

Tech: Neighborhood social networking sites mean business!

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No, No, No Photos!

Are you using photos owned by other companies? Cease and desist or pay some steep fines.

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COPYRIGHT ISSUES

No No Photos!

Are you using photos owned by other companies?
Cease and desist or pay some steep fines.

BY FLORIDA REALTORS® LAW & POLICY DEPARTMENT

Does this sound familiar? You've just secured a waterfront listing. You immediately take photos of the home but when you sit down to design the flier, you realize that it would benefit from some stock images of beaches and waterfront. So, you search the Internet, find some pictures and insert them in the flier. After all, when it comes to marketing Florida's sunny properties, it is easy to get carried away showing the beautiful coastline and surrounding areas.



Who Owns the Pictures?

Take heed! The problem for real estate professionals is that someone or some company owns every single one of those images. A bigger problem is a fundamental misunderstanding that an image readily ob-



Andrew Barbar
Keller Williams
Realty Services
Boca Raton

tainable on the Internet is available for use by anyone. This is not true. Its presence on the Internet doesn't mean that you have permission to use it. In fact, this problem has become so widespread that companies are enforcing their rights, demanding that real estate professionals, among others, pay for illegally using their photos in marketing.

Cease and Desist

Dozens of Realtors® have recently received demand letters from photo licensing companies, such as Getty Images, citing their illegal use of an image on their website. The challenge real estate professionals face is that 99 percent of the time the violation is a mistake. "Agents unknowingly use images they think are free, but then they get a legal letter notifying them of the violation," says **Andrew Barbar**, broker of **Keller Williams Realty Services** in Boca Raton and Florida Realtors president-elect. Barbar's mention of a violation refers to copyright ownership of the image, probably by a photo licensing company. One such company, Getty Images, aggressively enforces its copyright when it discovers someone using one of its images without the company's permission. Copyright law is not kind, and violating the law may carry hefty statutory and civil penalties. Ignorance and accidents are not excuses. Development of your website by a third-party company that selected the images is also no excuse. If you own the website, you are liable for the violation. Your website developer may share culpability, but regardless of who selected your site's images, you may be liable.

YOUR TERMS OF USE

Put This On Your Website

Your website should clearly state what someone who suspects a copyright violation should do.

Here is the language that the National Association of Realtors (NAR) uses (NAR says you're free to update it with your specific information and use it on your site):

"If you believe that your intellectual property rights have been violated by [brokerage name] or by a third party who has uploaded Content on our Site, please provide the following information to the [brokerage name]-designated copyright agent listed below:

"a. A description of the copyrighted work or other intellectual property that you claim has been infringed;

"b. A description of where the material that you claim is infringing is located on the Site;

"c. An address, a telephone number, and an e-mail address where [brokerage name] can contact you and, if different, an email address where the alleged infringing party, if not [brokerage name], can contact you;

"d. A statement that you have a good-faith belief that the use is not authorized by the copyright

or other intellectual property rights owner, by its agent, or by law;

"e. A statement by you under penalty of perjury that the information in your notice is accurate and that you are the copyright or intellectual property owner or are authorized to act on the owner's behalf;

"f. Your electronic or physical signature.

"[Brokerage name] may request additional information before removing any infringing material. [Brokerage name] may provide the alleged infringing party with your email address so that that person can respond to your allegations.

"[Brokerage name] has registered a designated agent with the Copyright Office pursuant to 17 U.S.C. 512(c). If you believe your copyright material is being used on this Site without permission, please notify the designated agent at:

"[Brokerage's Designated Agent name, address and contact information]."

Read Florida Realtors' terms of use here: floridarealtors.org/Terms-of-Use.cfm.

Tips for Protecting Yourself

How do you protect yourself and your business to ensure that you do not violate someone's copyright? First, audit your website and identify all the images you are displaying. Where did they come from, and how do you know you have permission to use them? If you cannot confidently answer these questions with



Where to Go for Pictures

Looking for great pictures where you can buy licensing agreements? Here are some sites:

1. Every Stock Photo: everystockphoto.com
2. iStockphoto: istockphoto.com
3. Shutterstock: shutterstock.com
4. Thinkstock Photo: thinkstockphotos.com
5. For blogs: PhotoDropper plug in, photodropper.com
6. Photodune: photodune.net

the knowledge and proof that you have permission to use the images, remove them until you receive confirmation of permission.

What if you already have a demand letter stating that you are violating someone's copyright? Consider consulting an attorney, and double-check the image in question. Is it owned by the company demanding payment? If it is, remove it. Then, make a business decision and see if you can negotiate a lower fine. Do not ignore such a letter; usually the demand will increase over time.

IDX Webpage Images

What if the image is on your IDX Webpage? It is not an image you placed on the page, so how can you be liable? That is a good point, and there is a process you can institute to protect yourself from violations within your IDX feed. It is a safe-harbor provision under the Digital Millennium Copyright Act (DMCA). Under the DMCA, you, as the "service provider and/or website provider," can take five steps to protect yourself if you are republishing images:

The website operator

1. does not have actual knowledge of the infringing content;
2. is not aware of facts or circumstances from which infringement is apparent;
3. does not receive a financial benefit directly attributable to the infringing activity;
4. acts expeditiously to remove the infringing content when notified; and
5. has provided a means for receiving notice of the infringing content, regis-

tered a person with the U.S. Copyright Office as the designated agent for notices about infringement and put the agent's name, address, phone number and email address on the website.

Brokers who have agents with individual websites need to ensure that each is registered with the U.S. Copyright Office. "The statute requires each website to register a person or entity that will receive notice of alleged infringement, referred to as a 'DMCA /Service Provider agent,'" says **Katie Johnson**, associate counsel for the **National Association of Realtors**. "The Copyright Office form is set up such that one person or entity can be the agent for multiple websites by specifically listing each website on the registration form. Therefore, to be fully compliant with the statute, you must list each of the websites for which you want to act as DMCA agent."

The first line of defense is to take your own pictures or hire someone to take pictures for you. If you use online images, pay the licensing fees to ensure that you comply with the law. If you work with a Web developer, consider inserting language into your services agreement that indemnifies you in the event that the developer provides an image that infringes on someone's copyright.

Finally, images are not the only items that are copyrighted: writings, drawings, music, printed material and videos are also a source of risk. When using these materials, follow the same steps to protect yourself. ○



Katie Johnson
National
Association
of Realtors®



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