

Founding a DSpace 501(c)(3) Nonprofit

A Report for the
DSpace Federation Governance Advisory Board Meeting
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Introduction

At the March 30-31, 2006 meeting of the ad hoc DSpace Federation Governance Advisory Board, the board recommended that the DSpace community form a 501(c)(3) tax-exempt organization to provide for the long-term sustainability of the software platform. A 501(c)(3) organization can provide the needed representative governance and legal ownership structure that reflects DSpace's status as a shared open source software resource. This document defines a 501(c)(3) non-profit and offers a checklist for founding one. It also draws out issues relevant specifically to the DSpace platform and community and proposes a timeline for the formation of DSpace's non-profit organization. Although the entire start-up process is outlined in the checklist, this document then focuses on the initial steps of the start-up process, encompassing approximately the next six months. Future documents will address in more detail the remainder of the process.

Definition of a 501(c)(3) Organization

“To be a tax-exempt organization as described in IRC (Internal Revenue Code) Section 501(c)(3) of the Code, an organization must be organized and operated exclusively for one or more of the purposes set forth in IRC Section 501(c)(3) and none of the earnings of the organization may inure to any private shareholder or individual. In addition, it may not attempt to influence legislation as a substantial part of its activities and it may not participate at all in campaign activity for or against political candidates.

“The organizations described in IRC Section 501(c)(3) are commonly referred to under the general heading of "charitable organizations." Organizations described in IRC Section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with IRC Section 170.

“The exempt purposes set forth in IRC Section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and the prevention of cruelty to children or animals. The term charitable is used in its generally accepted legal sense and includes relief of the poor, the distressed, or the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening the burdens of government; lessening of neighborhood tensions; elimination of prejudice and discrimination; defense of human and civil rights secured by law; and combating community deterioration and juvenile delinquency.”¹

Benefits of 501(c)(3) organization classification include:

1. **Tax Free Donations / Grants** - grants, gifts, or donations to non-profits are not federally taxable

¹ Source: <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

2. **Donor Assurance of Tax Deductibility** - contributions, donations, and/or gifts to non-profits are tax deductible (as a "certified qualified organization" under Section 170 of the Internal Revenue Code) by the donor
3. **Purchase Tax Exemption** - goods purchased by a "qualified organization" are not subject to a sales tax
4. **Special Program Participation Eligibility** – ability to apply for grants and other public or private allocations available only to Internal Revenue Service (IRS) - recognized, 501(c)(3) organizations.²

Starting a DSpace 501(c)(3) Organization

Process Overview

The process to found a 501(c)(3) non-profit organization is not a particularly complex one, but it entails a fair amount of due diligence and planning. There are many similarities to forming a for-profit corporation, in that it involves establishing formal legal status from state and federal agencies strategic, as well as detailed organizational and financial planning. Investing the time to do the proper up-front planning will increase the organization's short- and long-term chances for success.

To achieve 501(c)(3) non-profit status, there are numerous steps and forms that must be filed with state and federal agencies. The first step is to file articles of incorporation as a non-profit corporation within a state. Although incorporation is not strictly required to achieve tax-exempt 501(c)(3) status, it is highly desirable for several reasons:

1. **Limited Liability** - Corporations provide limited liability protection to its owners (or in the case of a non-profit, the fiduciaries or Board of Directors). Typically, corporate owners are not personally responsible for the debts and liabilities of the business; thus, creditors cannot pursue owners' personal assets (such as a house or car) to pay business debts.
2. **Tax Advantages** - Nonprofit corporations gain advantages such as: the deductibility of health insurance premiums paid on behalf of employees; savings on self-employment taxes, reduced rates on payroll rates to Social Security, Workers Compensation and Medicare; and the deductibility of other expenses such as life insurance.
3. **Establishing Credibility** - Incorporating helps a new business establish credibility with potential customers, employees, vendors, and partners.
4. **Unlimited / Perpetual Life** - A corporation's life is not dependent upon its owners. A corporation possesses the feature of unlimited life, meaning if an owner dies or wishes to sell his or her interest, the corporation will continue to exist and do business.³

