

## **NAMM ANTITRUST POLICY AND GUIDELINES**

### **THIS POLICY AND GUIDELINES ARE APPLICABLE TO ALL NAMM ACTIVITIES**

This Antitrust Policy and Guidelines are applicable to all NAMM, the International Music Products Association ("Association") activities and programs. They are required to be read and followed by all Members of the Association, the Association Staff, Board, Chairs and Members of all NAMM Committees, Councils, and Divisions, and all participants in NAMM-sponsored activities.

All of NAMM's activities must be conducted strictly in accordance with U.S. federal and state antitrust laws and foreign antitrust laws. This Antitrust Policy will familiarize you with the basics of antitrust law, but it is not a complete or definitive statement. Any specific questions related to antitrust compliance not addressed in this Policy should be forwarded to NAMM's counsel or to your company's legal counsel.

### **OVERVIEW OF THE ANTITRUST LAWS**

Antitrust laws are intended to promote and protect competition, which benefits consumers. Competition leads to lower prices, higher quality, and increased output of goods and services. Associations like NAMM can promote competition by engaging in a variety of activities, including standard-setting, educating the public, conveying information to the government, and collecting and disseminating information about the industries in which they operate. On the other hand, associations like NAMM often bring competitors together in person and through information sharing, and antitrust law is always suspicious that competitors might agree to engage in behavior that hurts consumers. For that reason, NAMM has developed this Policy to help ensure that its activities are conducted consistently with the antitrust laws.

The United States, the individual states and many foreign countries have antitrust laws. The main antitrust laws at the federal level are the Sherman Act, the Clayton Act, the Robinson-Patman Act, and the Federal Trade Commission Act. The Department of Justice prosecutes some violations of the Sherman Act criminally. Criminal antitrust violations are felonies, and an individual is subject to as much as ten years in prison and a \$10 million fine. Almost all the individual states have their own antitrust laws. More than 100 countries have their own antitrust laws (often referred to as "competition laws"). In addition, the European Union has its own antitrust laws and enforces them vigorously. Almost everywhere that people make music, there's an antitrust law governing business conduct.

### **IMPROPER ACTIVITIES AND PROGRAMS**

#### **(1) Agreements on Prices or Output (Price or Output Fixing)**

Agreements among competitors on price or output are per se unlawful, meaning that the agreements cannot be defended or justified. The agreement itself is illegal. "Price" is interpreted very broadly, and includes

- wholesale, retail, and suggested prices for goods and services (including salaries, benefits and wages for employees or independent contractors)
- price ranges
- pricing formulas
- discount, warranty and credit terms

- minimum advertised prices ("MAP")
- reference prices (e.g., using one price as a take-off point for other prices)
- price increases or decreases

Agreements among competitors on output or production are also per se unlawful. "Output" includes factors like:

- actual or proposed production or changes in production
- down-time at manufacturing facilities
- hours of operation (e.g., agreements to close on Sundays)

## **(2) Agreements to Allocate Customers or Territories**

Agreements among competitors to allocate divide or assign customers or territories are also per se illegal. Agreements between a manufacturer and a dealer to limit that dealer to certain customers or a defined territory are treated differently under the antitrust laws; however, dealers cannot agree on allocations among themselves and have the manufacturer adopt them.

## **(3) Boycotts and Refusals to Deal**

Agreements among competitors to boycott certain suppliers, customers or competitors are per se unlawful in some circumstances. In the trade association context, restrictions on membership and participation in shows or exhibitions, disciplinary proceedings, and standard-setting activities generate most boycott issues. In particular, NAMM Members should not engage in any discussion about whether to refuse to do business with any other entity, or whether to limit or terminate any existing relationship.

## **(4) Information Exchange**

The exchange of competitively sensitive information among competitors can lead to price fixing and other antitrust violations. NAMM members should not discuss any competitively sensitive information, including:

- individual company actual, suggested or proposed wholesale or retail prices; proposed price changes; discounts; warranty policies; credit terms; mark-ups; margins; costs; minimum advertised prices; price ranges; pricing formulas; and allowances.
- actual production levels; plans to increase or decrease production.
- costs for goods purchased for resale
- wages, salaries, and benefits for employees and independent contractors.

