

The files of a real estate brokerage are a treasure trove of data, packed full of information about people and homes. When you take a look into the files that you may carry with you daily or store under lock and key in your office, the data they contain while helpful to you and necessary to the transaction could be very harmful in the hands of another. The Federal Trade Commission recommends building a sound data security plan on the following 5 Key Principles

1. Take Stock
2. Scale Down
3. Lock It
4. Pitch It
5. Plan Ahead

This course looks at those 5 Key Principles and how they relate to the day-to-day operations of a busy real estate brokerage.

**Take Stock** *"You don't know what you've got until it's gone..."*

Real Estate agents and Brokerages need to know what information they have, where it comes from and how they store it.

For Brokers this begins with taking a look at the brokerage as an employer:

1. What information do you collect about employees and independent contractors of the brokerage?
  - Social Security Numbers?
  - Health Insurance forms or related information?
  - Driver's License numbers or photocopies of drivers licenses?
  - Birthdate?
  - Physical address? E-mail address?
  - Telephone number?
  - Vehicle information?
2. In what manner does the brokerage receive this information?
  - A form filled out and provided to the broker?
  - A digital form filled out and provided to the broker through the office intranet?
  - A digital form filled out and provided to the broker through e-mail?
3. Where is the data stored?
  - In a filing cabinet in the office of the Broker?
  - In a filing cabinet in a general storage area?
  - In a digital file on the computer of the Broker?
  - In "the cloud"
4. How is the data secured?
  - The filing cabinet is locked?
  - The digitally stored data is encrypted?
  - It's not?
5. Who has access to the data?

- Designated employees? All employees?
- IT staff?
- 3<sup>rd</sup> Party Vendors?

Brokers and Agents need to evaluate the data they collect from clients and consumers:

1. What information do you collect about a client or consumer?
  - Social Security Number to run a credit check in the case of a short sale?
  - Photocopy of driver's license as a security precaution?
  - Physical address? E-mail address?
  - Social Media account information "handles"
  - Telephone numbers?
  - Birthdate (Everyone likes a Birthday card)
  - Photocopy of an earnest money check?
  - Mortgage application or information needed to fill out an application?
  - Home warranty application or information needed to fill out an application?
  - Employment history?
  - Divorce decree or marriage license?
  - Credit card numbers for scheduling inspections or maintenance?
2. In what manner is this information received?
  - Notes taken by an agent?
  - Forms/applications filled out by client or consumer?
  - Digital forms/applications filled out and provided through e-mail or web-site.
  - Electronic communications: e-mail, texts, instant messages, etc.
3. Where is the data stored?
  - Do agents keep copies of data separate from the files maintained by the brokerage?
4. How is the data secured?

### Defining Data:

-Medium or Media-

Static: Paper

Digital or Electronic: Anything that requires a battery or a power cord

-Digital or Electronic-

RAM (Random Access Memory) How the data is read.

Memory: What is available when the system is powered on and running.

Storage: Where the memory goes when the system is powered down.

-Storage Form-

Magnetic: Hard drive reads magnetic discs with data in binary code

Optical: Binary code is read using light.

Flash/Solid State: Binary code is read digitally

## -Defining data-

Active data: Immediately available

Archival data: "Saved data"

Latent data: Things that you didn't think were there, but are.

## **Scale Down**

Once an audit has been performed to understand what data an agent or brokerage has, the questions "Do I need this for my business?" and "Why am I keeping this?" must be asked.

"Why am I keeping this?"

- ✓ State regulations require me to.
- ✓ My accountant told me to.
- ✓ My attorney recommended it in case of litigation.

## **Lock It**

In determining the best way to secure data, a look at the regulation of data is recommended. There is no one federal law that regulates how personally identifiable information is to be stored; there is not one definition of personally identifiable information either. A lot of various entities regulate the security of data you maintain. Just a few are:

The FACT Act: The Identity Theft Red Flags and Address Discrepancy Rules

The Federal Trade Commission Act

47 States have some kind of law regulating data storage either data security laws or security breach notification laws.

## Threats to Data

Viruses, Trojans, Worms, Drive-by-Downloads and Spyware, they all sound dangerous and they are all threats to your data, however the first step in securing your data is as simple as using the lock on your door.

## IRL (In real life) Security

- Store static data and digital copies of data that contains personally identifiable information in a locked room or locked file cabinet.
- Limit access to static data and digital copies of data that contains personally identifiable information to only those employees who have a legitimate business person for doing so.
- Consider computer placement. Are screens visible to consumers? What information is displayed?

## Electronic Security

### Audit of office and practices:

1. What computers or servers store personal information?
2. What connections exist to those computers or servers? Internet, digital copiers, other computers in the office, smartphones, etc.
3. Do agents keep digital copies of records?
4. What applications are being used in the office and how secure are they?

### Best Practices

- ✓ Install "patches."
- ✓ Run up-to-date anti-virus and anti-spyware programs on computers and servers on your network.
- ✓ Require "strong" passwords
- ✓ Install a firewall to protect computers while connected to the internet.

