



2013

The State of Syndication:
2013 and Beyond



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Introduction

Until 2010, real estate advertising publishers had all gone as far as they could toward profitability without stepping on brokers' toes – so they started quietly doing just that, perhaps hoping that the industry was too distressed and/or disorganized to notice. First publishers buried the links to the broker websites, adding “nofollow” to what links remained, so broker websites wouldn't accrue search engine benefits. Next, they buried the listing agent and brokerage contact information far down the pages from where the listing details were. Then, perhaps worst of all, they started selling ads on Broker A's listing to brokers B, C, and D, making it easy to contact these “experts”, which were placed around the listing because they paid to be there, not because they knew anything about this particular property or even the neighborhood. Let's be clear – in the real world this would be the equivalent of the company installing lawn signs for Edina Realty asking Coldwell Banker and RE/MAX if they wanted to pay to put stickers all around the Edina Realty yard sign with contact information for buyer agent “experts”, and obscure the Edina listing agent's phone number, email address and web site – an action that would be seen as outrageous in the offline world. Some publishers will stop this “cyber squatting” practice for a specific agent or brokerage upon request – by the agent “claiming a listing” (and giving up their contact information for sales purposes) or by the brokerage providing a direct data feed to the publisher. The unfortunate part is that most agents and brokers were unaware this was even happening. In late 2010, Clarity Consulting had finally heard enough broker complaints so we did some research and published a white paper in April 2011 to educate brokers about the publisher's business model shifts and dramatic changes in terms and conditions. The goal of the paper was to inform and inspire the industry to wake up and take action: “Syndication to Real Estate Portals: Problems and Solutions” (<http://www.callclarity.com/SyndicationToRealEstatePortals.pdf>).

In the white paper, many of the bad practices were illustrated, and we laid the groundwork for many actions that followed in Clarity's “**Syndication Bill of Rights**” for real estate brokers, the owners of the listing content:

1. The publisher will display the listing firm contact information, including phone number, in a prominent location on the listing detail page at no cost.
2. The publisher will provide a prominent link to the broker, agent, and/or MLS website, home page or property detail page if provided, and will not use “nofollow” tags that negatively affect the SEO benefit of such links. (This one remains an issue. No publisher will do this due to the negative SEO ramifications for their site.)
3. If the publisher displays non-listing agent/firm information, then: (a) the full contact information for the listing agent/firm must be displayed at no charge, and these parties must be clearly identified as the listing agent/firm; (b) the listing/agent firm information must be displayed more prominently than the third-party agent/firm information; and (c) the site must not send leads to third party agents or firms if the consumer has not selected them as a contact

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recipient, and non-listing agents and firms will not be the default (pre-selected) choice for consumer contact.

4. The publisher has a process for ensuring data accuracy with the data provider(s); ensuring data is updated or removed as appropriate, at least every three days.
5. The publisher displays the date the listing data was last confirmed and updated, and the name of the data provider.
6. The publisher respects the intellectual property of brokers and MLSs. The terms and conditions do not require brokers and MLSs to give up rights (beyond display rights) or to grant rights in perpetuity. The terms and conditions allow the listings to be used only for the explicit purpose for which they were provided. An accuracy disclaimer and copyright notice is displayed, attributing the copyright holder of the information. The publisher must obtain explicit consent from the data provider for any other uses or derivative works.
7. The publisher does not re-syndicate, sub-license, power, or display listings on other websites without informing the data provider and obtaining their consent.
8. The publisher will provide aggregate statistics regarding traffic, at no cost, to the data provider.
9. The publisher provides reasonable mechanisms for preventing screen scraping and misuse of the listing data, understanding that some listing information must be exposed to search engines.
10. The publisher does not re-syndicate to or "power" sites that fail to uphold the previously described rights.

