



## Guidelines for NCRA Listserv and NCRA-labeled Social Media Platform Etiquette

To ensure the best possible experience for all listserv and NCRA-labeled social media platform participants and to avoid legal liability, participants are asked to observe some basic guidelines for participation.

By using these e-mail lists or participating in any NCRA-labeled social media platforms, you agree that you have read and will follow the rules and guidelines set for these peer discussion groups and engagement platforms. You also agree to reserve discussions for topics best suited to the medium.

Please take a moment to acquaint yourself with these important guidelines. If you have questions about the NCRA Listserv, contact the NCRA Listserv Administrator at: [listservadm@ncra.org](mailto:listservadm@ncra.org). If you have questions about any NCRA-labeled social media platform, contact the NCRA social media content manager at: [social@ncra.org](mailto:social@ncra.org). In order to preserve a climate that encourages both civil and fruitful dialogue in a lawful manner, NCRA reserves the right to suspend or terminate participation on all lists and NCRA-labeled social media platforms for members/participants who violate these guidelines based on NCRA's sole discretion.

### Guidelines for Listserv Discussions and Social Media Engagements

Please keep the following guidelines in mind when posting and engaging with others on NCRA Listserv and NCRA-labeled social media platforms.

- **Do not challenge or attack others.** The discussions on the listservs and social media communities are meant to stimulate conversation not to create contention. Let others have their say, just as you may.
- Promotion of or solicitation for any particular service, product, or person is prohibited on NCRA listservs. Commercial messages will be deleted.
- Messages that are inconsistent with NCRA's mission, such as messages that promote alternative reporting methods over verbatim stenographic reporting technologies, are not allowed on listservs and social media.
- **Use caution when discussing products or business practices. Information posted is available for all to see, and comments are subject to libel, slander, and antitrust laws.**
- **All defamatory, abusive, profane, threatening, offensive, or illegal materials are strictly prohibited.**
- **Do not degrade others on the basis of gender, race, class, ethnicity, national origin, religion, sexual orientation, disability, or other classifications.**
- **Please note carefully all items listed in the disclaimer and legal rules below**, particularly regarding copyright ownership, defamation, personal privacy rights, and antitrust concerns of information posted to the listserv or NCRA-labeled social media platforms.

### Listserv Etiquette

NCRA Listserv is a medium with which to solicit the advice of your peers, benefit from their experience, and participate in an ongoing conversation. In order to facilitate meaningful and productive discussions, please keep the following Listserv Etiquette in mind:

- Include a signature tag on all messages. Include your full name, affiliation, location, and e-mail address.
- Be sure the Subject line clearly and concisely states the actual topic you are addressing. This allows members to respond more appropriately to your posting and makes it easier for members to search the archives by subject. This is particularly important when replying to a listserv posting or when changing the subject. (The subject line: "RE: Listserv Digest for the week of March 3-15, 2009" does not give your readers enough pertinent information when trying to decide whether or not to open and read your post.)



- When responding to a specific post, include enough text from the original message to make it clear exactly what posting it is you are commenting on. If there have been dozens of individual posts on a particular topic, your posting: "The exact same thing happened in Tuscaloosa just last year!" is probably not going to be as informative as you intended!
- ***But only include the relevant portions of the original message in your reply.*** If you get your listserv postings in Digest form, people don't need another copy of all 32 previous comments on the subject in the body or your reply. Cut and paste is a great tool. Feel free to use it.
- Only send a message to the entire list when it contains information that everyone can benefit from. If you want to carry on a private conversation, thank someone for a particularly useful piece of information, or express nothing more than your agreement with their posting, send a separate and private email to that individual, ***not*** to the listserv.
- ***This is the most frequently complained about violation of listserv etiquette, so just to be clear:*** Send messages such as "thanks for the information" or "me, too" to individuals--not to the entire list. Do this by using your e-mail application's forwarding option and typing in or cutting and pasting in the e-mail address of the individual to whom you want to respond.
- Do not forward messages or even segments of messages from the listserv to persons not on the listserv without the express permission of the person you are "quoting."
- Do not send administrative messages, such as "remove me from the list," through the listserv. Instead, click on the unsubscribe link that appears at the bottom of each email on that particular listserv. If you are changing e-mail addresses, send an email to the NCRA Listserv Administrator ([listservadm@ncra.org](mailto:listservadm@ncra.org)).
- Warn other list subscribers of lengthy messages either in the subject line or at the beginning of the message body with a line that says "Long Message."
- This is a listserv, not an online forum. **Once you hit send, your message is delivered into the individual email inboxes of every subscriber on the list. There is no way for NCRA or anyone else to delete a posting after the fact** if it is offensive, raises antitrust concerns or otherwise violates these rules and guidelines. So the burden is on **you** to be sensitive to the contents of what you post.

