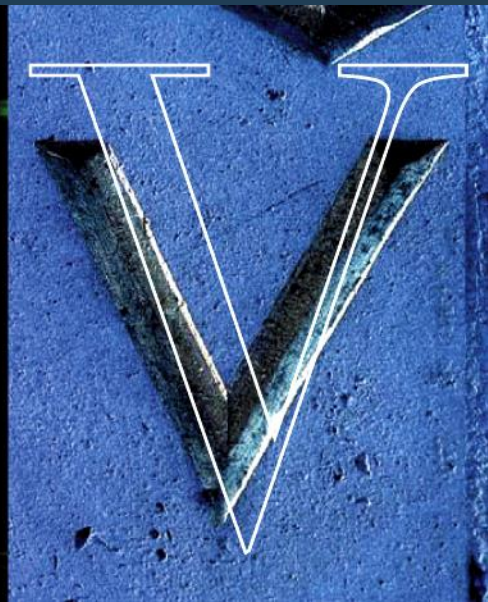
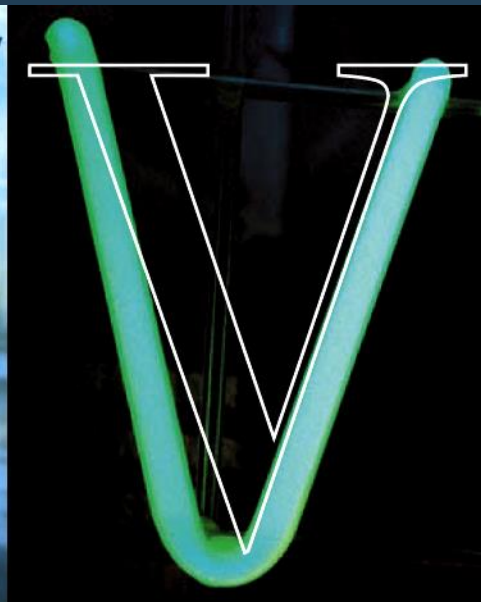
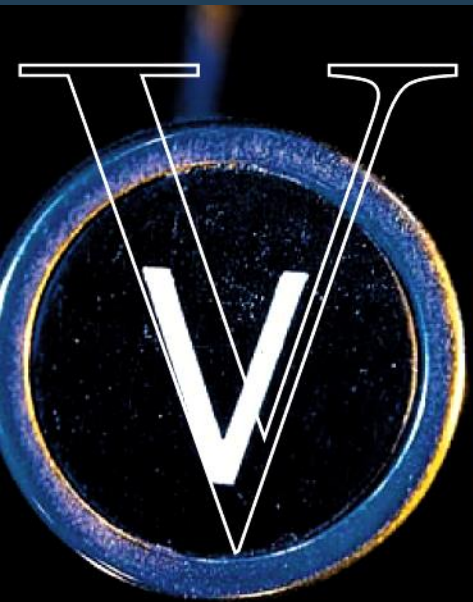


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Hot Legal Issues in School Fundraising & Marketing: Protecting Our Brand

Caryn Pass, presenter



Social Media

- Consider use of student names, photos and other identifying factors
 - Privacy and other legal exposure
- Facebook, twitter and other tools
 - Establish school's right to control posting, comments and other input
 - Be honest with consideration of impact message has on "community"
 - Argument that gift given based on representation of IB program, exceptional robotics program
- Ensure ability to "unsubscribe"
 - Monitor requests to remove
- Caution when linking to other page or reference
 - Responsible for information on linked site



intellectual property

- schools intellectual property
 - property and representations of the school
 - protect for benefit of the school and fiscal resources
 - failure to protect risks school's reputation
 - undermines school's ability to use property as alternative revenue sources and allows others to obtain protection and use resources at school's expense
- school's use of property of others
 - school's use of copyright protected property
 - exposes school to penalties and fines



trademark

- represents brand and reputation of school
- what can be protected?
 - name, logo, slogan, tag line, motto
- failure to protect allows others to use branded materials
 - use undermines reputation
 - can charge school for use
 - can trade on school's reputation
 - establish programs using school's name
 - i.e. "ABC school" summer program
 - can use for financial gain
 - selling t-shirts and other clothing with logos
 - can use inappropriate references
 - "ABC SCHOOL – Always at your service"
- entering international market
 - use of brand by schools internationally

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protecting school's trademark

- file for trademark protection
- If substantial change or expansion of school
 - Especially important to protect trademark
 - Twenty million dollar gift
- file in all countries school may consider operating in or expanding into
 - U.S. as well as foreign country
 - Partnering with school in foreign country
 - Opening school in foreign country
 - Considering sale or licensing program along with name of school
- different countries have different rules and different obligations
- work with attorney experienced in such area of the law
- file trademark protection for all possible branded items
 - name, logo, slogan, tag line, motto



enforcing trademark protection

- limit use of trademark protected brand markings by putting parties on notice that brand markings may not be used without permission.
- Include in following documents:
 - employment contract
 - employee handbook
 - student/parent handbook
 - enrollment contract
- notify the following parties that branded markings were protected and may not be used without permission:
 - employees, students, parents (parent's association/groups), t-shirt vendors, other consultants (international companies), parents (for private use), booster clubs and sports related events
 - international schools



copyright protection (employees)

- protect products, materials, writings, apps, programs, curriculum, pictures, images
- use of copyright materials for alternative revenue sources
 - curriculum created by teachers
 - educational programs created by teachers
 - text books drafted over the summer by employees
- clearly identify who owns the copyright to various objects
 - include in the employment contract & handbook
 - create specific document describing:
 - who owns;
 - what is division of resources if sold
 - who can use protected item and when
 - if employee drafts curriculum, can they use it at next school? can school continue to use curriculum? can either party sell it for profit?
- schools create wide range of arrangements



Copyright protection (students)

- Important to establish clear understanding when students involved in creations
- Produced during classes, after school in auxiliary programs
- Shark Tank, incubator programs, app creation classes
- Draft agreement
 - Who owns the “product”? Student, teacher, investor, developer, parents?
 - How are profits distributed?
 - Who makes decisions about the sale, development or use of “product”?
- Incubator Program Example: Entrepreneur runs an afterschool program; invests time and \$10,000 to help students design and develop apps; who owns creations? Does school have any rights? What if student is minor?



