



Listing Syndication

Be sure to read the fine print!

WAV GROUP

Terms of Listing Syndication to
Third Party Websites

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WAV Group

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Executive Summary

In the past several years many real estate professionals have begun to send their listings to third party sites to increase exposure and expand the potential audience for purchasing their listings. Many agents and brokers now send their listings to multiple websites. They are being asked and even demanded by their real estate customers to do so.

While these activities can be very valuable in creating new business opportunities for REALTORS® it is important to understand what third parties can do with your listing information once you send it to them. In some cases real estate professionals may be giving away rights to their data they are not aware of.

The goal of this research is to provide real estate listing agents, brokers, and multiple listings services (MLS) with a brief overview of the terms that apply to syndicating listing data over the Internet. We believe that any person who plans to syndicate listings over the Internet should carefully review the Terms of Use for any site that will be displaying their listing information. The principal concern in reviewing the terms is to understand what rights you retain over your information.

Indefinite use of Data

The terms of use of some sites contain some very specific language that indicates that the content you send includes the irrevocable, perpetual, non-exclusive, fully paid, royalty-free license to use, retain, transmit, copy, create derivative work of, and sell or distribute your data to other parties or sub-licensees. That means they can keep your listing data and contact data and use it as they like for as long as they like. These broad terms of use may be of some concern to some brokers.

Copyright Protection

One principal right that is lost or shared when you distribute your listings to websites involves copyright. At a minimum, brokers and agents are assuring the recipient websites that you are not submitting any information, which is subject to any other person's copyright protection. Only REALTOR.com, AOL, Threewide, and Point2 indicate that listing content remains the intellectual property of the contributor (agent, broker or MLS). With some – Trulia, VAST, Postlets -- you are transferring significant rights to the third party.

Indemnification

Another principal right that is being transferred when listings are distributed is that the agent, broker or MLS distributing the data to the third party requires you indemnify them from any claims as a result of displaying the data. In some cases you are assuming the



responsibility to ensure data is accurate and up to date. This can be very difficult, if not impossible, to maintain for sites that do not remove expired listings automatically.

“Resyndication”

Some sites (Trulia, Postlets, VAST) control who and where your listings are distributed. The broker has no written rights or recourse should one of these companies choose to repurpose the data in a way that is disagreeable once the listing has been submitted. They can send listing data to third parties they have agreements with -- without consent from you. Sometimes we hear agents complaining they have seen their listing in a place they did not send it. This can happen when a company you have sent your listing to decides to “resyndicate” it.

Staying current can be difficult

Finally, those who are syndicating listing information should pay close attention to the governance of changing the Terms of Use or Termination of the relationship. Many sites may change their Terms of Use by posting new terms to their website without ever notifying the listing contributor. With some sites, the Terms of Use survive even after the relationship with the website company has been terminated.

In summary, there may be risks that agents and brokers who syndicate their listings are unknowingly exposing themselves to beyond the rights they think for their content. While additional distribution may be appealing, it is every agent and broker’s obligation to understand the potential negative impacts of syndication. We encourage careful reading of the Terms and Conditions for any website agents and brokers are considering entering into a syndication relationship.

All Third Party Listing Sites are NOT created equal

In addition, brokers and agents are exposed to a host of practical, competitive, disadvantages and brand risks based on the terms of many syndicators. In our review, REALTOR.com’s Terms and Conditions provided the greatest amount of protections to broker data and may represent a model for brokers wishing to negotiate Terms of Use.

REALTOR.com also included some other protections. They prohibit a competitor’s advertisement from appearing next to another broker’s listing details. They also will not allow offensive or inappropriate content to appear next to a listing. Lastly, REALTOR.com displays both the buyer representative and seller’s representative on the listing when they display sold data. Zillow, for example, displays the seller’s representatives and none of the other syndicators display sold listings.



Top 10 Questions to Ask Before Syndicating your Listings

Since listing syndication is becoming a very important part of marketing listings online, there are several questions that can help clarify the rights granted to a third party listing site with participation. Here are a few questions that can be used to begin the dialog.

