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Dear Diana

Wikimedia UK Limited (the Company)

I am writing further to your application to register the above as a charity and our subsequent telephone conversations and e-mails.

Firstly, we want to take the opportunity to start this letter with an acknowledgement of your patience whilst we have considered the issues raised by your application. We are grateful to you for bearing with us thus far. As we indicated at the outset the application is a novel one that warrants careful consideration.

This letter mentions a number of publications and other documents that are available on our website. For your ease of reference I have listed them all below together with a link to the relevant publication or document:

- ◆ *Charities and Public Benefit*, available on our website at http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/public_benefit.aspx
- ◆ *The Advancement of Education for the Public Benefit*, available on our website at http://www.charity-commission.gov.uk/Charity_requirements_guidance/Charity_essentials/Public_benefit/pbeduc.aspx

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- ◆ Decision on the application for registration of The Millennium College UK Ltd, available on our website at <http://www.charity-commission.gov.uk/Library/start/millcolldecision.pdf>.
- ◆ *Analysis of the law underpinning The Advancement of Education for the Public Benefit*, available on our website at <http://www.charity-commission.gov.uk/Library/guidance/lawedu1208.pdf>.
- ◆ *RR1A – Recognising new charitable purposes*, available on our website at <http://www.charity-commission.gov.uk/publications/rr1a.aspx>

Introduction

Having carried out an initial consideration of the application we do not know at this stage if it will be possible for the Company to show that it falls within charitable parameters, both in terms of purpose and public benefit. But we want to explore the potential for that with you.

This letter attempts to explain why we think the Company may struggle to show that it established for a charitable education purpose for public benefit within the description at section 2(2)(b) of the Charities Act 2006 and what alternative charitable purposes for public benefit within those descriptions might be relevant.

It might perhaps be helpful if we start by reiterating the framework for our consideration of the application. As you may be aware, if the Company is to be eligible for registration as a charity it has to be established for aims that are exclusively charitable and for the public benefit. A charity must have only charitable aims. All aspects of public benefit must be met. For more information please see our publication *Charities and Public Benefit*.

As *Charities and Public Benefit* explains, when considering applications for registration we take into account more than what is stated in an organisation's objects (see section D4). We consider activities and the context in which an organisation operates.

It is worth reiterating at the outset also that we are not able to take into account the motives of those involved in establishing the Company. We have to take a view whether the Company is entitled, as a matter of law, to registration as a charity.

The advancement of education for the public benefit?

The objects of the Company as set out and the supporting information provided with the application make it clear that those involved with the Company take the view that it is established for a charitable purpose, namely the advancement of education for the public benefit. Two separate elements to that are identified in the application (and reflected in the stated object):

1. making education, cultural and historical content easily and freely available on the internet and so increasing accessibility and ease of reuse in various applications; and
2. educating the public at large on how to participate in the creation and use of that content. The benefit identified as arising from that is the increased provision of freely accessible content and engagement of the public.

Our guidance *The Advancement of Education for the Public Benefit* explains the scope of this charitable purpose. It explains what characterises education (in terms of educational merit or value) as it is understood in charity law and what needs to be demonstrated to show that the education is advanced for the public benefit. As the first element of the Company's work is derived from, and focussed upon, supporting the provision of Wikipedia as a facility (and other projects of the Wikimedia Foundation (WF)), the Company would need to be able to demonstrate that that site (including those projects/resources) meet the requirement for educational value (either in terms of content or process or both).

It is difficult to envisage that the Company would ever be able to produce independent evidence sufficient to verify the educational value of the content of the whole site (see section D2 of *The Advancement of Education for the Public Benefit*). Doubtless Wikipedia (and related resources) will include material of educational value. There are mechanisms in place that seek to impact upon verifying the accuracy of the content of the site, information for contributors, regular edits, for instance. We acknowledge the point made about the content being verifiable, consistent with the internal processes of Wikipedia.

But, by its very nature, would it ever be possible to say that the content:

- ◆ is finally settled;
- ◆ is verified in terms of factual accuracy before publication;
- ◆ is subject to editorial control by those well placed to verify its accuracy; and
- ◆ does not amount to promotion of views (see section C5 of *The Advancement of Education for the Public Benefit*)?

