

Policy Consideration

Display of IDX information by real estate franchise organizations.

Background Information

At the 2009 Annual Convention, comprehensive revisions to the Internet Data Exchange (“IDX”) policy were adopted by the NAR Board of Directors. The provision that formerly provided “participants must protect IDX information from misappropriation, by employing reasonable efforts to monitor and prevent ‘scraping’ or other unauthorized accessing, reproduction or use of the MLS database” was amended to read “MLS participants may not use IDX-provided listings for any purpose other than display on their websites. This does not require participants to prevent indexing of IDX listings by recognized search engines.”

There was no discussion in the Multiple Listing Issues and Policies Committee of whether, or how, the phrase “recognized search engines” would be defined - or whether it required a special definition at all. NAR generally does not define terms having common usage meanings, except where NAR intends for those terms to have a special meaning in the context of NAR policy. Based on common usage, together with the discussions in the 2009 work group that proposed the amendments to IDX policy, staff initially concluded that “recognized search engines” as used in the context of the IDX policy refers only to search engines consumers commonly use to search the Internet for any type of information, e.g. Google, Yahoo, etc. Put another way, absent a special NAR-developed definition, “recognized search engines” was intended to mean those facilities average consumers consider to be “search engines”.

In response to the suggestion that real estate advertising/promotion sites such as Zillow, Trulia and others, or franchisor sites such as Century 21, Re/Max, and others, might be “recognized search engines” as that term is used in NAR policy, staff advised that conclusion would require clarification of the IDX policy by the NAR Board of Directors.

At the 2010 Midyear meeting, Alex Perriello, President & CEO of the Realogy Franchise Group, made a presentation to the MLS Forum. A copy of his presentation is attached as Appendix 4A to this agenda. Mr. Perriello suggested the IDX policy might give “franchisors the option to index the IDX websites of their own brokers” to “present consumers with the brief summary of IDX listing results from all listing brokers with acknowledgement of source” to “allow franchisors to deliver a seamless search experience that allows the consumer to click through the originating IDX website to see the property details that fully comply with the MLS display rules for listings in that market.”

At the Committee meeting that immediately followed the MLS Forum, Chairman Mike Jewell advised the Committee that a work group would be convened to consider both the “RSS issue” (see Appendix 3) and Mr. Perriello’s suggestion.

Attached as Appendix 4B is Mr. Perriello's follow-up June 17, 2010 email proposing a definition of "Real Estate Franchisor" and "Rules Of Engagement" under which franchisors might index IDX sites of their own franchisees.

The proposed definition of "Real Estate Franchisor" suggested in that correspondence provides:

Real Estate Franchisor means any company that grants a real estate brokerage franchise under its trademarks and under a Franchise Disclosure Document in accordance with the FTC rule to a real estate broker that is actively engaged in the sale of real estate and an active participant in an MLS.

The proposed "Rules Of Engagement" suggested in that correspondence provide:

- 1. For initial search results only, franchisor can, at franchisor's option, index the IDX web sites of its own franchisees.*
- 2. Initial search results would present consumers with a brief summary (for example: thumbnail photograph, listing price, address, # of bedrooms and bathrooms, and MLS #) of IDX listing results from all listing brokers with attribution to the source MLS.*
- 3. Consumers can click through to the originating IDX web site to see the property details that fully comply with the MLS display rules for listings in that market.*
- 4. Franchisor will not modify, manipulate or store the IDX listing data.*
- 5. Franchisor will not use IDX-provided listing data for any purpose other than to facilitate the presentation of the initial search results on their websites.*
- 6. Franchisor will not distribute, provide, or make any portion of the IDX listing data to any person or entity.*
- 7. Franchisor will not show any preferential treatment in the display of IDX listings.*
- 8. At the request of an MLS, Franchisor agrees to correct attribution or to remove particular listings that are at issue.*
- 9. Franchisor will not allow paid advertising on the franchisor's search results pages.*

As discussed above, a work group of Committee members was appointed and met in Chicago on August 20, 2010. The work group's *Report and Recommendations*, attached as Appendix 4C, notes:

. . . real estate franchise organizations, while not REALTORS® or "REALTOR® firms", are generally aligned with the objectives of NAR and should, with their franchisees' consent, be permitted to index franchisees' IDX displays with the aggregated results being displayed on the franchisors' websites subject to appropriate qualifications and limitations.

The consideration of the Committee is requested to the work group's proposed enhancements to the IDX policy shown as the "Possible Recommendation" immediately below.

Action / Recommendation of the Committee

Possible Recommendation:

That the Internet Data Exchange ("IDX") policy be amended by the addition of the following new provisions:

Display of IDX Information by Real Estate Franchise Organizations

Participants may provide IDX information to their real estate franchise organizations ("franchisors") to be indexed for display on franchisors' websites. For purposes of this policy, "real estate franchisor" is defined as a company granting real estate brokerage franchises under the franchisor's trademarks pursuant to a franchise disclosure document meeting applicable Federal trade Commission rules. Display of IDX information by franchisors is subject to the following requirements and limitations. Failure of a franchisor to comply with the following requirements and limitations can, at the discretion of the MLS, result in suspension or termination of the participant(s)' authority to provide IDX information to the franchisor:

1. Initial search results that provide minimal information (e.g. "thumbnails") are exempt from MLS-required disclosures (e.g. listing firm, listing agent, source of information, notice that information is deemed reliable but is not guaranteed accurate) provided that a direct link to a detailed ("full view") display that includes all required disclosures is provided.
2. Consumers can link directly to the detailed ("full view") display that complies with MLS disclosure/display rules of the source MLS.
3. IDX information is not used for any unauthorized purpose.
4. Inaccurate or incomplete information related to any listing is promptly corrected by the franchisor at the request of the source MLS.
5. No advertising may appear on pages displaying IDX information.