

## ***From My Window: A Trade Association Perspective on Assessment***

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From where I sit as the Executive Director of the Association of Test Publishers (ATP), I see an assessment landscape that requires constant attention and maintenance. The assessment landscape is dotted with legislative, regulatory and legal crabgrass that at times distracts test publishers from their principle business of providing quality tests and assessment services to test users and test takers.

Changes in the landscape over the last twelve months have compelled ATP to prune or participate in the pruning of government affairs initiatives directed at testing. With few exceptions the impetus for ATP's actions has stemmed from legislative provisions that were inimical to test publishing. A provision was considered potentially harmful to the testing community if it contained language that could lead to one of the following outcomes: increase the cost of developing tests, place unreasonable psychometric demands on test developers, demand questionable disclosure of test materials, infringe on copyright ownership or expose commercial test publishers to excessive legal liabilities. Fortunately for the test publishing community these potentially harmful provisions directed at testing failed to reach the status of law or gain statutory credence. This presentation describes some of these initiatives and, if adopted, their expected effect on test publishing.

In 1992 ATP was formed to promote and defend the use and value of tests and assessment tools in society. Since its inception ATP has aggressively and with great success opposed a number of federal and state initiatives that could have hindered the effectiveness and growth of the test publishing community. As a North American trade organization with more than eighty members, ATP has established itself among federal and state lawmakers and government agency representatives as a determined and effective advocate.

One of the most prominent testing issues on the assessment landscape in 1998 was the proposal of President Clinton in his State of the Union Address to create national tests. Like President Bush, President Clinton urged the nation to raise the educational bar by requiring students to take Voluntary National Tests (VNTs). Education Secretary Richard W. Riley was designated the point person to explain the merits of VNTs for 4th and 8th graders in mathematics and reading to Congress, school officials, and the American people.

Almost immediately this nationwide testing proposal received poor grades from some members of Congress and from some members of the test publishing community. Many members of the U.S. House of Representatives showed their lack of enthusiasm for VNTs by voting to deny funding for VNT development and implementation. For some members the proposed national testing program challenged state and local school district control. These opponents argued that national testing was the first step toward the central control of education by the federal government. Other opponents argued that another test score to add to scores from Third International Mathematics and Science Study (TIMSS) and National Assessment of Educational Progress (NAEP) testing was an inefficient use of limited educational resources. Still, other members opposed the VNT testing project because it placed students in schools with limited resources at the bottom rung of another testing program. They argued that such information was sufficiently documented in

existing test information and they, therefore, concluded that the implementation of the President's proposal was unnecessary.

On the other hand, the Administration insisted that developing national tests in mathematics and reading skills provided parents, teachers and local school officials with important information on gaps in the education of students. The availability of this information would improve accountability among those responsible for educating students. From the Administration's perspective such information would help to gauge students' progress against the progress of students from other countries with knowledge-based economies.

For test publishers VNTs were redundant to many of the large-scale assessment programs already in use by school districts throughout the United States. A possible short-term outcome of VNTs was to force upon students another test during the course of the academic year while taking away from valuable classroom instructional time. This practice was likely to stir criticism about too much testing and direct unwanted attention toward standardized testing. A possible long-term outcome was that increased central control of testing would lead to the elimination or curtailment of large-scale test programs developed by commercial test publishers. Simply put, the inclusion of VNTs had the potential to compete with test publishers' large-scale assessment programs for limited testing time in the classroom. This outcome also meant that the Department of Education would emerge as a leading publisher of educational tests. At the present time the VNT tests have not reached the item tryout phase of development. Congress has denied funding for their implementation and has shown little interest on reversing its VNT position.

ATP was never opposed to the concept of assessing 4th and 8th grade students. ATP was, however, against the government entering the test publishing business and setting a costly precedent of developing "throwaway" tests. These tests were to be available on the Internet after the testing session for teachers, parents, and students to review.

