

This document considers the Movement Charter drafts for Hubs and the Glossary. The purpose of this document is to present information that the Movement Charter Drafting Committee and Wikimedia users can keep in mind as they continue the drafting, revision, and ratification process.

Summary

The envisioned roles and responsibilities for Hubs are appropriate and do not infringe on the Wikimedia Foundation's core responsibilities, so long as it is clear that Hubs must dedicate their funds towards the Wikimedia Foundation's nonprofit mission.

The draft Glossary also appears appropriate and feasible. Key terms are clearly defined and usable.

Hubs

Proposal for Hubs – Summary

The draft proposal for Hubs is written at a high level of abstraction and mainly focuses on the setup and function of Hubs within the context of the existing Wikimedia community. Hubs are set up by Wikimedia affiliates and must either form their own legal entity or be hosted by a legal entity, and is in either case independent from the Wikimedia Foundation. Similarly, Hubs have the ability to fundraise in coordination with, but separately from, the Wikimedia Foundation, and may not access its general budget, though they may apply for and receive grants from the Wikimedia Foundation. In general, the envisioned roles and responsibilities of Hubs are appropriate, keep the Hubs reasonably segregated from the Wikimedia Foundation, and do not implicate the duties of the Wikimedia Foundation's Board of Trustees, so long as Hubs act appropriately in helping to carry out the Wikimedia Foundation's educational mission.

There are also clear lines between the Wikimedia Foundation and Hubs in terms of institutional identity, responsibility, activity, and funding.

Hubs – Nonprofit purpose

The Hubs lack certain requirements that could more clearly define their role in the Wikimedia Foundation's nonprofit mission, which could help make clear their eligibility to receive grants.

Any grants issued by the Wikimedia Foundation must be aligned with its 501(c)(3) tax-exempt purpose. However, currently there is no requirement that Hubs must be formed as non-profits or their local equivalents (though Hub Hosts, being [fiscal sponsors](#), are required to form nonprofit organizations). Specifying that Hubs must be, or must be

hosted by, nonprofits may help the Wikimedia Foundation show any grants issued are in furtherance of its 501(c)(3) tax-exempt purpose.

While Hubs fundraising on their own may do little to implicate the Wikimedia Foundation, their eligibility for Wikimedia Foundation grants suggests that some language should be inserted to make clear that all funds granted are spent in furtherance of the Wikimedia Foundation's tax-exempt purpose. If Hubs are organized as (or are hosted by) nonprofit organizations, resolving this ambiguity may be as simple as adding language that allocation of funds to Hub members must be in furtherance of the Hub's nonprofit mission and in compliance with all applicable laws. There is currently some language to that effect under "Relationship to other bodies":

"Hubs can work together with the Wikimedia Foundation – for instance, in fundraising and fund dissemination, volunteer and staff safety, and global advocacy – in order to ensure compliance with applicable fundraising laws."

This language, however, may suggest more discretion on the part of the Hubs than is actually envisioned by the MCDC. While Hubs may retain broad discretion over their use of funds, additional language could be added to ensure that this discretion does not extend past permissible charitable purposes.

Hubs – Fiscal sponsorship

The draft seems to envision that fiscal sponsorships will take the form of a grant relationship, which have their own specific pros and cons. Preapproved grant relationships can produce complications when the sponsor provides services other than grantmaking to the sponsored grantee, such as administrative services, shared office space, or assistance with filings and registrations. Under such circumstances, the Internal Revenue Service may view the relationship as a conduit for making tax-deductible contributions to a non-exempt entity, collapse the transactions by disregarding the sponsor's role, and deny donors deductions for such contributions.

This may implicate potential fiscal sponsorship relationships under the Movement Charter, as a Hub Host is expected to act as their Hub's "employer of record," who, according to the draft Glossary, "assumes the role of managing payroll, tax deductions, employee benefits, employer liability insurance, worker's compensation insurance, and similar human resources services on behalf of the primary employer." When fiscal sponsors are expected to have such a comprehensive relationship, a more comprehensive fiscal sponsorship may be more appropriate, in which the sponsored project becomes an internal program of the fiscal sponsor.

Draft Glossary

Most of the terms defined in the Glossary are uncontroversial conceptual or value terms which are unlikely to implicate legal responsibilities of the Wikimedia Foundation (e.g.

“Charter,” “Equity,” etc.). More technical terms are also defined according to uncontroversial, common uses, and are therefore acceptable (e.g. “Employer of Record”).

Two terms, “Affiliates” and “Fiscal Sponsor,” may draw attention for their prominent use in other parts of the Charter. That said, both of these terms appear to be defined appropriately.

- The definitions used here for the several types of affiliate organizations are specific and already in consistent use by the Wikimedia Foundation. It may, however, be useful to note that affiliate organizations are divided into four categories (Chapters, Thematic Organizations, Wikimedia User Groups, and Other) rather than three, as the document currently states.
- Fiscal sponsorship is not itself defined by American law and may take several forms. The grant form envisioned in this definition is an acceptable form, though it gives rise to some potential concerns regarding the fiscal sponsor’s role as employer of record as described in the previous section. The remainder of the definition amounts to a list of requirements for a potential fiscal sponsor to form a relationship with a Wikimedia-affiliated entity. These are ordinary and acceptable requirements, particularly since additional standards may be required by the Global Council and Wikimedia Board of Trustees. The only requirement that is somewhat unclear is that a fiscal sponsor must “have a plan and documentation to the organization’s assets upon its dissolution.” This requirement seems to suggest a plan for the distribution of the organization’s assets, but does not say so explicitly.

*** The purpose of sharing this document with our community is to foster an open dialogue. By posting this document, Wikimedia does not intend to, and does not, waive any legal or other applicable privilege for any material not included in this document, including written or oral communications with legal counsel. ***