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GATS and public library services

Abstract: Public library service is based on the values of providing universal access to information by promoting literacy, supporting authors and scholars in their research, preserving cultural heritage, and providing other publicly supported services. The mandate of the public library is grounded in broad societal goals that justify a model of service delivery that relies on public funding and that operates outside of the constraints of private markets. However, there is a growing tension between the rationale for public service delivery and the principles of trade liberalization that underlie global trade institutions such as the World Trade Organization. Recent controversies surrounding WTO meetings and summits brought to the public's attention the concerns that the institutions of globalization could empower transnational corporations at the expense of the regulatory power of sovereign nations. While much attention has focused on the effects of globalization on labour, the environment, and human rights, there are also serious implications for information policy.

An initial study undertaken by various Canadian library and educational associations (Shrybman, 2001) underscored the inherent tensions between the values of public library services and the logic of international trade regimes by emphasizing how the General Agreement on Trade in Services (GATS) seeks to constrain government policy and regulatory options in favor of solutions rooted in the free market. In general, GATS applies to measures (laws, regulations, rules) by any level of government. GATS seeks to constrain government action by establishing a list of measures that may not be maintained or established by government that can regulate or affect the delivery of services by the private sector. The Shrybman report identified various issues and raised questions for further study including: whether public sector libraries are exempt under the GATS; if not exempt, the extent to which the GATS rules apply to public library services; if public sector library services are within the GATS framework, then to what extent public funding violates GATS requirements; and how the imposition of fees, the provision of services on a cost recovery basis, or the creation of 'public-private partnerships' impact on these outcomes. This paper explores how the WTO General Agreement on Trade in Services (GATS) will affect government policies, programs and funding arrangements concerning public sector libraries. The objective is to begin to sort out the various challenges posed by GATS, to situate these issues within the context of modern public library services, and to provide a roadmap for librarians to better grapple with these issues. The overall framework of the WTO and GATS, the specific GATS disciplines, and the scope and limitations of the governmental authority exemption are covered first. Then attention turns to the changing nature of public library services, identifying particular examples of services and programs that might be vulnerable to a GATS challenge. Finally suggestions are provided for avoiding or ameliorating the potential risks to public libraries under GATS.

Résumé: Les services des bibliothèques publiques sont basés sur des valeurs faisant la promotion de l'accès universel à l'information en encourageant l'alphabetisation, en soutenant les auteurs et les chercheurs dans leurs activités de recherche, en protégeant l'héritage culturel, et en fournissant d'autres services d'intérêts publics. Le mandat des bibliothèques publiques trouve sa source dans des objectifs sociétaux larges qui légitiment un modèle de distribution des services qui dépend du financement public et qui opère hors des contraintes du marché privé. Cependant, il existe une tension grandissante entre la justification pour la distribution des services publics et le principe de libéralisation du commerce qui

servent de base aux institutions de commerce global comme l'Organisation mondiale du commerce (OMC). De récentes controverses entourant les meetings et les sommets de l'OMC ont amené le public à se questionner sur le fait que l'institutionnalisation de la globalisation pourrait favoriser la coopération internationale au détriment de l'autorité réglementaire des nations souveraines.

