

# Movement Charter Drafts

## Legal Feedback to the MCDC

*Note:*

*This document contains the feedback the Wikimedia Foundation legal team provided to the Movement Charter Drafting Committee based on drafts shared by the MCDC.*

*The first section is feedback on an outline the MCDC prepared related to proposed powers for the Global Council. The content of that outline document is provided in full, with the legal team's feedback included inline and highlighted in green.*

*Following the section on the outline are the comments the legal team sent to the MCDC as part of the "legal review" step in drafting each of the movement charter chapters. There were additional comments left directly in shared documents, primarily asking clarifying questions about specific draft language. Where still relevant, versions of these comments have been added to the lists of questions and observations.*

*The various drafts were shared for review at different times, so the dates when the legal team sent its feedback to the MCDC are listed. Because of further revisions in later drafting stages, some of the feedback in this document may no longer be applicable.*

## Outline Feedback [May 25]

This document contains feedback on the feasibility of proposals from the Movement Charter Drafting Committee. The Legal Team provided preliminary review of the proposals based on existing policies and experiences working with other organisations in the Wikimedia movement.

Implementing these recommendations will depend on getting review and approval from the Board of Trustees (for example, any proposal affecting existing committee charter) and other stakeholders in the Wikimedia movement.

**Reading notes:**

1) Even some of the powers not marked as “undecided” are **highly provisional**, subject to major re-consideration even within the MCDC, as well as during later community review phases. This is a draft for legal review only.

2) The order of the powers is not intended to convey any meaning.

**Notes for legal reviewers (both WMF legal and external legal):**

- Present tense is used to be extra clear. (As such, the Movement Charter will be written in present tense anyway.)
- It has not been decided by the MCDC whether or not the Global Council will be a legal entity. As such, during the legal review, please note the functions and powers that are feasible as a non-legal entity vs. those functions and powers that would require the GC to be a legal entity to execute on.

The proposals below did not identify any changes that would necessitate forming a new legal entity for the Global Council. Some of the powers have other limitations (such as trademark review or agreements necessary to protect confidential information), but these are not affected by whether the Global Council creates a legal entity.

- Additional questions raised in-line to highlight some types of identified issues/areas and ask for more elaboration on potential solutions.

## Outline:

**Regarding technology decisions - partial standards setting & signoff**

- The Global Council works with the WMF Product & Technology team to set up the Technology Council, with Global Council making the final decision on structure and membership of the Technology Council.
- The Technology Council reports to the Global Council, and serves as a bridge between the Global Council and the WMF Product & Technology team.
- The Technology Council drafts priorities related to technology development and updates, as well as development plans for how to achieve those priorities, and proposes those priorities and plans to the Global Council, who has the power to approve or reject the proposals.
- [Additional Question 1: is it feasible to transfer the ultimate decision in this regard from the WMF BoT to the GC? What would need to be done to ensure this?]

This proposal is not feasible as written. The Technology Council does not currently exist, so its purpose and scope is not yet clear. There are currently multiple opinions on technical decision-making within the Wikimedia community that need to be resolved through both collaborative and more binding approaches. There also needs to be a process for making these decisions durable enough that technical contributors can rely on them but not so detailed that they prevent timely addressing of new issues as they are discovered. Formal structures for technology decision-making need to be built on shared understandings of goals and the problems they will solve. It is not possible to evaluate transferring responsibilities without starting with a shared understanding of the problems it will address.

The Board of Trustees may be able to rely on the Global Council to do certain things, like setting strategic priorities for technical initiatives, but this will depend on the amount of technical expertise that is available in the Global Council. The Board of Trustees is not able to delegate other things, like providing fiduciary oversight over the organisation or operations of the Product & Technology team.

#### Questions:

1. How can the Global Council coordinate and unite the technical priorities among multiple organisations that contribute to the Wikimedia movement's technical infrastructure?
2. Can the Global Council provide long-term stability to technical decision making? One challenge that the Foundation's Product & Tech teams have faced is that there are shifting/competing priorities among volunteers, resulting in moving targets that prevent progress on long-term projects. How can the Global Council reduce this risk and enable more durable technical decisions for the Wikimedia movement?
3. Can the Global Council help the Product & Technology teams understand potential impact of new or emergent work?