*With appropriate safeguards, trade associations may collect some competitively sensitive business information from their members and provide members with data compilations and survey results. These safeguards may include the use of a third party vendor to collect and process the submissions, limiting access to the raw data, masking the identities of the submitters (even from association personnel), and aggregating data so that the identity of the submitters is not disclosed and cannot be inferred. Under no circumstances can an association ever provide one member with another's competitively sensitive business information.*

## **Conduct of Association Business**

All officers, directors and employees of NAMM will receive a copy of this policy and acknowledge in writing (electronic acknowledgement is acceptable) that he or she has read and understands the policy. A copy of this policy will also be provided to every Member of NAMM and to a representative of every association with which NAMM communicates or partners.

A copy of this Policy should also be provided to all speakers and presenters at any conference or meeting sponsored by or affiliated with NAMM; presentations on commercial topics should be made available in advance for review by counsel. Notices and agendas of NAMM meetings shall be prepared and distributed in advance. Agendas should not include any subjects which are identified as improper for consideration or discussion under these guidelines and should conform to rules established or approved by legal counsel. Meeting minutes should be prepared, recorded and reviewed by counsel.

Discussion that appears to be leading to a violation of this policy should be discontinued until consult with legal counsel determines appropriate resume, limitations and/or safeguards.

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## **NAMM Events**

### **Antitrust Guidelines for Speakers, Presenters and Panelists**

These Guidelines apply to all speakers, presenters, and panelists (“Speaker”) at any program, conference, meeting or event (“Program”) sponsored by or affiliated with NAMM and to all NAMM directors, officers, employees or agents (“NAMM Personnel”) invited to be Speakers because of their affiliation with NAMM, even if the Program is not sponsored by or affiliated with NAMM. Additionally, all NAMM Personnel invited to be Speakers because of their affiliation with NAMM must receive approval from NAMM’s counsel before accepting any such invitations.

All Speakers must receive a copy of these Speaker Guidelines and NAMM’s Antitrust Policy and Guidelines (the “Antitrust Policy”). NAMM’s Antitrust Policy provides a brief overview of the basics of the antitrust laws. These Speaker Guidelines identify appropriate subjects for discussion at Programs and the limits of such discussions. They are not, however, designed to be complete or definitive statements regarding the antitrust laws. Any specific questions regarding compliance with U.S. or foreign antitrust laws should be addressed to NAMM’s antitrust counsel or to Speaker’s counsel.

Because antitrust compliance is critical to the continued success of an organization like NAMM, every Speaker must adhere to these Speaker Guidelines. Failure to do so violates the terms of the NAMM Speaker Agreement and could result in the Speaker not being invited back as a Speaker at future NAMM Programs.

### **Speaker Do’s**

- **Do comply with NAMM’s Antitrust Policy, Speaker Guidelines and other guidance from counsel at all times.**

It is absolutely critical that all Speakers follow and adhere to NAMM’s Antitrust Policy and Speaker Guidelines at all times and events related (directly or indirectly) to NAMM Programs. In addition to following the Antitrust Policy and Speaker Guidelines at all formal sessions, they must also be followed at any informal gatherings such as dinners and cocktail parties.

<sup>1</sup> NAMM’s antitrust counsel is Paul C. Cuomo, Esq, of Baker Botts L.L.P. Mr. Cuomo can be reached via telephone at 202.639.7932 or via email at [paul.cuomo@bakerbotts.com](mailto:paul.cuomo@bakerbotts.com). You may also contact his colleague, Vishal Mehta, Esq., at 202.639.7732 or [vishal.mehta@bakerbotts.com](mailto:vishal.mehta@bakerbotts.com).

- **Do remember NAMM's purpose as an organization.**

NAMM's purpose is to promote the global music products industry and to increase active participation in music making. Participate only in discussions that further these purposes.

- **Do follow approved Program agendas.**

Any questions concerning agendas should be raised with NAMM or other counsel before the meeting to the extent possible.

