

Copyright basics

Overview

COPYRIGHT HAS FOUNDATIONS IN THE U.S. CONSTITUTION, which provides for authors to have exclusive rights in their works.⁴ This chapter (a) identifies core copyright principles, including the exclusive rights the Copyright Act bestows on the owners of copyrights and the fair-use doctrine; (b) summarizes the types of works in real estate listing content that are subject to copyright protection; (c) explains how authorship and ownership in copyrights are established; and (d) discusses how owners can transfer rights to others.

⁴ The Constitution authorizes Congress to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors... the exclusive Right to their respective Writings. . . .” Art. I, § 8, Cl. 8.

Core copyright principles

THE STATUTORY SOURCE OF COPYRIGHT LAW is the Copyright Act of 1976.⁵ Throughout this guide, we’ll sometimes refer to 17 U.S.C. as the “Copyright Act” or the “CRA.” This section explains what kinds of things are subject to copyright protection, what the rights of the copyright owner are in general, and how “fair use” works.

⁵ 17 U.S.C. § 101 *et seq.* (2012).

What’s protected by copyright?

Copyright subsists “in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.”⁶ Let’s unpack that definition some, starting with the notion of an “original work of authorship.” Note that the threshold of creativity for original authorship is not high; to be protected, a work must have at least a “spark of creativity.”⁷

⁶ 17 U.S.C. § 102(a).

Also note that facts are not works of authorship, but the form in which they are expressed can be.⁸ So, imagine that a journalist witnesses a series of events and writes a story about them, includ-

⁷ *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

⁸ The Act excludes protection for any “idea, procedure, process, system, method of operation, concept, principle, or discovery.” 17 U.S.C. § 102(b).