

### **List Administrator/owner responsibilities:**

The Listserv list administrator/owner will manage the Listserv list(s), which includes but is not limited to, adding and removing subscribers, changing subscriber's settings, or responding, in a timely manner, to inquiries related to the list or its use. The management of the content of the Listserv list is also the responsibility of the Listserv list's administrator/owner. This includes compliance with, **and will require that all subscribers** to the Listserv list comply with, all applicable U.S. law, as well as require that all subscribers to the list agree, not to use the Internet connection for illegal purposes, including but not limited to, **defamation, violation of intellectual property laws, violation of antitrust or unfair competition laws or violation of criminal laws. It is usually acceptable to include a link to an article, while copying and pasting the actual article may be in violation of copyright laws.** When the Listserv list administrator/owner adds subscribers to the list, they **MUST send each listmember/subscriber a welcome message, which contains the APA Rules.**

### **APA Listserv Usage Rules:**

**Rule 1:** Do not use the forum for illegal purposes, including but not limited to defamation, violation of intellectual property laws, violation of antitrust or unfair competition laws or violation of criminal laws.

**a. Copyright** - Referring to an article or news item with typical reference citations, providing a brief quote, or offering a link to legitimate online published content is permissible; list members should not post a full-text version of published material to the listserv. Not infrequently a list member wants to tell others about an article or news item related to the issues discussed on the list. However, sending the entire article to the list, without the permission of the author or publisher, results in a prima facie case of copyright violation. While there can be defenses to a claim of copyright infringement where the purpose of copying is clearly not for commercial purposes (e.g. "fair use" or academic teaching exceptions), those defenses are complicated, have been construed differently in different jurisdictions and are not necessarily applicable to listserv distribution.

**b. Defamation and libel** - In exchanges on the listserv and when referring to others, avoid personal attacks and characterizations that question a person's motives or qualifications. Sometimes a robust debate about ideas spills over into attacks on the proponents or opponents of the ideas. List members need to be reminded that a false statement that harms someone's reputation can be actionable as libel. There is a substantial difference between disagreeing with how someone did their research or treated a patient and accusing the person of fraud or incompetence. Because negative statements that impugn someone's professional qualifications can cause substantial economic and emotional harm, this is an area for careful scrutiny. Keeping criticism on an objective basis that is factually verifiable and skipping personal commentary about character, competence or motive minimizes legal risk.

**c. Antitrust concerns** - APA by its nature is subject to antitrust issues. Discussions about rates charged, efforts to exert collective pressure on payors, terms of contracts with insurance companies, internship salaries, etc, all are prohibited. The antitrust laws are broad and complex but on a very basic level they operate to prohibit and even in some cases criminalize certain anticompetitive agreements between competitors. A professional association like APA is almost by definition a group of competitors that has come together to pursue common interests. Where those common interests involve agreements on such terms of competition as rates charged, salaries paid, standards applicable to members of the

profession, and other issues of the marketplace, the antitrust laws apply. Listservs provide a written record of statements that can create an antitrust risk even when there is no anti-competitive intent.

**Rule 2:** Do not intentionally interfere with or disrupt other forum members, network services, or network equipment. This includes distribution of unsolicited advertisement or chain letters, propagation of computer worms and viruses, and use of the network to make unauthorized entry to any other machine accessible via the Forum.

**Rule 3:** Do not use the Forum for commercial purposes. "Commercial" as used for purposes of evaluating listserv messages means communications whose primary purpose is to advance the business or financial interests of any person or entity, or otherwise to promote a financial transaction for the benefit of the author directly or indirectly. Examples of prohibited communications include advertisements for products or services, notices regarding rental of office space, or direct solicitations of listserv members to purchase products or services.

Examples of messages that may be of financial benefit to listserv members but are not prohibited because they do not inure to the financial benefit of the author include news of job listings or position openings, or discussion of professionally-related products or services where the listserv member conveying the information is not in the business of selling the products or services. Announcements that provide useful professional information to List members but may also have some incidental commercial benefit to the sender (e.g. an author who is a list member merely advising the List of publication of a professional book) typically would not be "commercial" for purposes of this restriction.

**a. Further Explanation about Commercial Postings on APA Listservs:** The Listserv agreement provides that "commercial use" includes communications whose *primary purpose is to advance the business or financial interests of any person or entity or otherwise to promote a financial transaction for the benefit of the author directly or indirectly. Examples of prohibited communications include advertisements for products or services, notices regarding rental of office space, or direct solicitation of listserv members to purchase products or services.*

Examples of messages that may be of financial benefit to listserv members but are not prohibited because they do not inure to the financial benefit of the author include news of job listings or position openings, or discussion of professionally-related products or services where the listserv member conveying the information is not in the business of selling the products or services.

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The ban on commercial use of the lists is based in legal requirements that flow from APA's status as a 501(c)(3) organization. APA and its divisions enjoy exemption under 501(c)(3) of the Internal Revenue Code, which is the most favorable tax status available to any United States organization; it is the same tax exemption held by universities, churches, and charitable foundations. Because of this status, among other things, APA and its divisions pay no federal income tax on revenues from carrying out exempt activities; voluntary contributions are tax deductible by donors as charitable contributions; and they are exempt from some kinds of local taxes. With these advantages come significant restrictions on how APA

can conduct its business, including such restrictions as taking no role in political elections, restricting lobbying and using resources for tax-exempt purposes.

