

Report and Recommendations
of the
Internet Data Exchange Presidential Advisory Group
August, 2011

Introduction

The Internet Data Exchange Presidential Advisory Group (“IDX PAG”) was convened by 2011 National Association of REALTORS® President Ron Phipps to review several IDX-related issues and concerns, and to develop recommendations for consideration by the NAR Leadership Team. The PAG was chaired by REALTOR® Ted Loring, Jr. (CA). The Vice Chair was Bob Bemis (AZ). The other members of the PAG were Mark Bardo (NC), Paul Boomsma (IL), Daryl Braham (ND), Jean Crosby (IL), Kristi Graning (CO), Russell Grooms (FL), Rick Harris (OR), Joe Horning (WI), Tom Hurdlebrink (WA), Mike Jewell (MA), Lynn Leegard (MN), Mike Letendre (RI), Mark Macek (MT), Peggy Ann McConnochie (AK), Robert Moline (MN), Alex Perriello (NJ), JD Rinehart (SC), and Greg Zadel (CO). Representing the NAR Leadership Team were Elizabeth Mendenhall (MO) and Rob Mehta (MN). The PAG met in Chicago on August 2, 2011.

Background

At the 2010 Annual Convention the Multiple Listing Issues and Policies Committee recommended, and the NAR Board of Directors approved, the following addition to the existing IDX policy:

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(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.*
6. *IDX listing information will not be modified, manipulated, or permanently retained.*

In early 2011 concerns were raised that the amendment to the IDX policy did not permit similar displays by real estate brokerage networks, regional real estate brokerage firms, and similar entities. Others voiced concern that real estate franchise organizations were not engaged in brokerage, were not participants in MLSs, and should not be able to display aggregated IDX listings. Consequently the issue was revisited by the Multiple Listing Issues and Policies Committee at the 2011 Midyear meeting.

At the 2011 Midyear meeting the Multiple Listing Issues and Policies Committee approved the following motion:

That upon approval by the NAR Board of Directors, the amendments to the IDX policy adopted at the 2010 NAR Annual Convention authorizing display of IDX information by real estate franchise organizations be suspended until the 2011 Annual Convention so a representative work group can hear from potentially-affected parties and can develop enhancements and clarifications that constructively address the concerns received by the Committee in the days leading to the 2011 Midyear meeting. Issues to be considered by the work group should include, but not be limited to:

- *whether the policy should be expanded to include brokerage networks, regional firms and other entities and structures in addition to franchise organizations,*
- *whether the policy should include a “participant opt-out” of IDX display by franchisors and other entities that might be added to the policy, and*
- *other clarifications or enhancements necessary to ensure compliance with real estate law and regulation.*

At the May 14, 2011 meeting of the NAR Board of Directors the following substitute motion of the Executive Committee was offered:

The current IDX policy remains in effective, with the addition of a listing broker opt out from franchisor indexing and display, until the committee reports back at the 2011 Annual Convention.

The accompanying rationale statement offered in support of the Executive Committee's motion provided:

Last November, the Board of Directors approved an amendment to the IDX policy to permit MLS participants to provide IDX information to their real estate franchise organizations to be indexed for display on franchisors' websites. That amendment to the IDX policy took effect in January of 2011.

Concerns regarding the policy were shared with the committee by the Realty Alliance, Leading Real Estate Companies of the World and Home Services.

The committee voted to have the policy studied by a work group.

The Executive Committee agrees that this study needs to take place.

Referral to a work group raises the issue of what happens to the current policy while it is being re-evaluated. The Executive Committee was sensitive to the fact that several franchise organizations, in reliance on the policy, invested in changes to their websites and that it would require time and resources to reverse those changes while the policy was under study.

The Executive Committee motion would allow the existing policy to remain in place during the re-evaluation of the policy with one significant change.

The Executive Committee motion adds the right for listing brokers to opt out of having their listings displayed on a franchisor's website.

The addition of an opt out of franchisor display responds to the two concerns raised by critics of the current policy.

First, it allows listing brokers to retain control of display of their listings by entities that are not participants in the local MLS.

Second, if brokers are concerned that a thumbnail display of a listing may violate state law governing advertisement of a listing, they may opt out of any such display.

The Executive Committee's motion minimizes harm to franchises that relied on existing NAR policy while responding to the concerns of the Realty Alliance, Leading Real Estate Companies of the World and Home Services.

The Executive Committee's proposal was subsequently amended from the floor of the Board of Directors, and the following motion was adopted:

That the current IDX policy remain in effect, with the addition of an [sic] listing broker opt-in to franchisor indexing and display that becomes effective 30 days from May 14, 2011 until the committee reports back at the 2011 Annual Convention.

Charge

The IDX Presidential Advisory Group was instructed to review, discuss and develop recommendations related to the Internet Data Exchange ("IDX") Policy for consideration by the National Association's Leadership Team including:

- Whether the "franchisor display" provision that became effective in January 2011 should be expanded to include real estate brokerage networks, regional firms, and possibly other entities and/or structures or, alternatively, whether that provision of the IDX Policy should be rescinded.
- If the "franchisor display" provision is retained, whether the recently-added franchisor display "participant opt-in" provision should also be retained, or whether it should be replaced with a "participant opt-out" provision.
- If the "franchisor display" provision is retained, whether other clarifications or enhancements are required to ensure compliance with state law and regulations.
- Whether – and how – the IDX policy should be amended to authorize display/delivery of listing information using mobile applications.
- Whether – and how – the IDX policy should be amended to authorize display of listing information via social media.
- Whether – and how – the IDX policy should be amended to authorize delivery of listing information using RSS subscription.