This Bill of Rights (BOR) was meant as a starting point – we measured each of the eight most trafficked real estate portals against the BOR, and we hoped that by educating MLSs, brokers, and others in the industry, there would be pushback against the worst practices – individually based on making informed business decisions rather than via a group boycott - and we've seen some success.

How successful have we been?

Let's recap some of the highlights over the past year. In January 2012, the national real estate franchises, in conjunction with MOVE, launched the real estate network (REN) and promised that they will abide by a variety of industry-friendly rules when receiving data through the network, similar to the courtesies contained in IDX rules. This includes, but is not limited to the following:

- Each listing detail page displayed on an Industry Participant website must identify the listing firm in a readily visible color and typeface not smaller than the median used in the display of listing data.

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- Listing information received from Network shall not be used for any purpose not specifically authorized in these Rules.
- All MLS data received from the Network and displayed by Industry Participant must be updated and refreshed no less frequently than one (1) time each day, or no less frequently than the Network feed is updated.
- The Industry Participant must take commercially reasonable steps to protect the security and privacy of the listing content received from the Network from unauthorized use, access, or disclosure.

This is apparently working well among participating franchises because, by agreeing to a reasonable set of rules, they get most United States MLS data from one source resulting in accurate data on their websites. Further, the rules reduce other frictions common to publishers that do not abide by these types of rules. A complete list of the REN rules can be found on this website:

<http://www.listhub.net/networkrules.html>

In 2012, a number of brokerages have individually opted to remove their listings from certain publishers – or from all third party publishers that receive data via syndication. This includes Edina Realty of Minnesota, ARG of San Diego, Nothnagle of Rochester, NY, Prudential of Kansas City, and several others.

In January 2012, Sandicor, the large regional MLS serving greater San Diego County decided to do something bold and innovative. The MLS made a rule change and added one field that could make a profound difference for the future of real estate advertising – they simply created a new advertising remarks field. This advertising field is distinctly separate from the normal remarks field in the MLS. The advertising remarks do NOT display in the MLS system, but only appear in the data syndication feeds from Sandicor. The advertising field allows an agent to input their contact information including name, phone number, web site link, email address, and a broker web site link along with the property description or no contact information at all if they wish. They are also allowed to include open house information in this field. One thing they cannot do in this field is self-promotion. For example they cannot say they're the #1 Agent in San Diego. The purpose and benefits of the new field are clear. Sandicor will require any online publisher/advertising sites that display remarks to not edit out the contact information. Sandicor has concluded that the current practice of obscuring the listing agent or broker by selling the ad space that surrounds a listing is misleading to consumers. At a minimum, this will at least establish a fair means for consumers to contact the listing agent directly. If buyers' agents choose to advertise around these listings, at least it's an honest representation and the consumer can decide if they want to contact the professional that actually represents the property and its owner, or to contact a random agent that infringes on another agent's listings by advertising near them. Several other MLSs have adopted nearly identical rule changes during 2012

Some brokers have picked national partners strategically and exclusively. In February of 2012, Howard Hanna (a 4,700 firm) started syndicating only to Zillow and Realtor.com. According to a February 21, 2012 Inman News article, on Zillow Howard Hanna listings appear as "featured listings" at the top of

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search results. Though the default search order is “Featured” (rather than by price or other criteria), the consumer probably does not notice that the listings being shown first are ads, displayed first because of sponsorship. Europe is currently suing Google over a similar practice where organic search result order is distorted. Google has tried to get EU regulators to back off by proposing to clearly mark such items as distinct from “neutral” search results – but this hasn’t yet been accepted. Realtor.com is very clear about which listings are ads and Zillow, and other portals that may play this game, may find themselves in a similar spot to Google.

