



Triangle MLS Participant Agreement Information

The MLS world has become more complicated: Data ownership, copyright protection, subscribership qualifications, and listing syndication are just some of the areas that need to be addressed in the licensing agreement between MLSs and their Participants. The listing data entered into the MLS is the key ingredient in most of these issues. Who has access to the data, who owns it, and who is responsible for protecting it?

TMLS wants to ensure that listing brokers can use content from their own listings any way they want; and that TMLS can play its proper role in protecting all the data content in the MLS system from piracy.

Benefits of choosing Option I in paragraph 21

You have an option regarding paragraph 21 on page 2. You must select either Option I or Option II. Option I(a) provides that your firm assigns its copyrights to TMLS; in return, TMLS promises in I(b) to take steps to protect your listing data using copyright law. Under Option II(a), your firm merely provides a license to TMLS for your firm's listings, retaining the copyright ownership; as a consequence, TMLS has no obligations to protect your listing data using copyright law under II(b). See the section below for an explanation of the copyright law issues. In summary, your firm obtains several benefits from choosing Option I.

A. Your firm is assured of obtaining rights to make full use of all the listing content in TMLS relating to your firm's listings. Very few brokerage firms have taken the difficult steps necessary to achieve this goal themselves. TMLS can deliver it to you very cost-effectively.

B. TMLS can register the copyrights in your firm's listing content on a quarterly basis as part of TMLS's copyright activities – your firm could not register its own listing content as cost-effectively alone.

C. TMLS can sue a data pirate for copyright infringement if the pirate takes your listing content.

Brokers that choose Option II will be responsible for obtaining their own legal rights, registering their own copyrights, and suing data pirates on their own.

Note that whichever option your firm chooses, TMLS promises in paragraph 24 not to license your firm's data to third parties for uses other than the core purposes of MLS.

The following section explains why TMLS has taken this approach with Options I and II.

Copyright ownership, registration, and enforcement

TMLS retained intellectual property counsel to advise us regarding the status of copyrights in the MLS database. After a thorough review, our attorneys have advised us that intellectual property rights in the MLS database are scattered among the MLS, brokers, agents and possibly third parties. Because of the way that copyright law operates, in most cases listing agents, not listing brokers, are the owners of the copyrights in all the original text in the listing data (including the listing remarks and perhaps the listing price). As for the photographs, the persons who actually snap the pictures are the

owners of the copyrights, unless they make assignments in writing to someone else; again, it is unlikely the listing brokers own the copyrights to the photos relating to their own listings.

There are three significant problems because the copyright ownership is scattered in this way:

1. Listing brokers may not have complete freedom to use the content relating to their own listings. For example, a disgruntled former listing agent could assert his or her copyrights in photos and text to the detriment of the listing broker.
2. The copyrights cannot be registered as a group. Normally, the U.S. Copyright Office requires a separate application and fee for each work (for example, each photo) registered with the office. In the case of automated databases, however, it is possible to register all the contents in a single, quarterly filing, provided that the filer owns all the copyrights. Registration is a prerequisite for filing a lawsuit.
3. No one is in a good position to enforce the copyrights against infringers and pirates. Generally only the owner can file suit for infringement. So, for example, in a case where a pirate steals a dozen listing photos of a dozen different brokers, filing suit would possibly require the cooperation of the listing brokers, agents, photographers, MLS, and others.
4. Some MLSs in this country have struggled with issues of rights and responsibilities over the listing data content in MLS. Under the current Participant agreement these rights and responsibilities were not clearly spelled out.

With those problems in mind, the TMLS Participant Agreement and copyright efforts have the following objectives:

- Secure for listing brokers the unfettered right to use intellectual property relating to their own listings.
- Reinforce in writing TMLS's long-standing commitment never to use listing data without the listing broker's permission.
- Create a system where the MLS can enforce copyrights by suing infringers.
- Permit MLS to make one quarterly registration of all the copyrightable material in the MLS database, protecting its own copyrights as well as those of the brokers.

To achieve these results, TMLS needs to obtain ownership of the copyrights in the TMLS database. The approach makes TMLS the owner of the copyrights in the text and photos relating to the listing broker's listings for brokers who choose Option I in paragraph 21, but the listing broker's rights to use the listing content are unlimited (see paragraph 21(l)(b)). The MLS's rights to use it are limited by contract to those uses approved by the listing broker (see paragraph 24). The other brokers in MLS are permitted to use the listing broker's content only to the extent expressly permitted in the MLS rules.

TMLS's ownership of the copyrights permits TMLS to register all the MLS copyrights with one quarterly registration and to sue data pirates who take the data subject to the copyrights.

TMLS is confident that this Participation agreement strengthens our listing brokers and also clarifies the rights and responsibilities of everyone involved with MLS data content. If you have any questions about the Participant Agreement before signing it, please contact Lisa Veach LisaV@TriangleMLS.com or Rachel Wiest, RachelW@TriangleMLS.com or call 919.654.5400.

Check out Frequently Asked Questions-Copyright Under the Participant Agreement for more information on data ownership and copyright.

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