

**USENIX Association
Board of Directors Meeting
October 28, 2005
Minutes**

Attendance:

Board:

Mike Jones
Matt Blaze
Clem Cole
Alva Couch
Jon "maddog" Hall
Geoff Halprin
Kirk McKusick
Ted Ts'o

Staff:

Ellie Young
Tara Mulligan (scribe)

Guests:

Dan Appelman
Andrew Hume
Tom Perrine

The meeting was called to order at 12:04 PM, PDT. All of the above were present on the telephone conference.

Jones stated that the purpose of the meeting was to discuss the newSAGE outsourcing and LISA agreement and newSAGE budget, and to vote on the motion put forth by McKusick.

Via email on October 27, 2005, McKusick moved and was seconded by Cole as follows:

USENIX is committed to work with newSAGE to complete and enter into the outsourcing and LISA cooperative agreement before December 31, 2005 which current memorandum of understanding is attached. Under this agreement, USENIX will pay newSAGE for performing certain SAGE-related services until newSAGE receives tax-exempt status from the Internal Revenue Service under tax exemption 501(c)(3) or the agreement is terminated, whichever occurs first. The effective date of the agreement for the purpose of calculating money to be paid will be the date at which newSAGE begins providing services but in no event shall be before the agreement is fully completed and executed by both parties. Excluding debt incurred prior to the effective date of the agreement, newSAGE shall have liabilities no greater than 110% of assets as of December 31, 2006. The newSAGE

organization shall have an excess of assets over liabilities as of December 31, 2007. USENIX agrees to resolve disputes arising from the agreement by binding arbitration for issues whose outcome will not potentially jeopardize the 501(c)(3) status of USENIX.

The current memorandum of understanding will have two changes made to ensure that USENIX does not risk its 501(c)(3) status:

- 1) In the event that newSAGE does not get 501(c)(3) status, transfer of the SAGE-related assets, including the SAGE name and trademark, shall be done at fair market value and only if USENIX determines that such transfer will not jeopardize its own tax-exempt status.**
- 2) Receipts from the LISA conference shall be a fixed dollar amount decided in advance reflecting USENIX's good faith determination of the fair market value of the services newSAGE renders to USENIX during the time newSAGE is performing services for USENIX.**

Board members questioned the newSAGE budget's marketing expenses, particularly in relation to LISA and promotion of the event, with concern that USENIX would bear the costs for the bulk of traditional marketing for the foreseeable future. The newSAGE budget income was based on assumed rapid membership growth, estimated at 10%, which seemed unrealistic since membership in technical organizations has been dropping in recent years. The expense side made assumptions on being more efficient than USENIX, which Hume attributed to outsourcing office operations to an association management company.

Legal issues were raised regarding the structure and characterization of the proposed payments from USENIX to newSAGE. Appelman said that any payments from a 501(c)(3) to another organization that lacked the same tax-exempt status could jeopardize the tax exemption unless those payments could be fairly characterized as "fee for service" payments. In Appelman's view, none of the proposed alternatives for having USENIX pay newSAGE could easily be characterized as "fees for services." This was particularly true where newSAGE planned on giving a substantial amount of those fees to a third organization, Association Headquarters, a for-profit commercial organization. The legality of such an agreement would be suspicious and could jeopardize USENIX's non-profit status.

Hume noted that the estimated total outlay of funds from USENIX to newSAGE through 2007 was \$208K.

Hume and Perrine left the call at 12:44 PDT.

Discussion by the Board indicated that while they wished to see newSAGE succeed, there were serious reservations about the agreement and budget in their current form. There were concerns that moving forward would negatively impact USENIX finances and potentially its tax-exempt status. Some felt that the agreement could move forward with revision of the documents and implementation of procedures to formalize payments for services.

Appelman said that since it is unlikely that newSAGE would be granted a 501(c)(3) ruling, attempts to provide them with operating funds while waiting to find out would be difficult to justify. He felt a clear agreement would outline who would monitor the expenditures, and how they would be justified. He mentioned that USENIX had not seen documentation from their association management firm and it was unclear precisely what services they would be providing at what cost, with no provisions for oversight. He stated that proceeding without such documentation would be risky for USENIX due to potential IRS scrutiny.