² Eric Miller

³ Eric Miller

In order to file for incorporation, an organization must have a Board of Directors, bylaws, and a mission statement (typically included in the first article of the bylaws), the latter two of which must be approved by the Board of Directors. Legal counsel is not required but can be instrumental in expediting the process in such areas as advising on the best state in which to incorporate (including special state requirements to which an organization must adhere such as the minimize number of Directors on the Board) and drafting the bylaws and the articles of incorporation. There also exist organizations with legal counsel on staff that specialize in the incorporation process, such as Bizfilings.com. It is estimated that the processing time from filing of the Articles of Incorporation to obtaining a Certificate of Incorporation takes approximately 1 month, however the preparation time will likely take at least 3-4 months. More details, specific to DSpace, on the mission statement, formation of the Board of Directors, and drafting the Bylaws and Articles of Incorporation can be found in Appendix A.

Once the organization is incorporated, DSpace can file for tax-exempt status with the IRS, which is a federal organization. To apply for tax-exempt status, an organization must complete and file IRS Form 1023, also known as the Application for Recognition of Exemption. The document is 28-pages long, plus required schedules and attachments. A summary of the information required to complete this form can be found in Appendix A. Once an organization has become incorporated, it has 15 months to file for tax-exempt status. The standard filing fee is \$500. It is estimated that the approval process takes the IRS between 4-6 months. Recognition of 501(c)(3) status is usually retroactive effective to the earlier of 1) the organization's legal formation or 2) the commencement of its programs. This means that the organization's activities are retroactively tax-exempt and donations are retroactively tax-deductible to the donor, extending even to prior tax years. Here, also, the materials filed for tax-exempt status with the IRS should be approved by the Board of Directors and can be drafted with the help of legal counsel or organizations that specialize in tax-exempt applications.

Prior to filing the Articles of Incorporation and the Application for Recognition of Exemption, MIT and HP should seek internal legal counsel's advise regarding transfer to the DSpace 501(c)(3) organization of the DSpace intellectual property created under their joint copyright. The outcome of this process likely will impact the structure of the organization and its bylaws.

The first meeting of the Board of Directors serves as a milestone for the formation of the non-profit. At this first meeting, the Board of Directors will:

- approve Articles of Incorporation and Bylaws;
- authorize tax-exempt filing (Form 1023);
- elect officers;
- agree on periodic meeting schedule;
- agree on committees; and
- appoint board members to committees.

Following this initial meeting and in parallel with the filing process for tax-exempt status, the Board can begin the next phase of the start-up process, transitioning to operating status, which entails hiring staff (such as an Executive Director, technical architect or other staff as deemed appropriate) or consultants who will then lead the strategic, budgeting, fundraising and operational planning process and ongoing operations. In the case of DSpace, it is likely that the organization will be lean in the early years with only one or two staff members and, perhaps, may rely on external legal, accounting, and business planning expertise to supplement operations in certain areas.

A Checklist⁴

The following is a checklist of tasks for founding a 501(c)(3) non-profit organization.

Establishing the Initial Board and Preparing the Founding Documents:

1. Create a clear, succinct, mission statement (charitable purpose) and vision.
2. Establish initial board of directors
3. Recruit a source of legal expertise.
4. Determine state requirements for incorporation.
5. Consult with internal legal counsel about transfer of intellectual property and other assets. (MIT and HP)
6. Draft bylaws.
7. Draft articles of incorporation.
8. Draft material for obtaining tax-exempt status.
9. Apply for an Employer Identification Number.
10. Hold meeting of initial board; approve articles of incorporation and bylaws; authorize tax-exempt filing; elect officers'; agree on periodic meeting schedule; agree on committees; appoint board members to committees.