1. What rights, benefits or protections do I lose by posting my listings on the site?
2. What ability do I have to control distribution of my listings or listing data?
3. What happens to my listing information when the listing expires or the property is sold? What about when if I stop syndicating my information to the site?
4. If the site receives multiple entries for the same listing from different parties (MLS, agent, broker, franchise, third party listing site) which one gets priority over the others and why?
5. Does the site receive or send my listings/listing data to/from a primary or secondary source? If so, which ones? What control do I have over the display/ownership of my listings on the secondary source?
6. What are the rules/terms for updating/maintaining listings and listing data on the site? What is the process for updating listings – how easy is it to reach customer service to update an error or required change in the database?
7. What rules/terms are in place to guard the listings from being “scraped” and from being sent to other places?
8. If the site is reporting sales, do the rules/terms require the site to give the broker for the buyer and seller side credit?
9. Do the site’s rules/terms restrict the type of content that can be placed in ads near listings and prohibit inappropriate topics (e.g., political, sexual, alcohol, tobacco and firearms?)
10. Do the site’s rules/terms guarantee there will not be competitive ads next to my listings?

A Disclaimer

This publication was created to provide a summary of information about online listing syndication and distribution and should not be construed in anyway to be a legal review of the terms and conditions of third party listing sites. This document does not in any way offer any legal or professional advice. We did not review any Federal or State Laws in conjunction with this research, nor are the authors attorneys. If you require any legal or expert advice, you should seek the counsel of a licensed attorney with domain experience in real estate and Internet data display rights.



Methodology of Study

The goal of this study is to evaluate the Terms of Use on a variety of syndication services and property search websites that offer brokers the opportunity to list their properties for free. Although there are dozens of websites that offer brokers advertising to consumers by placing their listings on their website, we selected a small handful to evaluate how the Terms of Use governing the use of listings that impacts the rights and liabilities of the real estate broker or agent.

Sites Reviewed

- AOL Real Estate
- Google Base
- Point2
- Postlets
- REALTOR.com
- Threewide's Listhub
- Trulia
- VAST
- Zillow

Site Selection Criteria

REALTOR.com was selected because they were the pioneer for national listing syndication and have the most frequently visited website for property search in the real estate industry.

Point2 and Listhub were selected because they are the two leading providers of listing syndication services for brokers and agents.

AOL was selected because they are provided with listing data by secondary sources.

Trulia, VAST and Zillow were selected as third party listing websites.

Google was selected as they are the leading search engine.

Postlets was selected because they are predominately syndicators of listings to multiple websites on behalf of agents.

Terms of Use Documentation

Finding the Terms of Use for this limited group of websites was a significant challenge.

The following websites have their Terms of Use relating to the data available on their website: REALTOR.com, Zillow, Google, Listhub Postlets, Trulia, VAST.

Our understanding is that AOL receives their listing data from Cyberhomes.

Point2 does not publish their Terms of Use on their public website. Like REALTOR.com and AOL, the Terms of Use are part of their Data License Agreements. A representative of their company provided the author with summary information.

Questions we tried to answer:

- Website operator's right to use the listings or listings data.
- Ability of the REALTOR or broker to control distribution of the listings or listing data.
- License termination, survival and obligation/ability to delete listings or listings data (e.g., what happens when right to listings expires or is terminated?).
- Listing data source prioritization protocol – MLS, agent, broker and others.
- Does the site get/send its listings or listing data to/from a primary or secondary source?
- What rights, benefits or protections do brokers lose by the posting of their listings on the site?
- What are the rules/terms for updating/maintaining listings and listing data on the site?
- What rules/terms are in place to guard the listings from being "scraped" and from being sent to other places?
- Is broker contact information maintained with expired listings?
- If the site is reporting sales, do the rules/terms require the site to give the broker for the buyer and seller side credit?
- Do the site's rules/terms restrict the type of content that can be placed in ads near listings and prohibit inappropriate topics (e.g., political, sexual, alcohol, tobacco and firearms?)
- Do the site's rules/terms guarantee there will not be competitive ads next to brokers' listings?