Halprin requested that his following statement be inserted:

“Halprin believed that the discussion was being framed incorrectly; that the Board was both legally and ethically bound by the June 2004 resolution, and that that resolution was not to second guess the new organization, but to provide it with the agreed funds to operate for a year, and then evaluate it, based on the criteria established.

He noted that many of the comments regarding business planning and marketing were very instructive, but did not reflect USENIX’s obligations correctly. The board should, instead, be focused on resolving the issues raised by Appleman to ensure that USENIX’s 501(c)(3) status is not jeopardized whilst still meeting the obligations of the June 2004 resolution.”

Others understood that the motion was to try to make the spin-off happen, but there were caveats that newSAGE had plans for viability.

The Board discussed the following concerns about commencing with the agreement: the lack of a solid business plan and full understanding of the operations and costs of running an organization, budget allocations to the association management company, newSAGE’s tax-status intentions and the uncertainty of the potential IRS ruling, the call for binding arbitration, and the modest LISA marketing budget. The general consensus seemed to be that while the Board would very much like to support newSAGE, what had been presented did not appear to have a reasonable chance of resulting in a viable organization to serve its members and seemed too risky for USENIX.

Motion failed: in favor: 4 (Hall, Halprin, McKusick, Ts’o); against: 4 (Blaze, Cole, Couch, Jones)

Jones asked that the Board participate in forming messages to members and the newSAGE organizers regarding the decision. Cole thanked all who were involved in the tremendous effort to make this happen. He is saddened that this did not move forward, and felt he would be open to considering other arrangements with new SAGE in the future. Others concurred.

The meeting was adjourned at 1:39 PM, PDT.

Proposed Outsourcing Agreement and Term Sheet

Roadmap

This document is presented to both USENIX and newSAGE boards simultaneously for their review and approval. After approval, newSAGE will turn it into a legal contract and present to USENIX for legal review. After legal review, it will go to both USENIX and newSAGE boards for their final approval and signature. *This document is essentially complete except for the Attachments and a few minor points yet to be finalized (these are marked in the text); of course, these will be done for the final contract. The technical specifics of the transition plans are contained elsewhere under the jurisdiction of the Transition Committee.*

This agreement is a clarification and refinement of the original June 2004 motion together with amending motions and various legal and business concerns. The goal is to help spawn a new independent SAGE and nurture it for a few years, evaluating the results along the way, and applying clear, objective go/no-go criteria at defined steps of the process, while maintaining USENIX's fiduciary interests. Accordingly, it has been structured as a viability section, an outsourcing section, and a conference agreement, each with their own checks and balances.

I'd like to thank Mike Jones, Kirk McKusick, Ellie Young and Dave Parter for their valuable time, help and patience in producing this agreement. It hasn't been easy, yet, it could have been much harder.

Andrew Hume

Introduction

For many years, USENIX has had a formally recognized subgroup (or STG) of members interested in systems administration, known as SAGE. In 2004, the USENIX board of directors and some members of the SAGE executive committee jointly established criteria for deciding whether SAGE should be spun off into a separate organization with 501(c)(3) nonprofit status, or whether SAGE should continue to remain part of USENIX. Since this process started, it has been amended by numerous motions and various legal opinions, and has become unworkable. Accordingly, both groups have jointly produced this document, which establishes new plans and performance criteria by which the possibility of USENIX funding the independent SAGE organization will be evaluated. This agreement governs the rest of this process, and supersedes the previous Board motions.

The purpose of this agreement is provide the new organization a stable foundation for future growth by, for a limited time, USENIX supporting the new organization as it had

SAGE. At the same time, USENIX protects its fiduciary interests by tying this support to benchmarks of the new organization's viability.

Because of USENIX's concern that the new organization might eventually be classified as 501(c)(6), some of the financial support is structured as an outsourcing arrangement, specified in its own section. Most of the remaining financial support comes from a co-sponsorship of the LISA conference; the details of this are set out in their own section.

Definitions

The term **oldSAGE** shall refer to the “SAGE” collection of services within USENIX. oldSAGE is the current successor of the SAGE Special Technical Group (STG) of USENIX which was formed in 1992 and dissolved by the USENIX Board in June 2004.

The term **oldSAGE members** shall refer to the set of individuals who have joined SAGE within USENIX, whether in combination with a USENIX membership, or without a USENIX membership.

