

MLS Insight: The DMCA and You

MLS Insight is a series about how things work at RMLS™.



The Digital Millennium Copyright Act (DMCA) was signed into law in 1998 with the intent to bring US copyright laws into the digital age. MLS listings normally contain several items subject to copyright, most prominently the photos and remarks. When a listing is loaded into RMLSweb, the understanding is that the listing content is authorized or legitimate, and there is no copyright issue.

This understanding is stipulated in the RMLS™ Rules and Regulations under Section 10.3 – **Authority to Publish**: *By the act of submitting any property listing content to RMLS™, the Participant represents that the Participant has been authorized and also thereby does grant authority for the MLS to include the property listing content in its copyrighted MLS compilation and also in any statistical report on comparables.*

In addition to the responsibility of the listing broker to ensure that there is no copyright infringement in the listing content they provide, RMLS™ also has responsibilities as a publisher under the DMCA. In order to limit liability for copyright infringement we may unknowingly include on our site, we have followed the safe harbor provisions of the DMCA since 2009. These provisions include appointing a copyright agent and making it easy for someone who spots a copyright infringement to contact us. RMLSweb and RMLS.com have a link on every listing to report any claims of copyright infringement, and there are specific steps we follow to meet the requirements of the safe harbor when we are notified of a problem.

That covers the responsibility of the listing broker and RMLS™.

Does it end there? NO!! It does not.

Each website posting listing data is individually responsible for copyright infringement that might appear on that site. That means that every IDX website needs to protect itself under the DMCA safe harbor provisions.

The National Association of REALTORS® (NAR) became concerned about potential liability for brokers, and in their model rules for 2016 they have required the addition of a section about copyright and the DMCA. The RMLS™ Board of Directors adopted this language and it has now been added to Section 10.3 of the RMLS™ Rules and Regulations. This is an important advisory recommendation from NAR. If you have a website that displays listing content, make sure you ask your website provider about their compliance with the DMCA. Here is the new RMLS™ Rules and Regulations language in full.

The Digital Millennium Copyright Act (DMCA) is a federal copyright law that enhances the penalties for copyright infringement occurring on the Internet. The law provides exemptions or "safe harbors" from copyright infringement liability for online service providers (OSP) that satisfy certain criteria. Courts construe the definition of "online service provider" broadly, which would likely include MLSs as well as participants and subscribers hosting an IDX display.

One safe harbor limits the liability of an OSP that hosts a system, network or website on which Internet users may post user-generated content. If an OSP complies with the provisions of this DMCA safe harbor, it cannot be liable for copyright infringement if a user posts infringing material on its website. This protects an OSP from incurring significant sums in copyright infringement damages, as statutory damages are as high as \$150,000 per work. For this reason, it is highly recommended that MLSs, participants and subscribers comply with the DMCA safe harbor provisions discussed herein.

To qualify for this safe harbor, the OSP must:

- *Designate on its website and register with the Copyright Office an agent to receive takedown requests. The agent could be the MLS, participant, subscriber, or other individual or entity.*
- *Develop and post a DMCA-compliant website policy that addresses repeat offenders.*
- *Comply with the DMCA takedown procedure. If a copyright owner submits a takedown notice to the OSP, which alleges infringement of its copyright at a certain location, then the OSP must promptly remove allegedly infringing material. The alleged infringer may submit a counter-notice that the OSP must share with the copyright owner. If the copyright owner fails to initiate a copyright lawsuit within ten (10) days, then the OSP may restore the removed material.*
- *Have no actual knowledge of any complained-of infringing activity.*
- *Not be aware of facts or circumstances from which complained-of infringing activity is apparent.*
- *Not receive a financial benefit attributable to complained-of infringing activity when the OSP is capable of controlling such activity.*

Full compliance with these DMCA safe harbor criteria will mitigate an OSP's copyright infringement liability. For more information see 17 USC §512.

NAR has additional information on its website, including a recent video on photo copyright. In the case of copyright infringement, the old adage "an ounce of prevention is worth a pound of cure" surely applies.

If you have questions on any RMLS™-related topic that you would like to have answered, I encourage you to post a comment.