Achieving Corporate Status:

11. File articles of incorporation with state; determine annual reporting requirements, if any, in incorporation state.

Achieving Tax-Exempt Status:

12. File application with the IRS for tax-exempt status.
13. After receipt of IRS tax-exempt status, file applications for exemption from state income tax (if applicable and required in incorporation state).
14. Determine if sales tax exemption can be secured in incorporation state; if so, file application.

⁴ Adapted from: *Starting and Running a Nonprofit Organization* by Joan M. Hummel

Transition to Operating Status:

15. Hire an Executive Director (as needed).
16. Develop strategic plan (or at least a tentative plan that will be revisited after a year of operation); secure board approval.
17. Develop one-year work plan for each program activity, including process to measure outcomes, and determine budget for each program.
18. Develop one-year organizational budget; secure board approval.
19. Develop fundraising plan; secure board approval.
20. Locate source of accounting expertise.
21. Establish accounting system and record-keeping procedures; open bank account.
22. Apply for solicitation license from local city if required.
23. Apply for nonprofit mail permit (reduced rate for bulk mailings).
24. Initiate fund raising efforts; develop and submit any appropriate grant proposals.

Building the organization and infrastructure:

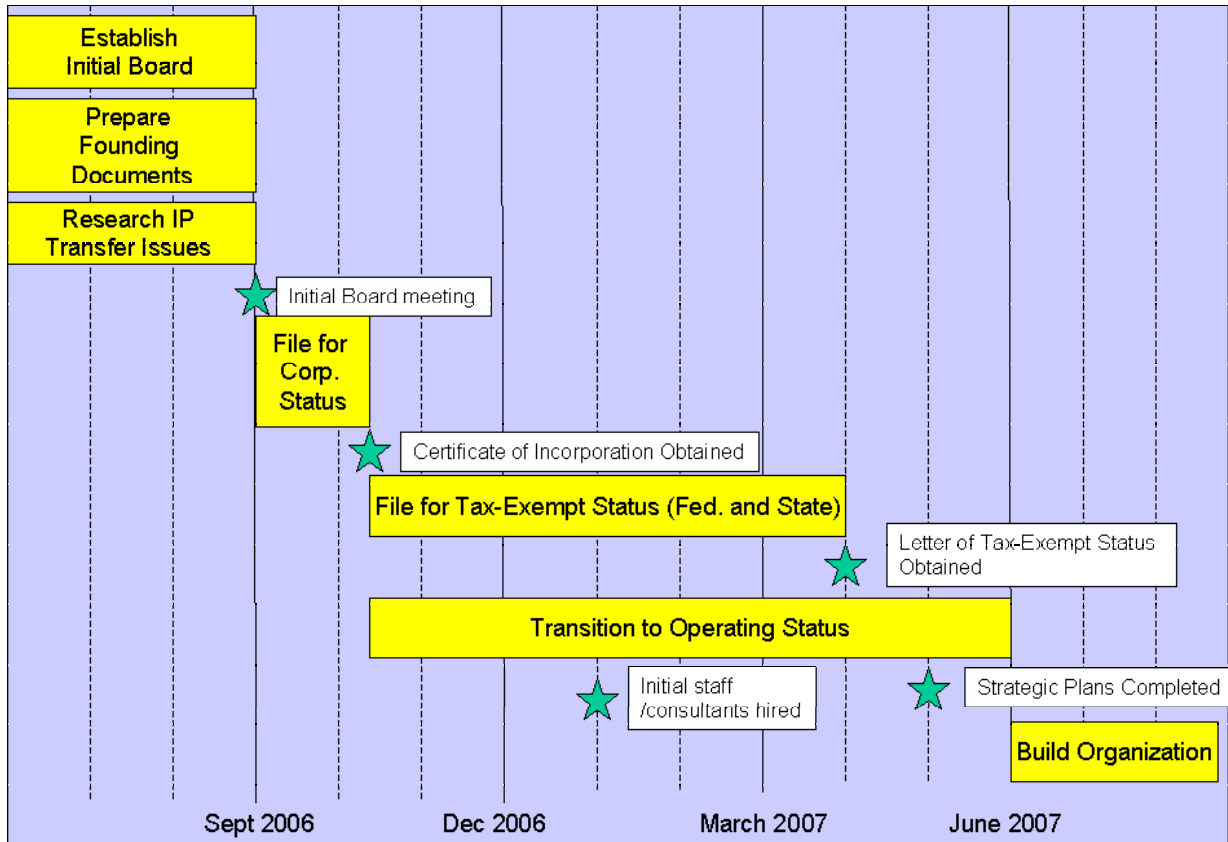
25. Recruit paid staff and/or volunteers as needed.
26. File employer registration with federal/state governments for income tax and FICA withholding (involves securing federal employee number).
27. Register with state unemployment insurance program per requirements of incorporation state.
28. Determine office and equipment situation and secure appropriate facility.
29. Apply for property tax exemption, if applicable, with local tax accessor's office.
30. Secure liability insurance.
31. Secure insurance to cover any equipment and other property owned.
32. Develop personnel policies (if there is paid staff); hold orientation sessions for staff and volunteers.