Une étude de plusieurs bibliothèques canadiennes et d'associations en éducation (Shrybman, 2001) a souligné les tensions inhérentes entre les valeurs des services des bibliothèques publiques et la logique des régimes de commerce international en mettant l'accent sur comment l'Accord général sur le commerce des services (AGCS) vise à astreindre les politiques gouvernementales et les options de réglementation en faveur de solutions ancrées dans le monde du marché libre. En général, l'AGCS s'applique aux mesures (lois, réglementations, règles) à tous les niveaux de gouvernement. L'AGCS vise à astreindre les actions gouvernementales en établissant une liste de mesures qui ne peuvent être maintenues ou établies par le gouvernement et qui peuvent régir ou affecter la distribution des services par le secteur privé. Le rapport Shrybman identifie divers problèmes et soulève des questions qui méritent une attention supplémentaire, incluant : l'exemption ou la non-exemption des bibliothèques du secteur public sous l'AGCS; si non exemptées, quelle est l'étendue de l'application des règles de l'AGCS pour les services des bibliothèques publiques; si les services des bibliothèques du secteur public cadrent à l'intérieur de l'AGCS, alors jusqu'à quel point le financement public enfreint-il les exigences de l'AGCS; et quel sera l'impact de l'imposition de frais, de l'offre d'un service sur une base de recouvrement des coûts, ou de la création de « partenariats public-privé » sur ces résultats. Cet article explore comment l'AGCS de l'OMC affectera les politiques gouvernementales, les programmes et les accords de subvention des bibliothèques du secteur public. L'objectif premier est de commencer à classer les différents défis posés par l'AGCS, de les situer dans le contexte des services modernes des bibliothèques publiques, et d'offrir un guide pour les bibliothécaires pour mieux se débrouiller avec ces questions. Le cadre général de l'OMC et de l'AGCS, les disciplines spécifiques de l'AGCS, et la portée et les limitations du pouvoir gouvernemental sont couverts en premier. L'attention se tourne sur la nature en évolution des services des bibliothèques publiques, en identifiant des exemples particuliers de services et de programmes qui sont peut-être vulnérables aux défis posés par l'AGCS. Finalement des suggestions seront apportées pour éviter ou amenuiser le risque potentiel posé par l'AGCS aux bibliothèques publiques.

INTRODUCTION

Public library service is based on the values of providing universal access to information by promoting literacy, supporting authors and scholars in their research, preserving cultural heritage, and providing other publicly supported services. The mandate of the public library is grounded in broad societal goals that justify a model of service delivery that relies on public funding and that operates outside of the constraints of private markets.

However, there is a growing tension between the rationale for public service delivery and the principles of trade liberalization that underlie global trade institutions such as the World Trade Organization (WTO) and the trading regimes it administers. Recent controversies surrounding WTO meetings and summits brought to the public's attention the concerns that the institutions of globalization could empower transnational corporations at the expense of the regulatory and subsidization powers of sovereign nations. While much attention has focused on the affects of globalization on labour, the environment, and human rights, there are also serious implications for information policy.

As stated by IFLA (2001), there is “growing evidence that WTO decisions, directly or indirectly, may adversely affect the operations and future development of library services, especially in not-for-profit institutions in the near future.” This paper explores how the WTO General Agreement on Trade in Services (GATS) will impact government policies, programs and funding arrangements concerning public sector libraries. At the outset, several difficulties in making confident predictions should be noted. First, it is difficult to make accurate predictions about the impact of a services agreement that has no precedent and few analogues. The GATS agenda is ongoing and not always transparent. At the root, there is an underlying tension in reconciling the trade liberalization objectives of the GATS with the public policies needed to ensure an ongoing and vital role for public sector libraries. Second, while on its face, GATS purports to protect public services by providing an exception for services offered under the auspices of a governmental authority, this exemption is extremely limited and may not be effective in the case of public library services. The GATS is still in an early stage of development, and there is a lack of solid authority how the exception will fare in the face of a challenge. Third, there is an ongoing misunderstanding about the actual scope and effect of the GATS. This uncertainty is understandable given the rather technical and often uncertain meaning of various GATS provisions. The objective of this paper is to begin to sort out the various challenges posed by GATS, to situate these issues within the context of modern public library services, and to provide a roadmap for librarians to better grapple with these issues. The underlying question may better be restated in three parts.

Section 1 will review first the overall framework of the WTO and GATS, the specific GATS disciplines, and the scope and limitations of the governmental authority exemption. In Section 2, attention will turn to the changing nature of public library services, identifying particular examples of services and programs that might be vulnerable to a GATS challenge. Section 3 will ask what can be done by the library community to avoid or ameliorate their potential risks under GATS.

1. THE WTO AND GATS FRAMEWORK

The basic framework of international trade agreements is embodied in the General Agreement on Tariffs and Trade (GATT), which was established in 1947. Successive rounds of trade negotiations have amended the framework prior to the conclusion of the Uruguay Round, starting in 1986 and ending with the 1994 WTO Agreement. While the original GATT framework only applied to trade in goods, the 1994 WTO Agreement expanded the scope of the trade regime to include annexes on trade in services (GATS) as well as for intellectual property rights (TRIPS).¹

The advent of the WTO Agreements has elevated the importance of international trade agreements into areas that were previously matters of domestic policy (Shrybman, 2001; Sinclair, 2000). The WTO framework includes general provisions on dispute settlement and enforcement. GATT, GATS and TRIPS (and other annexed agreements) are subject to these same general provisions.

