

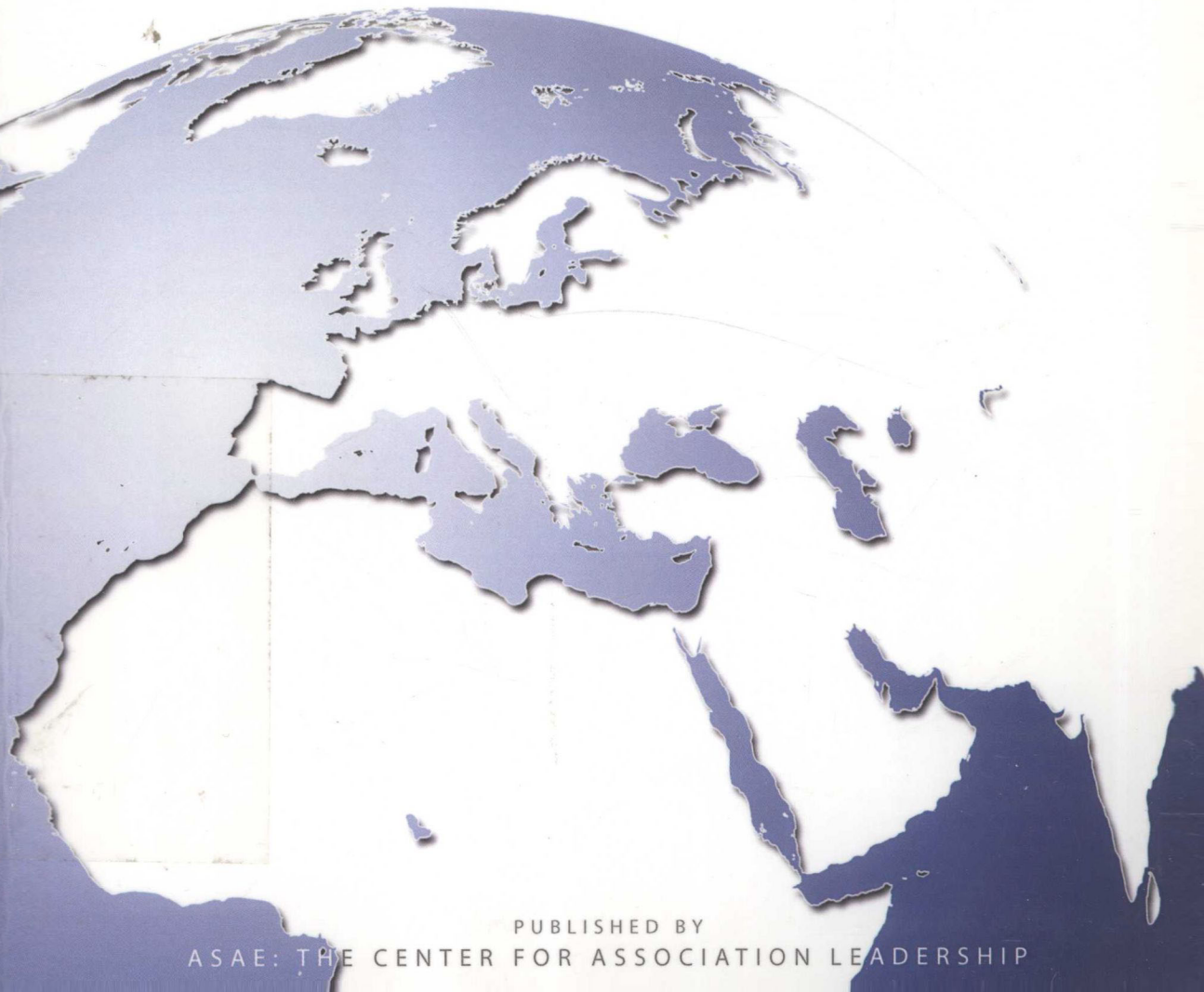
International **Legal Issues**

for

SECOND EDITION

Nonprofit Organizations

Jefferson C. Glassie



PUBLISHED BY
ASAE: THE CENTER FOR ASSOCIATION LEADERSHIP

International Legal Issues *for* Nonprofit Organizations

SECOND EDITION

Jefferson C. Glassie



 **asae**
The Center for Association Leadership

WASHINGTON, DC

The author has worked diligently to ensure that all information in this book is accurate as of the time of publication and consistent with standards of good practice in the general management community and applicable laws. As research and practice advance, however, standards may change, and the law certainly will change over time. For this reason it is recommended that readers evaluate the applicability of any legal information or recommendations in light of particular situations and changing laws and standards. This book does not represent legal advice or opinion, and readers are also advised to consult their own legal counsel for application of the law to particular situations.

ASAE: The Center for Association Leadership

1575 I Street, NW

Washington, DC 20005-1103

Phone: (202) 626-2723; (888) 950-2723 outside the metropolitan Washington, DC area

Fax: (202) 220-6439

E-mail: books@asaecenter.org

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Keith C. Skillman, CAE,

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Baron Williams, CAE,

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Foreword to the Second Edition

U.S. TRADE ASSOCIATIONS, PROFESSIONAL societies, charitable/educational/scientific organizations, social welfare groups, and other such nonprofit membership groups are increasingly operating on a worldwide stage.

American associations have long provided journals and newsletters to those beyond U.S. borders; scheduled meetings and exhibitions abroad; and conducted advocacy on trade, intellectual property, and other issues related to the furnishing of U.S. products and services in other countries. But more and more associations are broadening the programs and activities they provide regarding international issues; they are increasingly regarding non-U.S. members as regular members who may expect to receive regular association services. The world is flat and associations are going global.

Issues abound. U.S. associations have come to understand and accept, if not necessarily applaud, the comprehensive scheme of federal, state, and local tax laws, antitrust law, liability laws, lobbying and political laws, and other laws applicable to what associations routinely do in this country. While no other country in the world has such a detailed and exhaustive system for regulating non-governmental organizations, all other countries do indeed have laws; some of those laws clearly do affect the operations of U.S. associations doing business there—whether that business is education, expositions, advocacy, publications, credentialing, research, or whatever. Some knowledge of the legal ramifications of their international activities is absolutely crucial for associations that venture beyond American borders.

