

Stone King, September 26th, 2011 to Charity Commission

Dear [Charity Commission official],

In response to your email of 5 September (and in relation to my email of 13 September and our subsequent telephone conversations) Jonathan Burchfield and I are now responding to you on behalf of Wikimedia UK ("WMUK") with the additional information on Public Benefit you have requested.

Background

Accompanying this email you will find WMUK's response to your email of 5 September from Roger Bamkin, Chairman of WikiMedia UK ("the WMUK Letter"). This letter provides the wide-ranging survey of the charitable activities undertaken by WMUK you have requested and addresses some of the specific points you have made, including the analogy with libraries, reading rooms and other purposes of general public utility, and the specific concerns you have highlighted, including the issue of content control and the relationship between WMUK and the Wikimedia Foundation in the US. His letter is accompanied by various supporting materials provided throughout the letter and in extensive annexes, including supporting letters from prominent supporters and beneficiaries of WMUK's charitable work.

The purpose of this email is to complement the WMUK Letter by providing a linking framework between the charitable activities and public benefit provided by WMUK and identified in the WMUK Letter and the principles of Public Benefit set out in the Charity Commission's statutory guidance on Public Benefit.

The proposed Objects

As you know, we have already provided proposed charitable objects (in our email of 13 September), in accordance with the Commission's suggestion that we focus on the general public utility purpose. Our submissions in this email and the accompanying letters link the identified charitable activities and public benefit to those objects.

WMUK has an extraordinary general meeting ("EGM") on 16 October 2011 and the trustees have previously sought to agree with the Charity Commission suitable charitable objects to be adopted in that meeting. The objects we have previously proposed to the Charity Commission for that purpose are:

The Objects of the Charity are, for the benefit of the public, to promote and support the widest possible access to, use of and contribution to Open Content as an exclusively charitable general public utility, in particular the Open Content supported and provided by Wikimedia Foundation, Inc., based in San Francisco, California, USA.

"Content" means textual or numerical information, still or moving images, sound or music or other data disseminated on printed, electronic and other appropriate media and services. Content is subject to editorial policies and safeguards designed to ensure its overall accuracy and quality.

Content is "Open" when it is available for no charge and without discrimination to the general public, with legal rights to view, copy, share, adapt, improve and otherwise use and reuse that content and when technical measures are in place to support such usage.

In our submission, these are exclusively charitable objects in law. However, we understand that the Charity Commission may not consider these sufficiently precise (telephone conversation with Marion Shanley, 23rd September 2011). We would now propose the following objects (amendments capitalised), which emphasise the encyclopaedic or educational nature of much of the work supported by WMUK, whilst allowing for some of the other charitable activities described in the WMUK Letter:

The Objects of the Charity are, for the benefit of the public, to promote and support the widest possible PUBLIC access to, use of and contribution to Open Content of an ENCYCLOPAEDIC OR EDUCATIONAL NATURE OR OF SIMILAR UTILITY TO THE GENERAL PUBLIC, in particular the Open Content supported and provided by Wikimedia Foundation, Inc., based in San Francisco, California, USA.

“Content” means textual or numerical information, still or moving images, sound or music or other data disseminated on printed, electronic and other appropriate media and services. Content is subject to editorial policies and safeguards designed to ensure its overall accuracy and quality.

Content is "Open" when it is available for no charge and without discrimination to the general public, with legal rights to view, copy, share, adapt, improve and otherwise use and reuse that content and when technical measures are in place to support such usage.

In our submission, both formulations are exclusively charitable in law.

Note that the notice for the EGM on 16 October contained the proposed objects above in the form of a Special Resolution to be passed in the EGM, subject to such changes as the Commission may require. For obvious reasons, the trustees would be grateful to know what changes the Commission may require as soon as possible, in order to pass the appropriate Special Resolution at the EGM, if possible.

The analogy with libraries and reading rooms

Section 2 of the WMUK Letter focuses on the analogy and comparison with libraries and reading rooms, which we have made previously. In our submission, the public benefit provided by WMUK is directly analogous to a library or reading room and similar controls over content apply in each of these cases (see s.2, 3 and 13.3 of the WMUK Letter).

Again, in our submission, the only significant difference between the information utility provided by WMUK and that of a library or reading room is simply one that derives from society's migration away from traditional printed content to content that is online or otherwise available in electronic media. Both traditional and WMUK information utilities of this sort are open to the general public and encourage the widest possible access to the general public. However, in today's world, the general public now expects to be able to interact with content provided for its use in this way. Users have become adept at contributing their own knowledge and expertise; and tools have been developed by WMUK and others that allow users to improve content themselves.

In fact, Wikipedia (and the related content developed and promoted by WMUK) is improved and enriched on two levels: not just directly, by contributors and editors improving and expanding the “meaning” of the content, but also through the same people enriching the data itself by means of tagging, key words, and the addition of other

“metadata” that enables the content to be used (accessed, searched and referenced to) in increasingly sophisticated ways. As a result, the use of this content is unrivalled – as the usage figures referred to in the WMUK Letter illustrate. The “utility” of the content is therefore beyond doubt.

