

1. 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.

2. 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.

3. 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.

4. 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.