#### **Approving new language projects - standards setting**

- The GC is responsible for determining both the structure and membership of the Language Committee, which will report to the GC.
- The GC can modify rules that Language Committee would follow to determine if a new language project would be created/moved from the incubator to full status. Alternatively, the GC may delegate this task of updating the process to LangCom, while retaining the authority to approve or reject the proposals from LangCom.

This is a feasible proposal. The Global Council (or its delegate or subcommittee) could take on all of the responsibilities that previously belonged to the Language Committee, and hopefully further clarify these responsibilities.

Supporting an additional language is relatively cheap in the short term, but over the long term it is not free. It would be valuable to maintain some mechanism for accounting for this long-term cost.

Questions:

1. How can the Global Council ensure there is appropriate funding/support for projects that it approves?

### **Approving new sister projects - veto rights & [subject to change] viability partner**

- The GC must sign off / approve any new sister projects for the movement but it is not the only approver of new sister project. Others should be involved, such as, the technical council and the future host of the project (e.g. WMF Board of Trustees), a full community RfC, etc. The approval of a project may be impacted by factors like availability of resources, technical and legal viability etc.
- [Provisional - the following power was included prior to the announcement of a sister projects taskforce, and is therefore subject to rework when more is known about the taskforce]
- The GC has the authority to convene an ad-hoc committee of GC liaisons, new project founders, and relevant WMF staff to assess the viability of the new project and whether or not it would align with Movement Charter values. The committee, in their review would assess whether sufficient financial, human resources, and potential active editors (or equivalent) exist within the Wikimedia movement to support the proposed project.

This is a feasible proposal. The Global Council (or its delegate or subcommittee) could take on all of the responsibilities currently sitting with the Sister Projects Task Force.

Questions:

1. Similar to above, how can the Global Council (or subcommittee, etc) evaluate the costs of their recommendations, to ensure the benefit is worth it?
2. Should the Global Council define what makes a sister project?
3. Should the Global Council make recommendations to the Wikimedia Foundation to establish new Wikimedia projects, or can they establish new projects that are hosted by other affiliated Wikimedia organizations? (This question inevitably intersects with the first question, about costs and funding.)

## Closure of projects

- The GC possesses the authority to veto decisions to close lingual projects, but it may set its own standards for whether to take-up such a vote. Where they do not, such a decision will be made by LangCom [note: may change per SIPTAF Taskforce outcome].
- The GC possesses the authority to veto decisions to close sister projects. The GC's assent **must** be acquired to proceed with closing a sister project.
- The GC, through LangCom, would have the authority to set standards for an incubator project to be closed.

This proposal is not clear relative to the above two proposals. If the GC assumes responsibilities related to language or sister projects, this should likely include being able to recommend for or against closure as part of those responsibilities. That said, it likely is feasible for the Board of Trustees to rely on the Global Council's decisions to close projects.

### Questions:

1. Why does the Global Council only have a veto power in this proposal? Shouldn't its power to close projects match its power to open them?

## Recognition & derecognition of affiliates: standard-setting and limited direct decision-making

- The Affiliations Committee ("AffCom") reports to the GC. The GC makes the final decisions on form and structure of AffCom, subject to any binding provisions within the Movement Charter.
- The GC may set additional standards for affiliates to meet to be recognised, to continue to be recognised, and to receive grants. Fundamental standards should be written into the Charter.
- The GC may opt to allow AffCom to directly recognise affiliates or retain that authority for itself.
- [Additional Question 2: how can this role be separated from the WMF/WMF BoT? Would it mean e.g. separate affiliate agreements, or an obligation to use these decisions in e.g. a single WMF affiliate agreements' scheme]
- In this new structure, AffCom is specifically tasked to verify that affiliates are actively aiding the projects' functioning.
- Additionally, AffCom gathers and assesses evidence for derecognition of an affiliate, and submit recommendations, which will be accepted or declined by the GC.
- WMF/BOT retains the ability to de-recognise affiliates purely for misuse of trademarks or legally necessary actions. It is anticipated that except where emergency action is necessary, concurrence of the GC shall be sought.
- [Additional Question 3: to what extent can these role be moved from the WMF BoT to the GC? What happens should a conflict between GC and BoT arises?]

