



Copyright Basics

**& How Copyright
Impacts Real Estate
Brokerages**

What is copyright?

Copyright is a form of legal protection provided to the authors of "original works of authorship" fixed in a tangible form of expression

What can be protected?

Things like....

- Books
- Plays
- Paintings
- Photographs

What can't be protected?

Things like...

- Ideas
- Facts
- Short phrases or slogans

Who owns a copyright?

Generally, the copyright owner is the author who created the work:

- The writer
- The painter
- The photographer

Work made for hire

The author and owner is not the person who actually created the work, but is the person or entity that hired the person.

A work can be considered a work made for hire if the work is created by:

- An employee within the scope of employment, or
- An independent contractor under an express written agreement signed by both parties, but only for 9 specific categories.

What rights does a copyright owner have?

Copyright owners own certain exclusive rights, like the right to:

- reproduce the work
- distribute the work
- display the work
- make derivative works (create something new)

Can I grant or share rights with others?

Yes, a copyright owner can grant or share certain rights with another through:

- an assignment, or
- a license agreement

Subject to the terms and conditions of this Agreement, **Licens**or hereby grants to **Licensee** a **non-exclusive, non-transferable, worldwide, perpetual, royalty-free** license to **reproduce, display, and distribute** the material for marketing **Licensee's** services. |

How can I protect my copyrights?

- Registration
- Copyright Notice:
© 2018 Texas Association of REALTORS®, Inc.
- Agreements

What is copyright infringement?

Copyright infringement is the violation of one or more of the copyright owner's exclusive rights.

What are the remedies?

- Injunctive Relief
- Damages
 - Actual damages and wrongful profits, or
 - Statutory damages
- Attorneys' Fees and Costs

What about fair use?

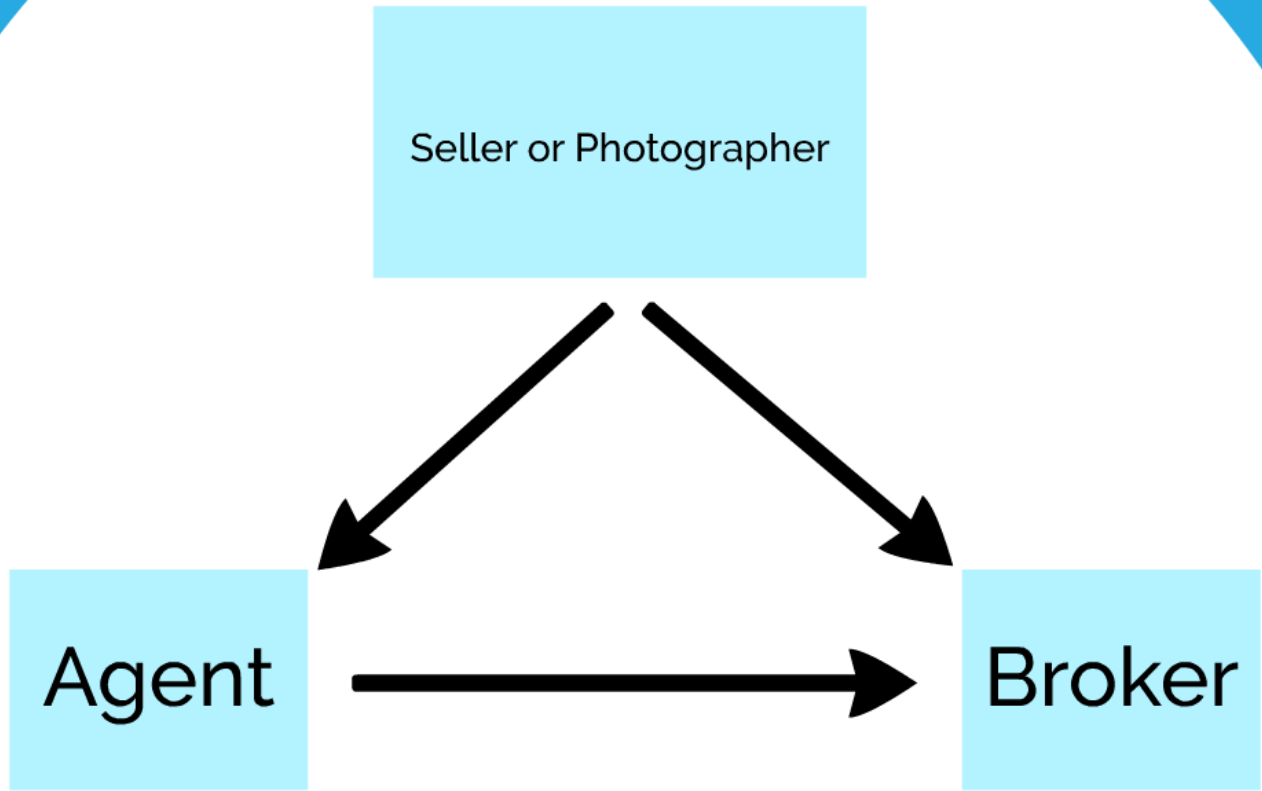
Fair use is an affirmative defense.