- **Do seek the advice of counsel or, if necessary, end the discussion if other participants engage in discussion of off-limits topics.**

If you become aware of any discussion relating to off-limits topics, you should stop the discussion. If the conversation continues, you should excuse yourself. You must report any such conversations to NAMM's antitrust counsel or to Speaker's counsel.

- **Do remember that appearances count—assume that the whole world is watching, and follow these Guidelines!**

### **Speaker Don'ts**

- **Don't discuss matters that are not part of the approved Program agenda.**
- **Don't discuss competitively sensitive information.**

Discussions with competitors concerning commercial or competitive matters always present significant antitrust risk. Even if the discussions themselves don't cross the line into illegality, they may be used later to suggest that NAMM or its members engaged in unlawful conduct. Therefore, to avoid even the appearance of impropriety, do not discuss any competitively sensitive information relating to products, warranty or repair services, or other business practices, including:

- Prices (including discounts), minimum advertised price programs, unilateral price policies, reseller prices, proposed or actual bids, production capacity or costs, sales quotas, discounts, sales promotions (including "freebies" and product or service add-ons), terms and

conditions of sale, or any other commercial terms, conditions, or features that can impact (either by directly or indirectly raising, lowering or stabilizing) the price of any product or service;

- Allocating, dividing or assigning specific customers, markets, products, services, territories, or areas, including whether to make sales to such customers, markets, products, services, territories, or areas, or whether to do business with particular manufacturers or dealers;
- Information concerning any individual company's costs, profits, margins, inventory, production capacity, pricing formulas, market share, or other commercial information of a non-public nature;
- Non-public plans to expand or contract product offerings or output, geographic areas of operation, or customers.

Note: There are two very limited exceptions to the prohibition on discussing prices and related business practices. First, Speakers may refer to pricing and related business practices, provided that (a) the information is more than six months old and (b) the information is aggregated so that individual companies' information cannot be identified. Second, Speakers can discuss information that is not competitively sensitive, such as the general effect of pricing or promotional activities on demand. When in doubt, Speakers should consult with NAMM or their company's counsel.

- **Speakers should adhere to these Guidelines and NAMM's Antitrust Policy. Assume that everything you say could be made public. If you wouldn't want the information in USA Today, then don't discuss it.**
- **Don't discuss whether to do business with other companies, organizations or industries.**

The antitrust laws prohibit express and implied agreements among competitors to boycott or refuse to deal with certain suppliers, customers or other competitors. Speakers should not discuss whether to refuse to do business with any other entity, or whether to limit or terminate existing relationships. Speakers should not disparage or discriminate against other companies, irrespective of whether they are or are not members of NAMM. Speakers should not disparage any other company's products and services.

- **Don't seek agreement – or even suggest or imply that agreement would be desirable – on how firms should operate their businesses.**
- **Don't discuss the future competitive actions of an attendee's organization.**
- **Don't endorse particular products, companies, or industry segments.**
- **Don't be negative about any company, organization, or industry.**
- **Don't threaten any company, organization or industry.**
- **Don't participate in "off the record" or informal discussions of off-limits topics.**

Speakers should not engage in any "off the record" discussions concerning sensitive matters pertaining to the way in which their companies (or any other companies) compete or otherwise do business. Informal, small-group, "off the record" discussions that touch upon competitively sensitive matters can often, unfortunately, open the door to the most serious antitrust concerns. For that reason, Speakers should exercise particular caution to limit substantive discussions to the formal Programs at which counsel, a member, or a staff representative attuned to antitrust issues is present.

- **Don't joke about engaging in inappropriate activities or off-limits discussions.**

Speakers should not joke about engaging in inappropriate activities or in off-limits discussions as these jokes often can be misinterpreted or taken seriously by those in attendance.

**You should consult with counsel in advance of any discussion that you believe may violate NAMM's Antitrust Policy, NAMM's Speaker Guidelines or the antitrust laws generally. If a discussion appears to be leading to questionable areas under these Speaker Guidelines or NAMM's Antitrust Policy, you should stop the discussion until you have consulted with counsel to determine the appropriate scope of discussion, including any limitations and/or safeguards.**



NAMM, the International Music Products Association

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