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Legally Speaking -- The Other "L" Word: A Primer for Creating Library Lobbying and Marketing Campaigns While Staying Within the Law

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“IT WAS the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to Heaven, we were all going direct the other way — in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the suprelative degree of comparison only.”

— Charles Dickens, A Tale of Two Cities

This is the best of times if you are a librarian looking for a job. There are more vacant positions than there are people to fill them, and more professionals are retiring every year. Yet this is also the worst of times — salaries are low, budgets are being cut, and whole libraries have been shut down. Financial difficulties are very disturbing to librarians and educators, as well as to publishers and book distributors. After all, funding cuts generally mean cancellations, so ensuring that libraries are fully funded is in everyone’s best interest.

Even more disturbing are some of the laws being proposed or passed. Libraries, publishers, and book distributors are concerned with copyright issues, filtering legislation, and the USA PATRIOT Act. The same social and economic forces that affect other non-profit and public agencies also affect libraries. Federal and state budget cuts, a drop in charitable giving, and an erosion of local tax revenues are causing our library budgets to shrink. At the same time, privacy is being eroded and copyright issues are never far from our minds. So how do we fight this trend? As Dylan Thomas said, “Do not go gentle into that good night. Rage, rage against the dying of the light.” Libraries, publishers, and book distributors can rage against the dying of the light by creating lobbying and marketing campaigns.

Lobbying and marketing are an essential part of library work. At the same time, however, non-profit libraries are restricted in the amount of “direct” and “grass roots” lobbying they can engage in without jeopardizing their tax-exempt status. “Direct lobbying is any attempt to influence legislation by communicating with a legislative body.” On the other hand, “Grassroots lobbying is an attempt to influence any legislation through an attempt to influence the opinions of the general public or any segment thereof. The effort must refer to specific legislation, reflect a view on the legislation and include a call to action to be considered grassroots lobbying.” A public relations campaign to bring in new users does not constitute grass roots lobbying, but a request for library card holders to contact legislators does. It is very important that libraries understand the difference between these two types of campaigns in order to stay within the law.

**Legal Limits on Lobbying in the Internal Revenue Code**

In order for libraries to maintain their tax-exempt status under section 501(C)(3) of the Internal Revenue Code, the type of activities and amount of money spent on lobbying or political advocacy must be limited.1 Section 501(C)(3) only grants tax-exempt status if “no substantial part of the activities [consists of] carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.” Non-profit associations must never endorse candidates or engage in political campaigns. Election activities will cause the organization to lose tax-exempt status.

It is very important that libraries pay attention to and adhere to these rules, not only because of tax considerations but also because of donations. If the organization loses its tax-exempt status, donors will not be able to deduct contributions from their income taxes. This situation will ultimately cost a library far more than the amount to be gained.

The restriction on electioneering does not mean that libraries with meeting rooms can’t allow candidates to use their facilities; however, just as with any meeting room policy, it must be available for all. The Library Bill of Rights states that:

“Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.”

Here is a summary of activities that would be considered “electioneering”:

1. Publication or distribution of written or printed statements on behalf of, or in opposition to a candidate.
2. Attempts to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office.
3. Contributions to any political campaign.
4. Voter education activities in which the organization presents a bias on certain issues.
5. Payment of salaries or expenses of campaign workers.

The issue of affecting policy is a bit trickier; after all, the First Amendment specifically states: continued on page 61
"Congress shall make no law . . . [Abridging] the right of the people peacefully to assemble, and to petition the Government for a redress of grievances." At the same time, however, the amount of political advocacy must not be "substantial" in order to retain tax-exempt status.

The Basics of the Rule are that a non-profit organization can elect to be bound under IRC section 501(h) by filing IRS Form 5768 (Election to Make Expenditures to Influence Legislation). According to the Missouri Department of Health and Senior Services:

This form allows your organization to state that it "elects" to adhere to the provisions of the 1976 lobbying law (PL 94-455-Sec. 1307) passed by Congress. By doing so, your organization agrees to stay within specified spending restrictions on lobbying activities (20% of your first $500,000 in annual expenditures, 15% of your next $500,000 of expenditures, 10% of expenditures between $1 million and $1.5 million, and 5% of expenditures between $1.5 million and $17 million). Maximum total expenditures for lobbying activities by the non-profit under these rules would be limited to $1 million.