My longtime partner and friend Jeff Glassie has done the impossible. He has made clear and understandable the principal areas of law that affect associations' international operations. There exists a rich bibliography of literature on every aspect of U.S. laws applicable to associations. Until now there existed virtually nothing on the

international side of things. Jeff Glassie has made this area of association law one of his main professional focuses, along with other areas of association law. He often provides professional counseling and advocacy for associations and other nonprofit organizations that operate abroad.

This text is well organized, neither too elementary nor too esoteric; indeed, it is thoughtful and interesting. It is a reference book that will quickly become essential for association executives; association consultants, including attorneys; and anyone who is involved in international aspects of nonprofit membership organizations.

– Jerald A. Jacobs
July, 2010

Preface and Acknowledgments

THE SECOND EDITION OF *International Legal Issues for Nonprofit Organizations* is the result of an effort of over 25 years of practicing law applicable to international legal issues involving associations and other nonprofit organizations. The focus of the book is to assist U.S.-based organizations that are conducting activities in other countries, but there are also references to activities by non-U.S. persons or associations in the United States. The sources for the material in this book are quite disparate, from legal treatises to court decisions, treaties to statutes, government publications to websites, and from actual legal experience to merely practical conclusions. It is hoped that the person using this book as a reference will be able to learn something helpful about the particular subject he or she is interested in, whether it be for the purposes of leading an association in a new direction outside the United States or providing legal advice to association clients.

The book is by its nature a general survey of issues and considerations in a number of legal areas related to activities of associations and other nonprofit organizations. It is modeled after Jerry Jacob's books on association law, to provide non-legalese interpretations of various legal areas of interest to association executives. It is not possible to cover each topic completely, and some topics are covered in more depth than others based primarily on my own experience or knowledge of the area. This is the case in part because the range of international activities by associations is so varied and broad. This Second Edition has updated all of the topic areas with new information about legal developments since the First Edition in 1999.

