

Avoiding copyright calamities

A program of Carolina MLS and Triad MLS

March 22 and 23, 2012

Presented by Brian N. Larson
Larson/Sobotka PLLC



Outline/agenda

- Welcome/introductions
- Copyright basics
- Ways brokers/agents get into trouble
- Ways others are using your listings (with or without your permission)
- Question and answer

Introductions

- Speaker – Brian N. Larson
 - Attorney and consultant
 - Adviser to MLSs, REALTOR® Associations, and real estate brokers in North America
 - Named among 100 Most Influential persons in real estate by Inman News (2009, 2010, 2011)
- “Miranda” warning
 - Not legal advice
 - Seek business and legal counsel
 - Views are of presenter, not sponsors or clients

Copyright basics

Data: Who owns it?

- Probably a red herring.
- Copyright law affects.
- Privacy issues beginning to invade.
- Contract law affects.
- Other factors



Rights of ownership

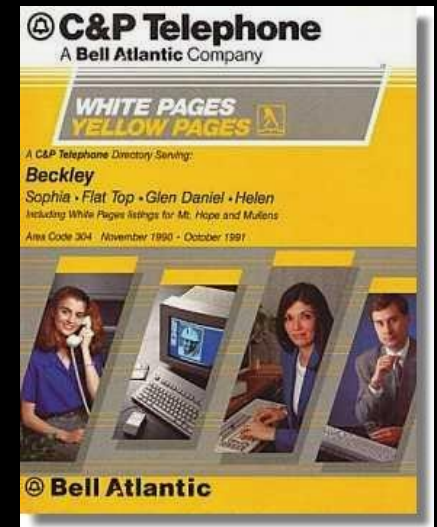
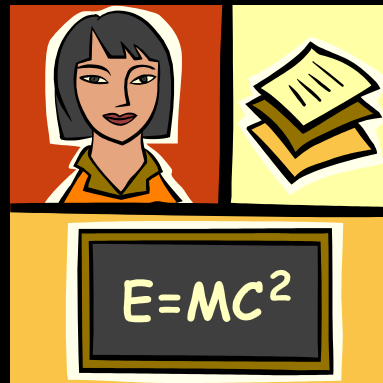
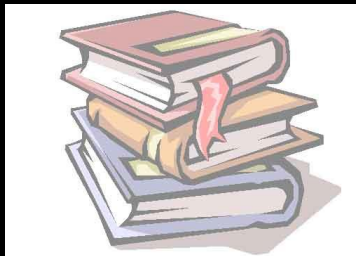
- Freedom to do certain things with the property.
- Power to exclude others from doing certain things with the property.
- Ability to enforce those rights
- Ability to sell ('alienate') those rights.

Kinds of ownership in a listing

- Real property
 - Settled: Seller, later buyer, owns
- Privacy rights
 - Not settled
- Listing contract rights
 - Settled: Broker owns (most places)
- Copyrights?

Copyright protects

- “Original works of authorship”
- Creative expressions of authors
- NOT facts
- Not number of bedrooms, etc.
- Feature information?

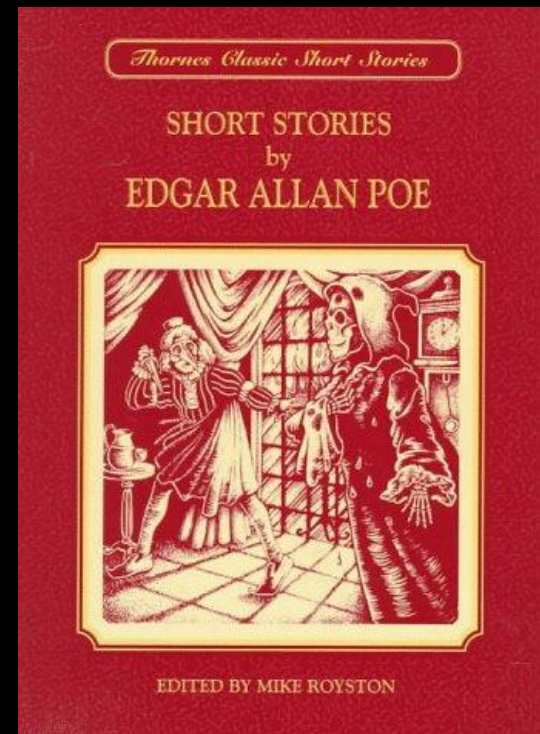


In listing data, copyright protects

- “Original” text: remarks, maybe directions, maybe list price
- Photographs
 - Digital or film
 - No matter how ugly
- The “compilation”
- NOT FACTS

Compilation

- Defined by statute:
 - “selection, coordination, and arrangement.”
 - Not the aggregated database.
 - ~ data structure
- For example: Possible to register copyright in a compilation with no data or only sample data in it.