The term **newSAGE** shall refer to the System Administrators Guild (SAGE) Incorporated, an entity incorporated in 2004 and applying for 501(c)(3) status.

The term **SAGE members** shall refer to the union of the oldSAGE members and the members of newSAGE.

The term **EDA** means the effective date of this agreement for the start of outsourcing.

Interim Funding

The USENIX Board has allocated a fund of \$10K in fiscal year 2005 to cover startup expenses, such as legal fees. No other funding from USENIX has been proposed.

Viability

This section covers issues other than the outsourcing and conference agreements.

Criteria

The following criteria shall be used to determine the viability of newSAGE:

1. Have completed elections for the board of directors.
2. Have an active application with the IRS for tax-exempt status.
3. Have a balanced budget for calendar year 2006.

4. Have a balanced budget for calendar year 2007, taking into account any deficit incurred in the prior year.
5. The actual expenses and liabilities for 2006 must not exceed the actual revenues and assets by more than 10%.
6. Attain a paying membership of 2300 newSAGE members within one year of USENIX no longer offering SAGE memberships.

The budgets in criteria 3 and 4 may assume revenue from the Conference Agreement for LISA'05 and LISA'06 and where necessary, use the USENIX estimates for LISA revenue.

Step 1 consists of criteria 1, 2, and 3 being met and documented in a report presented by newSAGE to USENIX on or before Nov 18, 2005. **Step 2** consists of criteria 4, 5, and 6 being met and documented in a report, and accompanied by an auditor report by a third party on criteria 5 and 6, presented by newSAGE to USENIX by Feb 1, 2007. newSAGE is responsible for any costs associated with these reports.

In both cases, the USENIX board shall decide, by motion, whether the criteria have been met, within 30 days of receipt of the report.

Consequences

When step 1 has been successfully completed, USENIX agrees to:

- Apply the Conference Agreement to LISA'05 and LISA'06.

When step 2 has been successfully completed, USENIX agrees to:

- Transfer the trademark for "SAGE: The System Administrators Guild" to newSAGE.
- At newSAGE's request, apply the Conference Agreement to LISA'07.

It is to be noted that if all these steps successfully complete and newSAGE exercises its option to extend the Conference Agreement, the Conference Agreement below will have been applied to three LISA conferences (2005-7). It is to be emphasized that there should be no expectation that the Conference Agreement will be extended to cover any other LISA conferences. newSAGE acknowledges and thanks USENIX for the level of support implicit in the commitment to cover LISA '05, '06, and optionally '07, and realizes that any extensions beyond that will be purely a business decision by USENIX, and not because of any purported moral imperative to continue subsidizing newSAGE.

What Ifs

If either Step 1 or 2 is determined to have failed, newSAGE agrees to immediately:

- Cease using the trademark "SAGE: The System Administrators Guild".
- Transfer all the SAGE-related domain names it owns, including but not limited to those that USENIX originally transferred to newSAGE, to USENIX.
- Return the SAGE web server to USENIX.
- Return any SAGE merchandise and booklets to USENIX.
- Agree that USENIX has the option, at its sole discretion, to resume providing SAGE services, including to newSAGE members, and take proactive steps necessary to facilitate this.
- Transfer its membership database to USENIX.
- Donate any remaining assets to USENIX.
- Allow USENIX to address the newSAGE membership about the transfer of services, preferably in the form of a joint communiqué from the newSAGE and USENIX boards, but otherwise as a distinct note whose content is supplied by USENIX.

Should newSAGE fold, cease operations, or become insolvent on or before Dec 31, 2010, newSAGE agrees to:

- Donate all remaining assets to USENIX, including trademarks and memberships.
- In particular, the trademark "SAGE: The System Administrators Guild", the SAGE domain names, and the SAGE web server must be returned to USENIX at no cost under these circumstances.

After the "SAGE: The System Administrators Guild" trademark and the SAGE domain names have been transferred to newSAGE, should newSAGE want to sell the trademark or domain names to a third party, USENIX has first right of refusal at fair market value.

Outsourcing

For the period **EDA** to Dec 15, 2006 inclusive, newSAGE shall provide membership services to members of oldSAGE in return for compensation from USENIX. It is noted that during this period that newSAGE will have its own members and that the services offered to these members need not be the same as those provided to oldSAGE members.