It is equally difficult to envisage that the Company would be able to show that the process involved in the use of the Wikimedia facility satisfies the requirement to demonstrate sufficient educational value. Neither this Company (nor WF) can ever know who are the recipients of the information (their level of knowledge or skills or capabilities) to be able to say that the use of the resources of Wikipedia (or related projects) on their part involves an educational process. In those circumstances, can it ever be shown that that use represents deliberate steps on the part of the Company to pursue an educational purpose?

We note the acknowledgement on the part of the Company that it does not consider that it advances education in terms of adding to the store of useful knowledge, by virtue of the practice of Wikipedia to publish existing material. That is not to say, of course, that the Company would not be able to show that it engages in specific activities in connection with its second element that involve processes with educational value - either drawing upon the content of Wikipedia or creating content.

The scope for that would very much depend on the processes involved – whether they reflected a structure capable of imparting information for genuinely educational purposes or simply involved in

reproducing or generating factual information. If the information is unstructured, the potential for any structure to be educational would depend upon the purpose of the information, the make up of those it is intended to educate and the process of delivering it (see section C4 of *The Advancement of Education for the Public Benefit*).

The Company would need to be able to show that any such work involves the imparting of learning in transferable skills with educational value for that audience – see our Decision on the application for registration of The Millennium College UK Ltd.

So, for instance, the workshop for schools would potentially fall into that category, involving the imparting of learning in transferable skills with educational value to that audience – drawing upon factual content on the site (with educational value or otherwise). Other projects, with an adult audience may fall short of those requirements. For instance, do the Workplace Learning Lunches represent the development of individual capabilities, competencies, skills and understanding of adults that involves an increase in skills of educational value?

We note that the Company has likened Wikipedia to a library (a facility within the scope of the advancement of education – see section C7 of *The Advancement of Education for the Public Benefit*). It is not clear to us that it would be possible for the Company to sustain an argument that Wikipedia (and related projects) equate with a library as a mechanism consistent with charitable education. That option might raise questions for the Company to address, such as:

- ◆ does indiscriminate access to content impact on factual accuracy for Wikipedia in a way that distinguishes it from a library?;
- ◆ does information represent structured arrangement in the same sense as it does for a library?;
- ◆ does any factual inaccuracy of content make a difference to the extent to which the facility can be said to be available for broader educational activities (see section C4 of *The Advancement of Education for the Public Benefit*)?

We note the points made by way of response to the refusal by the Inland Revenue to recognise the Company as a charity for the advancement of education. For our part, it seems to us that not all of those points help strengthen any argument by the Company that it is established for a charitable educational purpose.

As our *Analysis of the law underpinning The Advancement of Education for the Public Benefit* illustrates (at paragraph 1.12), what we take from *Re Shaw, Public Trustee v Day [1957] 1 WLR 729* is that the provision of information has to be directed towards advancing education – not necessarily by training or education in a formal or traditional sense – but structured so as to impact upon learning through the process involved (perhaps as in the case of *Millennium College UK Ltd* referred to above). Our understanding of *Re Shaw* is that that principle is not confined to original research. So, if the Company is to illustrate that its input to the provision of information, in respect of either elements (i) or (ii) qualifies as charitable education it would need to advance education in the sense described in *Re Shaw*.

The Company 's response also makes reference to the case of *Incorporated Council of Law Reporting for England and Wales v AG [1972] Ch 73*, drawing attention to the difference between the general public as audience of the Wikimedia Foundation resources, including Wikipedia, and the professional audience for the resources relevant to that case. It seems to us that the nature of the audience in that case was relevant to the purpose (including to further the development and administration of the law) and so the narrower audience in that case does not help the Company establish an educational purpose by virtue of a wider audience for WF resources.

It seems to us that those points do not overcome the difficulties the Company may have in demonstrating that it is established for an educational charitable purpose. That said, other comparisons the Company makes with facilities that have been recognised as charitable might be relevant to the application as follows.

Other charitable purpose?

We are considering whether it might be possible for the Company to demonstrate that it falls within the scope of other recognised charitable purposes for the public benefit. Our guidance *Recognising New Charitable Purposes (RR1A)* explains the relevant principles and the scope we have for recognising new charitable purposes in light of changing social and economic circumstances. Consistent with that, it would have to be possible to find an analogy for the Wikipedia facility with other facilities that further recognised charitable purposes.