Article I of the GATS provides, “This Agreement applies to measures by Members affecting trade in services.” So the threshold questions are first what is meant by a “measure,” and second, what is meant by “trade in services?” The term “measure” is given an expansive definition by

GATS Article XXVIII, which states, “measure” means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form.” Article I (3) provides that GATS covers all levels of government, including local municipalities as well as “non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities.” This scope includes Public Library Boards established pursuant to the provincial legislation.

There is general exception to the comprehensive inclusiveness of the GATS for services supplied in the exercise of government authority. Article 1.3(c) defines such a service with qualification as, “a service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.” In other words, if a service is either supplied on a commercial basis or supplied in competition with one or more service suppliers then the governmental services exemption is not applicable. Accordingly, it is an extreme oversimplification to say that library services aren’t covered by GATS because they’re protected by the governmental services exemption. As a practical matter, there are very few services that are neither supplied on a commercial basis, nor in competition with other suppliers. Even where providers operate pursuant to statutory authority that establish public sector monopolies there is often a commingling of commercial and competitive service delivery. To heighten the potential conflict, the private sector is now expanding into areas previously occupied solely by public service providers.

Like the broad application of the term “measures, the definition of “trade in services” is also very expansive. Article 1(2) identifies 4 different modes of supplying services that qualify as “trade:” (a) from the territory of one Member into the territory of any other Member [cross – border supply]; (b) in the territory of one Member to the service consumer of any other Member [to consumers abroad]; (c) by a service supplier of one Member, through commercial presence in the territory of any other Member [commercial presence]; (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member [presence of natural persons].

Note that only (a) and (b) deal with international trade in its strict sense. Sections (c) and (d) are very expansive. Article XIX identifies the long-range goal of GATS as a sweeping set of agreements that will cover all services under which members are obligated to “enter into successive rounds of negotiations. . . with a view to achieving a progressively higher level of liberalization.”

While services are not explicitly defined in the agreement (Shrybman, 2001), the WTO states that they range “from architecture to value-added telecommunications and beyond” and are “the largest and most dynamic component of both developed and developing country economies. Important in their own right, they also serve as crucial inputs into the production of most goods.” (World Trade Organization, 2001b). Fiona Hunt (2001) notes that covered services include anything that is not a good or a commodity.

It is important to distinguish between two different types of obligations under GATS, top-down and bottom-up. Certain GATS provisions apply across the board. These top-down, or “horizontal” rules (such as the Most Favored Nations provision¹) apply to all services unless an

exemption applies. Other GATS provisions only apply to services that have been specifically listed on a country's schedule of commitments that show the extent to which GATS obligations will be observed with respect to that particular service sector. These bottom-up provisions, such as the National Treatment² and Market Access rules³ only apply to services that have been specifically listed in a country's schedule. Since these bottom-up obligations are the most onerous, and the most likely to cause problems for public sector libraries, it is important to consider the exact text of a country's commitment schedule. Canada's schedule of commitments is found on the Strategis website at: <http://strategis.ic.gc.ca/epic/internet/instp-pcs.nsf/vwGeneratedInterE/sk00079e.html>.

The complexity of this listing process has generated considerable uncertainty about the extent of the commitments made by a country concerning any of the service sectors. So the extent to which government prerogatives may be subject to GATS constraints depends upon what a government has listed in its GATS schedules and whether the listing contain any express exceptions.

GATS also recognizes that certain subsidies may have distortive effects on trade (Article XV). Because subsidies are "measures" as defined by the GATS, they must be treated in accordance with National Treatment in sectors where specific commitments have been made. Any intention to restrict the availability of subsidies to national, as opposed to foreign service suppliers, must be specifically indicated in a country's schedule of commitments. So if a country lists a commitment in its schedule, and does not reserve the right to subsidize nationals within that sector, the subsidy can be attacked.