State Registration Goals

- “the wider the net, the greater the catch.”
 - need thorough understanding of charitable solicitation laws and registration requirements
 - can expose school to significant regulatory, financial, and legal risk.
 - snail mail, phone, and email campaigns can, trigger state charitable solicitation registration requirements, with nationwide registration requirements following close behind.
- States want to protect against fraud and misuse of charitable contributions
 - Require registration and financial reporting of charitable organization
 - Provide information to increase donor confidence
 - Provide law enforcement information so they can prosecute deception and misuse



State Regulation - Requirements

- Approximately 40 states require charitable solicitation registration
- online medium for solicitation will likely trigger registration requirements in all 40 states.
- National Association of State Charity Officials (NASCO) and the National Association of Attorneys General (NAAG)
 - developed the Unified Registration Statement (URS).
 - standardize registrations across multiple states the
 - URS is accepted by approximately 32 states, most require additional state-specific forms.
- different attachments per state
 - Form 990, audited financial statements, articles of incorporation, and/or bylaws (the list varies according to each state).
- national solicitation registration is completion and filing of 40 different state applications,



Multiple entities

- Schools often involve multiple entities in their fundraising efforts.
 - Before working with third parties such as professional fundraisers or commercial co-ventures, schools must be registered to conduct charitable solicitation in the states in which fundraising will take place.
 - In many cases, schools must make an additional filing (such as a fundraising notice or filing of a contract) when working with a third party.
 - Schools should confirm that the entities with which they contract are properly registered as professional fundraisers, fundraising consultants, or commercial co-ventures.

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Tax Considerations – UBIT

- Non-profit schools are exempt from income received that is related to the tax-exempt mission
- BUT, subject to tax on unrelated business income
 - Trade or business
 - Regularly carried on
 - Not substantially related to organization’s exempt purpose
- Common exceptions to UBIT
 - Qualified sponsorships – “Payment...with no arrangement or expectation that such person will receive any substantial return benefit other than the use or acknowledgement of the name or logo” – Code 513(i)
 - Royalty income – Passive license of intellectual property – Code 512(b)(2)
 - Sale of donated goods – Code 513(a)(1)
 - Work performed by unpaid volunteers – Code 513(a)(1)



Tax Considerations – UBIT

- Take-away – Consider tax consequences of school's activities
 - Use of name and logo v. services / active promotion
- Examples of UBIT concerns
 - Charity advertising
 - More than acknowledgement
 - Endorsements
 - Exclusive provider arrangements
 - Event tickets or other privileges provided by the charity to the sponsor
 - Contingency / bonus payments
 - Charity sale of goods



Charitable Raffles / Sweepstakes

- **Most states govern charitable raffles as an exception to the prohibition on lotteries**
 - **Qualified organizations and registration requirements vary on a state-by-state basis**
- **Some states govern sweepstakes, depending on prize value**
- **Federal tax issues**
 - **May be considered UBIT – exclusion for income and gaming events staffed by volunteers and bingo – Code sections 513(a)(1) / 513(f)**
 - **File Schedule G with IRS Form 990 if more than \$15,000 raised in gaming events**
 - **Private benefit concerns**



Gift Acknowledgment

- General rule – Charitable contributions to 501(c)(3) organizations can be taken as deductions on donor's federal income taxes if (1) donative intent and (2) exceed fair market value of benefits in return
- Requirements
 - Recordkeeping – any amount
 - Donor responsibility
 - Substantiation – more than \$250
 - Donor responsibility
 - Quid Pro Quo Disclosure Statement – goods or services provided and donor contribution more than \$75
 - Charity responsibility
- For more information, see IRS Publication 1771



Complying With Donor Intent

- Basic idea is that donor intent forms a contract with the organization for the acceptance of the gift and organization must abide by the donor intent
- Common problems with donor restrictions:
 - Availability of charitable deduction if restrictions are too severe
 - Accounting issues
 - Impact of restriction on tax-exempt status
 - Potential embarrassment associated with restriction
- Take Aways
 - Gift agreements should be clear and specific
 - Leave room for flexibility
 - Consider the possibility for changed circumstances
 - Know your donors



Gift Acceptance

- Policies
 - Not required (no specific rules or laws directly on point), but definitely a best practice
 - Guide the organization on soliciting, procuring, closing, and disposing of gifted property
 - Should fit current or desired practices and provide a workable process
- If drafted:
 - Statement of mission, values, guiding principles, and organizational priorities
 - Overview of different types of gifts and criteria for acceptance and disposition
 - Procedural and administrative matters
 - Draft narrowly enough to provide comfort to the donor but still allowing flexibility to the school



Specific Types of Gifts

- Consider impact on school of different classifications of
 - Cash
 - Securities – marketable versus non-marketable
 - UBIT
 - Limitations on disposition
 - Real estate
 - Due diligence: Phase I environmental survey; appraisal
 - Tangible personal property
 - Expected use
 - Anticipated costs
 - Intellectual Property
 - Gifts of property with expected disposition within three years.

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