It is simply not possible to cover the laws of all other countries and all relevant treaties. However, the general nature or tendencies of laws outside the United States have been indicated where reasonable or practical. Legal review with respect to the

applicable laws, regulations, and practices of other countries is essential in many cases. In fact, it is often advisable to have both U.S. and local country counsel review certain matters, because U.S. counsel is often necessary to provide the proper U.S. perspective on legal analysis by local counsel. This may seem redundant to many, but in certain situations, it is very important in order to maximize legal protection for the association.

I want to thank a lot of people. First, I would like to thank my partner, colleague, and friend, Jerry Jacobs, for his assistance, advice, and support over more than two decades of practicing law together. He is the unquestioned Dean of the association law bar and a fantastic lawyer and human being.

Many lawyers at Pillsbury Winthrop Shaw Pittman LLP were very helpful in reviewing and updating chapters in their particular areas of expertise, including Steve Becker (International Trade), Ronan McHugh (International Litigation and Arbitration), Alvin Dunn and Vernon Thompson (International Litigation), Fred Lowell and Emily Barrett (Lobbying and Political Law), Pat Jennings (Trademark, Copyright, and Internet), John Jensen and Nicole Beeler (Foreign Agents Registration Act), and Audra Heagney and Megan Spratt of our Nonprofit Organizations Practice.

In addition, valuable support was provided by summer associates Janine McKinnon and Keith Hudollin. Also, Vladimir Chechik, Eva Marie Nye, and Sue Mills of the Pillsbury Library staff were incredibly helpful. My secretary for over a decade, Cricket Baergen, provided invaluable help, assistance, and support.

Lenora Knapp of Knapp & Associates International reviewed and provided comments on the Certification and Accreditation chapter, and her friendship and assistance over the years is much appreciated.

Thanks also to Baron Williams at ASAE who coordinated this Second Edition.

My wife, Julie Littell, is an immigration expert and helped with review and revision of immigration-related chapters. I very much appreciate her love and support for all the Saturday mornings I had to work on this Second Edition, and for all my other eclectic ventures. Finally, a big thanks to my children, Jay, Anne, and Max, and my Mom, who turns 95 this year. They make all this worthwhile.

– Jefferson C. Glassie
Washington, DC
July, 2010

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I.
Introduction



Associations and Nonprofit Organizations “Go International”

TRADE AND PROFESSIONAL ASSOCIATIONS and other nonprofit organizations have become extremely important to the basic fabric of life in the United States. Nine out of 10 adult Americans belong to at least one association, and one out of four belongs to more associations, either personally or through their work; this trend is even more pronounced if churches and other religious organizations are included as nonprofit, tax-exempt organizations.

As we move into the twenty-first century, associations and nonprofit organizations are becoming significant players on the international scene in a variety of ways. The global economy and world society are influenced by incredible changes in electronic communications, information exchanges, international trade, cultural diversity, and the admittedly common goals of all mankind. Associations and nonprofit organizations are already ahead of the curve and are having significant effects on the development of our global village.

-
- There are more than 1.7 million tax-exempt organizations in the United States. They range in size from just a few members on into the millions. Their budgets can be almost nothing, or in the millions of dollars. AARP is one of the largest

membership organizations in the world, with a budget of over \$1 billion annually. Nonprofit organizations may have no paid staff or hundreds of employees.

- In the United States, the American Society of Association Executives (ASAE) has approximately 20,000 members (individual association executives who work for trade or professional associations or other nonprofit organizations). The ASAE International Section, begun in 1985, now has more than 2,000 members.
- Of the more than 150,000 associations listed in the Encyclopedia of Associations, over 6,000 have “International” in their name, while some 32,000 are listed under the “international” category.
- More and more associations are sprouting up around the world. According to a study by Johns Hopkins University on the nonprofit sector in a large segment of developed countries, a “veritable global association revolution appears to be underway, a massive upsurge of organized private, voluntary activity in literally every corner of the world.” The study found that spending by nonprofit groups exceeds \$1 trillion—if it were a separate national economy, it would at the time have been the eighth largest in the world.
- The internet has made nonprofit organization products, services, benefits, and programs accessible to practically the entire population of the world. Associations and nonprofit organizations have a tremendous opportunity to do good for the world; not just through “social responsibility,” but by exporting concepts of collaboration and community to the people of other nations.
- Legal implications for associations are on the rise, and associations with international activities must be sensitive to a new set of U.S. laws as well as the laws and regulations of other countries. Heightened security concerns tend to hinder the deployment of the full panoply of nonprofit organization benefits at a time when the world could most use the experience, expertise, and sophisticated organizational skills of membership organizations.

