

MLS Copyright Lawsuits a Sign of Things to Come?

By Christopher Barnett

According to a recent [article](#) published by Inman News, multiple listing service (MLS) companies – providers of real-estate listing information for brokers and their agents – may be contemplating the formation of an industry group to enforce the owners’ perceived intellectual property rights against third parties who acquire their data and make it available to others without the MLS providers’ permission. The issue apparently is a long-standing one for MLS providers, and it recently has gained more public attention due to copyright lawsuits filed by two regional providers (one from Maryland and one from Minnesota) against the operator of [NeighborCity.com](#), which allegedly used the plaintiffs’ data in the creation of its real estate agent ratings and referrals site. Based on the industry-wide nature of the problem and on the recent litigation, MLS providers now are considering the feasibility of a representative organization – similar to the American Society of Composers, Authors and Publishers (ASCAP), the Recording Industry Association of America (RIAA) or BSA | The Software Alliance (BSA) – to sue companies who acquire their data for their own uses.

One of the first hurdles that such an organization would face likely is the fact that copyright protection for databases is relatively weak. The U.S. Supreme Court has [held](#) that data itself – street addresses, broker names, selling prices and the like – is not protectable under U.S. copyright laws, nor, for the most part, is a simple collection of those data. In order to be eligible for protection, a data aggregator generally must show that it has organized the data in some minimally creative way. Even then, it is the way the data is organized that is protectable, not the data itself. How the current MLS litigants or any prospective MLS industry group plans to surmount that hurdle will be critical.

However, if the MLS providers are successful, this development could signal a new source of legal exposure for businesses that unwittingly may be using others’ data without permission. The rise of BSA-like organizations representing data owners in “data audits” could prove to be as much of a cause for concern as software audits are today. Developments in this area will be very interesting to watch.



About the author Christopher Barnett:

Christopher represents clients in a variety of business, intellectual property and IT-related contexts, with matters involving trademark registration and enforcement, software and licensing disputes and litigation, and mergers, divestments and service transactions. Christopher’s practice includes substantial attention to concerns faced by media & technology companies and to disputes involving new media, especially the fast-evolving content on the Internet.

Get in touch: cbarnett@scottandscottllp.com | 800.596.6176