An initial study undertaken by various Canadian library and educational associations (Shrybman, 2001) underscored the inherent tensions between the values of public library services and the logic of international trade regimes by emphasizing how the GATS seeks to constrain government policy and regulatory options in favour of the free market. Since GATS applies to measures by any level of government, it constrains government action by establishing a list of measures that regulate or affect the delivery of services by the private sector. Such measures may not be maintained or established by a government without running the risk of a GATS challenge. The Shrybman report identified various issues and raised questions for further study including:

1. Are public sector libraries exempt under the GATS?
2. If not, to what extent do the GATS rules apply to public library services?
3. If public sector library services are within the GATS framework, then to what extent does public funding violate GATS requirements?
4. How does the imposition of fees, the provision of services on a cost recovery basis, or the creation of "public- private partnerships" impact these outcomes?

Public sector libraries are either established by law, or are established by the institutions of which they are a part. Most municipal library revenue comes from local property taxes as approved by the City Council. Academic libraries are funded by their parent institution, which includes federal and provincial sources. Libraries also receive other governmental subsidies, such as the postal rate discounts⁴ for materials and other grants. They also benefit from the tax-free status that enables them to receive donations.

In response to government funding cuts, some public sector libraries have looked to the private sector for funding, resulting in a variety of so-called “public-private partnerships,” and some have instituted various “fee-based” services.

In recent years, libraries have provided Internet access and online services to their communities. The growing convergence of telecommunications and library services raises a thorny GATS problem. While Canada’s existing schedule of commitments does not include library services it does include telecommunications and other computer related services. By providing new services, libraries are more likely to be considered to be providing services in competition with private service providers. There is a growing overlap in subject matter offered by both public library services and the private sector. And fee based services, or private partnerships risk being characterized as a “service provided on a commercial basis.”

In preparing its list of service sectors that will be covered by the bottom-up obligations, most WTO members (including Canada) use the United Nations Provisional Central Product Classification (UN CPC) categories and codes. There are several classifications in which library services might fall, the most obvious is: 10.C. LIBRARIES, ARCHIVES, MUSEUMS AND OTHER CULTURAL SERVICES. To date, Canada has not made a commitment to this broad sector, but the United States and Japan (as well as Bolivia, Central African Republic, Ecuador, Gambia, Guinea-Bissau, Hong Kong, Iceland, New Caledonia, Sierra Leone, Singapore, and Venezuela) have.

Clearly, an initial goal of any national library association must be to convince their respective governments from making any commitments to this sector. But there are other classifications in which some library services might also fall. These classifications include:

- EDUCATIONAL SERVICES
- TELECOMMUNICATION SERVICES
- COMPUTER AND RELATED SERVICES
- RESEARCH AND DEVELOPMENT (R&D) SERVICES
- OTHER BUSINESS SERVICES

Therefore, even if a particular country does not make an explicit 10.C commitment, listings in other areas could still subject particular library services to a GATS challenge. For example, while Canada has not made a 10.C commitment, it has done so in the areas of telecommunications, computer technology and R&D. It becomes necessary to carefully review a country’s schedule of commitments, reviewing each sector to determine whether there is any potential coverage of library services. The Canadian Library Association (CLA) has undertaken this analysis and has determined that despite the absence of a general commitment to library services, other commitments do, in fact, endanger particular library services. In an October 22, 2002 letter to the Canadian Department of Foreign and International Trade (DFAIT), CLA points to five programs that may pose GATS problems (see <http://www.cla.ca/issues/robertson.htm>). These five areas are outlined in the following section. Before turning to these individual service areas, the various ways for a library’s services to fall within the scope of GATS, and become susceptible to a GATS challenge, are summarized.

First, and foremost, the loss of the governmental services exception through either (1) commercial provision, or (2) competition with a private provider, will subject libraries to all of the horizontal (top-down) commitments as well as to all of bottom-up commitments listed on a country's GATS schedule unless a specific reservation has been made.

Second, even if a country does not make a commitment in the 10C sector, the bottom-up commitments may apply to library services falling within one of the other service sector classifications. Third, even in sectors where no commitment is made, the top-down horizontal disciplines will apply unless they are expressly excluded in the schedule. Fourth, if a commitment is made along with an express reservation, a GATS panel reviewing a complaint will likely construe the reservation narrowly.

2. CONSIDERATION OF VARIOUS SERVICES NOW BEING UNDERTAKEN BY PUBLIC LIBRARIES

This section summarizes the arguments outlined by the CLA letter, each of which raises a potential GATS challenge and demonstrates the broad sweep of GATS.