Ongoing operations:

33. Begin marketing program services to clientele.
34. Create and implement community relations plan.
35. Begin program activities.
36. Monitor client satisfaction with services.
37. Monitor expenses in relation to budget.
38. Evaluate outcomes of programs (may not be productive until after one year of experience).
39. Reassess validity of purpose, mission, vision, goals, and strategies (involve representatives of all constituencies); discuss with board; revise as needed (six months to one year after beginning operations).

Process Timeline

The process timeline outlined below aims to expedite the time required to form the DSpace non-profit organization by working on several areas in parallel, while still completing the proper due diligence and planning to lay a foundation for success.



Resources Required

During the formation of the DSpace 501(c)(3) organization, the following resources are required:

- DSpace resource to manage the overall process
- Periodic access to the ad hoc DSpace Federation Governance Advisory Board for advice and recommendations, until such time as the Board of Directors is established
- Independent legal counsel to advise on the drafting of the bylaws, Articles of Incorporation, and IRS Form 1023: Application for Recognition of Exemption and to serve as a liaison with state and federal agencies during the filing process. Alternatively, there are companies like BizFilings and The Foundation Group that

- offer consulting services with legal counsel on staff to help companies and non-profits with these start-up activities.
- Internal legal counsel at MIT and HP to advise on intellectual property transfer issues
 - Approximately \$20,000 in funding to pay for legal and filing fees and to convene the initial Board of Directors meeting

Once DSpace has achieved incorporation as a non-profit and tax-exempt status, it must submit annual information returns to federal and, depending on where DSpace incorporates, state agencies. The DSpace organization may want to retain accounting expertise at that point.

Recommendations Sought from the Advisory Board

Prior to the formation of the initial Board of Directors for the DSpace non-profit foundation, MIT and HP seek advice and recommendations from the ad hoc DSpace Federation Governance Advisory Board to assist with various aspects of the start-up process. The objectives for the June 5, 2006 meeting of the DSpace Federation Governance Advisory Board are:

- **Mission Statement:** Review, modify (if necessary), and approve previously drafted mission statement. See Appendix A for the draft mission statement.
- **Membership:** Discussion of and recommendation for a membership structure (if any) for the DSpace non-profit. This should include qualifications for membership, length of membership, and the powers afforded to members.
- **Board of Directors:** Discussion of and recommendation for a Board of Directors. This should include a structure, number of Directors, terms of service, and process for replacing or removing Directors. Further, it should include a process for establishing the initial Board of Directors, including the role that the DSpace community, or membership, plays in this process. More details about the formation and responsibilities of a Board of Directors are in Appendix A.
- **Committee Structure:** Discussion of and recommendation for a committee structure that operates under the guidance of the Board of Directors. More information about possible committees to support the DSpace community and the non-profit organization is in Appendix A.

Appendix A: Further Details on Key Steps

Create a Mission Statement

The first step to establish a nonprofit organization is deciding on a mission statement and a set of objectives for the organization's programs and activities. At the March 30-31, 2006 meeting, the DSpace Federation Governance Advisory Board drafted the following mission statement.

