

The TEXDRA Connection Google Group Rules & Etiquette

To ensure the best possible experience for all participants and to avoid legal liability, participants are asked to observe some basic guidelines for participation.

By using this group, you agree that you have read and will follow the rules and guidelines set for this group. You also agree to reserve discussions for topics best suited to the medium. This is a great medium with which to solicit the advice of your peers, benefit from their experience, post and receive job assignments, and participate in an ongoing conversation.

In order to preserve a climate that encourages both civil and fruitful dialogue in a lawful manner, TEXDRA reserves the right to suspend or terminate participation of any member who violates these rules.

The Rules

- **Don't challenge or attack others.** The discussions are meant to stimulate conversation, not to create contention. Let others have their say, just as you may.
- **Don't post commercial messages.** Contact people directly with product and service information if you believe it would help them.
- **Use caution when discussing products or business practices. Information posted in this group 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 post anything in a message that you would not want the world to see or that you would not want anyone to know came from you.
- **Please note carefully all items listed in the disclaimer and legal rules below,** particularly regarding the copyright ownership, defamation, and antitrust concerns of information posted in the group.

Google Group Etiquette

- Include an identifier of some sort besides your e-mail address. TXcsr@gmail.com may be recognizable to some, but not everyone will know who that is.
- 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 posting or when changing the subject.

- When responding to a specific post, when possible, 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 Corpus just last year!" is probably not going to be as informative as you intended!
- ***Put only include the relevant portions of the original message in your reply.*** If you get your 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.
- Remember that when you post to the Google group, every member can see your post. 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, then send a separate and private email to that individual.
- ***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. This group is set up so you can either select Reply or Reply All. If you only want to reply to the individual who posted, just hit Reply. If you hit Reply All, your post will obviously go to the entire group.
- It is considered rude to forward messages or even segments of messages from the group to persons not in the group without the explicit permission of the person you are "quoting".
- 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."

The Legal Stuff

This group is provided as a service of TEXDRA for qualifying members. TEXDRA is not responsible for the opinions and information posted in this group by others. TEXDRA disclaims all warranties with regard to information posted on this site, whether posted by TEXDRA or any third party. This disclaimer includes all implied warranties of merchantability and fitness. In no event shall TEXDRA 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 in this group.

You are responsible for any consequences resulting from your postings, whether intended or unintended. Violation of the group rules, however, may place other members and even TEXDRA at risk (because of the role that TEXDRA plays in sponsoring and monitoring the group).

For your own protection, do not post any defamatory, abusive, profane, threatening, offensive, or illegal materials. Do not post any information or other material protected by copyright without the permission of the copyright owner. By posting material, 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. In addition, the posting party grants TEXDRA and users of this group the nonexclusive right and license to display, copy, publish, distribute, transmit, print, and use such information or other material.

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:

- prices;
- 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 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.

For these reasons, extreme caution must be exercised in the group 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 also protects 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 in a group 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.)

Recent Tough Action by Antitrust Regulators. Antitrust regulators have recently increased the stance they take against what they consider to be anticompetitive activities conducted under an association umbrella. Several months ago, 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 expect even more stringent and aggressive enforcement in the future and that TEXDRA and its members must conduct ourselves in the group 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 TEXDRA 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 TEXDRA 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!

TEXDRA wants its forums and groups to be a safe and pleasant place for all of its members to engage in dialogue. So 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, TEXDRA reserves the right to delete the offending post and immediately terminate access to any user who does not abide by these guidelines -- for their own good and for the good of other group participants and TEXDRA itself.