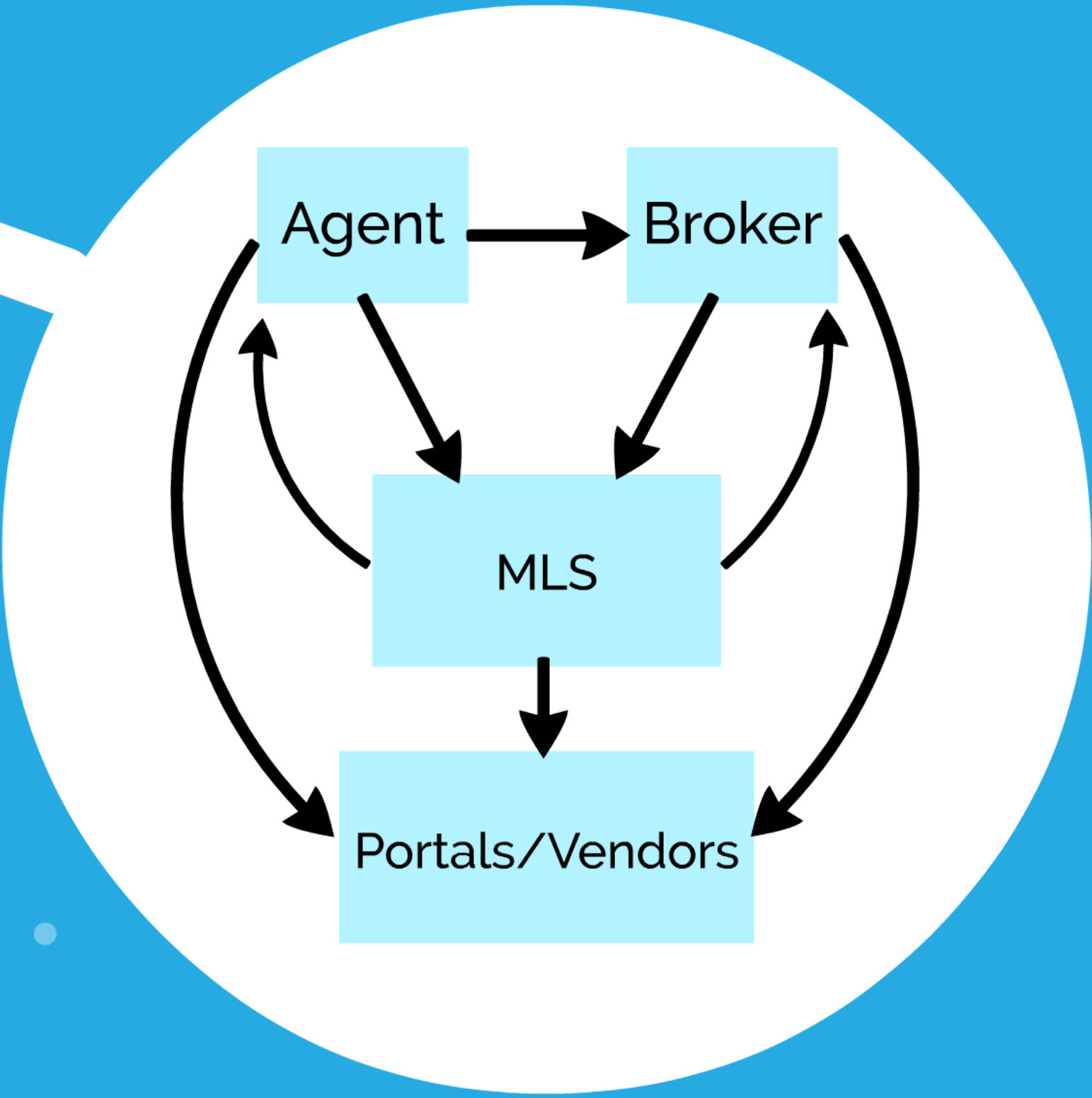
In determining whether any use is a "fair use", a judge or jury will consider the following factors:

- Purpose and character of the use
- Nature of the copyrighted work
- How much was taken
- Economic impact

How does any of this impact me or my brokerage?

Typically through use of photographs when marketing a property





Relevant Case Law

**How can I protect myself
or my brokerage from an
infringement claim?**

Know your rights

- Don't use content, like a photograph, unless you have permission.
- Review your existing agreements so that you know what rights you have and make sure your use complies.
- Ensure future agreements have given you the necessary rights

DMCA Safe Harbor

The Digital Millennium Copyright Act's "safe harbor" provision can protect you from a third party's infringing activity, but you must comply with the requirements.

TAR provides members with a free model policy to assist in compliance with the safe harbor requirements

Requirements

- Have no knowledge of complained-of infringing activity or of facts that make complained of infringing activity apparent
- If capable of controlling infringing activity, make sure no financial benefit can be attributable to the infringing activity
- Comply with DMCA takedown procedure
- Designate a copyright agent on website and with the Copyright Office.
- Implement a DMCA-compliant website policy

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contractor agreement

- Designed to address ownership of listing content created by an agent or a third party

TAR Resources

- Model Addendum to Independent Contractor Agreement Regarding Listing Content
- Model Copyright Policy
- Model Photography Agreements

Model Photography Agreements

Made for Hire: The broker is the automatic owner of the photographs from creation.

Assignment: The photographer assigns all rights to the photographs to the broker.

License: The photographer retains ownership of the photographs, but grants the broker a license to use the photographs.



Model Addendum to Independent Contractor Agreement Regarding Listing Content

- Model addendum to an independent contractor agreement
- Designed to address ownership of listing content created by an agent or a third party

Model Copyright Policy

- Addresses ownership of listing content created by agents and third parties
- Instructs agents on how to properly use listing content and the types of agreements they must secure

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