The mission of the DSpace Foundation is to:

- to lead the collaborative development of open source software for digital repositories that enables services for access, provision, stewardship and re-use of digital assets with a focus on educational and research materials;
- to promote the adoption of this technology; and
- to provide a platform for innovation in these areas with an overarching goal of promoting the dissemination and future utility of information and knowledge.

At its June 5, 2006 meeting, the advisory board will revisit this statement and make any amendments necessary, with the intention that the statement will serve as a guide during the interim period before the initial board of directors is established. The Board of Directors will then provide final approval of the mission statement, which will become a key component of the Articles of Incorporation and Bylaws.

Agree on a Membership Structure

A fundamental issue for which the advisory board can make a recommendation is whether the DSpace non-profit organization will have members. If the Advisory Board decides to recommend a membership structure, they then should address the following questions:

- What are the qualifications for membership?
- What is the length of membership?
- Powers: what can the members decide, if anything?

The Sakai Foundation, a recently founded open source software non-profit, defines its membership qualifications as follows (from a draft version of the bylaws):

“Membership. Membership in Sakai is open to academic and research organizations and commercial organizations and institutions with programs and missions consistent with the purposes of Sakai as set forth in Articles II and III and may include colleges and universities, research and development centers, membership organizations, and other nonprofit organizations, and for-profit organizations, provided that applications for membership must show that the organization:

(a) has goals and purposes consistent with the goals and purposes of the Sakai Foundation

to the satisfaction of a majority of the Sakai Board members present at the meeting at which the applicant's membership is considered, based on the applicant's application, bylaws, mission statement, and similar evidence,

- (b) agrees to pay membership fees and dues as specified by the Sakai Board, and
- (c) designates an Organizational Representative to the Sakai Foundation”

Establish the Initial Board of Directors

To incorporate as a non-profit organization, a Board of Directors is required. The Board serves as the governing body for the non-profit and is the organization’s fiduciaries.

The Advisory Board is asked to recommend a structure, number of Directors, terms of service, and process for replacing or removing Directors. Further, they are asked to propose a process for establishing the initial Board of Directors, including the role that the DSpace community, or membership, plays in this process. The following information intends to guide those decisions.

What are the responsibilities of the Board?

A non-profit Board of Directors typically is responsible for some or all of the following activities ⁵:

1. **Strategy and planning** - determines the organization's mission and purpose; reviews the organization’s annual planning process.
2. **Human resources** - hires the Executive Director to whom responsibility for the administration of the organization is delegated; supports the Executive Director and reviews his or her performance; serves as a court of appeal; and provides administrative guidance to staff.
3. **Policies** - governs the organization by broad policies and objectives, formulated and agreed upon by the Executive Director and employees, including assigning priorities and ensuring the organization's capacity to carry out programs by continually reviewing its work.
4. **Fundraising** – participates in fundraising activities.
5. **Budget and finance** – approves annual operating budget; determines the organization’s fiscal policies and internal control practices and ensures sufficient resources to fund the products and services adequately.
6. **Program evaluation** - monitors the organization's programs and services.
7. **Community relationships** – enhances the organization's public image and is held accountable to the organization’s stakeholder communities for the ethical and effective performance of the organization.
8. **Board development** – determines meeting frequency and criteria and procedures to secure board members, appoints new committees, and sets standards for self-evaluation.

⁵ Sources: BoardSource, in their booklet "Ten Basic Responsibilities of Nonprofit Boards"; Brenda Hanlon, in *In Boards We Trust*; and *Starting and Running a Nonprofit Organization* by Joan M. Hummel.

In addition to these responsibilities generally held by non-profit Boards, the DSpace Board of Directors, with input from the community – particularly the developer community, must determine the degree to which they engage in technical architecture and development decisions for the DSpace software platform. The Sakai Foundation, for example, uses the following language to describe this Board responsibility: “establish and maintain the processes of coordination determined to be necessary to support the development and release of the Sakai software.”