What copyright protects on a listing

Click Photo for Additional Media and Enlargement



Residential - One Family Detached

Status: Active (7/25/2003)
Type: One Family Detached
Address: 3 EMERSON DR
 STATEN ISLAND, NY 10304-1508
Area: EMERSON HILL
County: Richmond
Condition: Excellent
LotSize: 53,611 SqFt
LotDim: 200X196
Garage: /2 Car(s), Full/Finished
Basement: \$8,600
Taxes: No
Abated: No
ParcelID: 00828-00106
ElemSch: PS48
HighSch: WAGNER
Directions: DOUGLAS ROAD

MIS#: 125268-EP
ListPrice: \$1,999,000
NetSellingPr: 1,912,000.00
Style: Colonial
BldgDim: 19X48
BuildingSqFt: 3,568 SqFt
\$/Sqft: \$560.26
Rooms/Unit: 10/
 6
TotalBaths: 5
Full/3/4/Hlf: 4/0/1
Zoning: R1-1
CofD: Y
Rented?: /\$0
MiddleSch: IS49
OtherSch:

Remarks: ONE OF KIND! REPLICA OF BAVARIAN CASTLE ARCHITECTURAL GEM. BREATHTAKING PANORAMIC NY BRIDGE VIEW SITUATED ON 53,611 SQ FT. PRISTINE COND INGROUND POOL LANDSCAPED GROUNDS. MINUTES TO BRIDGE.

Basement: BILLARD ROOM, FIN REC RM, FPL, ENT TO YD, 1/2 BA, WINE CELLAR, LAUND RM.

Level 1: FOY, POWDER ROOM, LR, FP FOR DIN LIBRARY, EIK, 2ND STAIR.

Level 2: 4BRS, 2BATHS, MAIDS WITH FULL BATH (5BR) PRIV STAIR.

Level 3: BR, 3/4 BATH.

Room Type	Lvl	Dimnsns	Interior Features	Exterior Features		
Master Bedroom			MasterBedrm:	Exterior:		
Dining			LivingRm:	Siding:		
Kitchen			MainBath:	HandicapAccess:		
Living			DiningRm:	Pool:		
Other			Kitchen:	Yard:		
Full Bath			Interior:	WaterView:		
Library			Appliances:	Cable:		
			PrivBath:			
			Fireplace, Separate	GarOpenr		
			FullBth	AllBrick		
			Formal	N		
			EatIn			
			Fireplace, HotTub	N		
			Dishwashr, Dryer	Y		
Sewer: City	Elec: 220	HeatSrc: Gas	HeatSys: Steam	HeatingUnits: 1	ACSystem: Units	# ACUnits:
2nd Unit Info		Leased?:	Rental\$: \$0	Full Baths:	3/4 Baths:	1/2 Baths:
		Bedrooms:	Location:		Appliances:	
		Total Rooms:				
Apt Rmrks:						
Condo/CoOp/Pud Name:		Managing Agnt:	Managing Agnt Tel:			
Association Fee: 0		Fee Paid:	CoOp Shares: 0			
Amenities:		Fee Includes:				
Lst Off:	(21801) CONNIE PROFACI REALTY	Office Phone	718-667-9100	Own:	GRELLA	
Lst Agt:	(8428) CONSTANCE PROFACI	Direct		Own Ph:	718-981-6043	
Co-Off:		Cell		Show:	CallOffice	
Co-Agt:				LD:	7/25/2003	
Comp SA:	1.5 Own Fin: N Backup Offers:			Orig LP:	\$2,150,000	
Comp BR:				DOM:	340	
Agnt Notes:	LAND IS STREET TO STREET TO SERVICE ROAD/CLOVE ROAD.					

