

## CONSTITUTION AND STRUCTURE REPORT

FOR

### THE PROGRAMMING HISTORIAN

#### 1. Background

The Programming Historian is currently organised as a not-for-profit unincorporated association of academics across the UK and French and Spanish speaking countries, operating to help students of the humanities learn a wide range of digital tools, techniques, and workflows to facilitate research and teaching primarily through its website [www.programminghistorian.org](http://www.programminghistorian.org)

It consists of 18 individuals all of whom are also members of an Editorial Board (hereafter 'Members'). These Members oversee the academic work of the organisation and set criteria for publication of papers which are submitted, and then go to peer review. Each Language (Currently English, Spanish and French) has a Managing Editor. The Project Development Team (a sub-team of the Editorial Board) oversees the administration of the organisation. New Members of the Editorial Board are recruited by the Members and subject to approval of the Members. There is no membership fee payable. Members of the Editorial Board are free to resign their membership or simply cease membership by becoming inactive at any time.

#### 2. Objectives

The following objectives have been identified:

- a. To provide a structure which is distinct from the individuals who are Members.  
Being an unincorporated association means all members have unlimited liability and in an environment of increased compliance including obligations under regulations such as GDPR, this risk is unacceptable to a number of, and possibly all, Members.
- b. To become an entity which is easily able to accept monies from donations, sponsorship and grants.
- c. To be able to enter into contracts.
- d. To enable the efficient administration of the organisation.

To meet these objectives Members have are requesting advice on the most appropriate form of legal structure to meet their objectives, including whether of not registering as a charity is advisable.

### 3. Structure and Options

- a. We would certainly affirm that a corporate structure is needed to achieve your objectives. There are a number of possible structures all of which have a separate legal identity and which suggest themselves:-
  - i. Company Limited by Shares: the standard structure used throughout the world, and originally conceived as a mechanism for joint venturing for profit. Your organisation is not-for-profit and so we would not recommend this format.
  - ii. Community Benefit Society / Community Interest Company: these are relatively new corporate formats established primarily for activities within the UK, and consequently do not naturally fit with the international aspects of your organisation.
  - iii. Charitable Incorporated Organisation: relatively new charitable corporate structure. Could be appropriate were you to incorporate immediately as a charity.
  - iv. Company Limited by Guarantee: Long standing format used for charities and not-for-profit organisations.

We recommend you adopt the structure of a Company Limited by Guarantee, specifically limiting yourselves in your constitution to being not-for-profit.

- b. The recommended Company Limited by Guarantee Structure has the following benefits:-
  - i. Gives you a separate legal entity able to easily enter into both supply and service contracts with third parties e.g. service providers.
  - ii. Protects the Members by inserting a limited liability structure between the members and the organisation meaning the members are not liable for the losses of the company unless they behave inappropriately and breach company and trust law.
  - iii. Lends itself to not for profit organisations.
  - iv. Is a suitable structure for a membership organisation.
  - v. Is a recognised corporate structure for a charity should registration become an appropriate course.
  - vi. retains flexibility to remunerate staff or contributors who are also Members or Directors, which would be restricted in a CIO or other charitable body
  - vii. will be recognised as an independent entity overseas and can operate as a separate legal person in the other jurisdictions you operate in – subject of course to local laws.
- c. As regards charitable registration, while there are definite benefits in certain circumstances such a registration would also bring restrictions. At this stage we would not recommend registration for the following reasons:-

- i. registration requires charities to prove to the Charity Commission that they will meet an income threshold of £5000 per annum. At the current stage of development this will be a difficult threshold for the organisation to cross.
- ii. is particularly beneficial if you are looking for public donations because of the tax advantages of gift aid. As you are not seeking such donations as a primary source of funding this tax advantage is not relevant.
- iii. can be helpful if seeking grants from charitable bodies, but is not necessarily a prerequisite. Being established as a not-for-profit company should also give similar access to most of the funding sources you are likely to access.
- iv. has particular restrictions around overseas operations which are core to The Programming Historian, such as requiring compliance with the Charity Commission guidance on managing risks when working internationally, and following Chapter 4 of the Charities Compliance Toolkit, which would add unnecessary administrative burdens at this stage of development of the organisation.