Background on the emergence of Listing Syndication

There has been a significant shift from marketing real estate listings in print to marketing listings online. Brokers and agents are using a variety of available services that publish homes for sale on public websites. The process of distributing listings to other websites is called, “Listing Syndication.” Today, more than half of real estate listings in America can now be found on a variety of consumer real estate websites.

In the early days of listing syndication, listings were entered and maintained by hand on consumer websites. This entailed logging into multiple consumer websites and entering the data multiple times. The result was an inefficient system where tens of thousands of agents were manually maintaining hundreds of thousands of listings across dozens of consumer websites. This inefficiency was compounded when the listings were not updated or removed when the listing changed status.

This painful and time consuming process was soon replaced by brokers providing a data feed of their listings directly to each consumer website. Brokers would either parse out their listings from the IDX feed, or have agents input listings into their own database once. Once collected, the broker staff would format the data to the requirements of the multiple sites for syndication. The result was a few thousand brokers providing data feeds to dozens of consumer websites at great cost to the broker.

Multiple Listing Services (MLS) have responded to the request for Listing Syndication by their brokers by offering services that distribute broker listings with the broker’s request to most of the leading national consumer real estate portals.

The 2009 Council of MLS survey revealed that 58% of the nation’s MLS are currently providing Listing Syndication to their members. As a result, in more than half of MLS markets today, the broker may choose from a list of third party consumer websites for Listing Syndication. The MLS combines the listing inventory of all participating brokers and submits them on behalf of the broker to the third party websites in a single feed. Member satisfaction with MLS services has always been the cornerstone of assuring that the MLS is meeting the needs of its participants. Recent research of member satisfaction surveys among MLS participants performed by the WAV Group has revealed that Listing Syndication has become a prominent member benefit.

Problems with marketing listings online

Advertising listings on the Internet has emerged as a chief marketing tactic for real estate agents and brokers today. A cooperative business model has emerged whereby listing brokers provide their active listings to third party websites as content. In exchange for the listing content, third party websites provide exposure for the brokers' listings to their consumer audiences. This exchange is largely executed at par value whereby neither the website owner nor the broker is paying the other a fee. The monetary value received by the third party website owner is gained from selling advertising on the website. The monetary value for the broker is gained by converting inquiries on their listings into commissions on home sales.

On the surface, this mutual exchange between the listing broker and the third party website seems very mutual and fair. However, like most new business practices, new challenges emerged that were unanticipated.

In the case of marketing listings online, two key problems exist today. The first problem is the challenge of keeping the listing information across multiple websites updated with accurate listing information. The second problem is related to the rights of the listing broker, or Terms of Use when listings are syndicated. The focus of this paper is to understand the rights of the broker and potential liabilities that are faced once the listings are syndicated.

Website operator's right to use the listings or listing data

When a broker or agent submits listing information to a third party website, it is with the intent that the third party website publishes the listing information. As a result, the Terms of Use of all of the websites evaluated have language that indicates that they may use the content that they submit on their website. They are also very careful to indicate that you have the right to submit the listing and warrant that the listing content you are submitting is free of any copyright restriction. This is a very reasonable requirement.

Some website Terms of use indicate that the listing content remains the intellectual property right of the contributor. This is the case with REALTOR.com, AOL, Threewise, and Point2. Google Base aggregates listings via direct data feeds and crawling the Internet. If you published a listing to Google through a listing feed, each time you update the feed, the prior data will no longer display on Google. However, there is no language about what happens to it. Google may be keeping an archive of the data. By syndicating your data to Postlets, Trulia or VAST you grant them a royalty-free, perpetual and irrevocable license to use that data without restriction.

Like Trulia and Vast, Zillow retains the right to keep your listing content, but limits their rights to display the information only on websites controlled by Zillow, and providing attribution to the contributor. It is not clear how their policy would apply to a home that has been listed or sold by multiple listing contributors.

	You Retain All Rights	You Lose Some Rights	You Lose All Rights
AOL Real Estate	X		
Google Base		X	
Listhub	X		
Point 2	X		
Postlets			X
REALTOR.com	X		
Trulia			X
VAST			X
Zillow		X	

Ability of agent or broker to control the distribution of the listings or listing data

REALTOR.com, AOL and Zillow restrict the use of data to websites under their control ensuring you know where your listings will appear.

