") does hereby grant an assignable, irrevocable, perpetual, worldwide, non-exclusive license to _____ ("Broker") for the unlimited use of those certain photographs and/or video of the real property located at _____ taken or recorded on _____ (collectively, the "Work"), and, without limitation on the foregoing, hereby consents to the republishing of the Work in whole or in part, and in any format, by the Broker or any of its designees.

PHOTOGRAPHER:

Signature: _____

Name (please print): _____

Date: _____

Transferring Copyright from Broker to Realcomp – Coming to RCO3®

The next step in the chain is assigning the copyright from the Broker to Realcomp. Realcomp will be integrating the below assignment into its RCO3® platform. When an agent logs on to RCO3® to upload a listing, he or she will be prompted to agree to the following:

ASSIGNMENT OF LISTING CONTENT INCLUDING PHOTOS

By the act of submitting any property listing content (including photographs and virtual tours), I represent that I have full right, power and authority to assign and hereby do irrevocably assign, on behalf of the Broker, to Realcomp the Broker's entire right, title and interest (including, without limitation, all intellectual property rights) in such content.

In the alternative, the below provision will effectuate a license from the Broker to Realcomp:

LICENSE OF LISTING CONTENT INCLUDING PHOTOS

By the act of submitting any property listing content (including photographs and virtual tours), I represent that I have full right, power and authority to grant and hereby do grant to Realcomp an assignable, irrevocable, perpetual, worldwide, nonexclusive license for the unlimited use of such listing content, including, without limitation, the republishing of the content in whole or in part and in any format.

Each of these provisions will cover the assignment or license, as the case may be, of the more recently created copyright in the entire listing, which is a compilation of copyright-eligible works.

Overview

We understand that this intellectual property program we are proscribing can be overwhelming. To assist you and your staff, we have assembled the below checklists:

1) If you or the homeowner is hiring a professional photographer or videographer, make sure to have the following documents:

Additional paragraph to the listing agreement releasing the homeowner's privacy rights (shown on pg. 4 as "copy/paste" language); AND

One (1) of the following:

___ ** Copyright assignment from the photographer to the broker
(shown on pg. 6, repeated as blank form at top of pg. 10 for easy insertion into listing pkt.);

--OR--

___ ** Copyright license from the photographer to the broker
(shown on pg. 7, repeated as blank form at bottom of pg. 10 for easy insertion into listing pkt.)

<p>** The copyright <u>assignment</u> and <u>license</u> language has been included in this packet on a single page (pg. 10) for the convenience of adding one (1) page to your listing packet. Only one (1) of these should be used in a transaction (not both). Realcomp will also be adding these new forms to Instanet Forms.</p>

2) If the homeowner-seller has taken his own photographs, make sure you have the following documents:

Additional paragraph to the listing agreement, transferring the copyright owner's photographs to the broker (shown on pg. 5 as "copy/paste" language).

Taking these steps to secure the ownership of the copyrights in listing content allows Realcomp and brokers to avoid infringement suits and to prosecute those distributing unauthorized copies of listings. As we all understand the value of the multiple listing service, enacting these protections is vital to defending this community's investment in our collaborative, important resource.

If you have any questions about this information, please contact Ms. Karen S. Kage, Realcomp's CEO at kkage@corp.realcomp.com or (248) 699-9120.



ASSIGNMENT OF COPYRIGHT

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the undersigned _____ ("Photographer") does hereby irrevocably assign, transfer, set over and convey to _____ ("Broker") all of Photographer's right, title and interest in and to those certain photographs and/or video of the real property located at _____ taken or recorded on _____ (collectively, the "Work"), including, without limitation, all copyright and proprietary rights therein, and further including, without limitation, the right to grant permission to republish the Work in whole or in part and the right to republish the Work in any format.

PHOTOGRAPHER:

Signature: _____

Name (please print): _____

Date: _____

-OR-

COPYRIGHT LICENSE

For good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the undersigned _____ ("Photographer") does hereby grant an assignable, irrevocable, perpetual, worldwide, non-exclusive license to _____ ("Broker") for the unlimited use of those certain photographs and/or video of the real property located at _____ taken or recorded on _____ (collectively, the "Work"), and, without limitation on the foregoing, hereby consents to the republishing of the Work in whole or in part, and in any format, by the Broker or any of its designees.

PHOTOGRAPHER:

Signature: _____

Name (please print): _____

Date: _____