Effective Dec 15, 2005, USENIX will no longer offer an oldSAGE membership. After that date, as these memberships expire, USENIX will inform oldSAGE members of the opportunity to join newSAGE, making it clear that this is a separate organization from USENIX. The text of this note is in Attachment A of this agreement.

Services

newSAGE shall support the following services:

- Membership processing and fulfillment
- SAGE web site

- SAGE mailing lists
- Discount registration at LISA and other conferences jointly sponsored by USENIX and SAGE.
- Practical Booklets and Pamphlets: When you join SAGE for the first time, you receive a free copy of the most recent booklet. A member can purchase these at a member discount and also have access to archive of past SAGE booklets on the SAGE web site for members only
- Salary Survey: newSAGE must conduct a salary survey each year of a depth and breadth consistent with previous years. The survey results shall be tabulated and are available to SAGE members on the SAGE Web site.
- Access to Members-Only Areas of the Web Site: (SAGEweb member services include sysadmin salary profile results and job finding pages.)
- An online archive of the sage-members mailing list.
- Code of Ethics: A copy of the Code of Ethics suitable for framing.
- newSAGE will publish at least one SAGE booklet during 2006.

Comment: Initially, the only service different between oldSAGE members and newSAGE members will be newSAGE voting rights.

Fee for Service

In return for providing the above services to oldSAGE members, USENIX shall pay newSAGE:

- The pro-rated remainder (as of the EDA) of the current SAGE membership dues paid by oldSAGE members. This amount will be sent within 2 weeks of the EDA.
- The full oldSAGE membership dues of oldSAGE members as of Dec 15, 2005, whose dues were not included in the pro-rated amount sent following the EDA. This will be sent on Dec 15, 2005.
- The pro-rated (as of the EDA) SAGE portion of income from the LISA '04 conference (20% of the net of LISA, per prior arrangement). For this item, pro-rating is done on the basis of 100% means the full calendar year 2005. This amount will be sent within 2 weeks of the EDA.

To enable newSAGE to perform the services specified above, USENIX will:

- Pass control of the SAGE internet domain names, including sage.org, to newSAGE.
- License to newSAGE exclusive rights to use the SAGE name, and all related trademarks, patents and copyrights. This includes SAGE certification stuff.
- Give to newSAGE archives of the old booklets.
- Give newSAGE members access to LISA papers and other online LISA materials for the first year after the conference (older works are publicly available).
- Provide newSAGE the oldSAGE member database and other oldSAGE-related machine-readable information (contact lists, code, data, reports, etc). For this information, newSAGE would have to follow USENIX's information access and

- data privacy policies under which the information was collected for as long as this information is retained by newSAGE.
- Provide newSAGE all materials associated with the SAGE Certification project.
- All existing SAGE merchandise and materials (to be physically transferred at or before LISA '05). This includes branded merchandise, various shirts, and the existing stock of printed booklets.
- Provide newSAGE the current oldSAGE webserver hardware.
- Send the all oldSAGE member's names and contact information to newSAGE on Dec 15, 2005.

To enable USENIX to fulfill its obligations to make LISA content available immediately to newSAGE members:

- newSAGE shall supply a mechanism that USENIX can use to dynamically determine whether an individual is a newSAGE member at the time the LISA content access occurs. This same mechanism shall be usable by USENIX to determine whether an individual is a newSAGE member at the time they register for a LISA conference.

Management

There shall be a Transition Committee of four people, two appointed by USENIX and two by newSAGE, to manage the outsourcing effort, especially the transition from USENIX to newSAGE as the supplier of services. The Transition Committee shall be responsible for monitoring milestones and where necessary, making minor adjustments to timelines and milestones. When the Transition Committee cannot decide (by majority vote) to alter a timeline, it may refer it to the USENIX and newSAGE boards. The timeline may be changed only if both boards agree.

The Transition Committee should meet at least twice a month between the EDA and Dec 15, 2005 (and longer if some transition issues remain beyond this date) and issue a report at least once a month to both the USENIX and newSAGE boards.