Zillow felt pressure from the industry and hired Bob Bemis and Jay Thompson to improve industry relations with MLSs and brokers. In May 2012, they introduced the Zillow Partnership Platform (ZPP), under which the company promises to:

1. Always show the listing agent
2. Always show the listing brokerage
3. Clearly identify all parties
4. Never re-syndicate, redistribute, or sub-license listings without written consent
5. Always using listing data entrusted to Zillow in support of ONLY that business and no other
6. Keep listing information up to date and accurate
7. Allow MLSs and brokers to choose Zillow’s listings data source.
8. Allow agents to advertise or claim listings to which they ONLY have legal claim or right.
9. Always show source and update information.
10. Honor all intellectual property (IP) rights holders and protect their IP from misuse.
11. Always share traffic statistics.
12. Take all possible steps to stop screen scraping or other misuse of the listing data.

This is a positive step forward and we commend Zillow for making these pledges. The only catch has been that the MLS or broker must enter into a contractual relationship with Zillow and directly provide all data to Zillow, rather than use the syndication infrastructure. Zillow and other publishers are trying to improve their data accuracy while simultaneously decreasing their dependency on ListHub and Point2, the two leading syndicators.

Trulia took similar action with its Trulia Direct Reference, signing up a few more MLSs in 2012. The idea behind this program is that MLSs provide Trulia with data, and discrepancies between that data and what is on Trulia are reported back to MLS, broker and listing agent. The agent can then correct the information at the source that sent it to Trulia. Of course, it would be better for agents and consumers if Trulia stopped creating the mess that needs to be cleaned up in the first place, merely by only accepting syndication data from the MLS or its syndication vendor.

What it comes down to is that MLSs providing feeds directly to the publishers removes all of the leverage the industry has to force the portals to act in industry-friendly ways, as per the Clarity Syndication Bill of Rights or other similar initiatives. Meanwhile, it also continues to reduce the advantage of the broker & MLS consumer facing sites. Clarity strongly advocates that publishers should

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be required to only take feeds from MLSs and their syndication partners, or, if they use other sources to supplement MLS data, MLS data must always trump the other data sources, and the publishers need to be clear about what is MLS data and what is not. Clarity supports the Council of MLS "Source MLS" initiative for labeling MLS data – an effort still under development, but expected to launch in 2013 (<http://sourcemls.org/>).

In October 2012, Point2 disclosed at the Council of MLS meeting that, on behalf of its Canadian customers, it has made the portals sign a very restrictive Master Data Distribution Agreement to obtain data, and would be willing to implement that agreement for U.S. MLSs should they wish. The contracts include a limited license to display actives solely for website URL, data rights expressly remain with content source, a 30-day out - BUT immediate if breach of contract, no marketing use of data - period, and no derivative works, including agent apps, and NO UNILATERAL DISTRIBUTION TO OR POWERING OF third-party websites other mediums or apps. A copy of that agreement is located here: <http://paulhagey.com/Documents/Point2%20Data%20Distribution%20Agreement.pdf>. This could be the start of a whole new MLS dynamic with the portals if brokers and/or MLSs go along with these tighter controls. It'll also be interesting to see if Listhub's broker and MLS customers ask them to also get stricter with their data agreements.

Others are starting to join the fight. Texas broker Ben Caballero started the National Association of Real Estate Professionals (NAREP). According to NAREP, since publisher data is provided by our industry, our industry has a right to set guidelines for its use. To address this need for guidelines, NAREP developed the Real Estate Professional's Bill of Rights in January 2013 and is seeking broker comments on the draft which is partially based upon Clarity's work and that of others. Publishers who comply with this Bill of Rights will receive NAREP's accreditation which they will prominently display on their website to signify their adherence. NAREP members will know their data will be respected and consumers will know the information is accurate and current. It will be interesting to see how much traction NAREP gets in 2013. (<http://www.narep.net/>)

Looking at the big three?