The IRS has stated that completion of Form 5768 doesn’t flag the non-profit for an automatic audit. Those non-profits who chose not to “elect” to come under the 1976 lobbying law guidelines are subject to the ambiguous IRS “substantial” test. This “test” leaves uncertain which activities of charities constitute lobbying and how much lobbying is permitted. Because the IRS hasn’t provided a clear definition of “substantial” levels of lobbying activities, the non-profit which hasn’t completed IRS Form 5768 can never be certain when it is straying beyond the IRS legal lobbying limits.

It makes sense that libraries would elect to file form 5768. After all, the IRS guidelines are much easier to follow than the 1976 lobbying law. The 1976 lobbying law is not at all clear and non-profit associations have gotten into trouble while trying to interpret the meaning of the term “substantial.” On the other hand, the IRS regulations give libraries a good idea of how much is too much.

In addition to limits on overall lobbying, there is also a restriction on the amount of money spent on grass roots lobbying efforts. A tax-exempt organization may only spend up to 25% of their lobbying expenditures on grass roots lobbying. If the organization spends more than this limit, they will jeopardize their tax-exempt status. This is why it is important to understand the distinction between a public relations campaign and a lobbying effort.

Does this mean libraries have to sit passively by? Of course not! Although lobbying campaigns are a way to affect laws before they are passed, and a way to make sure legislators understand our needs and concerns, an effective lobbying campaign always begins with a good marketing strategy. Direct and grass roots lobbying efforts are ultimately more successful when they are combined with marketing and public relations plans.

Creating a Good Public Relations Marketing Plan

The goal of the campaign is what differentiates grass roots lobbying from marketing. A lobbying effort involves trying to change minds in order to influence legislation, while library marketing efforts are aimed at bringing more users into the library. A good marketing plan tries to get people to use the library. Although funding and legislation are not the primary goals of a PR campaign, showing the value of library services does affect legislators as well as patrons.

According to David Tyckson, "Libraries do not exist in a vacuum... Libraries that serve their communities well become integrated into the fabric of that community, becoming institutions with which all members are familiar and take pride. Success in serving the community often results in publicity, praise, and better funding. Failure to serve the community can result in neglect, indifference, and reduced funding."
An extreme case of failure can result in the elimination of the library as an institution within the community. A library that understands its users and services well will succeed, while a library that doesn’t serve the community will have trouble attracting funding.

The key to a good marketing campaign is to make people aware of the mission of libraries. We need to showcase the services libraries provide and the skills librarians bring to the table. We also need to make sure our communities are aware of how important we are, and what kinds of societal needs we help to fill. “The library will be measured by its service to the community. Libraries must always remember that they are part of a greater community. Serving the needs of that community is the sole reason for existence of the library, and will be the sole measure of success.” Libraries and librarians are only successful if they serve their communities.

Analyzing user needs, marketing to the public and civic leaders, and looking for creative sources of funding are things that should be done just as much in a school or academic setting as in a public library setting. (Even a special library has to market itself, or the users will disappear.) Libraries that are successful have built coalitions with users, the public, other entities, administrators, and politicians. The key is to get people to know what we do and what our services are, and to be flexible and ready to help at all times (which we should be doing anyhow as good librarians). Letting the public know how libraries can help is really the key to being successful as an institution.

While we are marketing our libraries, it is also important not to forget our librarians. A library without librarians is nothing more than a chaotic storehouse of books. It is the services that trained librarians and library assistants provide which add value to our institutions. The difference between a library and a Website lies in the personal interaction the librarians offer. “An increasingly impersonal world, the librarian will continue to provide personalized service to patrons. Personal service is what will differentiate the library from other information providers.” Trained library staff can give users assistance when other organizations don’t have time. The library gains users and supporters by highlighting the skills and services of the librarians.

Conclusion

Our libraries are now competing with other types of information services. Libraries and librarians have both a public relations problem and an image problem. We need to market our services, our resources, and ourselves, but we also need to stay within the law in order to avoid losing tax-exempt status.

