



The Last War

The debate over who owns listing data is a classic example of an industry fighting the last war. Asserting ownership may provide a path to eventual legal remedies, but brokers have to deal with market realities. Brokers can look to the **lessons learned** by other industries dealing with the same systemic pressure to control the intellectual property under their care.

Lesson 1- The dirty little secret understood by every company is that the most serious threats come from within the organization. Hackers and other external forces with malicious intent are not the primary threat to company assets. Most valuable and sensitive information walks out the front door due to neglect or outright theft by so-called “trusted” parties. Regulation designed to address this issue by mandating the improvement of internal controls, already burdening other industries is coming to real estate.

Lesson 2- A useful definition of “ownership” can be stated as; the *right*, to assign *rights*, to others. Models that determine how rights can be defined and enforced and what organizations can do with content have been integral to the growth of publishing and entertainment. Acceptable use and end user license agreements, (EULAs), even when they define what can be done with digital content seem to be rarely enforced by real estate organizations. Copyright protections may provide some relief but they are insufficient to deal with marketplace realities. By the time the legal cavalry arrives you may already be mortally wounded.

Lesson 3- Companies that effectively distribute digital information create a “chain of trust” from the content originator to the users. This chain of trust is enabled by a mix of 90% - policies, practices and procedures with the remaining 10% - filled by technology. The weak links in the chain can lead to internal leakage, theft and misuse of digital information. The weak links of real estate start with consumers who don’t understand what will be done with their information, agent’s who believe they own their listings, pictures and contact records, brokers who don’t specify their rights to the intellectual property that is created in their firms and MLSs who don’t adequately control their operating environment. Trust models that manage the chain of trust will work.



Lesson 4- Every broker is in the risk management business. That means balancing the investment in various forms of protection against the value of the assets that must be protected. Properly classifying a broker’s information assets against a standard metric, would quickly identify the information that should be subject to a higher standard of care, or more strident risk management

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processes. Not all information assets are valued equally, and listings are not always the most sensitive form of broker information.

Lesson 5- Technology has been available for years to protect and control real estate information. Encryption, two factor authentication, role based authorization, and application intrusion detection are proven methods and the great enablers of e-commerce. Unlike the challenge faced by the entertainment industry, there is no invention required.

In a digital economy the control of information translates into market power. The debates about listing ownership look backward to a by-gone era when control of listings meant control of the market. Brokers should get on to the next battle, evolving toward the information security competency necessary to control of the value chain.

"...users shall not publish and distribute such material (in whole or in part) and/or to incorporate it in other works in any form, media or technology now known or hereafter developed...."

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