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# Public relations or “grassroots lobbying”? How lobbying laws are re-defining PR practice

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## ABSTRACT

This research examines the legal implications of having an expansive definition of public relations practice. Specific attention is given to the 2016 New York lobbying regulations that mandated traditional public relations practitioners register as lobbyists. The examination of this law and the lawsuit that followed highlights how the public relations practitioners may inadvertently be subject to restrictive laws because of modern definitions of PR practice.

## 1. Introduction

Public relations practice has always sought to establish and preserve professional legitimacy. Part of the importance of PR's desire for a unified professional identity is it provides norms for ethical practice and a seat at the proverbial management table. In the late twentieth century these issues led to debates over what PR actually is, and whether a communications practice should and could be officially licensed to ensure quality control. The debate over PR regulation has waned in the twenty-first century as public relations practice has embraced a “big tent” identity that includes a variety of communication practices and professions. However, as the definition of public relations has expanded to reflect the new communication reality the issue of defining PR practice has led to unintended legal issues.

The definition of PR practice has become more expansive with the growth of media and convergence of communication. As PR subsumes the practice of advertising, marketing, and human resources while growing into a fully formed management function, it finds itself being subject to different professional norms and regulations. Nowhere is this more evident than the inclusion of public relations practice (and potentially the profession) in lobbying laws. In 2016 the New York Joint Commission on Public Ethics (JCOPE) created a broad lobbying regulation that required PR practitioners to register as lobbyists if they contacted the media to influence public opinion. This regulation prompted a quick response from industry, which included both criticism of the regulation and a federal lawsuit.

This response to New York's attempt to license PR raises important questions about the field and its communication and organizational function. Additionally the involuntary licensing of public relations raises old issues of what is public relations practice and how can it be regulated for quality. This paper examines these issues of PR's legal identity, and how attempts to license public relations practice, particularly that of New York in 2016, raise important definitional issues about the field. From this analysis, this paper concludes that definitional issues in public relations have legal implications that PR practitioners may have to grapple with as the profession evolves into an increasingly manifold communication practice.

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## 2. Literature review

### 2.1. Definition of public relations practice

The regulation of public relations ultimately hinges on the definition of PR, which in the past century has grown to include several communication functions and practices. Accrediting organizations, academics, and practitioners have debated this issue for decades, and the result has been a shifting definition of PR based on the realities of practice. However, the main theme in defining PR is the role of ethical guidelines and practices. Ivy Lee, an early PR pioneer, wrote the Declaration of Principles for public relations practice in 1906, which set forth ethical guidelines for PR practice that focused on honest information and the important liaison position held between organizations and their publics (Hiebert, 2017). Early public relations definitions crafted by Edward Bernays (1923, 1928, 1952) attempted to demarcate public relations practice from the unethical practice of pure publicity. The effort was designed to emphasize the professional nature of the field that used research, rather than intuition, in making PR decisions.

As public relations developed in the twentieth century, the definition of the field embraced the idea of professionalism. Bernays' (1952) invention of the “public relations counsel” was intended to be used as a professional moniker for PR practice (p. 83). For Bernays (1952) professional practice of PR was meant to embrace social scientific ideas instead of more technical skills. His approach to the definition of PR lent itself to the idea that PR practice was a standalone profession that required ethical guidelines and enforcement.

Related to this early professional identity of PR was a structural argument about PR's place within an organization. In the 1950s, Public Relations News introduced the idea that public relations was a “management function” within an organization (Cutlip & Center, 1958, p. 5). Influential PR educators Cutlip and Center (1958) adopted this definition of public relations in their widely popular textbook *Effective Public Relations*. The management aspect of public relations was important because it symbolized that public relations was a sophisticated practice that had institutional recognition. Managerial aspects of public relations were also related to institutional issues such as pay, respect within an organization, PR education, and practice. Relating public relations practice to organizations' management gained considerable popularity in the 1970s and 1980s (Harlow, 1976; Long & Hazleton, 1987). Grunig and Hunt (1984) introduced the four models of public relations practice, which categorized forms of PR practice in terms of their level of professionalism. These models showed a linear progression of PR that promoted the idea that the field became more ethical, professional, and managerial when it aligned with two-way symmetrical communication. In fact, in 1982 Public Relations Society of America (PRSA) defined public relations in terms of helping an organization relate better to their publics. They defined PR as “Public relations helps an organization and its publics adapt mutually to each other” (About Public Relations, n.d., para. 2). This definition embraced the management aspect of public relations practice, and acknowledged the relationship maintenance and ethical communication component of PR.

In 2011–2012, PRSA changed their definition of PR to: “Public relations is a strategic communication process that builds mutually beneficial relationships between organizations and their publics” (“About Public Relations,” n.d., para. 4). PRSA's justification for this new definition was rooted in the changes that occurred within the PR industry since 1982. While PRSA said that the “management function” aspect of PR was still present in some situations, the new definition did not include this specific term because it implied certain “one-way communications” practices (“About Public Relations,” n.d., para. 5). Instead the new definition used the term “process,” but PRSA noted PR's role within management is extremely important to research based counsel (“About Public Relations,” n.d., para. 5). The new definition also moved away from corporate language such as “stakeholders” and used more broad terms such as “publics” and “relationships” (“About Public Relations,” n.d., para. 5). The goal of the new definition was to provide a more comprehensive and inclusive description of public relations practice that did not situate PR work in an exclusively corporate context (“About Public Relations,” n.d.).

Scholarship in the definition of public relations has also changed to become more inclusive and less focused on managerial, corporate identity (Moss, Newman, & DeSanto, 2005; Vieira & Grantham, 2014). There is recognition of this expanding role of public relations in academic scholarship and legal circles (Hallahan, Holzhausen, van Ruler, & Sriramesh, 2007; Myers, 2016). These definitional issues within public relations, both in industry and academia, are tied to the idea that PR practice can be found in various organizations and in diverse professions such as human resources, communication departments, public information offices, and a myriad of line and column mid-level management positions.

### 2.2. Licensing in public relations practice

Defining public relations has implications for identity and quality of practice. The old licensing debates from the 1970s and 1980s demonstrate the difficulty of reaching professional consensus on the industry's true identity. However, it also raised some questions about what would happen to PR practice if the industry failed to define and regulate itself. Ultimately the debate ended with no consensus. Professional accreditation, such as APR, and professional organizations, such as PRSA, serve to promote professional standards in the field, and actual state-sanctioned licensing of PR practitioners exists only in Puerto Rico (Regulatory Board of Public Relations Agents of Puerto Rico, 2008).

The debate surrounding licensing of the PR profession led to a larger debate of a cross-section of issues including a universal definition of the field, the role of education, the experience needed to be a PR practitioner, the usefulness of accreditation rather than licensing, and the role the government should play in regulating the field. Bernays (1979) was one of the most vocal advocates of state sponsored licensing of public relations, arguing that public relations as a term was clearly defined by him and others since the 1920s, and that the practice needed state-sanctioned licensing to prohibit “unqualified individuals” from using the term (p. 26). He

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