Before doing any lobbying, libraries should file IRS Form 5768 (Election to Make Exempt Status Ineffective). Make sure to consult with an attorney or financial advisor, and make sure that lobbying expenditures are within the legal limit. Also be sure you understand the difference between marketing and grass roots lobbying. Trying to influence legislation constitutes lobbying. Trying to get patrons to use the library is a public relations campaign.

Marketing our services is what a good librarian should be doing. As a librarian, you can’t be shy. (Well, you can be, but you will have to put it aside.) We need to get out of the library and interact with other people in the community. Let them know what you have and that you are an expert, a specialist who knows how to do research and how to teach research. Don’t just recite mission statements to politicians; bringing patrons into the library and serving their needs is an essential part of our mission.

Column Editor’s Note: My co-author, Robin McGinnis, has compiled an annotated bibliography of works on lobbying and marketing, which follows. She was also instrumental in giving me the idea for this topic in the first place, and for assisting me with the research.

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Sources to Consult for More Information


The American Library Association’s @yourlibrary campaign, http://www.ala.org/ @yourlibrary/. — The American Library Association has created the Campaign for America’s Libraries in order to “educate consumers that libraries are dynamic, modern community centers for learning, information and entertainment. The campaign is designed to increase awareness about the vibrancy, vitality and real value of today’s libraries, to galvanize public support and influence public policy” (ALA Website).

Baker, Sharon. The Responsive Public Library Collection: How to Develop and Market It. Libraries Unlimited, 1993. — You may not think about collection development as a marketing strategy, but it can be! Baker’s book covers a variety of library marketing topics such as service distribution and delivery, promotion, marketing orientation, and marketing-based selection practices.


The author explains the basics of marketing and gives tips on conducting an effective campaign.

dc Sez, Eileen Elliott. Marketing Concepts for Libraries and Information Services. 2nd ed. Neal-Schuman, 2002. — This work discusses marketing in the digital age, promotion and public relations, and marketing techniques and practices. The author provides specific examples and case studies. The book is especially helpful for librarians who engage in marketing of resources, especially reference-oriented services.


Ford, A. “Food for Fines’ Drives: Positive PR That Works!” Marketing Library Services, 15.2 (2001). http://www.galegroup.com/nis/mar01/ford.htm. — Tired of poor publicity and complaints over library fines? Although fines are a source of revenue, they are also a source of trouble, and the money taken in usually doesn’t compensate for the bad feelings. This article offers a unique perspective on how to deal with patron fines while gaining positive attention in the community.

Gale Group. Free Marketing Resources For Libraries. Gale Group, 2001. http://www.galegroup.com/free_resource/marketing/index.htm. — The Gale Group has assembled a “tool box” of materials that can be used as part of a promotional campaign. This Website contains examples of bookmarks, posters, fliers, print ads, and even scripts for radio commercials. A good place to begin if you are looking for ideas.

Glitz, Beryl. Focus Groups for Libraries and Librarians. New York: Forbes, 1998. — Focus groups are one of the most important ways to find out what your community wants. This work discusses focus groups and provides step-by-step instructions on how to prepare questions, analyze results, etc. A must for all types of libraries.

Gritten, Sally. “Publishing and Marketing Campaigns Putting Good Ideas into Practice.” Youth Library Review 21 (1996). http://www.jahq.org.uk/groups/jlg/archive/ylr21_3.htm. — This article focuses mainly on the theoretical principles that guide marketing. The author explains how being aware of these principles can help with putting ideas into practice.

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Latombe, Terry S. Fund Raising Activities at Colleges and Universities in the United States. American Library Association, 1997. http://www.ala.org/acrl/paperhtm/h15.html. — ACRL has assembled several case studies of fund raising activities initiated by colleges and university libraries. Use this work if you are trying to find ideas for your organization.


Reed, Sally Gardner. Making a Case for Your Library. Neal Schuman, 2001. — Presents information on how libraries can develop the right message for the community. This book is useful for all types of libraries.


Stokes, Stephanie. Library Media and PR. http://www.ssdesign.com/librarypr/index.html. — Although aimed at public and school librarians, this site is applicable to all types of libraries. It contains articles, images, and Web links, as well as a "tool box" of ideas for library marketing.