While the U.S. Department of Education wanted to add tests to the educational assessment mix for 4th and 8th graders, in California a State Senator proposed Senate Bill 1807 which sought to eliminate standardized tests in the post-secondary admission and placement process. The ultimate aim of SB 1807 was to provide a remedy to the California Board of Regents' decision to do away with Affirmative Action programs in the state's colleges and universities. The principal backer of SB 1807 saw testing as an agent of the Board of Regents and therefore an opponent to Affirmative Action programs. The senator's solution was to remove standardized testing from the admission process even though it served as the most objective and valid component. This bill failed to garner support among committee members and fell short in its aim of challenging the role of standardized testing in the admission process. However, the bill sent a clear message to the testing community that efforts to eliminate so-called preferential admission programs for certain groups of American students would place standardized testing in harms way.

The call for national tests and the call to ban admission tests in California were two distinctly different initiatives that had the chance to produce similar results. In these cases the results were either the reduction or elimination of the use of commercially published tests. Furthermore, both initiatives, if implemented, were unlikely to improve educational assessment services in the United States.

A less obvious blemish on the assessment landscape emerged in August, 1998 when the branches of the US Congress passed separate versions of a bill known as the Digital Millennium Copyright Act (DMCA; HR 2281). The House of Representatives' version of DMCA contained a provision that gave parents the unrestricted right to circumvent technology copyright protection measures of any test, examination, or evaluation of a child's ability. This provision allowed parents to use electronic means to retrieve copyrighted information from test publishers' electronic databases without violating intellectual property laws.

The circumvention exemption for parents was inserted into the DMCA at the eleventh hour and was considered by many members of Congress as extraneous and inappropriate for inclusion in a bill that would harmonize the U.S. position with the World Intellectual Property Organization (WIPO) treatise. This circumvention exemption which would affect all educational test publishers was prompted by a controversial sex education survey administered to students in the State of Illinois. The survey contained probing questions that some individuals in the community considered to be intrusive and excessive.

In introducing the circumvention exemption in this bill members of Congress failed to recognize the unintended consequences of allowing parents to roam electronically in databases of test materials that were copyrighted protected. Conceivably, some sophisticated parents could hack into secured databases and achieve a considerable, albeit unfair, advantage for their children on standardized tests. Such an unfair advantage would undermine the integrity and utility of test scores. This pirating of information would make tests and their results useless to teachers, parents, and other members of the educational community.

By inserting this provision into HR 2281, members of Congress also ignored existing laws such as Family Education Rights and Privacy Act (FERPA) and the Individuals with Disability Education Act (IDEA). These laws have well-defined requirements that ensured parents the right to review and inspect test questions and children's protocols. Although these laws allowed for reasonable access they stopped short of giving parents the right to reproduce test questions or answers. HR 2281 allowed for the total reproduction of test materials to occur. The authors of this provision were seemingly uninformed about the ways in which their actions would have compromised, if not destroyed, test security. Other congressional members agreed with ATP and voted to delete the provision from HR 2281.

Although ATP succeeded in removing this questionable provision during deliberations of the Joint Conference Committee, the reintroduction of this provision, perhaps in future FERPA legislation is conceivable. Unfortunately, many members of Congress have not made a distinction between surveys of sexual behavior and standardized tests. ATP has begun a campaign to educate key members of Congress on the importance of distinguishing standardized tests developed by commercial test publishers from those developed by teachers for classroom use and by researchers for surveying student behavior. ATP has also expressed its concern to members of Congress that, as it wrestles with digital delivery of tests and digital copyright issues, care should be taken to understand the critical role that standardized tests play in the educational process and that this role should be carefully guarded and maintained.

Regulatory bodies can also defoliate the landscape for test publishers. In the State of Indiana, the Board of Psychology proposed a regulatory code change (IC 25.33-1-3 (g)) that restricted access to 318 assessment tools to specific licensed or exempt professionals. This assessment land grab by a professional group was vigorously protested by ATP, its members, and other professional associations whose members would be directly affected by the proposed regulatory code change. The putative purpose of this modification to regulatory code was to offer citizens of Indiana a greater measure of protection from the danger of ill-trained test users. An obvious consequence of this restrictive code change was to place other licensed, qualified professionals, including those involved in psycho-educational assessments, at a severe professional and economic disadvantage.

