# Antitrust Compliance Policy

## 1. Antitrust Compliance Policy

It is the policy of the Content Delivery and Security Association, Inc. ("CDSA" or "Association") to comply with all applicable laws, including the antitrust laws. CDSA is a New York mutual benefit nonprofit organization. This Antitrust Compliance Policy (this "Policy") is intended to provide guidance and rules about appropriate behavior in this context.

There is no general antitrust immunity for activity engaged in under the auspices of a nonprofit corporation. Instead, the antitrust authorities closely scrutinize industry groups precisely because they consist of companies with competing commercial interests and thus offer an opportunity for collusion.

It is expected that all CDSA staff and all participants in the Association's programming will be sensitive to the unique legal issues involving nonprofit associations and trade associations and will take all measures necessary to comply with the antitrust laws. The Association recognizes the potentially severe consequences of failing to comply with these laws and adopts this policy to guard against and mitigate these risks.

## 2. Basic Antitrust Principles and Prohibited Practices

### a. Antitrust Statutes

The principal federal laws are the Sherman Act, the Clayton Act, the Robinson-Patman Act and the Federal Trade Commission Act. At a general level:

• The Sherman Act in broad terms prohibits "every contract, combination...or conspiracy" in restraint of trade, as well as monopolizing, attempting to monopolize, or conspiring to monopolize any part of trade or commerce.

• The Clayton Act prohibits exclusive dealing and "tying" arrangements, as well as corporate mergers or acquisitions that may tend substantially to lessen competition, as well as certain interlocking directorates or officerships among competitors.

• The Robinson-Patman Act prohibits discriminating in price between different buyers when the discrimination adversely affects competition. This statute applies only to sales of commodities, it does not cover services, licensing or intangibles.

• The Federal Trade Commission Act broadly prohibits "unfair methods of competition" and "unfair or deceptive acts or practices" in or affecting commerce.

All fifty states, as well as the District of Columbia, Puerto Rico and the Virgin Islands have state antitrust statutes. These statutes have many similarities with the federal laws, although there are some variations.

### b. "Hard Core" Offenses (Criminal Prosecution Potential)

Certain antitrust violations are referred to as "hard core" or "per se" offenses. Conduct that falls in this category is automatically presumed to be illegal by the courts, and the absence of any actual harm to competition will not be a defense. Conspiracies falling in the hard core category

are the most likely to be prosecuted as criminal offenses, and include the following:

• Price-fixing agreements: These are agreements or understandings among competitors (or potential competitors) directly or indirectly to fix, alter, peg, stabilize, standardize, or otherwise regulate the prices paid by customers. This category includes any agreement among buyers fixing the price they will pay for a product or service. “Price” is defined broadly to include all price-related terms, including discounts, rebates, commissions, credit terms and the timing and manner of price-related decisions. Agreements among competitors to fix, restrict, or limit the amount of product that is produced, sold or purchased, or the amount or type of services provided, may be treated the same as price-fixing agreements.

• Bid-rigging agreements: These are agreements or understandings among competitors (or potential competitors) on any method by which prices or bids will be determined, submitted, or awarded. This includes rotating bids, agreements regarding who will bid or not bid, agreements establishing who will bid to particular customers, agreements establishing who will bid on specific assets or contracts, agreements regarding who will bid high and who will bid low, agreements that establish the prices firms will bid, and exchanging or advance signaling of the prices or other terms of bids.

• Market or customer allocation agreements: These are agreements or understandings among competitors (or potential competitors) to allocate or divide markets, territories, or customers. Price-fixing, bid-rigging and market division among the CDSA Board of Directors, staff, affiliates or other competitors in the Association’s ecosystem are strictly prohibited.

### c. Sensitive Activities

There are other activities that, though typically not subject to criminal prosecution, are nevertheless sensitive, and may lead to investigations, litigation and civil liability. These activities include:

• Group boycotts: An agreement with competitors, suppliers, or customers not to do business with another party, or to do business only on certain terms, may be found illegal as a boycott or “concerted refusal to deal.” In certain circumstances this conduct may be per se illegal.