Following is an update to the table in Clarity's 2011 study, for the top three nationwide real estate publishers by consumer traffic:

	Realtor .com	Zillow	Trulia
1. The publisher will display the listing firm contact information, including phone number, in a prominent location on the listing detail page at no cost.			
<i>Listing Broker firm name</i>	Yes	Partial Must scroll 7 (typical) screens down	Yes
<i>Listing Broker firm telephone</i>	Yes	Partial Must scroll 7 (typical) screens down	Partial Must scroll 7 (typical) screens down. Previously No

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	Realtor .com	Zillow	Trulia
<i>Listing Broker firm email</i>	No	No	No
While not specifically required in the Bill of Rights, no-cost display of agent name and contact information may be of interest to readers.			
<i>Listing Agent name</i>	No	Yes	Yes – clearly identified alongside advertising agents.
<i>Listing Agent telephone</i>	No	No	Partial - (only if you “claim your listing”)
<i>Listing Agent email</i>	No	No	Partial (only if you “claim your listing”)
2. The publisher will provide a prominent link to the broker, agent, and/or MLS website, home page or property detail page if provided, and not use “nofollow” tags that negatively affect the SEO benefit of such links.			
<i>Links to home page</i>	No (cost)	No	No
<i>Link to property details page</i>	No	Partial Must scroll 7 (typical) screens down	Yes Not obviously a link to details – the “Provided by” link.
<i>Does not use “nofollow” tag</i>	No (Yes, but cost)	No	No
3. If the publisher displays non-listing agent/firm information, then: (a) the full contact information for the listing agent/firm must be displayed at no charge, and these parties must be clearly identified as the listing agent/firm; (b) the listing/agent firm information must be displayed more prominently than the third-party agent/firm information; and (c) the site must not send leads to third party agents or firms if the consumer has not selected them as a contact recipient, and non-listing agents and firms will not be the default (pre-selected) choice for consumer contact.			
<i>(a) the full contact information for the listing agent/firm must be displayed, and these parties must be clearly identified as the listing agent/firm;</i>	Yes (no non-listing agent display)	Yes	Partial (Name, not contact information)
<i>(b) the listing agent/ firm information must be displayed more prominently than the third-party agent/firm information; and</i>	Yes (no non-listing agent display)	No	No Advertising agent phones are listed – not listing agent’s.

	Realtor .com	Zillow	Trulia
<i>(c) the site must not send leads to third party agents or firms if the consumer has not selected them as a contact recipient, and non-listing agents and firms will not be the default (pre-selected) choice for consumer contact.</i>	No ("Serviced by a real estate professional") <i>Previously Yes</i>	No	Partial (It looks like all are pre-selected – non-advertising and agent alike. Site sends to contacts selected by consumer.)
4. The publisher has a process for ensuring data accuracy with the data provider(s); ensuring data is updated or removed as appropriate, at least every three days.	Yes	Partial ¹	Partial ²
5. The publisher displays the date the listing data was last confirmed and updated, and the name of the data provider.			
<i>Listing date/time stamp</i>	Yes	No (previously Yes)	No
<i>Data provider name</i>	Partial – says "MLS" where provided by MLS	Yes (previously No)	No (previously Yes)
6. The publisher respects the intellectual property of brokers and MLSs. The terms and conditions do not require brokers and MLSs to give up rights (beyond display rights) or to grant rights in perpetuity. The terms and conditions allow the listings to be used only for the explicit purpose for which they were provided. The publisher must obtain explicit consent from the data provider for any other uses or derivative works. ³	No ⁴	No ⁵	No ⁶

¹ Clarity still hears about data issues – the publishers (Zillow, Trulia, and others) accepting data from non-MLS sources that do not keep data updated, using this data ahead of data received from Point2, ListHub and other MLS syndication vendors.

² Same as previous footnote.

³ Note that publisher terms of use may be trumped by terms negotiated by the MLS or by syndication partners such as Lithub or Point2.

⁴ <http://www.move.com/company/terms.aspx> "By Transmitting Content to the Move Network, you grant, and you represent and warrant that you have the right to grant, to Move an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, and distribute the Content and to prepare derivative works of, or incorporate into other works, the Content, and to grant and authorize sublicenses (through multiple tiers) of the foregoing. Furthermore, by posting Content to any public area of the Move Network, you grant Move all rights necessary to prohibit any subsequent aggregation, display, copying, duplication, reproduction, or exploitation of the Content on the Move Network by any party for any purpose."

