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Commercial Postings on APA/Division 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 or 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.

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 listmember merely advising the List of publication of a professional book) typically would not be "commercial" for purposes of this restriction."

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.

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