ATP argued that the fundamental premise of this provision--that the safety of the public was protected when tests were limited to and controlled by specific doctorate-level professionals--was woefully misguided. In disputing the professional membership model that underlined the proposed code change ATP urged careful consideration of a competency-based model for accessing tests by all qualified professionals. If the quintessential intent of the proposed code was to provide the greatest protection to the public, then a competency-based model was the most rational choice. The process of becoming competent in the use of assessment tools was the

same for all test users. Well-defined competency standards for test use by professionals can be viewed as protecting the citizens of Indiana and ensuring that tests were fairly and equally accessible to all competent test users. An intended consequence of the competency-based model would be that it would keep assessment services affordable, ensure a similar level of competency across professions, and eliminate the prospect of a single profession enjoying a monopolistic stranglehold on the assessment enterprise. This issue has not been resolved, but the response from the testing community to the Governor of the State of Indiana was swift and highly critical of the proposed regulatory change. ATP will continue to monitor the professional board's activity on this issue and will request the opportunity to testify at a public hearing plan for later this year.

### **Today's and Tomorrow's Landscape: Net-Centric Economy and E-Testing**

As I consider the present and near-future assessment landscape the signs of a Net-centric education that emphasizes life-long learning are sprouting everywhere. On-demand, digital testing formats (e.g., Internet, computer- or video-based, etc.) are already the primary medium for administering the GMAT, the TOEFL and other graduate as well as most professional examinations. E-education with Internet-only schools is now available. The recent accreditation of Jones International University from the North Central Association of Colleges and Schools and with the online introduction of the Washington Post Co.'s Concord University School of Law in Los Angeles are two illustrative example of this new wave. [Incidentally, the accrediting body for Jones International University is the same one that accredits the University of Chicago.] Although the E-education era is in its nascent phase, digital technology is an undeniable driving force that will define the future practices and much of the growth of education and testing.

With technology leading the way it is important for the test publishing community to make an orderly shift from traditional to digital formats of testing. This means developing guidelines for digital formats that reflect best practices in the development, delivery, administration and security of tests. ATP is sponsoring the creation of such guidelines. The aim is to achieve worldwide adoption of the guidelines by developing well-defined procedures that are generalized across products, publishers, and countries. From ATP's perspective the development and eventual adoption of guidelines is important because the majority of its test publishers service an international market.

Other issues that concerns ATP include the adaptation of tests to different cultures, the protection of copyrighted tests in cyberspace and the interoperability of test databases. Net-centric, E-testing with its global reach demands that publishers meticulously adapt their tests to different cultures and provide all test takers with the same opportunity to complete successfully the tests. Delivering tests over the Internet or by other digital formats mean that test publishers must create safe and secure procedures. These procedures must thwart most individuals who are eager to obtain pirated copies of test questions and scoring algorithms. Equally important for test publishers is the need for clear and unambiguous digital copyright law that contains adequate penalty for those who may circumvent the law and make a mockery out of the fair use doctrine.

The importance of establishing interoperability guidelines grows markedly with the ever-increasing use of the Internet to provide testing services. The issue of interoperability is critical to organizations that employ more than one firm to deliver its testing services and to maintain test databases. Translating a database from one language to another database language is presently inefficient, costly and time consuming. Establishing a common platform that enables data to travel effortlessly across formats is essential to the growth of E-testing.

### **Conclusion**

E-testing landscape looks promising for the visible future. To realize this promise will require the test publishing community to embrace wholeheartedly the notion of self-regulation and to defend the role of testing when faced with unjust legislative or regulatory initiatives. This landscape will continue to demand constant attention and care. Test publishers who nurture creativity and actively work to market innovative methods for performing assessment services will find a productive and expansive landscape in their horizon.