What will be the structure of the Board of Directors? What will be the size of the board?

According to www.boardsource.org, “building a board depends, to a large extent, on where the organization is in its evolution. In broad terms, there are three stages in the life cycle of a nonprofit board (Karl Mathiasen III, Board Passages: Three Key Stages in a Nonprofit Board's Life Cycle):

1. Organizing Board
2. Governing Board
3. Institutional Board

“Some organizations will evolve and move through these three life cycles and some will not. The important thing is not whether or not the organization makes the transition from step one to step three but rather that the board structure is planned and developed according to the organization’s current stage. A brief summary of some of the broad differences between the boards of organizations depending on the stage of development is as follows:

Organizing Board

Role of the Board Members:	Volunteering Supporting the Executive Director/Founder
Size of the Board:	3-10
Composition and Style of the Board:	Informal Less focus on professionals – more “hands on” Less focus on diversity
Approach of the Board:	Organizing Building

Governing Board

Role of the Board Members:	Governance Planning Supervising finances Some volunteering
Size of the Board:	10-25
Composition and Style of the Board:	More formal More professional More focus on diversity
Focus and Approach of the Board:	Governance Effectiveness

Institutional Board

Role of the Board Members:	Fund Raising Governance
Size of the Board:	25-40
Composition and Style of the Board:	Relatively Formal Access to contacts and donors Demonstrable diversity
Focus and Approach of the Board:	Fund Raising

DSPACE, clearly, is in the organizing stage. If DSPACE adheres to Mathiasen's recommended structure, its Board of Directors initially should be small (3-10 members) and populated with Directors who are willing and able to engage in the activities of forming a new organization. To alleviate some of the burden on the Board of Directors, they could hire full-time staff or consultants to execute the start-up tasks, while the Board offers guidance and oversight.

Who is eligible to be a member of the Board of Directors?

The composition of the Board should reflect the stakeholders in the DSPACE community, allowing representation from the original founders, organizations using DSPACE, and commercial organizations offering services and support to the community. Selection of Directors should take into account the skills required to meet the responsibilities of the Board. Finally, Directors may be called upon for their connections to external and strategically beneficial projects or funding-raising opportunities.

The Sakai Foundation considered the following statements about Board composition in a draft version of their Bylaws:

- (a) Board composition is determined by the Board elections, i.e., there are no restrictions on Board composition
- (b) At least 90% of the Board must be composed of Organizational Representatives

(defined as a designated representative of a member organization to the Sakai Foundation)

(c) At least 90% of the Board must be composed of staff or employees of member organizations

(d) Organizational Representatives, or staff, of commercial members (currently called "Commercial Affiliates") may compose at most 30% of the Board

How are board members who resign during their terms replaced?

Again, the following are options that the Sakai Foundation considered when drafting their Bylaws:

- If an individual elected to the Board is incapacitated or resigns, then that Board seat becomes vacant and remains so until the next election
- If an individual elected to the Board is incapacitated or resigns, then that Board seat becomes vacant and remains so until an interim election is held, which is to be held within 2 months
- If an individual elected to the Board is incapacitated, or resigns, the Sakai Board may appoint an individual to the Board for the remainder of that person's term

Further Questions

- How long do board members serve, and can they serve more than one term?
- Can board members be removed from the board of directors before their terms are over? If so, how? Under what conditions?
- Will board members be compensated for time, services, transportation, or other expenses?