• Exclusionary standard setting, certification, accreditation or best practices: Standards-development, certification and accreditation programs, and best practice guidelines generally are pro-competitive and lawful. Such activities may be found unlawful, however, if they have the effect of fixing prices, unreasonably restricting output or innovation, or if they result in firms or individuals being boycotted or unreasonably excluded from the market.

• Tying arrangements: Conditioning the license of a desired product on the license or purchase of a second unwanted product may be unlawful.

• Exclusionary membership criteria: Membership criteria with the intent or effect of excluding and disadvantaging others should be given careful legal review.

• Coordination of commercial strategy: The coordination of commercial strategy such as product release dates, marketing policies or product windows may be unlawful.

• Information Collection and Dissemination: Data collection and sharing can provide substantial pro-competitive benefits if properly conducted. Among other requirements, the data should not concern price or price-related terms; it should generally be historical in nature and be reported

in the aggregate.

• Vertical price-fixing agreements: Agreements between suppliers and resellers that establish minimum resale prices may be unlawful.

#### d. Other Activities Including Lobbying and Litigation

• Petitioning: While there is generally broad protection from antitrust liability under the Noerr-Pennington doctrine for lobbying, litigation and other governmental petitioning activities, there are exceptions to this immunity.

• Joint research and development programs: While not discouraged by the antitrust laws and potentially subject to some legislative protection, proposals for CDSA involvement in these types of programs must undergo legal clearance and executive approval.

### 3. Antitrust Violations Can Have Severe Consequences

Violations of the antitrust laws can have very serious consequences for the Association, its staff, officers and directors, as well as for participants in the Association's ecosystem.

#### a. Criminal Penalties

Antitrust violations may be prosecuted as felonies and are punishable by steep fines and imprisonment. Individual violators can be fined up to $1 million and sentenced to up to 10 years in prison for each offense. Corporations and associations can be fined up to $100 million for each offense. The events that give rise to an antitrust violation often provide the basis for other related charges, which, if proven, carry additional penalties.

Additional consequences of a criminal antitrust violation for a joint venture, association or corporation can include: dissolution, exposure to follow-on treble damages lawsuits, exposure to enforcement actions in other jurisdictions or countries, disruption of normal business activities, the expense of defending investigations and lawsuits, and reputational harm.

Additional consequences for an individual can include: prison, termination of employment, loss of community status and reputation, loss of future employment opportunities, and exposure to litigation.

#### b. Civil Penalties

In contrast to criminal actions, civil cases can be initiated by individuals, companies and government officials. They can seek to recover three times the amount of the damages, plus attorney's fees. Even unfounded allegations can be a significant drain on the financial and human resources of the Association and its participants, and an unproductive distraction from CDSA's mission. For these reasons, the Association strives to avoid even the appearance of impropriety in all its dealings and activities.

### 4. Guidelines for Meetings and Other Association Functions

CDSA meetings, conference calls and other activities with our participants by their very nature

bring these competitors together. In light of the costs involved in defending antitrust claims, even when they are without merit, it is always necessary to conduct Association meetings in a manner that avoids even the appearance of improper conduct. Generally, the best way to accomplish this is by following regular procedures and avoiding competitively sensitive topics.

It is important to remember that an antitrust violation does not require proof of a formal agreement. In fact, purported illegal collusion or concerted practice often is alleged based solely on evidence that members of a joint venture or trade association acted in a parallel manner following a meeting.

### a. Meetings

Because of their sensitive nature, certain topics may not be discussed at meetings of CDSA's board or any of the Association's advisory committees unless otherwise advised by legal counsel. These prohibitions apply equally to all CDSA sponsored social functions or other informal association gatherings. Off-limit topics include:

• prices, pricing methods, or terms or conditions of sale or licensing;

• pricing practices or strategies, including methods, timing, or implementation of price changes;

• discounts, rebates, service charges, or other terms and conditions of purchase, sale and/or license;

• price advertising;

• what constitutes a fair, appropriate, or "rational" price or profit margin;

• whether members should do business with certain suppliers, customers, or competitors;

• complaints about the business practices of individual firms; and

• confidential company plans regarding future product or service offerings.

It is recommended that the following meeting guidelines be observed:

• When feasible, written agendas shall be prepared in advance. Agendas may not include any subject that is identified in this Policy as improper for consideration or discussion.