The commercial use ban derives from the related requirements that 1.) APA activities, including those of APA divisions, be focused on 501(c)(3) tax exempt purposes 2). APA's assets, such as its lists, be used for tax exempt purposes and 3.) APA not provide financial support directly or indirectly to other persons or entities that are not 501(c)(3) organizations, absent certain limited conditions that would not apply to use of APA's lists by other organizations for their business purposes. Thus, the Listserv rules provide that sponsored lists hosted by APA cannot be used for commercial purposes or to promote the financial or commercial interests of others, as these are not tax-exempt purposes.

In addition, material that looks like an advertisement or has that intent, also runs afoul of the rule that APA not provide support to non-c-3 organizations by allowing, in effect, free advertising on the List that would normally be purchased elsewhere i.e. APA is donating support to the advertiser. Posting recruitment materials for other non-c-3 membership organizations does not comply with these restrictions.

A closely related and equally important restriction based in the tax law, is the fact that APA is not able to share its resources freely with organizations that are exempt under less restrictive tax statuses, such as 501(c)(6) organizations. Other membership organizations, that are not exempt under 501(c)(3) of the Code, are likely to engage in a range of activities that APA cannot legally engage in and therefore entwining their activities and initiatives with APA division listservs is not permissible. Thus permitting another entity, even one that is tax exempt under another Code provision, to utilize a list to promote membership, distribute its information or conduct activities is inconsistent with and could jeopardize APA's tax status and that of the divisions who enjoy tax exemption under APA 's exempt status.

While these limitations on use of 501(c)(3) resources are clearly quite important, in administering the rules, APA has sought to avoid being heavy-handed. For example, an individual author of a publication of professional interest to others on the list is not precluded by the policy from simply announcing the publication of a book to the list (as opposed to a de facto advertisement) and providing a link to another site where commercial information could be available. In short, we are trying to balance the benefits of information exchange among members with our legal obligations and need to protect an important APA asset, its tax-exempt status.

List managers' and list members' judgment is involved in following the rules and protecting the interests of all involved. APA MIS and legal counsel are always available as resources for list managers and members if needed. It has been APA's experience that when provided with the rules, and explanation of the underlying reasons for the rules, as needed, list members do a good job of keeping list discussions focused on material that is inherently related to the purposes for which APA and the divisions were formed.

**Rule 4:** Do not use this forum for any communication that could be construed in any way as support for or opposition to any candidate for a federal, state or local public office. The Federal law providing for the American Psychological Association's tax exempt status absolutely forbids the use of APA resources or facilities, including this forum, in any way that would even appear to support or oppose such a political candidate.

**a. Political statements affecting tax exemption** – Listserv exchanges must avoid electioneering or endorsing a candidate for federal, state, or local political office.

While using the list to endorse political candidates in a federal, state, or local election or for commercial purposes likely won't expose a member to personal legal risk, it can jeopardize APA's tax exempt status under section 501 (c) 3 of the Internal Revenue Code. To keep this advantageous tax status, APA cannot ever be involved in or support in any way electioneering or endorse a candidate for federal, state, or local political office. APA must assure that its activities are focused on the scientific, educative, and charitable purposes for which it gained tax-exempt status.

**b. Lobbying Elected Officials**

Advocacy on substantive issues is separate from electioneering for candidates. While electioneering is absolutely prohibited, advocacy on legislative issues is not part of this prohibition. However, for APA Divisions, "calls to action" asking listserv members to contact their elected officials to express a view on legislation are considered a statement of the division under APA Rule 100-1.4, and are subject to the mandatory review and disclaimer requirements therein. Such statements may not be included on the list serv unless and until they have received such review and, where appropriate, have included required disclaimer language.

**Rule 5:** APA does not endorse or forward requests for research participation to any APA listserv. Divisions may choose to post requests for research participants to their listservs. If you need more information about a Division listserv, it is recommended that you contact the listserv administrator of that Division. Please note the following statements regarding the limits of division and all other listservs as sources for research participants and samples.

APA disclaimer regarding limits of division listservs as research samples.

- Listservs (Division and other APA discussion lists) make no claim to be exhaustive collections of members who may fit into one or more specific category (e.g., clinical psychologists, practitioners, educators, and so on). In fact some 45% of APA members do NOT belong to any one Division. By using a Division as the "universe" for one's respondents, researchers are excluding a large number of eligible participants and hence may be introducing bias into their research.
- Many members belong to more than one Division, and if the research is being sent to more than one Division, the researcher faces the challenge of defining response rate given duplication and of removing duplicate records.

APA members and others who are not APA members belong to Divisions and topical listservs for a number of reasons, some of these may not reflect the fact that the member works in the area covered by the Division or list in any more than a tangential sense - raising questions about the suitability of the sample to the research.

**Additional Listserv Information:**

**List retention policy:**

The Listserv list's administrator/owner is **REQUIRED** to notify the APA Listmaster (Listmaster@apa.org) when he/she discontinues their duties as the Listserv list administrator. Any list whose

administrator/owner's email address is either no longer valid, or mail from the Listserv server or its lists are blocked for any reason, or the Listserv list's administrator/owner does not respond to inquiries, instructions, contacts or other communications, will be made inactive until the owner can be contacted and the situation has been rectified. If the situation has not been rectified for a period of twenty-one calendar days, the Listserv list may be deleted. Any list which remains unused for **6 months or longer** may be removed.

**Research Related Information:**

APA does not endorse or pass along outside requests for research participation to any APA listserv. Divisions may post requests for research participants to their Listserv list. If you need more information about a Division listserv, it is recommended that you contact the listserv administrator of that Division. Please note the following statements regarding the limits of division and other Listserv list as research samples.

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If you have any questions, concerns, or problems, with regard to the Listserv server, please feel free to contact me.

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2/24/2014