2.1 Digital Publication of Scholarly Research

In recent years, there has been a growing movement towards establishing scholar-controlled or university-controlled open archives of digital publications, through which free and open access to new research will be provided, independent of the established publication channels. Examples include the Public Library of Science (www.publiclibraryofscience.org/) and the recent Budapest Open Access Initiative (BOAI) (www.soros.org/openaccess/). These initiatives are designed to ensure sustainable public access to new research and to undermine the near-monopolies developed by some notable publishers. As the movement grows the costs of creating, storing and organizing these archives will increase and, may then begin to threaten the profitability of commercial publishing. In this case, academic libraries and universities participating and supporting these efforts may become vulnerable to a GATS challenge (Canadian Library Association, 2002a).

2.2 Video Services

[T]here has been an increasing overlap between library holdings and collections offered by commercial rental outlets. Given the legislated free provision of tax funded video (and now even DVD) collections in direct competition with commercial entities, this service appears to CLA to be a candidate for a GATS challenge (Canadian Library Association, 2002a)

2.3 Provision of Internet Access

While there is no direct government measure that legislates free public access to the Internet, direct and indirect government involvement in infrastructure development (to facilitate broad access) has taken place. But as public use of the Internet increases, so will commercial Internet services commercial providers see opportunities for the expansion of fee-based services. The free

access provided by public libraries is likely to be seen as subsidized competition giving rise to a potential GATS challenge (Canadian Library Association, 2002a).

2.4 Document Delivery Services

These services are justified on the grounds that they provide a natural extension of making materials and information resources available to the public or a specific community. The fees charged for these services are typically based on the recovery of direct costs, but not recovery of the full indirect costs, which includes a proportion of the costs of acquiring, processing and maintaining collections, general administrative costs, and the physical infrastructure. To a greater or lesser degree, these services are subsidized, and compete with commercial ventures and are therefore potentially exposed to a challenge under the provisions of GATS. (Canadian Library Association, 2002a)

2.5 Virtual Reference and Information Services (VR)

Virtual reference (VR) is seen as an extension of traditional reference service and there have also been specific federal and provincial government grants awarded to virtual reference projects in academic libraries. At the same time, the development of the Web and use of the Internet has led to increased commercial presence in the sphere of information mediation and research services. Given this growing overlap between the private and public sectors in this sphere, a challenge to publicly funded institutions that offer VR services is possible under GATS (Canadian Library Association, 2002a). To this we would add that fee-based question-answering services are sprouting like dandelions. The Google search engine provides “Google Answers” for fees ranging from \$2.50 to \$200. Questions are answered by “researchers” some of whom are free-lance librarians and they receive 75% of the fee charged to the user (West, 2002). Another example is provided by *Library Systems and Services* (LSSI), a private company whose Product Development Manager, states, “despite their limitations, commercial Web-based customer service applications are still the best resource available to libraries that want to venture into virtual reference on the Web” (Coffman, 2001).

2.6 What other library services overlap with offerings from the private sector?

It is important to extend the discussion beyond these five service areas that were treated by the CLA in their submission to DFAIT. Indeed, the identification of additional services that may overlap with offerings from the private sector poses an ongoing area of research that LIS scholars and practitioners are in a strong position to undertake. The question is one of a moving target. In addition to libraries moving into new service areas to meet the needs of their communities and patrons, the private sector is also expanding into new services as it identifies new opportunities for markets in the expanding information sector. The area of overlap, and hence the potential loss of the governmental exemption on the grounds of competition, continues to grow. Some additional areas of concern are literacy programs, homework centers, senior programs, and tax return preparation assistance programs.

The growing importance of literacy programs was emphasized in a recent brief submitted by the Canadian Library Association (2002b) to the House of Commons Finance Committee on the

2002 Budget. The brief outlined the role of libraries in literacy and other skills programs as well as the strong relationship between local libraries and Human Resources Development Canada. Many libraries are also embarking on new programs to provide enhanced assistance to schoolchildren doing their homework. For example, the Los Angeles Public Library has established an innovative program of providing enhanced resources, computer technology and homework helpers to support the educational needs of students in targeted communities. The program is supported by a combination of grants and other community-based resources and thirty-one centers have been established in the Los Angeles area to date.⁵ Mediavilla (2002, 2) predicts that while only one in seven public libraries currently offers formal after-school homework assistance, the need for homework-related library services will increase in the coming years.