- The creation of new affiliate categories (beyond the existing structures of chapters, thematic orgs, and user groups) will be reserved to the Community with BoT acceptance.

This proposal is feasible. The Global Council (or its subcommittee, etc) could take on the powers currently delegated to the Affiliations Committee. The Wikimedia Foundation is the trademark owner for the Wikimedia name and logo, and with that comes certain responsibilities to provide guidelines for and oversee usage of the trademarks. These guidelines can be established based on advice and agreement with the Global Council. The Wikimedia Foundation may need to reserve certain basic rights to terminate recognition (e.g., for violations of the law or actions contrary to Wikimedia's mission).

One challenge that we faced with AffCom is that certain tasks are suited for volunteers (like making judgement calls based on standards) and other tasks are much more difficult (like managing consistent timelines). The Global Council would benefit from clearly defining where they can add the most value by involvement, and otherwise determining how and where they will get support to accomplish their goals.

#### Questions:

1. Does the Global Council want to be primarily involved in setting standards that Foundation or affiliate staff will apply, or in making decisions directly?
2. How will the Global Council operationalize the decisions they make?

### **Recognition & de-recognition of Hubs: standard-setting and direct decision-making**

- The GC may set additional standards for Hubs to meet to be recognised, to continue to be recognised, and to receive grants. Fundamental standards will be written into the Charter.
- The GC is directly responsible for recognition & de-recognition of Hubs. It may devolve evidence-gathering and similar to different groups, but may not devolve the decision-making.
- AffCom's scope is expanded to include Hubs, to include the tasks above (verify that hubs are actively aiding the projects' functioning, gather and assess evidence for derecognition of a hub, and submit recommendations to the GC).
- WMF/BOT retains the ability to de-recognise Hubs purely for misuse of trademarks or legally necessary actions. It is anticipated that except where emergency action is necessary, concurrence of the GC shall be sought.
- The GC works with both the Hubs themselves and relevant teams within the WMF to enable cross-hub co-operation and, where necessary, mediation.

This proposal is feasible. Especially given there is no current existing structure to manage Hubs, there is an opportunity for the MCDC to put forward a proposal for the Global Council (or subcommittee, etc.) to take on that role.

#### Questions:

1. How differently should hubs be treated from other Wikimedia affiliates?
2. Should the Global Council determine the models for affiliation? (Including what is a hub, chapter, user group, etc) When should these models be re-evaluated?

### **Fund dissemination [Very Undecided]**

- Extremely undecided

The Wikimedia movement's current model allows for any Wikimedia organization to allocate resources for distribution from the revenue it generates independently. Wikimedia organizations must meet baseline standards like compliance with the law, governance best practices, and consistency with Wikimedia's nonprofit mission.

If the Global Council wishes to be involved in fund dissemination, there is potentially an opportunity to define standard expectations as part of the model for affiliation with the Wikimedia movement.

### **Fundraising [Undecided]**

- [This is likely to include some form of oversight and/or coordination of WMF and affiliate/hub fundraising. Primary concerns with the WMF's are mainly that of inaccurate/aggressive past methodologies, while there is a broader range for non-WMF fundraising. There is also a concern about cannibalisation where multiple entity's efforts get in the way of each other. However, both the form and scale of this remain undecided]

The most feasible proposal is probably to focus on standard setting across Wikimedia entities and priority setting. Fundraising is also closely tied to Wikimedia trademark usage, so this will need to be implemented in coordination with the Wikimedia Foundation if there is any change to trademark licensing and usage guidelines, or Wikimedia affiliate agreements.

### **User-safety**

- The GC possesses a purely advisory role in assisting user safety, such as through aiding training and collaboration.