Volunteer leaders, officers, directors, and staff of nonprofit organizations and associations must be careful in implementing international activities. Certainly, both domestic and local country counsel are essential to the analysis of applicable laws and regulations. However, nonprofits should not shy away from such international endeavors because of legal concerns. This book is intended to help demystify some of the important legal principles that may be encountered when nonprofit organizations expand internationally, though it is no substitute for obtaining professional advice from applicable country counsel.

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Nature of International Activities

ASSOCIATIONS AND OTHER NONPROFIT organizations are engaged in an extremely wide variety of international activities. This is a factor that often makes it difficult for association executives to compare notes and exchange meaningful information, as they do on common areas of concern, such as conducting meetings or managing finances.

Some associations are deeply involved in international trade protection matters, such as antidumping or countervailing duty actions. Others are involved in export expansion activities. Some may only have a few international members. Others may have an extensive and sophisticated international network of chapters and affiliates, with members and functioning committees in many nations. The spectrum of association international activities is as wide as the purposes of the thousands of associations around the world.

- According to ASAE's database, over one-third of its members identify themselves as being international in scope and involved in numerous international activities.
- One of the first of these international activities is simply admission of non-U.S. members. The goal of most trade associations or professional societies, consistent with tax-exempt requirements under Section 501(c)(6) of the Internal Revenue Code, is promotion of the common business interests of the industry or profession. In the broad context, this should not be restricted by national boundaries, so admission of non-U.S. members should be reasonable and appropriate.

Denial of admission to non-U.S. entities also may raise antitrust or even “due process” concerns in certain situations.

- Many associations hold meetings overseas, perhaps in conjunction with conventions of similar international associations or international trade shows. According to a survey of association meeting planners, over 60 percent generally hold meetings outside the United States.
- An association may accomplish certain tasks in other countries, such as lobbying another country’s government or distributing publications through an agent, distributor, or the internet.
- Many associations also are involved in international trade matters, which may involve customs regulations and domestic import relief actions, export control restrictions, or opening of foreign markets.
- International communications by nonprofit organizations are commonplace and necessary, demanding that associations reach out in many ways to solve not just domestic but international problems, such as relief efforts for disasters including the Indian Ocean tsunami and the devastating earthquake in Haiti.
- Many association executives are developing expertise in international specialty areas. The International Section of the American Society of Association Executives undertook an initiative to document its body of knowledge on international association management issues through its *ASAE Global Opportunities*^{*} project. This online service was developed to help ASAE International Section members manage their association’s transition into the global marketplace. The project focuses on four key areas for associations considering a global presence:
 - 1) The first area addresses the question of whether or not an association should go global. It features a self-assessment tool that poses strategic questions about an association’s international potential. It also includes an overview of international organization structures and definitions.
 - 2) The second area provides useful background information on various international issues involved in successful global association management, including complex financial, legal, marketing, cross-cultural communications, international meetings, technology, and staffing issues.
 - 3) The third area explores program strategy development for associations going global. It provides an overview of successful strategies to help associations develop programs around the unique challenges and opportunities of their trade, profession, or cause.

^{*} The ASAE Global Opportunities project’s online service of information and resources was undergoing a revision when this book went to press in July 2010. Revisions are expected to be completed in winter 2010–2011 and made available for ASAE members to access online.

- 4) The fourth section provides access to a wide variety of useful resources and information, including publications, peer networking contacts, case studies and models, a glossary, and links to other sources.

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