Who owns: Authors

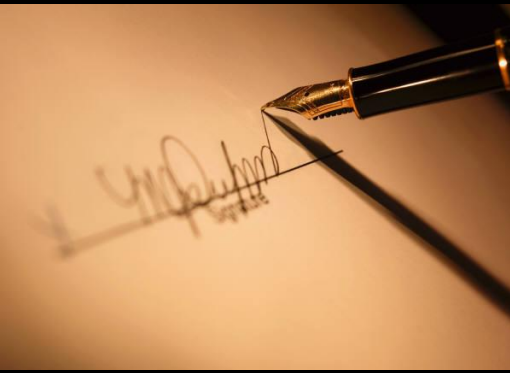
- First owner of a copyright is the author.
- Author secures copyright the moment the work is created.
- Generally, author is the human being who did the creating.
- Work made for hire.
 - If an *employee* creates a work in the scope of her employment, the *employer* is considered the author.
 - Work for hire doctrine otherwise only applies in very specific and limited circumstances.

Who is the author of listing data content?

- Facts?
- Original text?
- Photographs?
- Compilation?

Transfer of author rights

- Limited use = “license”
 - Can be oral
 - Can be implied
 - Can generally be revoked
- Transfer = “assignment”
 - Grant of everything
 - Must be in writing and signed



In most markets...

- Brokers don't have assignments in independent contractor agreements.
- Agents don't sign anything with the MLS.
- MLS application forms and subscriber agreements do not address copyright ownership.
 - (If they do, they just claim MLS's ownership of the "compilation.")

In your MLS...

So who is the owner?

- Facts?
- Original text?
- Photographs?
- Compilation?

Ways brokers/agents get in trouble

- Copying stuff from the web
- Using professional photos beyond scope of license
- Copying other brokers' materials

Copying stuff from the web

- Most images you see on the web ARE NOT free for your use
- The “cooler” an image is, the less likely you’ll be able to use it without obtaining permission



Example: Cattails

- **Broker A takes a listing.**
- **It's a hole in the ground**
- **There's a lake.**
- **It's also a hole in the ground.**
- **Broker A goes online and finds pretty picture of cattails.**
- **Broker A loads picture into MLS.**

Photo Credit: Derek Jensen (public domain, Wikimedia Commons)

Cattails continued

- Broker B displays listing on her IDX site
- Broker B gets nasty letter from Getty Images
 - “That’s our photo!”
 - “You used without permission”
 - “Pay \$875 or we’ll sue you”
- MLSs working to make sure that Broker A is on the hook...


CMLS rules

- Section 1.22: MEDIA: The Listing Brokerage may submit photographs, virtual tours, PDF documents, text files and artist renderings (“Media”).... The Listing Brokerage indemnifies CMLS in the event of any legal proceeding relating to the reproduction of the Media by CMLS or other authorized entities.

You should avoid liability

- Use Wikimedia.
- Use Flickr Creative Commons images.
- License stock photos.

Using Wikimedia

 [Log in / create account](#)



WIKIPEDIA
The Free Encyclopedia

- [Main page](#)
- [Contents](#)
- [Featured content](#)
- [Current events](#)
- [Random article](#)
- [Donate to Wikipedia](#)

- ▼ [Interaction](#)
 - [Help](#)
 - [About Wikipedia](#)
 - [Community portal](#)
 - [Recent changes](#)
 - [Contact Wikipedia](#)

- [Toolbox](#)
- [Print/export](#)

- ▼ [Languages](#)
 - [العربية](#)
 - [Башҡортса](#)
 - [Български](#)
 - [Català](#)
 - [Česky](#)
 - [Dansk](#)
 - [Deutsch](#)

Article [Talk](#)

[Read](#) [Edit](#) [View history](#)



Typha

From Wikipedia, the free encyclopedia

Typha (ⓘ /taɪfə/) is a **genus** of about eleven **species** of **monocotyledonous** flowering plants in the family **Typhaceae**. The genus has a largely **Northern Hemisphere** distribution, but is essentially **cosmopolitan**, being found in a variety of **wetland** habitats. These plants are known in **British English** as **bulrush**, **bullrush**, or **reedmace**,^[1] in **American English** as **cattail**, **catninetail**, **punks**, or **corndog grass**, in **Australia** as **cumbungi** or **bulrush**, and in **New Zealand** as **raupo**. *Typha* should not be confused with other plants known as **bulrush**, such as some **sedges** (mostly in *Scirpus* and related **genera**).