Recommendations

The IDX PAG makes the following recommendations to the Leadership team.

Recommendation #1:

That the “franchisor display” provision of the IDX policy adopted November, 2010 be rescinded Further, that NAR support syndication as an alternative method for franchise organizations and similar entities (e.g. real estate brokerage networks and regional real estate firms) to display listings subject to listing brokers’ right to determine and control where their listings will be displayed as established in NAR’s Statement of MLS Policy 7.85 which provides, in part:

Use of listings and listing information by MLSs for purposes other than the defined purposes of MLS requires participants’ consent. Such consent cannot be required as a condition of obtaining or maintaining MLS participatory rights.

Rationale:

The PAG noted that IDX has historically been limited to participants in the same MLS exchanging reciprocal authority for display of each other’s listings on their websites. While the real estate franchisees are often REALTORS®, and while the interests of real estate franchise organizations are generally aligned with those of the REALTOR® organization, they do not engage in real estate brokerage and are not participants in MLSs. The PAG felt that allowing the “franchisor display” provision to remain in place would inevitably require further expansion of IDX display rights to like organizations (e.g. real estate brokerage networks, regional brokerage firms) and potentially others whose interests are not aligned with those of the REALTOR organization, MLSs, or MLS participants, and over whom MLSs would have little or no control with respect to unanticipated and unauthorized repurposing of participants’ listings. The PAG noted that rescinding the “franchisor display” provision leaves intact the methodology that franchise organizations (or like entities) have used in the past to aggregate and display listings, that is by linking to their franchisees’ individual IDX sites. The PAG believes that another methodology, syndication, may be of real value to such organizations and that NAR should provide MLSs and MLS participants with information on the pro’s and con’s of syndication, together with practical guidance on how listing syndication is accomplished.

Note: Syndicators are companies that manage feeds of listing content to consumer-facing websites. Syndication of listings occurs when syndicators (e.g. ListHub, Point2, etc.) receive listings from MLSs pursuant to agreements with those MLSs, and then provide those listings to third-party agregators for display on websites. The traditional list of third-party aggregators (e.g. Realtor.com, Trulia, Zillow, etc.) may now include the websites of real estate franchisors, brokerage networks, and regional brokerage firms. Even though the contracts for syndication are between MLSs and the syndicators, individual participants retain ultimate control over where their listings will be displayed pursuant to longstanding NAR policy.

The PAG noted that syndication of listings, and resulting display of those listings, is separate from and unrelated to the participant-to-participant consent for listing display granted through IDX. The PAG also noted MLS syndication of participants' listings for display on third-party sites is already permissible under existing NAR policy which clearly establishes that the decision about whether a participant's listings will be syndicated – and where those listings might be displayed if syndicated – remains one for each participant to make. The PAG also agreed that while NAR should support expanded availability of listing syndication with the clear understanding that listing brokers will continue to control where their listings will be displayed. NAR should remain neutral on whether MLS participants choose to allow their listings to be syndicated.

Recommendation #2:

That the IDX policy and enabling model rules be enhanced and expanded to address the unique aspects of displaying IDX listings in a social media context while complying with applicable laws and regulations.

Rationale:

As noted above, the original premise of IDX was participants in the same MLS exchanging reciprocal authority for display of each other's listings on their websites. The PAG acknowledged MLS participants' increasing use of social media to market their firms, their services and listed property (both their own and others' listings). While social media sites and channels may not be fairly characterized as "participant's websites", and displays of listing information utilizing social media channels may not readily accommodate the current IDX policy's existing disclosure and other requirements, those issues should not preclude use of these commonly-used tools to deliver information to potential buyers and sellers. Consequently, the IDX policy and the enabling model rules should be revised and enhanced taking into account the peculiarities of each medium or channel to permit use of social media to display IDX listings to consumers.

Recommendation #3:

That the IDX policy and enabling model rules be amended to clarify that all delivery mechanisms and devices may be utilized for display of IDX listings provided that the resulting display complies with the IDX policy and applicable laws and regulations.

Rationale:

MLS participants use a myriad of devices and delivery channels to provide information (including IDX listings) to consumers. Among these are real estate-specific applications (“apps”), devices such as increasingly “smart” phones, technologies (e.g. RSS feeds), and others. Many of these didn’t exist or weren’t commonly utilized when the IDX policy was originally developed over a decade ago. Times change and the PAG’s recommendation acknowledges that it’s the information - and not the device or channel that should be the focus of the IDX policy. The IDX policy and the implementing rules should be revised so display of IDX information by authorized participants is permitted whether by desktop, laptop, smartphone, tablet or other device. Similarly, appropriate displays of listing information should be permissible whether IDX information is viewed on a website or is “pulled” by a consumer through a RSS feed or other technologies.

Note: Proposed amendments to the existing IDX policy implementing the PAG’s recommendations will be developed for review by the Leadership Team and consideration by the appropriate bodies at the 2011 Annual Convention.

(revised 9.1.11)