But at the same time that public libraries are expanding their services to meet this need, so to is the private sector. Private companies like Kumon,⁶ Sylvan Learning Centers,⁷ and Kaplan's K-12 Learning Services⁸ are aggressively expanding their commercial presence and are openly soliciting potential franchisees:

As parents take a greater interest in their children's academic development, supplemental education will be one of the fastest growing industries in the years to come. Kumon plans to meet this demand by increasing the number of franchised Centers in North America. We are seeking enthusiastic, highly motivated and achievement-oriented candidates who are committed to helping children achieve their full academic potential. Kumon offers a unique franchise opportunity that is affordable and community-oriented. If you like working with children, then Kumon might be the right franchise opportunity for you.⁹

Other areas of concern include expanding services for older adults, an area targeted for future service growth by the Canadian Library Association,¹⁰ as well as Income Tax assistance programs.¹¹

2.7 Assessing the Real Risks

Writing in the UK, Ruth Rikowski (2001/2002) argues that the GATS "will engender the commercialisation, commodification and privatisation of information and library services globally." She argues that "for each WTO member nation and for each public service, there will be national forces of the GATS – legislation and mechanisms that facilitate the opening of public services to corporate capital." According to Rikowski, proponents of GATS in the UK argue that there will be no "forced privatisation" of public libraries and that GATS critics are "scaremongering". We have seen similar criticism from the WTO itself (WTO, 2001), from the press (Schiller, 1997; Hemingway 2002) and even from other library associations (Weingarten, Nisbet, & Sheketoff, 2001).

The question of GATS' scope and effects has been contested and is subject to ongoing controversy. The WTO itself has gone to great lengths to attempt to rebut many of the claims made by critics. For example, a recent WTO Report, entitled, *GATS - Fact and Fiction* characterizes many criticisms of GATS as implausible scare stories:

Recently, however, the negotiations and the GATS itself have become the subject of ill-informed and hostile criticism. Scare stories are invented and unquestioningly repeated, however implausible. It is claimed for example that the right to maintain public services and the power to enforce health and safety standards are under threat, though both are explicitly safeguarded under the GATS. How have serious people come to believe what is, on the face of it, out of the question? Why should any Government, let alone over 140 Governments, agree to allow themselves to be forced, or force each other, to surrender or compromise powers which are important to them, and to all of us? (WTO, 2001, 2).

Later in the report, the WTO stresses that public services are protected by the government services exclusion:

The Agreement excludes from its coverage all services provided in the exercise of governmental authority, which are defined in Article I:3(c) as those supplied neither on a commercial basis nor in competition with other suppliers. Since they do not fall under the Agreement, these services are not covered by the negotiations and commitments on market access and national treatment do not apply to them. This is a principle to which all Member Governments attach great importance and which none has sought to reopen. So far, Members have not expressed the need to adopt an authoritative interpretation of the criteria in Article

I:3(c). They could obviously do so whenever they deem it desirable or appropriate. Also, the issue could arise if a specific measure, which had been challenged in dispute settlement, were to be defended on the ground that it applied only to services supplied in the exercise of governmental authority. There is no requirement to notify such services (2001, 10).

But this broad justification fails to account for the fragile nature of the governmental authority exemption. Rikowski (2001/2002) argues that “in many ways the case against the GATS is being understated” and that the GATS is “founded on the expansion of capital accumulation; not on human information, education or recreation needs for social justice and sustainable development.”

3. AMELIORATING THE GATS RISK

How, then can libraries and their associations ameliorate this very real risk? First, library documentation (missions, goals, objectives, and policy documents) should reflect the strong holistic relationship between newer, non-traditional services (such as database services, internet training, educational programs) with the more traditional services and avoid characterizing such services as non-core (hence severable) as distinct from core-services

Second, libraries should avoid providing services on what may be construed as a commercial basis (fee-based services are particularly problematic). Any fee-based services should be priced only on a cost-recovery basis and the operation should be fully integrated into the overall library operation. Any outreach materials should stress the fact that the service is part of the library operation, is offered as a service to patrons, and seeks to recover only enough revenue to support the direct costs of its operation.