Walters, Suzanne. Library Marketing that Works! Neal Schuman, 2003. — This book is for libraries that wish to follow a step-by-step approach to public relations. It is comprehensive in that it also includes new techniques such as "using listservs and Websites, developing contact databases and building relationships with stakeholders and donors."

Wolfe, Lisa A. Library Public Relations, Promotions, and Communications. New York: Neal Schuman, 1997. — Looking for information on writing, reviewing, and updating a communications plan? Not sure how to develop a corporate identity? This book will help you get started. Other topics include arranging media coverage, making the most of your Web presence, and creating effective newsletters, brochures, posters, and

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other print communications. The book contains numerous examples and case studies.


Endnotes

3. The guidelines for tax-exempt status are found at 26 U.S.C. §501(c)(3).
8. Starting a Non-Profit Organization.
11. Tyckoson.
12. Tyckoson.

Questions & Answers — Copyright Column

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QUESTION: When a library receives a copy of an article from a document delivery company through ARIEL in response to an interlibrary loan request, how long can the library keep or archive this article? Can it be reused to satisfy another request for the same article by another patron?

ANSWER: This question mixes language somewhat. If the article is obtained from a document delivery company, it is not an interlibrary loan. Instead, it is document delivery which does not have to satisfy the ILL guidelines. If the copy of the article was obtained from a company that means that royalties were paid for it. In this instance, because royalties were paid, the library may reuse the copy. If the patron for whom the copy was purchased asks its use, or if he can return it to the library where it can be archived. The only restriction on use of that copy is that it can be reproduced only if that reproduction is a fair use. Having determined that it should obtain the copy of the article from a document delivery company as opposed to a library, the requesting library may have made the decision that the use is not a fair use. If additional copies of the article are made, additional royalties are due since the library has paid only for one copy.

If the article is obtained from another library as an interlibrary loan, then royalties may not be due if the request is within the suggestion of five. The ILL guidelines, however, place more restrictions on what may be done with a copy of an article so obtained. For example, the copy must become the property of the user. Thus, the library may not archive the article at all.

QUESTION: An elementary school is performing How the Grinch Stole Christmas as a play tied to a family literacy night with music and other activities at the school. Parents are invited, but there is no charge for the performance. Is there a copyright problem?

ANSWER: Under section 110(4) of the Copyright Act, a performance of a nondramatic literary or musical work by a nonprofit organization when there is no payment of fees to promoters, organizers or performers and there is no admission charge, or if there is one, it goes back for charitable purposes, then the performance is exempted. Under all of these conditions, there is no problem.

Somewhat more information is needed concerning whether “performing the work as a play” also means creating a derivative work or whether the literary work is simply read with the characters speaking their lines. If it is a derivative work, permission would be needed.

QUESTION: If a student completes an assigned term paper and produces a bound copy of that paper as required by the institution, who owns the paper — the professor, the student, or the university? Can the institution place it on reserve in the library?

ANSWER: The student is the author and thus owns the copyright in paper he or she completes. The university certainly may require that the student deliver a copy to the university in order to satisfy curricular requirements. If that work is to be available in the library where it can be reproduced, such as being on reserve, the institution should obtain permission from the student. This can be done up front when the student “signs on” to complete the paper, and the agreement should be in writing and kept on file by the institution.

Should the faculty member or institution put such papers on a Website, even a password protected one, permission should be sought from the student before doing so.

QUESTION: If there is no copyright notice on a government document, should a library assume that it is not copyrighted?

ANSWER: If it is a work published by the Government Printing Office, yes. It is produced by a federal agency. Section 105 of the Copyright Act says that the federal government may not own copyright in works it produces. This was an absolute until about 1978 when the National Science Foundation began to offer grants to researchers that permitted the researcher to publish research results and claim personal copyright in that work. Today, some federal agencies contract out various studies and reports and may permit the contractor to hold copyright. For these, one must hope that they contain a notice of copyright. The problem is that notice of copyright is now optional.

As a rule of thumb, if the author of the work is a federal agency itself or a federal official acting in his or her official capacity, the work is public domain. The terms of the grant or contract determine whether a contractor can hold copyright.

QUESTION: In a nonprofit research institute, can a researcher send multiple collaborators on a project a pdf of an article that the institute purchased? It is to support the work on a project.