Controls

To complement and manage the “open” nature of the access, all user contributions are moderated by content policies as set out in the WMUK Letter, both in s.2, s.13.1 and s.13.3, in more detail. As the WMUK Letter makes clear, these policies are directly analogous to the acquisitions and other content-related policies of libraries and reading rooms. Neither libraries nor reading rooms aim (and nor would it be possible for them) to exercise absolute control over content (as your email of 5 September proposes). Through the controls, protection facilities and editorial policies set out in the WMUK Letter, it is now increasingly difficult for “vandals” to upload malicious or incorrect material (see s.13.1.4).

The Public Benefit principles

Note that throughout the WMUK Letter and in this email, we have used the word “utility” to describe the public use, usefulness or other value to the general public of WMUK activities and not simply as a reference to the word as it is used in the proposed objects (although there is of course a direct link between the two).

Principle 1 - There must be an identifiable benefit or benefits

1a - It must be clear what the benefits are.

The benefits offered by WMUK are set out from section 4 to section 12 in the WMUK Letter.

1b - The benefits must be related to the aims

The benefits described in the WMUK Letter relate to the proposed objects.

As you know, we have accepted that the Charity Commission does not regard educational objects as appropriate for WMUK. However, the charitable purpose of general public utility (which, of course, derives from Lord McNaughton’s fourth head of other purposes beneficial to the community) may encompass activities that nevertheless do provide educational and similar benefits, such as research and dissemination of information useful to the community. It is therefore appropriate for WMUK to provide evidence of benefits of this sort in order to demonstrate that it fulfils the proposed general utility objects.

The educational benefits identified in the WMUK Letter range from primary and secondary school ages through to further and higher education. We would draw your attention to the remarks of Vice President of Oxford University Press USA, Caspar Grathwoh, which support the proposition that Wikipedia provides educational benefits (“a vital role in educational settings”) and that there is a real use for Wikipedia in research, not as a source in its own right, but with a role in “pre-research”.

Similarly, whilst we have accepted that the Commission does not consider that heritage, community and other objects are suited to WMUK, it is, for the reasons given above, nevertheless appropriate to include the significant community, heritage and public life

benefits provided by WMUK's activities (see s.7, 8, 9, and 11 and elsewhere in the WMUK Letter) in the assessment that the information resources and other utilities provided by WMUK advance charitable general utility objects. Likewise, whilst we would not, of course, argue that WMUK has purposes that include the promotion of health or prevention of sickness, the contribution made by WMUK to public health (see s.10 of the WMUK Letter) also demonstrates the public utility it provides.

1c - Benefits must be balanced against any detriment or harm

We have not identified any significant harm that is caused by WMUK. However, the WMUK Letter (at s.13) sets out the few issues we have identified and explains how WMUK (and the projects it supports) make great efforts to minimise any harm. These sections speak for themselves and their length illustrates the seriousness with which the trustees take these issues.

Principle 2 - Benefit must be to the public, or a section of the public

2a - The beneficiaries must be appropriate to the aims

The beneficiaries are, potentially, the general public of the world. Access is not even restricted to those who have access to the internet and the charity places significant focus on access in the third world and other deprived areas (see s.4.6 of the WMUK letter). It goes without saying that, in many such areas of the world, there may be great difficulty getting access to some of the primary sources of information that are the subjects of Wikipedia entries or other WMUK projects.

2b - Where benefit is to a section of the public, the opportunity to benefit must not be unreasonably restricted

As we have explained, benefit is not restricted to a section of the public. The Objects are drafted to reflect WMUK's aim of giving the "widest possible access" to its content and other resources.

2c - People in poverty must not be excluded from the opportunity to benefit

People in poverty are not excluded at all. Anyone with access to a computer (whether they own one or access a computer by other means, for example through a public library or through an education institution) can benefit from WMUK activities. In fact, in many African and Third World countries, access to a mobile phone is more widespread than access to the internet and Wikimedia activities/projects are now also accessible by those means too.

2d - Principle 2d Any private benefits must be incidental

We have not identified any significant private benefits. There is a small private benefit to individuals or organisations that become noteworthy enough to have their own entry on Wikipedia (or similar WMUK project), but this is controlled by means of the editorial policies noted in the WMUK Letter (see for example, s.13.3.3 – 13.3.10 and 13.3.16).

The relationship between WMUK and the Wiki Foundation in the US

We would draw your attention to the information provided in s.14 of the WMUK Letter. In

passing we would also add that the trustees of WMUK are aware of and adhere to the guidance that the Charity Commission offers to charities that work with other organisations based in countries overseas (including the requirement that charities carefully monitor how grant money is spent and satisfy themselves that it is properly expended in furtherance of their objects). The trustees operate independently of the Foundation, operate a conflicts of interest policy and declare their interests in order to manage any potential for conflict of interest.

Summary

We hope that the Commission will understand why we have found it necessary to provide such a substantial quantity of supporting information and understand that it would have been possible for our clients to have provided much more. In light of the information now supplied, we trust that the Commission will now agree that the work of WMUK is exclusively charitable, and is dedicated to the purpose of providing a public utility which is demonstrably for the public benefit.

Kind regards,

Tom

Tom Murdoch
Solicitor, Charity & Education
Stone King