- Formal authority continues to reside with the relevant body (local projects, U4C, T&S, etc.).
- [Additional Question 4: who can decide on the competent body and decide in case of the conflicts between bodies? Can it be moved to the GC?]

The Global Council should decide if this type of question is within its scope. We should also note that this topic is currently receiving a lot of legislative attention around the world. Future proposed laws, in addition to some that are already in place, may require particular entities to be responsible (and legally accountable) for user safety, privacy, security, etc.

### **Global Policies - oversight and final decision of WMF-created policies**

- The GC is a mandatory consultation partner on changes by the WMF to WMF-created global policies.
- Except where those policies are clearly legally required, the GC may vote to reject those changes within 1 month of them being published (or prior), should they view it as necessary.
- The GC does not have the power to amend global policies directly.
- The GC may launch a global RfC, like any other user, to amend a community global policy. Or it may propose changes to a WMF-created global policy by a formal request to the Foundation.
- The GC has no authority to decline a community amendment to a global policy or the creation of a new community global policy.
- **NOTE:** currently the UCOC policy text (but not the enforcement guidelines) are a WMF/BOT created policy, as they lack community ratification. The MCDC will make a specific statement to clarify whether this is either included or excluded from the scope of WMF-created policy above in this section.

This proposal is not feasible as written. Unfortunately, trying to distinguish between policies (or revisions to policies) that are “clearly legally required” and ones that are not is impossible in practice. Almost all policy decisions, even when directly responding to changes in the law, are based on some sort of risk evaluation and judgement call around the necessity of preventing a harm where the Foundation could face liabilities. There are times when these evaluations point more strongly in the direction of a particular course of action, but there is no clear line distinguishing what is “clearly legally required” from what is not. In some cases, policies that are clearly not required under existing law may nevertheless be critically important to demonstrate that there is no need for new laws in order to avoid disruption to the movement.

There are also new regulatory models that require platforms to take more proactive steps to identify and address potential harms. See Article 34 (Risk Assessment) and 35 (Risk Mitigation) of the EU Digital Services Act. We believe there are opportunities to work proactively with



Wikimedia volunteers so that the projects continue to be community governed in compliance with these obligations and similar obligations that may become law in other applicable jurisdictions. However, the website host will ultimately bear responsibility for taking actions necessary to comply with these rules. This will limit the Foundation's ability to commit to restrictions on policymaking or taking action (as proposed above under User-Safety).

The Global Council can add the most value by helping to generate stable consensus among multiple entities within the Wikimedia movement and possibly by providing consistent cross-movement strategy. The Wikimedia movement, like many collective efforts, has faced significant challenges around making decisions. There is a risk that adding new veto points actually exacerbates the movement's challenges reaching a stable consensus.

Questions:

1. Which “global policies” are within the scope of this section?

### **Privileged access to information**

- GC members inherently need access to a variable amount of privileged information depending on their role, actions, (sub)-committee activity, etc.
- This access should be granted, subject to the relevant agreements, including non-disclosure agreements.
- Significant breaches of any corresponding non-disclosure policy would be grounds for removal from the GC. In addition to any other potential removal pathway, the Ombuds commission may act on this as they would for other breaches of non-disclosure agreements by volunteers.

This may be feasible in some situations, and not in others. It would help to have examples of the types of confidential information that Global Council members might need and for what purpose.

It will only be possible to share data where it is permissible under the applicable policies, such as the Wikimedia Privacy Policy. It may also be necessary to take steps to ensure that all access to confidential information is subject to appropriate controls to ensure it is secure and not used improperly. Breaches of confidentiality commitments may have additional consequences beyond removal from the Global Council, such as legal liability.

### **Representation of the Movement - [insufficiently decided]**

- [Currently there is insufficient agreement in this regard to submit for review. It is, however, unlikely to be legally significant, as the options would either be “not at all”, “for the GC”, or “for Wikimedia” - not speaking specifically for the WMF. There is also

uncertainty amongst the MCDC whether we mean “represent” in the legal sense versus “represent” as “representative” of the movement.]