Websites like Trulia, VAST and Postlets that claim all rights to the data that you submit offer no broker control over the distribution, resyndication or resale of the broker data. The broker has no written rights or recourse should one of these companies choose to repurpose the data in a way that is disagreeable once the listing has been submitted.

Companies like Postlets, Point2 and Threewide offer a core service to their customers that explicitly include distributing listings to other websites. In the case of Point2 and Threewide, the broker is offered a control panel that enables them to selectively opt in or opt out of distribution site by site. Postlets provides ample information about the sites where your listings may be published. However, Postlets may distribute data to any site at will without notifying the listing contributor.

	You Control Distribution	You Control Some Distribution	They Control Distribution
AOL Real Estate	X		
Google Base		X	
Listhub	X		
Point 2	X		
Postlets			X
REALTOR.com	X		
Trulia			X
VAST			X
Zillow	X		

What happens to the rights of the listing after it expires or is terminated?

This is a complicated issue as it relates to listing syndication. There are two issues at play. The first issue is related to how listings are updated and managed while under the control of the listing agent or broker. The second is how long the third party website retains the right to keep the listing data after the listing has been sold or expired.

Real Estate agents and brokers have a relationship with a seller during the listing term that is outlined in the listing agreement. Generally the agreement makes it clear that the listing agent and broker is going to generate listing information about their property, share the information with other MLS participants, and market the property in print and online. Once that listing agreement is terminated either by sale or by expiration, what means does the agent or broker have to remove the listing from listing syndication?

To address the issue of updating the listing as it changes (like price change) or if the listing is sold or expired, each new data feed submitted to a website service overwrites or updates the prior feed submitted. However, the effectiveness of removing expired or sold listings is fraught with challenges. A study published by Roost in 2008 showed that many syndicated listings were not being removed on a timely basis when the status changed and many listings available on MLS systems were simply not available on these websites. In this study, the MLS IDX data was used as a benchmark.

Although this issue can be cured through emerging standards and accepted practices among syndicators and third party websites, no standard exists today that effectively manages the issue.

Another issue is the notion that many Agents and Broker are providing their listings to third party websites under Terms of Use that allow that website to publish the data or retain the data forever.

REALTOR.com retains the rights to keep the data, but the use of that data or the release of that data to any party is confined by the acceptance of the National Association of REALTORS®. Zillow may only use your data for sites under their control or in applications like Zestimates®. Google retains the data unless you remove it.

	Listings Are Deleted	Listings Are Retained with Conditions	Listings are Retained Forever
AOL Real Estate	X		
Google Base		X	
Listhub	X		
Point 2	X		
Postlets			X
REALTOR.com		X	
Trulia			X
VAST			X
Zillow		X	

Listing data source prioritization – MLS, agent, broker, franchise, others

Confusion exists when listings are being syndicated or re-syndicated to the same third party website by multiple sources. This is true for sites like Google Base, Trulia, Zillow, Point2, and VAST. Many franchisors are syndicating listings, their broker franchises are syndicating listings, and many Agents are syndicating listings. As a result, the same, or nearly the same listing, may be submitted to the third party websites multiple times.

None of the Terms of Use articulate any kind of “trumping” order that explains how duplicate listings are handled. Some merely show duplicate entries and do not worry about which source should take priority. Other sites like Trulia and Zillow try to remove duplicates by using a trumping order.

We were able to find a very helpful video on the Frequently Asked Questions pages at Zillow that indicates that their display priority is arranged as follows: Agent’s Manual Entry to the site will display ahead of any others, followed by Broker/Franchise, MLS, Aggregator or Syndicator like Point2, followed by Postlets, and publishers like Homes and Land. By making manual entry the first priority, the listing data submitted in this manner will inherently suffer from inaccuracies due to update delays.

Terms and Conditions of Third Party Listing Sites Review

AOL receives listings from MLSs, and Point2. Individuals can also input their own listings through a partner site, BargainNetwork. It was not clear in any terms we could find which source of data would take priority if more than one listing source is submitted to AOL.