We recommend that you adopt a structure which could in due course become registered as a charity and keep this issue under review.

#### **4. Commentary on the Draft Constitution**

We have prepared a suggested Draft Constitution (Memorandum and Articles of Association) for discussion. There are a number of issues which will require consideration and we have highlighted those that we know from experience are likely to be of most interest or concern to you as an organisation.

- a. Article 2 sets out the objects of the Company. We have suggested some wording. While we recommend that becoming a charity is not currently appropriate for your organisation, we recommend that the structure put in place should be flexible enough to enable conversion. Should that become appropriate, and this wording complies with Charity Commission guidelines
- b. Article 7 refers to Directors. As an incorporated body you will need to appoint Directors who are responsible to the Members for the day to day management and organisation of the Company. You should consider:-
  - i. How large a Board you want and who might be most appropriate to be on it? It is generally advisable that the Board of Directors is not too large – for a small organisation say 5-8 individuals.
  - ii. Who should be represented on that Board? For instance you might want to include the three language Managing Editors, plus roles such as a financially competent Treasurer and a Managing Editor / Administrator. You can also consider who would Chair it. None of these criteria need to be included

formally in the Constitution but in practical terms they are fundamental to the organisation.

- iii. Directors will be appointed by votes of the Members at an Annual general Meeting.
  - iv. How long should Directors be appointed for? They will normally either be appointed annually, or for 3 year terms. Consideration needs to be given to which model best suits your organisation.
  - v. At your request we have retained provisions which allow a Director to be able to appoint an 'Alternate' to act on his behalf. Note if Managing Editors change this should normally be dealt with by resignation and appointment of Directors rather than using the Alternate provisions
- c. Article 11 Conflict of Interest. Company Law has rules which need to be followed if a director has a conflict of interest. The rules in Article 11 are standard for an organisation of your type and allow for a bit more flexibility than the strict Companies Act 2006 provisions.
- d. Articles 18 – 20 set out a suggested structure for Membership for discussion. This leaves wide discretion with the Directors to enable flexibility as the organisation changes over time. As an alternative it is possible to require that membership criteria and changes to membership rules require amendment by the Members. Consideration needs to be given to which is most appropriate for the organisation – bearing in mind the administrative burden of more restrictive rules, but equally recognising that more active member involvement may be beneficial, and may also reflect the culture of the organisation.
- e. Article 26 - Rules: At present the Editorial Board is not embedded in the structure to allow flexibility to change over time. The way to formally constitute it would be to establish it under the Rules which would be approved by the Board, who would also set out its terms of reference and any criteria for membership, numbers of members etc.
- f. Terminology: The phrase 'Editorial Board' is could give rise to confusion when you move to a corporate structure as the word 'Board' is used in law to refer to the Board of Directors, who currently correspond more closely to your Project Committee. We suggest some thought is given to adjusting the terminology, so that Members are simply that, and that the Project Committee effectively becomes the Board (subject to the other suggestions made on membership of the Board in this report).

## 5. Next Steps

To move forward with these recommendations your next steps are:-

- a. Organisation approve the proposed structure
  - b. Articles further tailored and amended after consideration
  - c. Company registered at Companies House
    - i. Directors will need to have been identified – you should start with two – others can be added once the registration is complete
    - ii. Initial Members will need to sign – this can be a small group to assist administration and the remaining members can be admitted in an initial Board Meeting
- A lot of the registration can be done online
- d. Once Registration is complete Companies House will issue a Certificate of Incorporation
  - e. Once in possession of the Certificate of Incorporation you will be able to approach a Bank to open a suitable Bank Account.

If you have any queries or require further assistance we would be delighted to help

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