Establish a Committee Structure

The committee structure, as defined by a non-profit organization's bylaws, serves as a way of distributing the work of the Board of Directors and the non-profit's senior management. In the case of an open source community, committees can serve as a useful mechanism for gathering community input to and enabling broader participation in the governance process. Typical committees at a non-profit include an:

- executive committee
- finance committee
- nominating committee (to recommend nominees to the Board of Directors)
- human resources committee
- community relations committee

- program committee⁶
- audit committee (to ensure compliance under Sarbanes-Oxley)

The committee structure should take into account the unique needs of the organization. The Apache Foundation, for example, has the following committees⁷:

- **Project Management Committees** - responsible for the active management of one or more Apache project communities, which are also identified by resolution of the Board. Each PMC consists of at least one officer of the ASF, who shall be designated chairperson, and may include one or more other members of the ASF. The role of the PMC from a Foundation perspective is oversight. The main role of the PMC is not code and not coding - but to ensure that all legal issues are addressed, that procedure is followed, and that each and every release is the product of the community as a whole.
- **Conference Organizing Committee (ConCom)** - responsible for the organization of the official ASF conference (aka ApacheCon)
- **Security Committee** - responsible for the handling of potential security holes in the software
- **Public Relations Committee** - responsible for the fund raising (collaborates with the concom since the conference is one of the major sources of income of the foundation) and public relations - including trademark licensing and other issues regarding management of the Apache brand, raising of funds, and is responsible for the press-related issues like press releases for major ASF events or dispatching requests for interviews.
- **Java Community Process Committee** - responsible for the liaison between the ASF and the Java Community Process (the ASF is a member of the JCP Executive Committee)
- **Licensing committee** - responsible for the legal issues associated with licensing and license compatibilities and for the revision of the Apache Software License

Draft the Bylaws

The following questionnaire outlines the typical decisions that should be made about what the bylaws contain⁸. The June 5, 2006 meeting of the DSpace Governance Advisory Board is designed to address many of the questions posed here, in order to begin drafting the Bylaws.

Questionnaire:

What is the purpose of the organization?

Where will be the location of the organization (registered office)?

⁶ Source: *Starting and Running a Nonprofit Organization* by Joan M. Hummel

⁷ <http://www.apache.org/foundation/how-it-works.html#other>

⁸ Source: *Starting and Running a Nonprofit Organization* by Joan M. Hummel

Will the organization have members?

What are the qualifications for membership?

What is the length of membership?

Powers: what can the members decide, if anything?

Meetings: What is the least number of meetings that will be held during a year; who can call the meeting; what advance notice is required; how many members must be present to conduct business; will Robert's Rules of Order or Sturgis parliamentary rules prevail (it is advisable to designate a specific set of rules); and can members vote by proxy?

What will be the structure of the Board of Directors?

What will be the size of the board?

Who is eligible to be a member of the board of directors?

How long do board members serve, and can they serve more than one term?

How are board members who resign during their terms replaced?

Can board members be removed from the board of directors before their terms are over? If so, how? Under what conditions?

Will board members be compensated for time, services, transportation, or other expenses?

How are the meetings of the Board of Directors structured?

What is the minimum number of times the board must meet during a one-year period?

Who may call a special meeting of the board – chair, executive director, and/or a certain number of directors?

What are the notification requirements regarding meetings?

What is the quorum for a board meeting?

Is a simple majority (the votes of half of the board members present plus one) sufficient to pass a motion at a meeting of the board?

Will "actions in writing" be authorized?

What rules of procedures will be used to conduct meetings?

What shall be the duties of the officers?

What officers shall the corporation have?

How can officers be removed from their positions?

How can officers be replaced if they resign or are removed before the end of their terms?

What are the specific powers and duties of each officer?

Determine which officers are members of the board.

What will be the structure of the Committees?

What special rules will apply to the corporation?

Will the corporation indemnify its board members (protect them from the financial consequences of liability lawsuits and judgments)?

What is the fiscal year of the corporation?

What are the provisions for amendments of the bylaws?

What is the process for dissolving the organization?

In addition, there are other possible special areas of consideration for DSpace:

Intellectual property

Management of the intellectual property of DSpace in keeping with open source software ideals is critical to a community of participation. With guidance from internal legal counsel, MIT and HP will need to plan a path for negotiating transfer of DSpace's intellectual property, either by donating or licensing it, to the DSpace 501(c)(3). The Sakai Foundation, founded in January 2006, provides a possible model for this process because the five original institutions that collaborated on the Sakai Project recently donated their respective software intellectual assets to the Sakai Foundation.

