

EXHIBIT 3

allows agents and brokers to post their listings at no charge.⁵⁵ Zillow allows sellers (e.g., FSBOs) as well as brokers and agents to post listings on their site, also at no charge.⁵⁶ Zillow and Trulia were recently reported to be among the most frequently trafficked real estate related websites on the Internet.⁵⁷

53. Notably, many brokers have embraced the concept of providing consumers with direct access to information about listings through these third-party Internet websites. For example, Realogy, which owns major franchises such as Coldwell Banker, Century 21, and ERA, as well as the largest brokerage in the U.S. (NRT), recently announced plans to submit its listings, which number over 500,000, to Google Base and Trulia.⁵⁸ Similarly, the Houston Association of Realtors[®] submits all of its listings to Google Base.⁵⁹ Other significant brokers in large markets have likewise embraced this form of direct dissemination of listing information to consumers.⁶⁰

54. Furthermore, new technologies are making it less cumbersome for listing brokers to place their listings on various websites. For example, Point2 is a company that allows brokers to automatically “syndicate” their listings to several websites, including Trulia, Google Base, and Yahoo! Classifieds, at little cost to the broker.⁶¹ Point2 also has developed

⁵⁵ See <http://www.trulia.com/> (last visited on August 1, 2007) and Trulia Real Estate Search – FAQ <http://www.trulia.com/faq/> (last visited on August 1, 2007)

⁵⁶ See <http://www.zillow.com/> (last visited August 1, 2007) and Zillow – About Zillow – Home Real Estate Valuation, Services, The Big Question, <http://www.zillow.com/corp/HowZillowMakesMoney.htm> (last visited on August 1, 2007)

⁵⁷ See “Monthly Internet Traffic Reports” for January, February, and March available on at: NAR Website Traffic Statistics: 2007, <http://www.realtor.org/realtororg.nsf/pages/sitetraffic?OpenDocument> (last visited August 1, 2007)

⁵⁸ “Realogy Announces Comprehensive Online Listings Distribution Strategy,” Realogy Press Release, March 2, 2007, http://www.realogy.com/media/pr/show_release.cfm?id=329 (last visited on August 1, 2007)

⁵⁹ Deposition of Curtis Robert Hale, III, March 16, 2007, p. 141.

⁶⁰ <http://www.trulia.com/testimonials/> (last visited August 1, 2007)

⁶¹ Point2 NLS, Listing Syndication, <http://nls.point2.com/Content/FeaturesServices/SyndicationAdvertising.asp> (last visited August 1, 2007). The websites to which brokers can “syndicate” their listings through Point2 include Google

peer-to-peer technology (referred to as “handshake”) that allows brokers to directly share listings with one another, rather than through the MLS.⁶²

55. The abundance of websites that provide consumers access to MLS and non-MLS listings illustrate that Internet access to listings is not dependent on VOWs. Further, as I explain in Section IV, these sites provide a range of information that appears to be valued by consumers. Also, as I discuss in that section, the comprehensiveness or completeness of VOW listings does not appear to distinguish VOWs from IDX or other sites. Ultimately, the fact that these many alternative sites are not only common but popular suggests that the information on these sites provides a good substitute for Web-based access to property listings available via VOWs.

C. VOWs Are Not Distinguished by Increased Productivity, Unique Non-Price Benefits, or Broker Discounting

56. Dr. Vistnes asserts that consumers benefit from VOWs because brokers operating VOWs are more productive.⁶³ He states that this productivity advantage derives from the fact that VOWs allow brokers to offload much of their work to the client and, hence, saves broker resources. Dr. Vistnes further claims that due to these productivity advantages, consumers not only receive better service from VOWs, but also pay lower fees because of significant rebates.⁶⁴ These alleged better services include lower-cost, expedited transactions, as well as non-pecuniary benefits such as automated search processes, property

Base, Yahoo! Classifieds, NYTimes.com, Point2 Homes, Trulia, Oodle, PropSmart, Edgeio, RealEstateAdvisor.com, US Condo Exchange, LiveDeal.com, LiveDeal.ca, Craigslist, HotPads.com, Vast.com, CityCribbs.com, Propbot.com, House.com, VideoHomes.com, TheHousingPages.com, Backpage.com, and eBay. Realtown: Point2 NLS Expands Real Estate Listing Syndication Network, <http://www.realtown.com/articles/technology/point2-nls-expands-real-estate-listing-syndication-network> (last visited August 1, 2007)

⁶² Point2 NLS, Listing Syndication, <http://nls.point2.com/Content/FeaturesServices/SyndicationAdvertising.asp> (last visited August 1, 2007)

⁶³ Expert Report of Dr. Vistnes, pp. 24-34.

⁶⁴ Expert Report of Dr. Vistnes, p. 16.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 1 day of August, 2007

A handwritten signature in cursive script, appearing to read "Fredrick A. Flyer", with a long horizontal line extending to the right.

Fredrick A. Flyer, Ph.D.