REALTOR.com receives its listings from MLS feeds only, so REALTOR.com does not suffer from multiple data sources. They use credible MLS listings that provides regular updates with arguably the highest quality listing data available today. The partnerships between REALTOR.com and the MLS community reduces the possibility of duplication and conflicting information about the same listing.

No other information was available for any of the other websites.

	No Duplicate Syndication	Display Priority for Syndication	Duplicate Syndication Terms Not Available
AOL Real Estate			X
Google Base			X
Listhub			X
Point 2			X
Postlets			X
REALTOR.com	X		
Trulia			X
VAST			X
Zillow		X	

Does the site receive/send listing data to/from a primary or secondary source?

This issue crops up frequently when an agent or broker finds their listing on a third party website that they did not explicitly syndicate a listing for display. Our research noted that the listing source of listings was many times displayed by the third party websites when the listing information is arriving from a variety of sources. We saw examples of this on Trulia, Zillow, VAST, and Google. It also appears AOL gets its listings from secondary sources while REALTOR.com gets its listings directly from MLS feeds.

	Primary Source Only	Secondary Source Only	Both
AOL Real Estate		X	
Google Base			X
Listhub	X		
Point 2			X
Postlets	X		
REALTOR.com	X		
Trulia			X
VAST			X
Zillow			X

What rights, benefits or protections do brokers lose by posting their listings on a site?

Whenever an agent or broker syndicates real estate listings, they lose some level of control over their listings simply by handing off their data to another corporate entity that they do not have management jurisdiction over. However, there are some websites where the broker loses all protection: Postlets, Trulia and VAST.

For listing syndication services like Postlets, Threewise, and Point2, the protections in the Terms of Use governing the relationship between the listing entity and the service provider indemnify the syndicator. The broker or agent takes on the responsibility for the accuracy of the listing information.

It is also usually true that the listing provider is also required to indemnify the secondary websites from any action by any party wishing to dispute the display of property information on their website. We are not aware of any claims against any broker or website for the display of any syndicated property information, but many Terms of Use leave the door open for these types of claims and point to the broker for any injunctive relief.

	Broker Keeps Protection	Broker Keeps Some Protections	Broker Loses All Protections
AOL Real Estate	X		
Google Base		X	
Listhub		X	
Point 2	X		
Postlets			X
REALTOR.com	X		
Trulia			X
VAST			X
Zillow		X	

What are the rules/terms for updating/maintaining listing data on the site?

For a website like REALTOR.com, this is a minor issue because the rules and regulations that govern participants in the MLS govern listing maintenance. For example, many MLS rules require that MLS listings must be updated in the MLS within 72 hours. As the updates occur in the MLS, they are reflected on REALTOR.com.

Trulia, Zillow, Point2 and Listhub also manage MLS data feeds for brokers. On the portion of the data that they get from the MLS, the same update frequency and rules apply. The problem is that the MLS feed does not always get precedence over manual feeds from agents or other data input sources so the quality of the MLS data is not always reflected in the quality of data shown on these sites.

There is no requirement in the Terms of Use for Postlets, Google Base or other sites that require any update. Some third party websites offer a simile for what organized real estate calls “Days on Market.” The simile is typically articulated by stating something like “Days on Website.” We were able to locate examples of listings that have been on websites for more than 600 days. We looked up some of these examples on the broker’s IDX website and called some of the listing agents to learn that the listings were either sold or expired. Brokers have no recourse to manage this issue beyond their own internal policies when data is being syndicated by sources other than the MLS data feed.

	Adhere to MLS' Updates Rules	If Data from MLS, Adhere to Update Rules	No Requirements for Updates
AOL Real Estate			X
Google Base			X
Listhub		X	
Point 2		X	
Postlets			X
REALTOR.com	X		
Trulia		X	
VAST			
Zillow		X	

What rules/terms are in place to guard the listings from being “scraped” and from being sent to other places?

The issue is to understand how a broker’s listing data is, or is not, protected from being taken from one website and displayed on another without the consent or knowledge.

The Terms of Use of the website services *all* indicate that the information on the website cannot be copied and repurposed. If a violation of these Terms occurs, there is no indication of how the company will respond, nor is there any information that would provide the listing agent or broker with the authority to force the third party website to respond to violations.