This is a topic where Wikimedia organisations have historically faced a challenge. The term "Wikimedia movement" is not broadly understood by the public and has frequently resulted in confusion with "Wikipedia", which is much more widely known. The Global Council may want to set out guidelines for its membership and as a commitment to accuracy and clarity on behalf of the wider Wikimedia movement that they serve. As one point of reference, agreements between Wikimedia chapters and the Wikimedia Foundation include a commitment not to speak on each other's behalf. The Global Council should be clear about areas where it will respect the independence of other projects, entities, or participants in the Wikimedia movement by not claiming to speak on their behalf.

#### Questions:

1. To what extent might the Foundation be able to rely on the Global Council to provide movement/community review or feedback on the Foundation's work? Are there any current methods of community engagement that the Global Council would supplant, augment, or take responsibility over?

# Chapter Feedback

## General Comments

Most of our feedback on these chapters is not about legal requirements per se, but based on our experience with studying, drafting, and interpreting formal documents similar in kind to the movement charter (constitutions, laws, regulations contracts, etc.). We hope you will read our responses accordingly, and we would be happy to answer any clarifying questions you have for us.

Also, a broader question for the MCDC: is the principle of subsidiarity meant to apply to project content as well as movement governance? For example, could editors in Argentina claim more authority over Wikipedia articles about Argentinian history and culture? Do native Korean speakers have authority over all project content about or based on sources originally written in Korean?

# Chapters

## **Global Council [June 26]**

There is inconsistency throughout the chapter in defining the Global Council and what its responsibilities are. As a result, it is difficult to get a clear picture of how the body would operate and the role it would play in movement governance. Some harmonization is likely needed with the other chapters of the charter, particularly Decision-Making and Roles & Responsibilities.

Some questions and observations:

- There are some seemingly conflicting descriptions about what the Global Council is and does. Does it exist to “improve accountability and transparency for movement-wide decision-making,” to “simplify access to Movement resources and empower individuals and communities”, or to “promote sustainable work and growth within the movement”? These are different functions that may be best served by different organizational structures.
- What other existing bodies did you use as a model for how to structure the Global Council? Right now, it seems mostly to be a recreation of the Foundation’s Board of Trustees. Was that the intention?
- What does it mean for other bodies (such as the Language Committee and regional fund committees) to “report” to the Global Council? What sort of authority/oversight does the Global Council have over those bodies? How does the Global Council operationalize its oversight, or exercise its “limited executive responsibilities”? What does it mean for AffCom to be a “subcommittee” of the Global Council? We note in particular the potential risk of confusion between the use of “report” purely for informational purposes (i.e. to draft a report) as opposed to “report” in the sense of a structure that allows for giving commands.
- Our confusion about the role of the Global Council may be in part because there are many different types of actions that the Global Council is described as taking. For funds dissemination, the Global Council sets standards, guidelines, and criteria. For sister projects, the Global Council outright approves or doesn’t. For closing language projects, the Global Council has veto authority. For affiliate recognition and derecognition, the Global Council engages in “limited direct decision-making”. For “movement advancement”, the Global Council engages in “coordination”. It isn’t clear what exactly the Global Council has general authority to do, and by extension what type of body it is. Will this be addressed in the Roles & Responsibilities chapter? If so, how will this differ from or harmonize with the “responsibilities” section of the Global Council chapter?
- One area that we feel is missing is the set of goals that the Global Council hopes to accomplish with its particular processes and activities. This may be related to the feedback above in which there are several distinct descriptions of the purpose of the

Global Council. In resolving this issue, it may be helpful to think about each activity and identify the goal that the Global Council's involvement serves. For example, is the Global Council serving the same goal with its involvement in fundraising, budgeting, and funds dissemination? Or different goals in each of these three processes?

- How does the Global Council get funding for its own operations?

A note in the draft indicated that the MCDC would revise the chapter to respond to known concerns. Presumably, that will happen after this current round of feedback scheduled around Wikimania. We will need to review the drafts again after those revisions, though we can also provide assistance to the revision process if desired.