⁵ <http://www.zillow.com/corp/Terms.htm> "For materials you post or otherwise provide to Zillow in connection with the Services (your "Submission"), you grant Zillow an irrevocable, perpetual, worldwide license to (a) use, copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, modify, and translate your

	Realtor .com	Zillow	Trulia
<i>An accuracy disclaimer and copyright notice is displayed with the listing, attributing the copyright holder of the information.</i>	Partial – on request ⁷	No	No
7. The publisher does not re-syndicate, sub-license, power, or display listings on other websites without informing the data provider and obtaining their consent.	No - No choice: Powers MSN Real Estate	No - No choice: Powers Yahoo!	No – Trulia's Publisher Platform powers many websites.
8. The publisher will provide aggregate statistics regarding traffic, at no cost, to the MLS data provider.	Yes On Request	Yes	Yes
9. The publisher provides reasonable mechanisms for preventing screen scraping and misuse of the listing data, understanding that <i>some</i> listing information must be exposed to search engines.	Yes	Partial	Unknown
10. The publisher does not re-syndicate to or "power" sites that fail to uphold the previously described rights (Items 1-9).	No	No	No

The information in this table was gathered the week of January 14, 2013. It is believed to be reliable, but not guaranteed.

A watchful eye moving forward: old and new challenges

The industry is not making a lot of progress in keeping the advertising publishers in line. There have been a few minor shifts noted in the table above, some positive and some negative. The more significant changes have been negative: Realtor.com’s main contact form does not necessarily go to the listing agent, but is “Serviced by a real estate professional”, and Trulia’s Publisher Platform powers many websites, creating new compliance challenges for MLS with little additional benefit for subscribers, with publishers placing whatever content they want around the listings. Some agents and brokers are fine

Submission, in connection with the Services or in any other media, and (b) sublicense these rights, to the maximum extent permitted by applicable law.”

⁶ <http://www.trulia.com/terms/> “You agree that by posting content on the Site, you are granting Trulia a royalty-free, perpetual, irrevocable and fully sub-licensable license to publish, reproduce, distribute, display, adapt, and otherwise use this content in any manner on or in connection with the Site or in the course of offering the Services. You understand and agree that any User Content that you post or submit to Trulia may be redistributed through the internet and other media channels, and may be viewed by the general public.” Note that Trulia can change the definition of Service at any time: “Trulia reserves the right to modify or discontinue the Service or a portion or attribute thereof, or the offering of any information, good, content, product or service with or without notice.”

⁷ For example: http://www.realtor.com/realestateandhomes-detail/11-2nd-St-Se_Minneapolis_MN_55414_M86319-80943 “Copyright 2013 Regional MLS of Minnesota, Inc. Information deemed reliable but is not guaranteed.”

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with this practice and believe that “any exposure is good exposure”. That kind of thinking serves the industry better in slower market conditions, but in today’s environment of lower inventory and multiple offers on new listings happening in many cities, it’s more important than ever to have accurate information on EVERY site for the credibility of REALTORS® and the industry. But it’s not in the best interests of brokers - and the MLSs representing their interests – to continue to syndicate to publishers or provide listing data directly to a publisher without an immediate value exchange, or quid pro quo, to address the issues described in this paper as well as those being raised by disgruntled brokers.

Therefore, first, Clareity suggests stricter syndication contracts like the Point2 agreement referenced above as a starting point for addressing publisher practices. But note that Point2 still has an addendum for sites the publisher can “Power” without the broker opting-in. This should be done away with and distribution should be entirely within the brokers’ control as an “opt-in”.