Is broker contact information maintained with expired listings?

For those sites that display expired listings, the information supplied by the listing agent or broker remains on the listing. This is a rather interesting scenario because the website may not be aware that the listing has expired due to the challenges to listing syndication as a whole.

Terms and Conditions of Third Party Listing Sites Review

Websites getting feeds directly from MLS are not getting expired listings in the feed due to the rules and regulations of the MLS.

REALTOR.com is the only site that provides recognition for both the listing broker and the selling broker, if requested by the MLS/data content provider.

If the site is reporting sales, do the rules/terms require the site to give the broker for the buyer and seller side credit?

Some of the sites we reviewed display sold listings to give the consumer information about area transactions that may affect the value of properties in a given area. REALTOR.com and Zillow express that they will attribute the sold listing to the seller's representative.

REALTOR.com expresses both the buyer representative and the seller's representative on the listing when they display sold listings.

We believe that this is an important Term to pay attention to as the trend is pointing in the direction of more websites posting sold data.

	Display Sold Listings with Credit to Both Sides	Display Sold Listings with Credit to Seller's Representative	Do Not Display Sold Listings
AOL Real Estate			X
Google Base			X
Listhub			X
Point 2			X
Postlets			X
REALTOR.com	X		
Trulia			X
VAST			X
Zillow		X	

Do the site’s rules/terms restrict the type of content that can be placed in ads near listings and prohibit inappropriate topics (e.g., political, sexual, alcohol, tobacco and firearms?)

REALTOR.com was the only company whose Terms of Use incorporated language that prohibited the inclusion of inappropriate topics.

Most of the websites have policies against unsavory offensive, obscene or pornographic content. Some, however, have Terms of Use that indicate that you acknowledge that by using the Service, you may be exposed to content that is offensive...etc. Agents and brokers who value their brand and reputation should be aware that their listings – and picture – may appear next to content that they may find wholly inappropriate if the syndication partner does not expressly prohibit inappropriate topics.

	Prohibit Inappropriate Content Next To Your Listing	Policy Against Inappropriate Content	Listing May Appear Next to Inappropriate Content
AOL Real Estate			X
Google Base			X
Listhub			
Point 2			
Postlets			
REALTOR.com	X		
Trulia			X
VAST			X
Zillow			X

Do the site’s rules/terms guarantee there will not be competitive ads next to brokers’ listings?

REALTOR.com is the only company that will not display a competitor’s advertising next to another broker’s listing.



Terms and Conditions of Third Party Listing Sites Review

If Postlets syndicates your listing to a third party, that third party won't have any restrictions on displaying a competitor's ad next to your listing.

Trulia, Zillow and VAST frequently display competitor advertising next to a broker's listing and have no restrictions in their Terms of Use.

By not having competitor restrictions in place, it is akin to allowing another broker to put their "for sale" sign on the front yard of your listed property.

	No Competitive Broker Advertising on Listing	Competitor's Ads Appear Next to Your Listing	No information available
AOL Real Estate			X
Google Base			X
Listhub			X
Point 2			X
Postlets		X	
REALTOR.com	X		
Trulia		X	
VAST		X	
Zillow		X	

Conclusion

We believe it is apparent that there are many nuances and intricacies that real estate professionals need to close monitor before they send their valuable listing data to anywhere other than their own website. The terms and conditions of REALTOR.com seem to be the most REALTOR®-friendly.

Remember that third party websites exist to make a profit, not to look out for the best interest of the real estate industry. They can provide a valuable service of expanding exposure for listings to attract more potential buyers. Just be careful to ask the right questions before giving them one of your most precious assets – your listings.



About the Authors

WAV Group is a leader in providing technology consulting services and research to the real estate industry. The company provides strategic direction and thought leadership to some of the industry's leading Multiple Listing Services, Associations, Technology companies and real estate organizations globally. The company regularly publishes studies and white papers on a variety of technology topics.

WAV Group has expertise in the areas of content development, market research, strategic planning, product development, distribution, marketing, and technology evaluation, selection and implementation.

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