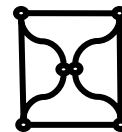

Sustainability Working Group

Interim Report

MetaArchive of Southern Digital Culture Project



2005-11-30

Summary

This document is an interim report presented to the MetaArchive Steering Committee by a working group on sustainability chartered as part of the Cooperative Agreement Analysis Plan of August 15, 2005. This interim report summarizes the tentative notes on findings of the group to date concerning the Cooperative Agreement, and identifies questions that the working group has discussed. This document makes reference to the project plan and other project documents which provide more details about other aspects of the project.

General Planning Notes

The group has held several conference call discussions analyzing issues associated with the Cooperative Agreement, and has exchanged email concerning various related topics. At a summary discussion held on November 29 the group reached a general consensus on the process for going forward, summarized here. This discussion makes reference to terms defined in the section of this document on *Types of Legal Entities*.

The consensus is that we will undertake development of a Cooperative Agreement in two phases, an Interim phase of the next 1-2 years, and a subsequent Long Term phase.

During the **Interim** phase, we envision the MetaArchive Cooperative operating as an unincorporated association (see next section for a definition), composed of a set of agreements (contracts or memoranda of understanding) between our six institutions. Aaron Trehub and members of this working group have worked on a draft of such an agreement, which should be available by the time of the next Steering Committee meeting in February 2005. These agreements will capture the critical elements of our association for the immediate future of 1-2 years, and enable us to operate "on the same page" with each other and potential new additions to the Cooperative.

In the **Long Term**, we believe that it will be important to establish a 501(c)(3) nonprofit organization under which to operate the MetaArchive Cooperative. The creation and affiliation of the Cooperative with this postulated nonprofit is outside the scope of the current project, but is clearly a topic of great interest to the Steering Committee and will be further explored in the final year of the current project. Recommendations will be made concerning such a nonprofit by the Steering Committee by the end of the project.

Types of Legal Entities

This section of the document is adapted from a listserv message by Martin Halbert dated November 24, 2005. It is informed by presentations by various nonprofit leaders, and resources maintained by the Georgia Center for Nonprofits (GCN), the IRS, and other organizations.

The types of potential legal entities that may be relevant for us to consider for the Cooperative include:

* 501(c)3 Public Nonprofit Corporation. Although it is "not-for-profit", it is still an incorporated entity, or corporation. The key distinction between a nonprofit and for-profit is that nonprofit corporations may not distribute profits to their members. A 501(c)3 has to file annual income paperwork with the IRS, although it is not taxed under most circumstances. A nonprofit enterprise is an organization in which "no profit may inure to the benefit of its members". Nonprofits cannot undertake any type of lobbying effort, so if we pick this type of organization we will have to be very careful about not talking to politicians (unfortunate, since LoC is consciously trying to influence the feds). Two main variations on the 501(c)3 under the Section 509 details about public charities are the "public benefit" and "mutual benefit" nonprofits: * A "publicly-supported charity" nonprofit organization (technically referred to by the relevant sections of the US Code, in this case as 503(c)3 - 509(a)1) has a "charitable purpose, derives much of its support from contributions, and is prohibited from distributing its income or its assets to its members". This category "primarily includes churches, schools, hospitals, and other organizations that receive their public support primarily from gifts, grants and donations." This one isn't a good match for us because we will most likely get a significant portion of our funding from subscriptions (i.e. "membership fees"), which is precluded for this type of nonprofit.

* A "mutual benefit" nonprofit organization (technically, 503(c)3 - 509(a)2) is another type of public charity that "derives most of its support from the sale of goods, or the rendering of services, and, upon dissolution, may distribute its assets to its members". "Section 509(a)(2) covers organizations that receive their support from a combination of gifts, grants and contributions and fees for their exempt services. The methods of calculating these public support levels can be tricky." I believe that a mutual benefit nonprofit corporation most closely matches our needs, but there are more options (see below).

