

Bloggers

Cite Right: Blog Content from Other Sources Must Abide by and Comply with Copyright Laws

By Ann-Lewis Shaw, NVAR General Counsel

Last month, I discussed defamation as one of the problems you definitely want to avoid when writing your real estate blog. This month we will look at another problem area: copyright infringement. Most copyright infringement is not intentional. Rather, it results from ignorance of the fact that items appearing on the Web or in a blog may be subject to copyright protection.

While the inventors and earliest users of the World Wide Web wanted it to be a medium for the free-flowing, open exchange of ideas and information, eventually users acknowledged the need for rules that would protect them and the information posted.

Copyright law provides strong protections for certain intellectual property, and an ever-growing body of law is and will be addressing the Internet's particular requirements and features. Copyright rules can

be complicated, so let us examine just two questions that may apply to your blog. First, what kind of information or material does copyright law cover? Second, how can you legally copy or use material from someone else's Web site or blog on yours?

As a starting point, keep in mind that ideas, facts or theories cannot be copyrighted. This means that you are allowed to report the ideas, facts or theories that are part of another person's Web site, blog or written article. It does not mean, however, that you can duplicate the other person's manner of expressing those ideas, facts or theories. You cannot copy the exact way that person combines words to express the information unless you have that person's permission. In other words, you can paraphrase the presentation, but you cannot reproduce it word-for-word.

Take an example of a blog you might use as a



marketing tool in your real estate practice. As a REALTOR®, you have access to a variety of information on both the local and national markets that could be of interest to your clients and potential clients. By posting some of this content on your blog, your goal is to inform the public as well as to invite visitors to engage in commentary on your material. As a result, your blog is partially for education, but primarily for business.

Suppose next that you post a particularly interesting copy of an article from the *Washington Post* Real Estate Section one Saturday morning, and then you invite your bloggers to

comment. If you have copied the article in full, verbatim, you have violated at least one and possibly two copyrights.

I mentioned the copyright exemption covers facts: to the extent your copied material contains only facts, you would be protected. However, if you merely "cut and paste" the entire article, then you have done more than report facts. You have copied the manner in which those facts were expressed (i.e., the author's style of conveying the facts), and such expression is protected by copyright law. All of the articles you read in the Post, or any other newspaper, are copyrighted either by the publication

Beware:

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itself or by the author. In order to use the article, you would at least need to contact the newspaper publisher and perhaps the author.

At this point you might think, “Hold on – when I was setting up this blog, I’m pretty sure I read about another way to avoid the copyright hassle. What about the ‘fair use’ exception?”

Among other things, the “fair use” exception allows you to use short quotations from someone’s copyrighted material, particularly if you are going to do so in a way that paraphrases the material. The law recognizes that paraphrase as a “transformative use”: the more you paraphrase or add your own ideas to the original piece, the less infringement.

Simply put, there are no fixed rules governing the fair use exception. U.S. copyright law (17 U.S.C. §107) states four elements that a court should consider when

determining whether something is a fair use exception. You should know that one of the important factors in such a determination rests on the purpose and character of the use. Educational use is favored, but commercial use is not. Since we assume that your blog exists to help your business, a court would likely conclude that your blog is commercial, and not educational, with the result that you could not claim the fair use exception.

Does all this mean that you should abandon your real estate blog? Not at all! Blogs may be a great way to communicate with your clients and potential clients, and to find out what people in your community are thinking about real estate topics. Just remember to treat the blog with the same formality and seriousness that you would a printed newsletter, and you will avoid copyright infringement trouble.

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