### The Legal Stuff

By posting materials to NCRA Listservs and NCRA-labeled social media platforms, mentioning NCRA or NCRA events/programs in your public social media posts (i.e. using "hashtag", "tag", etc.), you grant to NCRA the nonexclusive, worldwide, transferable right and license to display, copy, publish, distribute, transmit, print, and use such information or other material in any way and in any medium, including but not limited to print or electronic form.

Do not post any information or other material subject to copyright or privacy rights without obtaining the appropriate permission. By posting materials, the posting party warrants and represents that he or she owns the copyright with respect to such material or has received permission from the copyright owner and does not violate any third-party privacy rights.

The listservs and NCRA-labeled social media platforms are provided as a service of NCRA for its members and the community. The opinions of moderators, posters, and commentators are their own and not necessarily that of NCRA, and NCRA is not responsible for such opinions and information posted.

NCRA disclaims all warranties with regard to information posted on the listserv or NCRA-labeled social media platforms, whether posted by NCRA or any third party. This disclaimer includes all implied warranties of merchantability and fitness. In no event shall NCRA be liable for any special, indirect, or consequential damages or any damages whatsoever resulting from loss of use, data, or profits arising out of or in connection with the use or performance of any information posted on this site.



You are responsible for any consequences resulting from your postings, whether intended or unintended. Because violation of these guidelines may place other members and NCRA at risk of legal claims, NCRA reserves the right to remove postings in violation of these guidelines based on NCRA's sole discretion.

**Basic Antitrust Rules.** The lawyers' word it this way: *Messages should not be posted if they might be construed as encouraging or facilitating members in arriving at any agreement that either expressly or by implication leads to price fixing, a boycott of another's business, or other conduct intended to illegally restrict free trade.* Messages that encourage or facilitate an agreement about the following subjects are inappropriate and are strictly prohibited:

- prices;
- boycotts or refusals to do business;
- discounts or terms or conditions of sale;
- salaries;
- profits;
- profit margins or cost data;
- market shares;
- sales territories or markets;
- allocation of customers or territories; or
- selection, rejection, or termination of customers or suppliers.

**What it means in plain English:** *Any discussion that might be viewed by enforcement authorities as leading to increased prices, decreased competition, or even minimizing discounts, gifts or promotions are problematic.* Even perfectly innocent discussions asking what fees (amount) reporters charge for particular services, whether they charge for a particular ancillary service or whether it is part of the basic page rate, or comments that just praise or denounce the pricing and business practices of others could be construed as a conversation intended to "encourage" or "facilitate" a conspiracy (agreement) to "fix prices," encourage a "boycott" or otherwise "illegally restrict trade."

**Why do we make such a big thing about antitrust compliance?**

**The penalties for violating federal antitrust laws are severe.** The maximum criminal penalty for violating the Sherman Act is \$1 million for an individual and from \$10 to \$100 million for a corporation (including associations). Under sentencing guidelines, alternative maximum fines can be imposed of up to double the monetary gain realized by the offender or twice the loss to another person.

Individuals and corporate officers who are found guilty of price fixing or market allocation will virtually always be sentenced to jail pursuant to federal sentencing guidelines. Community service cannot be used to avoid imprisonment. The minimum recommended sentence is four months; the maximum is three years.

Additionally, there are civil penalties such as injunctions or cease and desist orders which could result in government supervision of association members, restrictions on association activities or even putting the association out of existence.

Civil suits may be brought by consumers or competitors. Civil antitrust actions result in damage awards and attorneys' fees. Successful litigants are entitled to triple damages – financial payments of three times the claimed financial harm.

**Defending against an alleged antitrust violation is extremely costly, even if you are entirely vindicated in the end.** NCRA's own history proves this point. Twice in the past, NCRA has had to incur extraordinary legal costs and staff time to defend certain practices even though NCRA eventually prevailed.

The first time, the U.S. Federal Trade Commission challenged NCRA's gift giving prohibition. The FTC argued that the gift prohibition was really just an agreement among competitors not to incur a promotional expense that is common commercial practice – just like if all the airlines got together and decided to stop awarding frequent flyer miles so they could all save money. Although NCRA narrowly prevailed by arguing that gifts by officers of the court trigger unique ethical concerns, the FTC made clear that NCRA cannot discourage volume discounting or restrict other



business practices under the guise of ethics. NCRA's gift giving rules and "Ethics First" program are very narrowly crafted and carefully limited to meet possible DOJ or FTC scrutiny.

