

Approved by the board 5.16.19

National Association of Science Writers, Inc.

Antitrust Policy

I. Background and Purpose

The National Association of Science Writers, Inc. (“NASW”) is committed to compliance with all applicable antitrust laws. This Antitrust Policy will familiarize you with the basics of those laws, but it is not a complete or definitive statement. Any questions related to this policy or antitrust compliance should be directed to NASW’s Executive Director, who can be reached at (510) 647-9500 or director@nasw.org. If the Executive Director is not available, questions should be directed to NASW’s President, who can be reached at president@nasw.org. If you have any doubt about whether an activity is permissible, ask questions *before* proceeding.

This policy applies to all NASW members, directors, committee members, officers, employees and agents. It applies to all NASW activities, events, programs and communications, including emails, listservs and other electronic communications.

II. Overview of Antitrust Laws

A. Key U.S. Federal Laws

The three core U.S. federal antitrust laws are the Sherman Act, the Federal Trade Commission Act, and the Clayton Act, though there are other antitrust laws not discussed here. Section 1 of the Sherman Act outlaws “every contract, combination . . . , or conspiracy, in restraint of trade or commerce” Section 2 of the Sherman Act makes it illegal for any person, corporation or association to “monopolize, or attempt to monopolize, or combine or conspire” with any other person, corporation or association to monopolize, any part of trade or commerce.

In general, the Sherman Act does not prohibit *every* restraint of trade, only those that are *unreasonable*. However, certain acts are considered so harmful to competition that they will be presumed to be illegal, regardless of the reason for the act. These include plain arrangements among competing individuals (for purposes of this antitrust policy, NASW members may be considered “competing individuals”) or businesses to fix prices, divide markets, or rig bids. These acts are “*per se*” violations of the Sherman Act, which means that no defense or justification is allowed, no matter how worthy it may seem. Other agreements may or may not violate Section 1 of the Sherman Act, depending on the economic circumstances. Joint venture agreements are one such example.

Per se violations of the Sherman Act may be criminally prosecuted as felonies, and the penalties can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice. The Sherman Act imposes criminal penalties of up to \$100 million for a corporation and up to \$1 million for an individual, along with up to 10 years in prison. Both the government and injured private parties may pursue civil antitrust claims. Defendants in a civil antitrust action may be liable for treble (triple) damages, attorneys’ fees, and injunctive relief.

The Federal Trade Commission Act (the “FTC Act”) bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Violations of the Sherman Act may also violate the FTC Act. The FTC Act also prohibits certain other anti-competitive practices that may not fit neatly into conduct prohibited by the Sherman Act or Clayton Act. Only the Federal Trade Commission can bring cases under the FTC Act.

The Clayton Act addresses specific practices that the Sherman Act does not clearly prohibit, such as mergers and interlocking directorates (that is, the same person making business decisions for competing companies).

In addition to federal antitrust laws, states may have their own antitrust laws, and many other countries have antitrust or competition laws. Enforcement actions may be brought by a federal or state agency. Those agencies also have authority to conduct investigations and demand documents and testimony in connection with such inquiries.

B. Professional Associations

Forming a professional association such as NASW does not shield joint activities from antitrust scrutiny. In general, dealings among competitors that violate the law would still violate the law even if done through a professional association. For instance, it is illegal to use a professional association to control or suggest prices of members. It is also illegal to use information-sharing programs, standardized contracts, accounting, or other methods, as a disguised means of fixing prices or other terms of trade.

One area for concern for government regulators is exchanging price or other sensitive business data among competitors within a professional association. Any data exchange or statistical reporting that includes current prices, or information that identifies data from individual competitors, can raise antitrust concerns if it encourages more uniform prices than otherwise would exist. In general, information reporting cost or data other than prices, and historical data rather than current or future data, is less likely to raise antitrust concerns. Dissemination of aggregated data managed by an independent third party also raises fewer concerns.

III. Compliance

A. Generally

Because professional associations are typically comprised of business competitors, particular vigilance is required to assure compliance with antitrust laws. It is NASW’s policy to conduct all business and activity in full compliance with international, federal and state antitrust and competition laws. NASW will not tolerate any violation of this policy, and any person who violates this policy may be subject to disciplinary measures up to and including expulsion or discharge.

NASW members may not agree with their competitors (i) on prices or terms of sale; (ii) to allocate customers, territories, or markets; (iii) not to compete (*e.g.*, bid-rigging); (iv) to boycott suppliers or customers for anti-competitive ends; (v) on levels of production or service; or (vi) any other matter which is inconsistent with the proposition that each corporation/individual must exercise its independent business judgment in pricing its services or

products, dealing with its customers and suppliers and choosing the markets in which it will compete. NASW members are always free to accept any assignment at any rate they choose.

B. Guidelines for Documents and Electronic Communications

NASW documentation should also reflect compliance with antitrust laws. A “document” includes virtually any record, including but not limited to draft documents, letters, emails, listserv posts, notes and meeting transcripts. Below are some basic guidelines in connection with document preparation.

- No matter how informal or private a communication is intended to be, assume that anything written in a document, email or listserv post may be misinterpreted in an investigation or lawsuit, and may be scrutinized by prosecutors, lawyers, or juries composed of people who know nothing about you or your business. Focus on the facts, and avoid sensational or suggestive language and hyperbole.
- Meeting agendas should be submitted to the Executive Director prior to meetings of NASW or its committees, and meeting minutes should be sent to the Executive Director following meetings. The Executive Director should raise any questions with legal counsel.
- Approval of legal counsel should be obtained prior to statistical reporting or sharing of sensitive business data (or commencing projects regarding the same), by or among NASW or its committees.

C. Reporting Complaints, Investigation, and Non-Retaliation

Reports of noncompliance with this policy or other antitrust complaints or concerns should be sent immediately to the Executive Director. If there is reason to believe that an antitrust violation may have been committed, it will be investigated promptly. If an instance of questionable conduct is presented, the Executive Director will consult with legal counsel as appropriate to determine whether an internal investigation is appropriate.

NASW takes seriously all reports made in good faith of potential antitrust issues, and will not penalize or retaliate against anyone for making such reports or cooperating with an investigation into such reports. Any incidents of retaliation should be reported immediately to the Executive Director or, if the Executive Director is not available, to the President.