Third, libraries should avoid “contracting-out” to commercial service providers. Regardless of the state of the governmental services exemption, such an arrangement seems to clearly call for a commercial transaction with a non-governmental service provider. Perhaps the library has attempted to give priority to local service providers or to persons from certain under-represented groups. All of these arrangements seem to invite scrutiny from foreign service providers who may seek to obtain the same preferences and opportunities.

While contracting out has traditionally been thought of as a function-specific and limited issue, recent examples from the United States show just how far the practice can lead. For example, Riverside, California has contracted out its entire library operation. The Privatization Center applauds the Riverside example as a “best-practice”:

In 1997 Riverside County, California, became the first county in the nation to privatize its library operations. Maryland-based Library Systems and Services Inc. (LSSI) is paid \$5.3 million annually for 1-year renewable contract to run the county's 25-branch, 85 year old library system. LSSI is a subsidiary of the publisher Follett Corporation and offers cataloging, purchasing, automation, and other services the libraries nationwide. . . Riverside County's library system was previously run by the city of Riverside, but due to budget cutbacks, the city voted to drop the contract. The county decided to offer a new contract in a competition open to both public and private bidders. LSSI was the only private-sector bidder, competing against the Riverside County Office of Education and the San Bernardino County Library District.¹²

Writing for *American Enterprise*, Mark Hemingway (2002) praises the Riverside contract:

A fresh blow in the battle for privatization of inefficient public institutions has recently been struck by an obscure little private company based in Germantown, Maryland. In five short years, the successes of Library Systems and Services Incorporated (LSSI) have turned the sleepy world of public libraries on its head.¹³

Other press reports have also celebrated the success of the arrangement. Writing for the Orange County Register, Erin Schiller (1997) takes critics to task, saying: “Many people associate privatization with corporate greed. They think that in the absence of regulation, prices will skyrocket as businesses try to make a buck. This perception is just plain wrong.”

Fourth, libraries should thoroughly review all existing “public-private partnerships” for compromising relationships that could trigger a complaint for discriminatory treatment. The logic here is similar to the problem of contracting-out. Foreign service providers may demand similar treatment, creating yet further risks of a GATS challenge.

One of many examples of “public-private partnerships” in Canada is the new London Public Library central branch, which is replete with corporate “donations.” Entire rooms or sections or services are “named” for corporations. To justify these measures, the Library Board would surely argue that without such donations the library could not have been built. Indeed there are historic echoes here, with Carnegie library buildings sprinkled around southern Ontario. However, the fact remains that corporate donations are not without benefit to the corporations involved. To the extent that potential private sector competitors of libraries are not recipients of such corporate largesse, the public libraries are susceptible to GATS challenges.

Fifth, librarians should give more thought to why the practices, philosophies, and discourses of the private sector may be inappropriate for public library services. Avoid usages such as: “knowledge management centers” instead of libraries or “customers” instead of patrons.¹⁴ To avoid the trap of being characterized as providing commercial services or acting in competition with private service providers, libraries should be careful to distance themselves from the private sector. The problem of the growing commercialization of public library services is not new and its treatment goes well beyond the problem of GATS. John Buschman and Michael Carbone (1991) wrote that social institutions and those who work in them cannot be studied apart from their social, political, and economic contexts. In noting that powerful forces within the field are moving librarianship toward business models of operation and away from more traditional service orientations, they stress that librarianship is not immune to the effects of economic policies and ideologies (1991, 36).

Finally, and perhaps most important, librarians should, through their associations, engage in a program of effective advocacy geared towards educating the public about the dangers of GATS. In his presentation to the IFLA Conference in Jerusalem, Canadian trade lawyer Steven Shrybman (2000) pointed to the information dissemination role that could be played by the library community:

It seems to me that there is particular role for librarians to play as well, and not just as the defenders of public libraries, although without your determined intervention I fear the era of such public institutions, which emerged only a little more than a century ago, will not survive very much longer. But there is another and equally important service you can provide, which would be to provide effective public access to the complex, obscure and often secretive reports, submissions, studies, and negotiating texts which comprise the record of contemporary trade negotiations and dispute resolution. There is great need to find ways to reveal this vital information, which far too often has been shrouded from public view (Shrybman (2000)).

It is essential for private associations representing the various service sectors, including the library associations, to appreciate the highly contested nature of the issue and avoid sinking into a state of over-complacency.