The second time, the U.S. Department of Justice investigated the NCRA Constitution and Bylaws prohibition blocking voice writers from becoming NCRA members, which the DOJ characterized as a possible restraint of trade. NCRA prevailed on the basis of our superior technology and the fact that voice writers were not kept from getting business by being barred from NCRA membership. Although cleared, the DOJ indicated that future NCRA actions against competitors utilizing non-stenographic technologies could be subject to further challenge.

Once again, although NCRA prevailed in each of these situations, the costs in terms of time and money were extraordinary. (Legal costs from the most recent DOJ investigation were well into six figures; responding to information and document requests consumed a staff person full time for a period of several weeks and additional staff time for a period of more than half a year. And all of that on a case in which NCRA ultimately won on all counts.)

For these reasons, extreme caution must be exercised on the listserv to avoid further antitrust challenges.

Finally, care must be exercised not to rely too much on the so-called Noerr-Pennington doctrine. This doctrine provides some measure of protection for discussions or actions relating to matters that are controlled by government regulations or actions, such as official page rates for court transcripts. However, such protection may not extend to discussions and collusion about charges for ancillary services that are not regulated.

The Noerr-Pennington doctrine can be utilized to protect lobbying communications and litigation positions taken in good faith, but this immunity does **not** extend to discussions about the pros and cons of the underlying business practices or to sharing information that is otherwise prohibited. So, while it is appropriate to share public filings and lobbying positions on a listserv and even to accurately summarize in an impartial manner the allegations in a lawsuit, participants may **not** use the circulation of a public document as a pretext to discuss or share information about their individual business practices or to suggest how others should conduct their business. (When circulating public documents from legal proceedings, care must also be taken to accurately describe claims still under adjudication as allegations, not proven facts.)

**Tough Action by Antitrust Regulators.** In the not-too-distant past, Antitrust regulators have taken a strong stance against what they consider to be anticompetitive activities conducted under an association umbrella. In 2009, for example, a FTC enforcement action came down even harder and more explicitly than prior rulings. The FTC required the National Association of Music Manufacturers to enter into a Consent Agreement and implement an onerous and costly antitrust compliance program that severely curtailed the association's services and operations even though there was no evidence that the membership's discussion ever actually resulted in any agreement or impact on prices. ***Essentially, the FTC stated that, as a matter of law, mere exchanges of information within a profession on pricing, pricing strategies, restrictions on advertising and maintaining the profitability of a profession or industry serve no appropriate, legitimate, defensible or beneficial public purpose, and should be prohibited.*** This suggests that we can always expect stringent and aggressive enforcement, so NCRA and its members must conduct ourselves on the listserv and otherwise in a manner that will withstand such scrutiny.

**Antitrust restrictions and concerns are not unique to court reporting.** These same rules and these same concerns apply to **all** trade associations and professional societies, large and small. The federal government has brought civil or criminal actions against national, state and even local organizations. Enforcement actions have been taken against barbers, farmers, musical instrument sellers, pharmacists, audiovisual companies, and the list goes on. The exposure to legal liability exists on any website or online forum that permits such discussions to go on, whether the list managers are aware of them or not.

**Final Warning.** Just one more time, for emphasis: ***it is the strong position of antitrust regulators that it is illegal for competitors (such as the NCRA membership) to talk about raising prices, maintaining current prices, or even about minimizing discounts, gifts or promotions.*** Under the antitrust laws, such discussions and any resulting collective actions are viewed as hurting consumers, because they cause prices to be higher, for services to be more restricted, and/or for discounts, gifts and promotions to be more limited, than if the discussions and collective actions never occurred. The fact that the competitors who engage in these discussions genuinely feel they need to do so in order



to protect their incomes or even to preserve their profession **is no defense**. It just reinforces the view of antitrust regulators that these discussions and collective actions are driven by economic and profit motives, rather than concerns for the public welfare, and are illegal.

For this reason, professional associations like NCRA and its members are well advised to avoid any semblance of activity which might lead to the belief that the association members had agreed, even informally, to something that could have an effect on prices, fees or competition.

So beware. Take the dangers in engaging in such discussions seriously!

### **Conclusion**

NCRA wants its forums and listservs/social media communities to be a safe and pleasant place for reporters to engage in dialogue. Please be sensitive to these concerns and understanding when a gentle reminder gets posted suggesting that a certain line of discussion be dropped. But also be aware that, if all else fails, NCRA reserves the right to terminate access to any user who does not abide by these guidelines -- for their own good and for the good of other listserv/social media community participants and NCRA itself.