The stated object of the Company includes a means that suggests that the Company will support work of WF only in so far as it furthers charitable purposes for public benefit. As we understand it, however, from the available material, as a local chapter of WF, the remit of the Company is to support and extend WF's reach in the UK: to support the mission of WF without restriction.

If that is correct then, if the Company is to demonstrate that it is to be established for exclusively charitable purposes for the public benefit, it would have to be possible to conclude that that extent of support for the work of WF is consistent with that conclusion: in effect, that WF's purposes equate with exclusively charitable purposes for public benefit.

At this stage, we do not know if it will be possible for the Company to show that it falls within charitable parameters, both in terms of purpose and public benefit. We note, for instance, that there is a relationship of some sort between WF and a for-profit Company, Wikia, owned by the founder of WF. If that feature were to raise the potential for private benefit to a third party the Company would need to be able to illustrate why that (or any other private benefit, for instance private benefit arising from work with individual businesses) is consistent with the public benefit requirements in connection with public benefit principle 2d (see section F12 of *Charities and Public Benefit*).

The Company may also need to be able to demonstrate that if there is any potential for detriment or harm from discriminatory, defamatory material within WF resources that that does not impact upon benefits claimed in respect of the Company (see section E4 of *Charities and Public Benefit*). That said, we wish to explore the possibility with the Company and would welcome any views, comments or further information you might have that you think might be relevant to that.

We are giving some thought to whether the Company could be said to be assisting in the provision of a facility of general public utility (within the description at paragraph (m) of the 2006 Charities

Act). The Company has likened its support of WF projects to other facilities recognised as charitable for the advancement of education, such as the establishment and maintenance of museums and art galleries. For the reasons we have highlighted above (the absence of control and state of flux regarding the content of WF resources) we think it may be difficult for the Company to equate those resources with 'educational' facilities that are able to meet the requirements of a charitable educational purpose in terms of educational value.

However, it may be that there is some scope to liken WF resources to other facilities the Company has identified: reference sources such as a dictionary and libraries. It may be that aspects like the nature and extent of access to the site (which weaken the prospect for establishing an educational charitable purpose for the Company) may be less significant where educational capacity does not determine whether it meets the requirement of a charitable purpose.

In the context of a public utility there might be potential for comparisons between Wikipedia (and related projects) and a library as a (re)source of information including a mixture of educational and non educational material. We would be grateful for any further comment the Company might want to make about Wikipedia in that context.

In the context of a public utility it may be that the nature and extent of use of Wikipedia (and related projects) as an index or catalogue – as a signpost to other resources – could be relevant. We have been provided with some evidence in support of the use of Wikipedia on which individuals rely for the purposes of study, but it is not clear to what extent use of the site involves reference to the content as opposed to use as a point of reference. Are there any comments that the Company wants to make or evidence it can point to that might support this application of WF resources or identify any benefits arising from that use? In particular, it would be helpful for any comments the Company might have about whether the nature of the resources (including any implications for accuracy, or any lack of control of content) impact upon this function.

In the context of a public utility it might be that there could be said to be some similarity between WF resources and the provision of a reading room, a facility recognised as charitable some time ago of course (see *Re Scowcroft [1898] 2 Ch 638*). It seems to us that what was relevant in that case was the potential for improvement inherent in the gift. There were restrictions on the use of the facility (*'intoxicants and dancing'*) that appear to reinforce that quality. Is it possible for the Company to establish:

- ◆ that that same quality is inherent in WF resources;
- ◆ that they provide the like mix of material for readers; and
- ◆ that they provide the opportunity to acquire the equivalent basic skills?

Lastly, both the objects of the Company and the supporting material emphasise the knowledge sharing aspect of WF resources, the inclusiveness of the facility and its participative features. If there is anything further the Company would wish to say about that it would be useful to be able to factor that into our consideration. For instance, how the Open Knowledge Conference 2010 contributes to, or otherwise fits with, those features. At this stage it is too early to say whether any of those features may have any direct bearing upon whether the Company falls within the

parameters of a charity, but it would help build a picture of the nature and extent of benefit attributed to the Company.

We look forward to receiving your response once you have had the opportunity to consider the contents of this letter, as well as the guidance referred to, and discussed it with your clients.

Yours sincerely

[Charity Commission official]