### Devices

#### Laptop Security

- Brokerages should assist agents in developing laptop security protocols.
- Encrypt data on laptops
- Install "patches" regularly
- Password protection

#### Phones & Tablets

- Encrypt transmissions of personally identifiable information.
- Consider safety of applications
- Install updates/patches regularly
- Password protect
- Install remote wiping

### Cloud Storage Vendor Checklist

#### 1. Security

Real Estate Licensees are entrusted with a significant amount of very private information (social security numbers, financial account information, full names, addresses) when selecting a third party vendor to store files that may contain that information, security is key.

##### a. Encryption

- What encryption methods are used to secure the data?
- Does the vendor automatically encrypt the information when it leaves your servers and enters the cloud?
- Who has the encryption key necessary to view that information?
- If the vendor can access the data, are they allowed to use it?

- If the data is accessed by another party, how quickly and in what manner will the vendor notify you?
  - b. Physical Location
    - Where are the data servers located?
    - Who has access to the physical location?
    - What plans are in place in case of natural disaster?
  - c. Security Support
    - Does the vendor have security support staff that you can contact?
    - Does the vendor have independent audits of its security systems/controls?
    - Does the vendor allow for you to choose levels of security based on the data?
  - d. Access
    - How will you access the data?
    - How will access to the data be controlled?
2. Tech Support  
As savvy as your IT department may be, support directly from the vendor is important.
- How and when is support available (web-chat/e-mail/telephone)?
  - Is the support staff of the vendor prepared to assist individuals with all levels of technological backgrounds and skillsets?
3. Reliability
- How much uptime is guaranteed by the vendor?
  - Will there be times when you cannot access the data that you have stored?
4. The Fine Print  
Regardless of if you negotiate a contract with a third party vendor, or click on “agree” to a terms of use, the details of the agreement are important.
- a. Money
- Is there a set-up fee?
  - Are fees based on usage or a set amount?
  - Can the vendor increase the fees?
- b. Termination
- How can the relationship be terminated?
  - Following termination, does the vendor keep any copies to the data that was stored?

### **Pitch It**

If there's no valid reason for documents or data to be stored, a system should be implemented to insure for timely disposal.

Paper records should be shredded or destroyed.

Destruction is the preferred method for disposing of electronic devices, it insures that no latent data will be discovered and used by a third party.

## Resources

### -Personal Software Inspectors-

These programs are designed to scan your system and look for outdated programs or programs that have "patches" that need applied.

Secunia

Bitdefender

FileHippo

### -Encryption Programs-

Folder Lock

Dekart Keeper

PGP (pretty good protection)

### -Review Web Sites-

[www.toptenreviews.com](http://www.toptenreviews.com)

### -apps to save texts-

iMazing (formerly DiskAid- primarily Apple)

PhoneView (primarily Apple)

iExplorers (primarily Apple)

CopyTrans (primarily Android/Windows)

SMS Backup & Restore (primarily Android/windows)

Tansee (primarily Apple)

### -Apps That will Secure Your Texts-

textsecure

wickr

telegram

gliph

## A Primer on Intellectual Property

*Really boring Intellectual Property background that only Trista really cares about.*

The protection of the thoughts, ideas and inventions of Americans has a storied history. The Intellectual Property Clause of the United States Constitution, Article 1 §8, grants Congress the power “to promote the Progress of Science and the Useful Arts, by securing for limited Times to Authors and Inventors the exclusive right of their respective Writings and Discoveries.” The drafters of the Constitution realized that very few thoughts, ideas and concepts are truly new, they are based on the thoughts, ideas and concepts of earlier generations. The role of intellectual property law in the United States is to find a balance that allows an individual to profit from a creation without ceasing the development and growth that can result from that creation.

The implementation of the Constitution has resulted in a framework of Intellectual Property protection found at the federal and state levels. The Federal Government has enacted laws pertaining to and regulating patents, copyrights and trademarks. State law regulating intellectual property relates to such matters as trade secrets, unfair competition, publicity and trademarks. Some states, including California and New York have adopted state laws that protect the “moral rights” of an author when the author no longer is the copyright holder. Intellectual property is frequently divided into four distinct categories; 1) Patents, 2) Trade Secrets) 3) Trademarks and 4) Copyrights.

A patent protects new and useful ideas and concepts, ornamental designs and asexually reproduced plants. This protection allows a limited time in which the patent owner may exclude others from making, using or selling the patented product. The application process for a patent requires the inventor to disclose the methodology behind what is being patented.

Protection of a Trade Secret is afforded without disclosing the methodology behind the “secret.” The recipe for your amazing barbeque sauce may be eligible for protection under you state law if you begin marketing the product. Trade Secrets are protected at the state level through state law or common law.

Trademarks are the words, symbols, names and devices that a manufacturer uses to identify its goods and separate them from others. There is a wide range of legal protection for trademarks, including common law, state law, and federal statute.

### What is Copyright?

Virtually every original work that is ultimately fixed in a tangible medium of expression is eligible for copyright protection, and in most cases, copyright protection is instantaneous upon fixation. Everything from a novel to a text message can be subject to copyright protection.