A recommendation for the MCDC: A couple places in the chapter, you mention that a goal of the Global Council is process simplification. Most of the proposals for what the Global Council would do, though, are about adding the Global Council as a bureaucratic stakeholder to decision-making. That is more likely to add complexity to processes than to simplify them. Think about the places where movement-wide governance and decision-making is currently complicated, resource-intensive, and/or slow. How could the introduction of a Global Council allow for new processes that are an improvement over the status quo?

## **Decision-Making [June 26]**

It is difficult to provide specific feedback on this chapter, because it is still incomplete (several sections are not yet drafted) and it lacks the specificity that is needed. It takes a very broad and philosophical approach to discussing how decisions are made, but then it doesn't provide clear descriptions about exactly what process needs to be followed for which decisions.

Some questions and observations:

- Where is this chapter proposing changes to current processes for decision-making?
  - The chapter discusses decision-making about project content, for example. Is the goal of the chapter to document how decisions are already made in that area, or to impose a new decision-making process for project content? Either way, is that within scope for the Movement Charter?
- There seems to be a conflict between the desire for subsidiarity and the desire to ensure that there is accountability for all decisions to all potential stakeholders. There is also some discussion of "ownership" of a decision—what does that mean in this context?
- What counts as an "actionable" decision?
- There seems to be a conflict between a desire for consensus and the use of majority vote as the primary decision-making tool. We have previously understood consensus, as it is used on the projects, to be a higher standard than a majority vote. How would you define "consensus" for the purposes of the Movement Charter and Global Council?

We will need to review this content again when it is further along in its development and has been harmonized more with the rest of the draft charter.

A recommendation for the MDCD: We recommend, rather than one very abstract decision-making process, that the movement charter include a few different specific, well defined processes for making movement-wide decisions, each of which says which categories of decisions need to use which processes.

## **Glossary [July 11]**

Some questions and observations:

- The terms “organization”, “entity”, and “group” seem to be used interchangeably throughout the glossary. Sticking to one term (and perhaps including a definition for it) could help with clarity and comprehension.
- Several terms have definitions that are very similar to dictionary definitions or common usage (“revenue generation”, “resources” “stakeholders”). Is there a need to have separate definitions for these specific to the Charter? If the sections of the Charter where these terms are used lack clarity, that might be best addressed by revising those sections rather than defining additional terms.
- We already have an adopted [definition of “free cultural works”](#), via the [licensing policy](#). It would be best not to create a duplicate and potentially conflicting definition of “free knowledge”.

## **Hubs [July 11]**

This draft presents a much clearer picture of what a hub is and the purpose it serves than anything we have had so far.

Some questions and observations:

- Is the hub recognition committee separate from AffCom? Is that up to the Global Council to decide?
- Is there a role for the Foundation in the hub set-up process?

A recommendation for the MDCD: This chapter has a lot of detail. It’s good that you have put so much thought into how hubs could work, but you may want to consider whether any of that detail does not need to be written directly into the Movement Charter.

## **Roles & Responsibilities [July 26]**

It would be helpful to have a summary accompanying this chapter that describes what it proposes in terms of changes to roles and responsibilities in the movement. As currently drafted, this chapter could be read as mostly describing how the movement currently operates. Is that the goal, or is there a different vision?

Some questions and observations:

- How do the different forms of Wikimedia communities (“thematic, geographic, linguistic, or project-based”) interact with the subsidiarity principle? Is any one of them by default the “lowest level”? How do we determine which is the “lowest possible level” in any given circumstance?
- There is an aspirational statement about how “The long term goal is for the resources of the movement to be spread across the spectrum of movement bodies...” This seems out of place in a section that discusses what movement bodies are and do—is there another place in the charter where it would be more appropriate? It prompts a lot of questions that would need to be addressed before attempting to put the stated goal into practice, such as: What does it mean for resources to be “spread across the spectrum of movement bodies”? What type of growth is envisioned? What are the “strategic areas”? What is “pragmatic decentralization”? Is there a timeline for achieving this goal? How will we know it is achieved?