APPENDIX XX: ANTITRUST POLICY

(Approved by the Board April 2013)

In order to minimize the possibility of antitrust concerns, the Legal Marketing Association ("LMA") requires all of its officers, directors, members, employees, and staff to abide by the terms of this antitrust policy ("Policy").

1. No individual officer, director, member, employee, staff member, committee, special interest group, chapter, or other party is authorized to speak or act on behalf of LMA unless specifically granted such authorization by LMA in writing (all references to "in writing" or "written" include email).

2. The Board of Directors is the only party authorized to issue policy statements or adopt positions (public or otherwise) on behalf of LMA. Responses to questions or complaints from the public or from private parties must be handled in accordance with LMA's Bylaws and its Policies.

3. No individual officer, director, member, employee, staff member, committee, special interest group, chapter, or other party is authorized to use LMA letterhead or LMA's logo without the prior written consent of the Board of Directors, or its designee.

4. Agendas for LMA meetings shall be prepared in advance, with proper review by an LMA staff member, and followed at the meeting. Only approved agenda items will be discussed.

5. The LMA Secretary shall take minutes of all Board and membership meetings, which minutes shall be submitted to the LMA International Headquarters and reviewed by an appropriate LMA staff member prior to distribution. Upon approval, such minutes shall become the "official minutes" retained by LMA. Each committee, special interest group, chapter, or other party holding a meeting shall appoint a member to take meeting minutes and shall submit such minutes to the LMA International Headquarters. Members should not keep their own minutes.

6. Periodic written reports to the LMA Board of Directors are required from all LMA committees, special interest groups, chapters, and Executive Director reflecting all pending matters, requests for action and approvals for preliminary decisions.

7. Committees, special interest groups, and chapters may act only within the scope of their authority, and all correspondence must comply with this Policy. Recommendations shall be made to the Board of Directors for other actions to be taken.

8. Participants in all meetings related to or discussing LMA business, whether Board, membership, committees, special interest groups, chapters and other meetings of LMA members, must comply with this Policy at all times.

9. Any questions regarding this Policy or its implementation shall be addressed to the LMA President or Executive Director.

10. All LMA officers, directors, members, employees, staff, committees, special interest groups, and chapters shall adhere to the LMA Antitrust Guidelines, a copy which are attached hereto as Exhibit A.

11. A copy of this Policy shall be made available to all LMA members, employees, and staff, and the need to comply with its terms shall be communicated regularly.

LEGAL MARKETING ASSOCIATION
ANTITRUST GUIDELINES – APPENDIX A

Associations, although well recognized as valuable tools of American society, are subject to strict scrutiny by both federal and state governments. While such scrutiny should not prevent participation in, and support for, an association, members should be aware of, and comply with, certain relevant legal principles. Compliance with these laws does not prevent association members from lawfully engaging in a wide variety of group activities, as long as the purpose or intended effect of the activities is promotion of an industry as a whole, and not to gain a competitive advantage over non-members.

The single most significant law affecting organizations such as LMA is the Sherman Antitrust Act, which makes unlawful every contract, combination or conspiracy in restraint of trade or commerce. The Federal Trade Commission Act, the Clayton Antitrust Act and the Robinson-Patman Act also are applicable to associations, for they also forbid anticompetitive activities. Furthermore, virtually every state has enacted antitrust laws similar to the Sherman Act. As such, any association activity that arguably could be perceived as a restraint of trade exposes associations and its members to antitrust risk.

Between the state and federal laws, there is no organization too small or too localized to escape the possibility of a civil or criminal antitrust suit. It is thus imperative that every association member, regardless of the size of the association, refrain from indulging in any activity which may be the basis for a federal or state antitrust action.

There are four main areas of antitrust concern for associations: price fixing, membership, self-regulation, and standardization. The area of greatest concern historically has been price fixing. The government may infer a violation of the Sherman Act by the mere fact that all or most of the members of the association are following the same course with respect to prices or other terms or conditions of trade. It is not required that there be an actual agreement, written or oral, to set prices. Rather, price fixing is a very broad term, which includes any concerted effort or action that has an effect on competition or on prices, terms, or conditions of trade. Moreover, such concerted actions (affecting prices) cannot be justified by showing that they will benefit customers, or that the prices set are otherwise reasonable.