Copyright vests in the author the following exclusive rights:

1. Make and distribute copies;
2. Make derivative works;
3. Make public performances and display.

Copyright is a personal property right and is subject to state laws and regulations governing the ownership, inheritance, or transfer of personal property, as well as the terms and conditions of contracts or the conduct of business.

To establish Copyright, there must be an original, fixed, non-functional expression.

### Originality

For an expression to be Original, the work must be independently created by the author. The author is presumed to be the individual who conceived the thought that led to the expression of the thought. The work must possess at least a minimum degree of creativity.

### Fixed

The expression must be stored somehow, this can be on paper, on a hard drive, or even in clay.

### Non-Functional Expression

Ideas, facts, processes and discoveries are not eligible for copyright. The manner in which these ideas are expressed and facts are compiled is eligible for copyright protection.

### How do I Obtain Copyright Protection?

In the United States, copyright attaches immediately when an original, non-functional expression is placed in a fixed medium. There is no affirmative action needed on behalf of the author.

Copyright registration with the Federal Copyright Office provides additional protections. You may not be able to seek a legal remedy without registration. Registration is required in advance of most infringement lawsuits being filed. Copyright registration provides prima facie evidence of the existence of a copyright. If the copyright is registered within 3 months of publication, punitive damages and attorney fees may be awarded in an infringement suit. If the copyright is filed but not within the 3 months, only actual damages may be awarded.

Filing to register the copyright requires you to fill out the appropriate forms found at [www.copyright.gov/register](http://www.copyright.gov/register). There is a \$45 fee and you must send a copy of your work. It currently takes about four months for the forms to be processed. The copyright office also processes on-line requests and there is a decreased filing fee for using that system.

Regardless of registration, it is still a good idea for the author to mark his work as protected by copyright.

The above are all acceptable methods of marking the copyright. By marking your work as a copyrighted work, if there is an infringement, the infringer cannot claim that the infringement was innocent as a defense in litigation.



## How Long Does the Copyright Last?

As with most questions that involve an interpretation of the law, the answer is "It depends". Copyright currently falls within three categories of dated protection. For work created after 1978, the protection is for the life of the author plus 70 years. For work created after 1978 when the work is made-for-hire, anonymous or pseudonymous works, the protection is for 95 years from publication or 120 years from creation. For works created prior to 1978, it depends on the manner in which the work was copyrighted, if the author renewed the copyright and if it is a work that falls within a law offering additional protection.

## Using Copyrighted Materials

A work being copyrighted does not mean that another individual is forbidden from ever using that material in their own work.

The most effective way to use copyrighted work is to get permission from the copyright holder. Permission can also be purchased as a "license."

The Fair Use Doctrine is a defense to an infringement suit that allows for the use of copyrighted materials in very limited circumstances. The courts have provided that there are four factors that a judge will look at to determine if usage qualifies as "fair use."

The first factor is the **purpose and character of the use**, including whether such use is of a commercial nature or for non-profit educational purposes. If the purpose is to reap financial benefits or other business related benefits, that weighs against a finding of fair use. The material must be related to the matter which is being taught in a non-profit educational institution.

A judge will also look at **the nature of the copyrighted work**. Use of a purely factual work is more likely to be considered fair use than the use of an authors' create work.

The third factor is **the amount and nature of the portion used in relation to the copyright protected work as a whole**. There are no set page or word limits that define the boundaries of fair use. Courts exercise common sense judgment on a case-by-case basis, about whether what is being used is too much of, or so important to, the original overall work as to be beyond the scope of fair use.

The final factor to be weighed is **the effect of the use on the potential market for or value of the copyright protected work**. If your work diminishes the potential market for the work it decreases the likelihood that your use will be determined "fair use." If you are using the copyrighted work in the same manner that the copyright holder would use the work, your use is unlikely to be a "fair use."

## The Public Domain

The Public Domain is comprised of all the works that can be freely copied. There are four main categories of works that fall into the public domain.

### **Generic Information**

These are works that fail to meet the originality standard for copyright eligibility.

**Works whose copyrights have lapsed due to the passage of time or the failure of the copyright holder to renew the registration.**

This can be broken down into the following categories:

1. Works published in the United States before 1923
2. Works published between 1923 and 1963 whose copyright registrations were not renewed.
3. Works created between 1963 and 1989 that were not copyrighted.
4. Works created after 1989 that are presumed to be copyrighted and the author has taken affirmative action to put the work in the public domain.

**Works created before March of 1989 that failed to include a proper notice of copyright.**

Earlier copyright regulation required works to contain the copyright notification in order to qualify for protection. Works created under the current regulatory scheme do not require this notice.

**Works created by the United States Government**

### Infringement

Attorneys are expensive. Attorneys who are experienced in federal copyright litigation are even more expensive. In the book The Musician's Business and Legal Guide, Mark Halloran, Esq. estimated the court costs and attorney's fees for one side of a copyright trial in the late 1990's to average \$150,000. Those costs have only increased since then. These costs also increase if you are found guilty of infringement and are ordered to pay the attorney's fees of the party as well as damages. Statutory damages can run the range of \$750 to \$30,000 per infringement.