* 501(c)3 Private Foundation. All 501(c)3 organizations that don't qualify as public charities under Section 509 are classed as various kinds of private foundations. The key disadvantage is that private foundations don't get the same tax breaks. If the IRS finds that you are bending the rules of Section 509 (for example, lobbying politicians) they can reclassify you as a private foundation.

* Piggybacking off another "Fiscal Agent". According to the GCN, "A fiscal agent is an organization that has already established incorporation and tax-exempt status who is willing to be a 'parent organization' to a group that is just getting started. With a fiscal agent, the new organization is under the umbrella of an existing organization. Because the preexisting organization would become legally responsible for the newly formed organization, affiliation is done through a contract. The contract usually states a specific time period for the 'parent' status and specific agreements pertaining to the individual organizations. It is strongly recommended that a new organization explore starting out this way. Even if only for a year, it allows both the founders of the organization and the community to see that a new group is indeed a needed entity that is well on its way to becoming a stable organization." Our options here include continuing to just use Emory University, or the nonprofit that I mentioned on the conference call that we had on 11/22.

* "Unincorporated Associations" (usually just called "associations" or "clubs") are very simple to set up. According to the GCN, such associations can have meetings and undertake activities, and get to skip all the reporting requirements, provided the group has an annual budget under \$25,000. The limited scale of this type of entity makes it less relevant to our long term needs, but it may be fine for an interim period.

* 501(c)6 Business League. The IRS says: "A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. Trade associations and professional associations are business leagues. To be an exempt, a business league's activities must be devoted to improving business conditions of one or more lines of business as distinguished from performing particular services for individual persons. No part of a business league's net earnings may inure to the benefit of any private shareholder or individual and it may not be organized for profit to engage in an activity ordinarily carried on for profit (even if the business is operated on a cooperative basis or produces only enough income to be self-sustaining)." This is an interesting possibility, but doesn't quite match our needs.

Best options appear to be either setting up a mutual benefit nonprofit for the MetaArchive Cooperative, or piggybacking off another fiscal agent.

Annotated Reference List

This section of the document is taken from a listserv message by Martin Halbert dated November 24, 2005. The following is a quick list of the websites that were most useful:

1. The Georgia Center for Nonprofits Guide to Starting a Nonprofit

<http://www.gcn.org/Services/Publications/StartingaNonprofitOrganizationinGeorgia.aspx>

This is a tremendously valuable starting document that provides overviews of all the key points and links to lots of other resources.

2. Relevant sections of the US Code

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000501---000-.html

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000509---000-.html

http://www.law.cornell.edu/uscode/html/uscode26/usc_sec_26_00000170---000-.html#b_1_A

Actually reading the relevant pieces of law (as opposed to secondary sources) is a very effective way to understand what it was saying about nonprofits. These are nicely formatted versions maintained at Cornell.

3. IRS Guides

<http://www.irs.gov/charities/charitable/article/0,,id=122670,00.html>

<http://www.irs.gov/charities/nonprofits/article/0,,id=96107,00.html>

<http://www.irs.gov/pub/irs-pdf/p557.pdf>

<http://www.irs.gov/pub/irs-pdf/p4220.pdf>

These IRS resources are really helpful. They are effectively hyperlinked to each other, and after reading enough of them, it all started making a lot more sense. The last one is a great overview of the nonprofit incorporation process (at least from the IRS' perspective).

4. Other Links

<http://www.labyrinthinc.com/sharedcontent/TaxExemptRef.asp?Page=6&subs=6>

<http://members.aol.com/irsform1023/index.html>

<http://www.nonprofitissues.com/public/features/point/39.html>

<http://www.floridacdc.org/forms/501self.htm>

These are some additional sources that are very helpful.

Notes on this document

This document was completed with input via conference call and email by members of the sustainability working group listed below. The document was last updated by Aaron Trehub and Martin Halbert on 2005-12-01.

Members of the Sustainability Working Group:

1. Delinda Buie
2. Tyler Walters
3. Gail McMillan
4. Caroline Arms
5. Aaron Trehub
6. Martin Halbert