Dissolution

From the IRS website on 501(c)(3) organizations⁹: “Assets of an organization must be permanently dedicated to an exempt purpose. This means that should an organization dissolve, its assets must be distributed for an exempt purpose [as described by IRS regulations], or to the federal government or to a state or local government for a public purpose. To establish that an organization's assets will be permanently dedicated to an exempt purpose, the articles of organization should contain a provision insuring their distribution for an exempt purpose in the event of dissolution. Although reliance may be placed upon state law to establish permanent dedication of assets for exempt purposes, an organization's application can be processed by the IRS more rapidly if its articles of organization include a provision insuring permanent dedication of assets for exempt purposes. For examples of provisions that meet these requirements, download [Publication 557](http://www.irs.gov/pub/irs-pdf/p557.pdf) (<http://www.irs.gov/pub/irs-pdf/p557.pdf>), *Tax-Exempt Status for Your Organization*.”

To comply with this IRS requirement, the bylaws of the DSpace organization should include specific provisions for DSpace's intellectual assets, particularly the DSpace codebase. Here, again, legal counsel's advice should prove essential.

Draft Articles of Incorporation

Below are items typically required in the Articles of Incorporation. Legal counsel will be able to advise on any special requirements in the state in which DSpace chooses to incorporate.

1. Name of the corporation
2. Purpose of the corporation. (Note: The IRS is likely to pay close attention to this statement because it limits the organization's activities to those consistent with the mission statement, and the specific purposes must comply with what is permitted for tax-exempt status.)
3. A statement that the corporation does not afford “pecuniary gain”, or profit, to its members or others.

⁹ Source: <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>

4. The period of duration of corporate existence, which may be perpetual.
5. The location of the organization's registered office.
6. Name and address of each incorporator.
7. Number of directors constituting the initial board of directors, the name and address of each director, and the tenure in the office of the first directors.
8. The extent of personal liability, if any, of members for corporate obligations and the methods of enforcement and collection (there will be none, except in unusual circumstances).
9. Whether the corporation has capital stock (most nonprofit corporations do not have capital stock).
10. Provisions for the distribution of corporate assets and for dissolution.
11. Whether or not there will be a membership separate from the board of directors.¹⁰

Draft Material for Obtaining Tax-Exempt Status

To apply for tax-exempt status, an organization must complete and file IRS Form 1023. The document is 28-pages long, plus required schedules and attachments. In summary, the following information is required to complete the form:

- legal structure
- list of officers, directors, trustees, employees and independent contractors (including any compensation or other financial agreements with them and potential conflicts of interest)
- member benefits
- answers to detailed questions about the organization's specific activities
- a written narrative outlining the organization's programs in pursuit of its mission
- financial data (three-year revenue and expense projections, if organization has been in existence less than one year, and current balance sheet)
- public charity status

Once an organization has become incorporated, it has 15 months to file this form. The standard filing fee is \$500. It is estimated that the approval process takes the IRS between 4-6 months. Recognition of 501(c)(3) status is usually retroactive effective to the earlier of 1) the organization's legal formation or 2) the commencement of its programs. This means that the organization's activities are retroactively tax-exempt and donations are retroactively tax-deductible to the donor, extending even to prior tax years.

Apply for an Employer Identification Number¹¹

Every organization must have an employer identification number, even if it will not have employees. The employer identification number is a unique number that identifies the

¹⁰ Source: *Starting and Running a Nonprofit Organization* by Joan M. Hummel

¹¹ <http://www.irs.gov/charities/>

organization to the Internal Revenue Service. (Note: the employer identification number is not an organization's "tax-exempt number". That term generally refers to a number assigned by a state agency that identifies organizations as exempt from state sales and use taxes.) To apply for an employer identification number, an organization must obtain IRS Form SS-4 and file it with the IRS. An organization can also file for an employer identification number on-line or by telephone.