ENDNOTES

¹ The texts of the various WTO agreements, including GATS are available through the WTO gateway at http://www.wto.org/english/docs_e/legal_e/legal_e.htm .

² The Most Favored Nations obligation (Article II) requires that each party “shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and service providers of any other country.”

³ National Treatment refers to the obligation to treat foreign service suppliers and domestic service suppliers in the same manner. (Article XVII)

⁴ The Market Access rules (Article XVI) require that each party “shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule.”

⁵ Since 1939, the Canada Post has provided a discount to libraries mailing print materials. CLA estimates that while the annual cost of the discount to Canada Post is approximately \$1.3 to \$2 million, the loss of the discount to libraries would be incalculable. After initial uncertainty over whether the discount would be discontinued, a three year agreement was reached in February 2002 providing for an increase of 6.8% in 2002, 0% in 2003, and 6.3% in 2004, an overall increase of 13.1%. <http://www.cla.ca/issues/lbr.htm> . The spectre of a discrimination-based subsidy challenge under GATS can only act as a chill on future negotiations to extend the discount on favourable terms.

⁶ <http://www.colapublib.org/children/parents/hmwork.html> . A similar program in San Jose, California offers individual tutoring and assistance with homework for K-12 students on a drop-in basis. <http://www.sjpl.lib.ca.us/Kids/hwcenter.htm> . In Seattle, Homework Centers offer students help in completing homework assignments and provide access to computer learning labs. <http://www.spl.org/capplan/libforall/schools.html>

⁷ Kumon’s service is described at <http://www.kumon.com> “Located in nearly every corner of the world and with an enrollment of more than 3 million children, Kumon Math and Reading Centers offer the premier, after-school supplemental education program. From pre-school to high school, the Kumon Method empowers students to reach their full potential by helping them to master, step by step, the skills and knowledge they need for success in higher level math and reading comprehension.”

⁸ See <http://www.educate.com/homepage.html>

⁹ See <http://www.kaplank12.com/>

¹⁰ <http://www.kumon.com/franchise/franchise.asp>

¹¹ See *Canadian Guidelines on Library and Information Services for Older Adults*, <http://www.cla.ca/resources/olderadults.htm>, which provides an aggressive blueprint for expanding library services to seniors.

¹² The Volunteer Income Tax Assistance (VITA) program offers free income tax return preparation assistance for seniors, persons with disabilities, low-income persons and others at thousands of locations throughout the United States. Many of these programs are housed within public libraries during tax season. The overlap with commercial services such as H&R Block is evident.

¹³ <http://www.privatization.org/Collection/SpecificServiceAreas/Libraries-local.html> .

Privatization.org is a project of the Reason Public Policy Initiative's (RPPI) "Privatization Center." The Center "provides practical research and analysis, how-to guides, case studies, and reports designed to inform elected officials on how to streamline government . . . specializes in government services--such as health services, social services, and public safety--as well as infrastructure, such as airports, electric power, highways, transit, and water/wastewater facilities. . . [and] explores how different institutional arrangements can create incentives for efficiency, improve customer service, enhance accountability, and save taxpayer dollars."

¹⁴ *American Enterprise* is published by the American Enterprise Institute, a conservative think-tank. Hemingway's account, reproduced on the LSSI website, is particularly scornful of LSSI's critics: "Still, this revolution hasn't been embraced by everyone. 'The naysayers out there like to use the term 'privatization' in a way that incites fear and concern,' says [an LSSI marketing officer]. He notes that LSSI is actually not privatizing anything. 'We don't go in and buy library buildings. We don't own any books or materials. Those are all kept in the public trust. They continue to be owned by the city or whomever was in charge of the library. And we don't set policy. The decisions in the operation of the library are still done by the governing body of that library.' LSSI simply provides efficient, no-nonsense, business-like management. For vested interests like unions, however, the company's ability efficiently to meet terms set by local officials offers no solace." Hemingway wrote a similar article for the Maryland Public Policy Institute's newsletter, arguing that the Enoch Pratt Libraries should also be handed over to private management. http://www.mdpolicy.org/publications/policy_update/Update0003.pdf

¹⁵ To illustrate just how ingrained the discourse of "customer service" has become in public libraries, one only need visit the new American Library Association website, complete with an "Online Customer Service Center" <<https://cs.ala.org/ScriptContent/Index.cfm>>.

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