Their **rhizomes** are edible. Evidence of preserved **starch** grains on **grinding stones** suggests they were eaten in Europe 30,000 years ago.^[2]

Contents [hide]

- [Description](#)
- [Species](#)
- [Uses](#)
 - [3.1 Culinary uses](#)
 - [3.2 Other uses](#)
- [References](#)
- [External links](#)

Description

[\[edit\]](#)

Typha leaves are alternate and mostly basal to a simple, jointless stem that eventually bears the flowering spikes. The **rhizomes** spread horizontally beneath the surface of muddy ground to start new upright growth, and the spread of *Typha* is an important part of the process of open water bodies being converted to vegetated **marshland** and eventually dry land.

Typha plants are **monoecious** and bear **unisexual**, wind-pollinated flowers, developing in dense **spikes**. The numerous male flowers form a narrow spike at the top of the vertical stem. Each male (staminate) flower is reduced to a pair of **stamens** and

"Typha"



"Typha latifolia"

Scientific classification

Kingdom:	Plantae
(unranked):	Angiosperms
(unranked):	Monocots
(unranked):	Commelinids
Order:	Poales
Family:	Typhaceae
Genus:	<i>Typha</i> <div>L.</div>

Species

Is Wikipedia photo available?

This file is licensed under the [Creative Commons Attribution-Share Alike 3.0 Unported](#) license.

You are free:

- **to share** – to copy, distribute and transmit the work
- **to remix** – to adapt the work

Under the following conditions:

- **attribution** – You must attribute the work in the manner specified by the author or licensor (but not in any way that suggests that they endorse you or your use of the work).
- **share alike** – If you alter, transform, or build upon this work, you may distribute the resulting work only under the same or similar license to this one.




This licensing tag was added to this file as part of the [GFDL licensing update](#).

You may select the license of your choice.

File history

Click on a date/time to view the file as it appeared at that time.

	Date/Time	Thumbnail	Dimensions	User	Comment
current	17:24, 3 July 2005		1,600 × 1,200 (1.11 MB)	Bogdan	{{GFDL-self}} {{Romanian}} papură Typha latifolia

Using Flickr



Signed in as [BrianNLarson](#) (1 new) [Help](#) [Sign Out](#)

[Home](#) [You](#) [Organize & Create](#) [Contacts](#) [Groups](#) [Explore](#) [Upload](#)

 [Search](#)

Witaj BrianNLarson!

Now you know how to greet people in Polish!



Signed in as [BrianNLarson](#)

[Home](#) [You](#) [Organize & Create](#) [Contacts](#) [Groups](#) [Explore](#) [Upload](#)

Search

[Photos](#) | [Groups](#) | [People](#)

Everyone's Uploads

SEARCH

[Full Text](#) | [Tags Only](#)
[Advanced Search](#)

Sort: [Relevant](#) | [Recent](#) | [Interesting](#)

View: [Small](#) | [Medium](#) | [Detail](#) | [Slideshow](#)



From Jutta.Karin



From haroldbro...



From LeagueDodge



From Green...



From Chelsea Lowe



From afant90

Creative commons on Flickr



Tip: Find content with a Creative Commons license.

[Learn more...](#)

- Only search within **Creative Commons**-licensed content
- Find content to use commercially
- Find content to modify, adapt, or build upon

Flickr CC results



Stock photo supplier

The screenshot shows the homepage of the Getty Images website. At the top, the logo 'gettyimages®' is on the left, with 'Sign In' and 'Register' links. On the right, there are links for 'Live chat', 'Contact us', and 'International'. Below this is a navigation bar with 'Images', 'Videos', 'Music', and 'Resources' tabs, and a 'My account' link with a shopping cart icon showing 0 items. A search bar is present with a 'Search' button and links for 'Advanced search' and 'Search tips'. The main content area features a large banner with the text 'It's all here' and a welcome message. Below the banner are three columns for 'Images', 'Video', and 'Music', each with a set of sub-categories. On the right, a 'Top picks' sidebar contains a 'Start here' section with a descriptive paragraph and a 'Quick links' section with several blue links.

gettyimages® Sign In | Register Live chat | Contact us | International

↑ Images Videos Music Resources My account (0)

Search Advanced search | Search tips

It's all here

Welcome to Getty Images. We've got lots for you to look at, watch, and listen to. See a small sampling below.