Second, both ListHub and Point2 as syndication partners should do away with all remaining “opt-out” implementations and brokers should be required to opt-in to each site, at least quarterly, after having access to information regarding publisher compliance with industry practices. MLSs should address this with their syndication partners or within their own internal data distribution processes.

Third, the industry still needs to keep a watchful eye on all of the advertising publishers (not just the top three listed above). Lithub (<http://www.lithub.net>) will continue to provide its Channel Scorecard, and Clareity Security’s Safe Syndication (<http://clareitysecurity.com/>) will help MLSs expand those ratings, quickly adapting to changing portal business models and providing “report cards” to brokers so they can continue to make informed choices about where their listings are going. If we maintain a watchful eye and continue to shine a light on publishers’ business practices, hopefully the publishers will continue to respect the content owners’ intellectual property rights and improve their practices and data quality.

Lastly, our industry has set a very low bar for protection of the data via screen-scraping. Realtor.com has been the leader and invested millions of dollars protecting the listing data and driving thousands of scrapers off of their site. As Curt Beardsley, VP at Realtor.com, concluded several 2012 presentations, “My problem is about to become yours” (as data pirates redirect their efforts and repoint their bots to other publishers, brokers and MLS public facing sites). MLS operators, brokers, and legitimate publishers are aware of scraping and are fed up with fighting data pirates as well. Clareity Consulting is testing an industry-wide solution that will be available in March of 2013 – a solution that scales up to the largest websites and down to the smallest IDX websites, and which creates an industry-wide intelligence network that effectively blocks data scrapers. Look for more information to be disclosed on this subject next month at the Clareity Consulting MLS Executive Workshop. (<http://www.callclareity.com/MLSWorkshop/>).

Clareity is pleased that Zillow, Realtor.com, Homes.com, ListHub and Point2 will be participating in this year’s MLS Workshop and continuing to collaborate with MLS executives to improve the data quality for consumers. We also expect the most substantial data quality initiative to date will be unveiled at the Workshop March 1st. Thank you for reading this update on Listing Syndication and we appreciate your input and feedback.

Company Profile

Clareity Consulting brings clients fresh insights and wide perspective gained by serving clients throughout the industry: associations and MLSs, brokerages, franchises, information and technology vendors, and others. Clareity's services include:

STRATEGIC AND BUSINESS PLANNING

Clareity provides strategic, governance, and product/service business planning that bridges the gaps between strategy, tactics, and the timely activities needed to support your goals. Clareity also facilitates MLS regionalization & data shares.

PUBLIC SPEAKING

Clareity can address leadership or large groups on timely topics in an informative and fun way. Popular topics include MLS trends and system options, information security, and real estate technology trends, such as cloud computing and mobile technologies.

PRODUCT / SERVICE / SOFTWARE REVIEW

Clareity performs customer surveys and market research, develops product strategies and specifications, performs usability and quality assurance, audits security, and facilitates user groups. Clareity also facilitates strategic alliances, mergers, and acquisitions.

WEBSITE PLANNING AND REVIEW

Clareity helps improve website design, usability, and content, accounting for key factors such as SEO and mobile experience. Clareity also creates specifications and helps clients select the best partners to produce, and provide compelling content for, their web applications.

SYSTEM SELECTION

From needs assessment and RFP to contract negotiation, for MLS, TMS, Public Records, and other offerings, Clareity's structured processes help your organization make a good business decision with stakeholder involvement.

COMPLIANCE AND RISK AUDITS

Providing information security, risk management and business resumption planning, staffing and salary reviews, and VOW / IDX compliance audits, Clareity brings both an independent view and finely-honed technical skills.

RECRUITING

Your business is only as successful as your leaders and employees, and Clareity has discreetly helped recruit some of the brightest minds in our industry for their current positions, both executive and technical.

EXPERT WITNESS

Whether it's a matter of the policies and practice of organized real estate or a more technical software dispute, Clareity can provide an expert witness with integrity and experience to conduct research, write expert opinions, and provide depositions and testimony.

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