

FAIR MARKET VALUE MANAGEMENT, LLC
PROTECTING YOUR INTELLECTUAL PROPERTY RIGHTS

GENISIS

Copyright is not just a symbol it is a constitutional right so your work yields you the reward not the infringer for the theft of your work. The history of American copyright law originated with the introduction of the printing press in England in the late fifteenth century. In 1710 Parliament enacted the Statute of Ann to address concerns of English booksellers and printers. Since the Statute of Ann almost three hundred years ago, U.S. law has been revised to broaden the scope of copyright, to change the term of copyright protection, and to address new technologies. According to Article I, Section 8, Clause 8 of the U.S. Constitution, “the congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

The First Congress implemented the copyright provision of the U.S. Constitution in 1790. The Copyright Act of 1790, An Act for the Encouragement of Learning, by Securing the Copies of Maps, Charts, and Books to the Authors and Proprietors of Such Copies, was modeled on the Statute of Ann (1710). It granted to American authors the right to print, re-print, or publish their work for a period of fourteen years and to renew for another fourteen. The law was meant to provide an incentive to authors, artists, and scientists to create original works by providing creators with a monopoly. At the same time, the monopoly was limited in order to stimulate creativity and the advancement of “science and the useful arts” through wide public access to works in the “public domain.” Major revisions to the act were implemented in 1831, 1870, 1909, and 1976.

The 1976 revision was undertaken for two primary reasons. First, technological developments and their impact on what might be copyrighted, how works might be copied, and what constituted an infringement needed to be addressed. Second, the revision was undertaken in anticipation of the Berne Convention adherence by the U.S. It was felt that the statute needed to be amended to bring the U.S. into accord with international copyright law, practices and policies. The 1976 Act preempted all previous copyright law and extended the term of protection to life of the author plus 50 years (works for hire were protected for 75 years). The act covered the following areas: scope and subject matter of works covered, exclusive rights, copyright term, copyright notice and copyright registration, copyright infringement, fair use and defenses and remedies to infringement. With this revision, for the first time the fair use and first sale doctrines were codified and copyright was extended to unpublished works. In addition, a new section was added, section 108 that allowed library photocopying without permission for purposes of scholarship, preservation, and interlibrary loan under certain circumstances.

Tim Vining, MAI was the first appraiser to file suit for copyright infringement and was awarded a judgment filed in the Eastern District of Washington Federal Court. Since then Vining has both written articles about his lawsuit, conducts a seminar and prepared a DVD, titled Copyright for Professionals. FMV Management was created as an outgrowth of Tim's experience.

Vining has discussed with real estate appraisers throughout the country about how their work is being pirated on a wholesale basis. Through interviews, seminar presentations, and the Copyright for Professionals DVD, more and more real estate appraisers are realizing their work is protected by copyright law and furthermore there is value to their work beyond that of the appraisal report. Conversely many of those same real estate appraisers expressed concern their work is being distorted, the cost of registering appraisal reports with the Copyright Office was not cost effective, the prohibitive cost of litigation, the threat of retaliation, and being blacklisted by lender clients.

In-depth research into those concerns was undertaken by Vining. It was decided that a grass root organization needed to be established to clean-up this wholesale pirating and counterfeiting of real estate appraisal reports and the subsequent effects that the distortion of this work has caused. FMV Management (Fair Market Value Management, LLC) was developed to provide a cost effective means for real estate appraisers to enforce their Constitutional Rights, collect royalties from copies and derivatives of their work, and stand up for them against threats of retaliation and blacklisting.

THE COSTS AND ADVANTAGES OF REGISTERING APPRAISAL REPORTS WITH THE COPYRIGHT OFFICE

FMV Management has confirmed with the U.S. Copyright office that it allows appraisal reports to be registered as a compilation instead of registering each work separately. Thus, an appraiser can organize and bundle his or her appraisal reports that have been created in the past and register as a compilation for a one time fee of \$45.00. Thus periodically registering your appraisal reports as a compilation instead of registering each report individually is a cost effective measure in protecting your copyright.

Registering your reports in a timely manner (within 90 days of creation) allows you to seek statutory damages, attorney fees and costs, should your work be infringed. Registering your reports is Prima Facie evidence of a valid copyright in the work. Prima Facie evidence is a legal term defined as "legally sufficient to establish a fact or case unless disproved." Another advantage of registering your work with the Copyright Office is the registered appraisal report is evidence of the original work in a court of law. Also, registering your work will help to protect you from identity theft and appraisal fraud.

DON'T BE A VICTIM

As a result of the current crisis in the housing market and turmoil in the mortgage industry and financial markets, there is potential real estate appraisers are going to be

confronted with lawsuits. (Recent legal actions in New York serve as a good reason to register your work.)