Images	Video	Music
Newest creative stills	iStockvideo	Rock
Latest event stills	Latest event clips	Electronic
Illustration	Archive film: creative	Pop sounds

Top picks

Start here

Looking for something? Chances are, you'll find it here. From cutting edge [creative imagery](#) to of the moment [editorial shots](#), daily [entertainment video](#) to original [music tracks](#), we put what you need at your fingertips.

Quick links

- [All stock photos](#)
- [Royalty-free stock photos](#)
- [News images](#)
- [Sports images](#)
- [Entertainment images](#)
- [Video clips](#)
- [Music](#)
- [Rights & Clearance](#)

Stock photos

- Getty Images and others
- Seek royalty-free licenses
- Use a reputable provider

Using stuff beyond your license

- How many hire a photographer for listings?
- Do you have a written agreement?
- Who owns the photo copyrights?

Copying other brokers' stuff

- MLS Rules
 - Triad MLS
 - CMLS

CMLS rules

- **SECTION 1.22: MEDIA:** ...By submitting Media to the MLS, the submitting Listing Brokerage grants the MLS and the other Member Participants and Subscribers the right to reproduce and display the Media.... Before a Member Participant or Subscriber copies the Media submitted by another Listing Brokerage to a new listing, the Member Participant or Subscriber must obtain the written permission of the owner of the Media.

Ways others use your listings, or...



**Where are are
all my listings going?
(and why?)**

Participants use listings



Consumers use listings



Official Site of the
National Association of REALTORS®

Hi! | Sign In | Sign Up

- Find Homes
- Find REALTORS® ^{NEW}
- Finance
- Moving
- Home & Garden

0 Listings ▾ 0 Searches ▾

Find a home

The most comprehensive source for real estate listings.

111,035,192 Properties • 4,638,364 Homes for Sale
• 153,897 Homes for Rent



Home Type: **Homes for Sale** ▾ Location:

Price Range: to Beds: **Any** ▾ Baths: **Any** ▾ Search on Map **Search**

Search by MLS # | Search Assist | **Advanced Search** Listings last updated 15 minutes ago

Get **new listings** when they hit the market.

Sign Up for Free

SEARCH ASSIST
by REALTOR.com®



Find a REALTOR® or Real Estate Office

- Knows your neighborhood
- Has a track record of success
- Specializes in your type of home search

Search

Home Values

Top Rated Mobile Apps

Foreclosures

Celebrity Homes

How much are Houses worth now?

Get a free home value report for your neighborhood



Street Address (Optional): Zip Code:

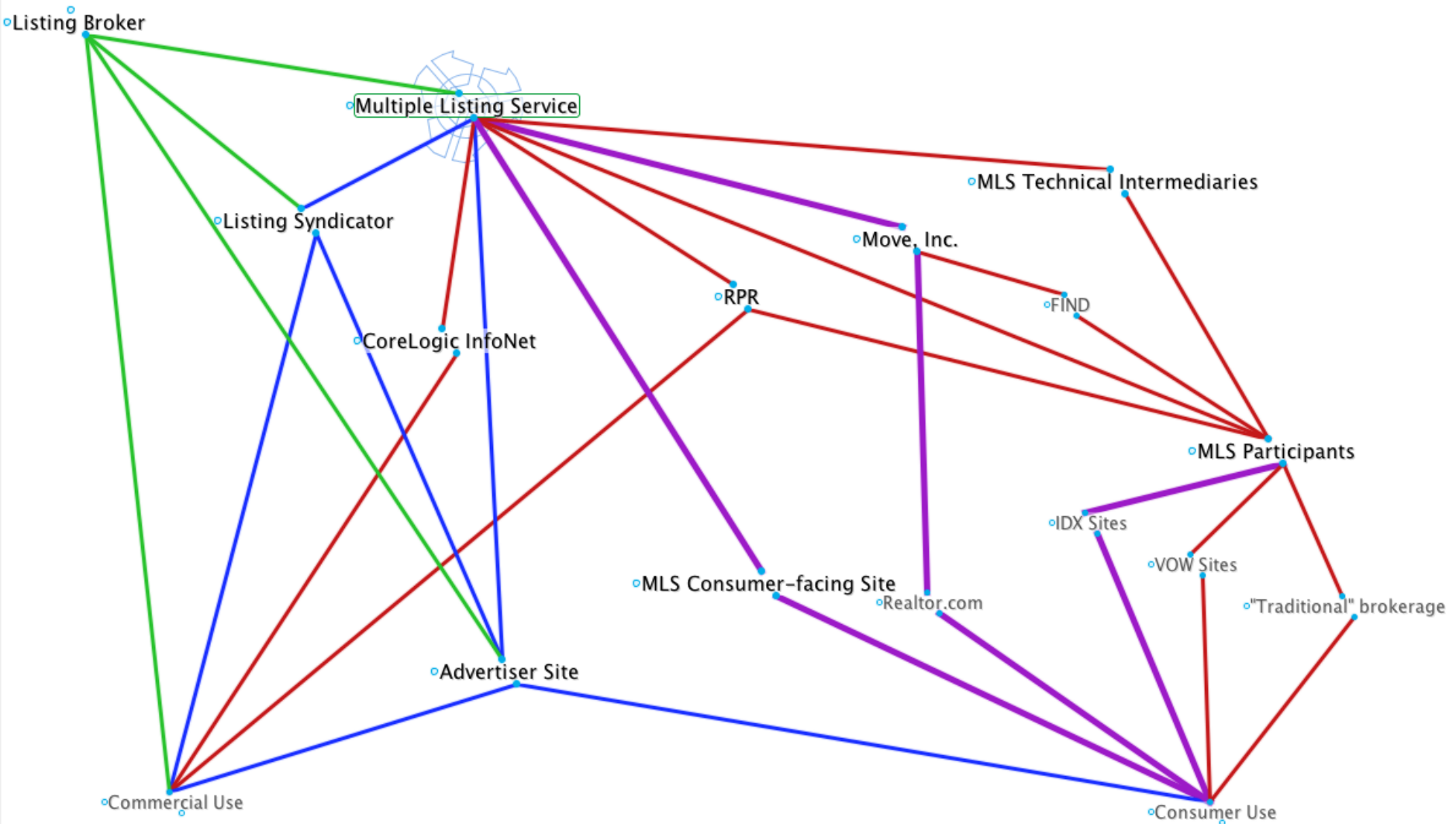
Single Family Home Condo/Townhouse **Go**

Home. Improvement.

Business wants to use listings



The flow of listings (simplified view)