Accordingly, association members should refrain from any discussion which may provide the basis for an inference that the members agreed to take any action relating to prices, services, production, allocation of markets or any other matter having a market effect. These discussions should be avoided both at formal meetings and informal gatherings.

The following topics are some examples of the subjects which should not be discussed at LMA meetings, either virtual or live:

1. Do not discuss current or future prices (be very careful of discussions of past prices).

2. Do not discuss what is a fair profit level.

3. Do not discuss standardizing or stabilizing prices or pricing procedures.

4. Do not discuss cash discounts or credit terms.

5. Do not discuss controlling sales or production or allocating markets or customers. (This applies to services as well as products.)

6. Do not complain to a competitor that its prices constitute unfair trade practices and do not refuse to deal with a company or individual because of pricing or distribution practices.

7. Do not discuss anticipated wage rates.

Inasmuch as an association's antitrust violations can subject all association members to criminal and civil liability, members should be aware of the legal risks in regard to membership policy and industry self-regulation. Because membership in an association can be of substantial benefit, associations must ensure that they do not in any way restrict or prejudice competitors from membership or illegally discriminate against non-members. Membership policies should avoid:

1. Restrictions on dealing with non-members.

2. Excluding from membership any qualified participant.

3. Limitations on access to association information.

In encouraging certain conduct, associations may lawfully establish a code of ethics. However, codes that may have an anticompetitive effect, such as those banning advertising or competitive bidding, are prohibited. In general, industry or professional self-regulation, ordinarily manifested by a code of ethics, must avoid:

1. Requiring refusal to deal with any member violating the association's code of ethics.

2. Arbitrary enforcement of the code.

3. Unreasonably severe penalties for violation of the code.

4. Regulations or polices which have price fixing implications, such as preventing the advertising of prices.

Standardization programs can be among the most beneficial activities in which associations engage. There is a substantial risk, however, that such programs will be used to restrict competition or discriminate against certain competitors. Thus, the following guidelines should be followed:

1. Standards should be voluntary.

2. Non-members must be allowed to participate although they may be charged a reasonable, higher fee.

3. Proposed voluntary standards should be widely circulated for comment by affected parties.

4. Performance standards, rather than design standards, should be used.

5. Periodic review of standards criteria should occur in order to account for changing technology.

6. Due process procedures for denials should be established.

7. Standard validation by an independent authority may be beneficial.

An association may be held strictly liable for the illegal conduct of its members and agents acting under the association's name even if the association has not authorized the activity. Thus, an association must ensure that its members and agents are not using the association's legitimate activities for anticompetitive purposes. Associations that undertake standardization programs are particularly vulnerable to this type of liability and should closely monitor such activities. Thus, associations should consider:

1. Adopting written guidelines outlining the authority and responsibility of members and staff, including who may "speak" for the association and who may use association letterhead.

2. Requiring written committee reports of pending and completed matters.

3. Implementing due process procedures for decision-making and dispute resolution.

The penalties for violating federal and state antitrust laws are severe. The Sherman Act is a criminal conspiracy statute. Therefore, active participants, as well as individuals who silently acquiesce in illegal activity, can be held criminally responsible. Violation of the Sherman Act is a felony punishable by a fine of up to $100 million for corporations, and a fine of up to $1 million or up to ten years imprisonment (or both) for individuals. Under some circumstances, the maximum potential fine may be increased above the Sherman Act maximums to twice the gain or loss involved. In addition, collusion among competitors may constitute violations of the mail or wire fraud statutes, the false statements statute, or other federal felony statutes. In addition to receiving a criminal sentence, a corporation or individual convicted of a violation may be ordered to make restitution to the victims for all overcharges. Additionally, there are civil penalties such as cease and desist orders, requiring government supervision of association members, restricting the association's activities and disbanding the association.

The greater likelihood of occurrence, and possibly the more severe penalty, may be civil suits brought by competitors or even consumers. Civil antitrust actions result in treble damage awards. Thus, an antitrust violation which caused $500,000 in damages would result in an award of $1,500,000.

The government's attitude toward associations requires associations and their members to, at all times, conduct their business openly and avoid any semblance of activity which might lead to the belief that association members had agreed, even informally, to something that could have an effect on prices or competition. Thus, it is important that members contact the association for guidance if they have even the slightest qualms about the propriety of a proposed activity or discussion. Because of the importance of the antitrust laws, as well as the practical importance of associations, to the successful functioning of the American economy, strict compliance with the antitrust laws by associations and their members is critical.