• When feasible, meeting handouts and presentations should be reviewed by counsel in advance of meetings.

• Counsel must attend all meetings where there is any risk that competitively sensitive issues may be discussed.

• Meetings should follow the written agenda and not depart from it except for legitimate reasons. Informal or "off the record" discussions of competitively sensitive topics are not permitted.

## 5. Document and Email Guidelines

Many antitrust investigations and lawsuits are fueled by poorly phrased or exaggerated statements in internal documents, with emails being a leading culprit. Common sense should be

used when composing documents and emails. No matter how informal or private a communication is intended to be, it must be assumed that anything written in a document or e-mail is potentially discoverable in an investigation or lawsuit, absent a legitimate claim of privilege. As a general rule, nothing should be written or communicated that you would not want to read aloud to a prosecutor, plaintiff's lawyer or jury.

### 6. Standards, Certification and Best Practices Guidelines

Standard-setting, certification and accreditation programs and best practice guidelines can be highly pro-competitive and beneficial to suppliers and customers. Antitrust problems will arise, however, if such a program is used as a device for fixing prices, restraining output, or chilling innovation, or if it has the effect of boycotting or unreasonably excluding competitors from the market. Accordingly, these types of activities should be undertaken subject to legal review.

These programs must serve identifiable public interests, such as protecting copyrighted content from infringement or preventing false or deceptive marketing practices, and they must do so in a manner that does not unreasonably restrict competition. The programs must not have the purpose or effect of unreasonably (i) restraining price or quality competition, (ii) limiting output of products or services, or (iii) discouraging innovation. No company or individual should be denied certification or accreditation on arbitrary grounds. There can be no agreements to refuse to deal with any company for lack of voluntary certification or noncompliance with best practice guidelines.

As a general matter, these programs should be voluntary and have reasonable process. Reasonable process means, among other things, that companies with a direct and material stake have a chance to participate in the formation of the standard, accreditation or certification criteria or best practice guidelines; and that the process is free from dominance or bias by any particular industry segment or company.

More specifically, any standard, certification, accreditation or best practice guideline activity of CDSA should generally be conducted in accordance with the following basic principles:

• Participation in CDSA should be voluntary and open or accessible on reasonable terms to persons who are directly and materially affected. Any fee or cost charged to participants should be reasonable, and there should be no arbitrary requirements to participate.

• Timely notice of the activities should be provided to participants.

• No industry segment, interest group, or company should be allowed to dominate or bias the process. All views and objections should receive fair and equitable consideration.

• Reasonable procedures should govern the methods used to develop standards, certification and accreditation criteria or best practice guidelines.

• The procedures should entail the impartial handling of complaints concerning any action or inaction by the Association with regard to its standards, certification, accreditation or best practice guideline activities.

### 7. Executive Responsibilities

The Chairman, President and General Counsel have the ultimate responsibility to oversee the

implementation of the Association's antitrust compliance policy. The General Counsel is responsible for day-to-day management and implementation.

## 8. Training

All CDSA officers, directors and employees as well as all members of the Association's advisory committees will receive a copy of this compliance policy and will sign an acknowledgment that they have read it and have been given an opportunity to ask questions. In addition, appropriate antitrust training will be periodically provided.

## 9. Complaint Investigation, Internal Enforcement and External Contacts

Reports of noncompliance or other complaints should be promptly sent to the General Counsel, or, if they are unavailable, to CDSA's President. If there is reason to believe that an antitrust violation may have been committed, an investigation will be undertaken immediately.

Employees, officers and directors that violate or fail to comply with this compliance program are subject to disciplinary action, ranging from adverse reviews to termination.

Because compliance with CDSA's policies is a requirement for participation in the Association's ecosystem, an individual or company's participation may be terminated as a result of violations of the Association's antitrust compliance program.

It is CDSA policy to cooperate with authorized government authorities in connection with any investigation. Before complying with any written or oral information request, the Association, its employees and participants have the right to obtain advice of legal counsel. Consequently, should an attorney or investigator representing any governmental entity or other third party request information, documents, or an interview, the matter must be referred immediately to General Counsel or, if they are unavailable, to the President. Similarly, any written inquiries must be forwarded to them upon receipt.