The New York Attorney General filed suit against E-Appraise It for inflating values under pressure from Washington Mutual. Subsequently, the Attorney General has issued subpoenas to Fannie Mae and Freddie Mac. *How would you like to be called in to question for an appraisal you prepared but was altered and you had no independent proof of what you originally transmitted to the client?*

According to the Mortgage Fraud Blog website, www.mortgagefraudblog.com A New York business owner was indicted in November of 2007 for Appraisal Fraud. According to the indictment D&T National Appraisals Inc., recruited licensed appraisers over the internet and offered them positions with his company as part of a scheme to steal their personal identity information. In turn D&T National Appraisals, Inc. (Donald Odato) would forge the names of prospective job seekers (appraisers) on numerous appraisals he filed in connections with residential mortgage applications for the purchase of Queens County, New York, properties. *Lenders subsequently sought out the appraisers whose identities had been stolen and advised them their services were no longer needed due to inappropriate and highly inflated values of properties based on falsified data.*¹ By creating a history of copyright registration that matches with your record keeping would be persuasive evidence that you were not the author of the bogus appraisal work.

Lender excesses were exposed in an article published August 26, 2007, in the New York Times. The article titled "Inside the Countrywide Lending Spree" was based upon interviews with former employees. The article stated "According to dozens of loan documents, LandSafe, a subsidiary of Countrywide, routinely charged service fees of \$60, far above what other lenders charge for information about any outstanding tax obligations of the borrowers. Additionally, LandSafe charged \$36 for credit checks, about double what other service companies' levy. Some Countrywide loans even included fees of \$100 to e-mail documents or \$45 to ship them overnight. Appraisals are another profit center for Countrywide, brokers said, because it often requires more than one appraisal on properties, especially if borrowers choose not to use the company's own internal firm."²

These examples are illustrative of greed and willingness to engage in immoral if not illegal activity to make money. These entities helped to create a market for pirating and counterfeiting real estate appraisal reports. The pirating and counterfeiting of appraisal reports is a contributing factor to the crisis in the financial markets. Furthermore pirating and counterfeiting has damaged the appraisal profession as a whole, depressed the market for real estate appraisal services, and has robbed the appraiser's ability to profit fairly from their work.

¹ Rachel Dollar, Mortgage Fraud Blog.com; Nov 14 -15, 2007.

² New York Times, Inside the Countrywide Lending Spree, by Gretchen Morgenson, August 26, 2007

THE COST OF LITIGATION

The next significant issue for real estate appraisers is funding the cost of litigation. Legal services are expensive, fees are quoted anywhere from \$250 to \$750 per hour depending upon the location and reputation of the law firm.

FMV Management is an LLC that services the professional's intellectual property rights. Whether you are an appraiser, surveyor, engineer, accountant, architect, business consultant, doctor or lawyer, you create analysis and opinions everyday in written or digital format. FMV works to ensure you, and not others gain the profits from that work.

FMV Management is considering litigation on behalf of our appraiser clients against infringing parties who have copied portions or all, of appraisal reports submitted to intended parties. We have a number of our customers who have indicated their decision to pursue their legal remedies, which could include defendants that are banks, appraisal services, computer servicing agencies and others. In order for litigation to be cost effective FMV is seeking a minimum of five hundred certified/licensed real estate appraisers. FMV has developed a fee schedule that is less than \$1.00/per appraisal report to fund this proposed litigation. Included in the fee is the cost of registration with the copyright office. Located on our web page is a confidentiality agreement. Only licensed and or certified real estate appraisers can receive additional information once FMV verifies the appraiser's information. One of the important things is to know from the start just what is involved with the requirements of your participation in the proposed litigation thus confidentiality is required given the in-depth detail that is provided and the likelihood that potential defendants will seek to exploit this information. For more details visit our website at WWW.FMV Management.com

Although uncertainty surrounds all litigation FMV has commissioned extensive legal research about copyright infringement of real estate appraisal reports. FMV and litigation counsel are firm in the belief of their facts and being on the right side of the law.

ACCOUNTABILITY OF FMV TO ITS CLIENTS

A litigation committee has been formed that consists of five real estate appraisers located throughout the United States. The litigation committee will help steer and administer litigation efforts and among its duties will review and approve the litigation budget and all expenditures prior to issuance. Strict accounting of all funds received and distributed will be made available to all client participants on a quarterly basis.

If you believe in your Constitutional Rights, and that it is wrong for others to profit from work that is yours, now is the time to step up and make a stand. As Thomas Jefferson our third president stated "**One man with courage is a majority**".