Your listings: Syndication

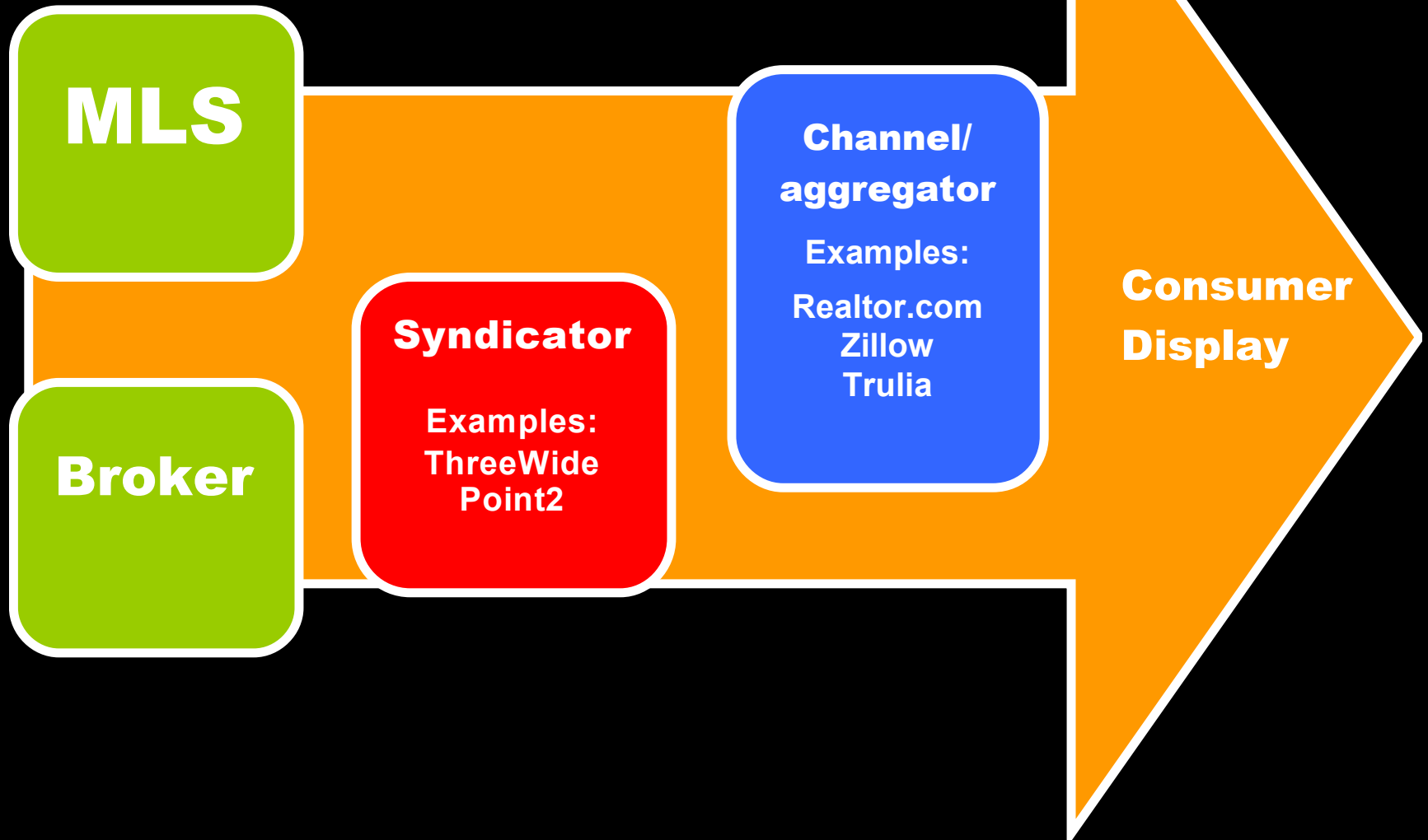
- Your MLS probably offers 'syndication'
- For most brokers first 'syndication channel' was Realtor.com (late '90s)
- Others are possible now through ListHub or others

Syndication defined

- No official definition
- Informal one
 - Distribution in bulk
 - **Active real estate listings** (listings currently available for sale)
 - By or on behalf of the listing agent or listing broker
 - To sites that will advertise them on the web to consumers



Syndication 'flow'



Syndication

- You can pick which sites your stuff goes to
- Or you can auto-subscribe

<http://www.listhub.com/channels.html>

NATIONAL CHANNEL PARTNERS



...and more

WAL*MART



PROPERTY PURSUIT.com



foreclosure.com™



What it means to be 'all in'

- Many brokers are 'auto-subscribed,' meaning their listings go to ALL listed channels
- Beginning this year, they will go via the Real Estate Network, to national franchisor sites
 - REMAX, C21, etc.

Remember all those syndication channels?

- If you are authorizing them to advertise your listings
- You are responsible for how they do it

Caution: Risks with syndication

- Your firm name or agent name may be stripped off the listing
- Your contact information may be removed
- Violation of license law and Code of Ethics

Syndication: value

- What value do you get from syndicating to:

The logo for Walmart, featuring the word "WAL*MART" in a bold, blue, sans-serif font. A small blue star is positioned between the "A" and "L" of "WAL" and the "M" and "A" of "MART".The logo for Quantum Digital, featuring a stylized "Q" icon composed of two overlapping squares (one dark blue, one red) to the left of the text "QUANTUM digital". "QUANTUM" is in a dark blue, sans-serif font, and "digital" is in a red, lowercase, sans-serif font.

Syndication questions for you

- Are these sites giving you value for your listings?
- Are these sites displaying your listings in a way permitted by law and the Code of Ethics?

Syndicators and channels use listings with permission

- What if someone uses your listings without permission?
 - State license law and Code of Ethics prohibit it
- What if that someone is not a real estate broker or REALTOR®?
 - Copyright law?...

Listing broker copyright claims

- Who owns the copyrights?

What your MLSs do...

- Copyright registrations
- Manage syndicator relationships
- Perform research
- Cease and desist letters
- Usually not litigation (very expensive)
- Educate you

Thank you!

I tweet: @BLarsonMpls

I blog: www.MLSTesseract.com