LISA Conference Agreement

This agreement consists of three parts

- Conditions about the LISA conference itself
- Conditions (reciprocal to LISA) about conferences held by newSAGE
- Specific LISA conferences and associated terms to which this agreement applies

LISA Conference

- In consideration for its participation in, and promotion of, LISA, USENIX shall pay newSAGE a portion of the LISA conference net. For LISA '04, this amount is 20% of the conference net (after USENIX G&A and personnel is applied). For LISA '05 through LISA '07, this shall be 10% of the conference net after direct expenses have been applied (but before USENIX G&A and personnel expenses are applied)
- "LISA" is a trademark of USENIX and may not be used by any other organization, including newSAGE, without explicit permission from USENIX, and then only for specific purposes. This agreement permits newSAGE to use the "LISA" trademark in its promotion of LISA as a co-sponsored conference.
- USENIX will list newSAGE as a co-sponsor of the LISA event, with all publications and advertisements listing newSAGE in equal prominence.
- USENIX will provide 10 complimentary conference registrations and one meeting room for the period of the conference to the SAGE organization to be used at their discretion. The Transition Committee may increase the number of complimentary registrations if it proves insufficient. For space reasons, the newSAGE board meeting normally held at LISA might have to be held in this meeting room.
- USENIX will provide booth space for newSAGE, a room for a newSAGE BOF (advertised on the conference schedule), and (if possible) a room for a SAGE board meeting; all comparable to the corresponding USENIX facilities.
- USENIX will distribute the funds specified in this conference agreement from LISA by the March 1st immediately following the conference.
- For LISA '06 and LISA '07 (if this agreement is extended to cover LISA '07), USENIX will provide a newSAGE membership check-off box on its registration materials and distribute any newSAGE dues collected within 60 days after the conference. The LISA '05 check-off box shall be for oldSAGE.
- USENIX may charge an administrative fee of *[amount TBD]* for newSAGE renewals done through the registration process.
- The ability to join/renew USENIX and newSAGE memberships as part of conference registration shall be given equal treatment.
- USENIX will distribute printed material supplied by SAGE in the registration kits.
- There will be sufficient space in the conference opening remarks for the newSAGE President (or their delegate) to address the attendees, and to award annual newSAGE prizes.
- USENIX will provide an electronic copy of the attendee list distributed to conference attendees to newSAGE.
- newSAGE may appoint a LISA Conference Liaison, which includes being on the same conference-related mailing lists as the USENIX board liaison to the conference.
- newSAGE will promote LISA as its primary annual co-sponsored conference.

- newSAGE will promote LISA to its membership and as part of its annual marketing efforts (e-mail or online promotion is sufficient for this purpose).
- LISA must always be described as “Co-sponsored by USENIX and SAGE” with the names appearing in that order.
- newSAGE will not hold any newSAGE conference that conflicts with LISA. This is defined as a conference with planned attendance greater than 50 people that falls within the time period of 90 days before or 30 days after the LISA technical program. Conferences/workshops with a planned attendance of less than 100 held in conjunction with (but not overlapping) LISA are excepted; USENIX shall be offered the chance to co-sponsor these events. Other exceptions may be granted by specific vote of the USENIX board. A newSAGE conference is one where newSAGE is responsible for running the conference and has control over the date and location of the conference.

newSAGE Conferences

In the event that SAGE holds their own conference(s), they agree to provide USENIX the following, for one such event every 12 months:

- 10 complimentary conference registrations and one meeting room for the period of the conference to the USENIX organization to be used at their discretion.
- booth space for USENIX.
- distribution of printed material provided by USENIX in the registration kits.
- a USENIX membership check-off box on its registration materials and distribution of any USENIX dues and member information collected within 60 days after the conference.
- SAGE may charge an administrative fee of *[amount TBD]* for membership renewals through registration.

Applying the Conference Agreement

The following list describes each LISA Conference and any associated prerequisite conditions necessary for the agreement to apply to that conference.

- LISA '05:
 - Successfully complete step 1 of the viability review above. The key point is the balanced budget for 2006.
- LISA '06:
 - Submit a balanced budget for 2006 to USENIX by April 1, 2006. This budget should reflect the actual income from LISA '05.
- LISA '07:
 - newSAGE requests USENIX to apply the LISA Conference Agreement to LISA '07. The request shall be made by Feb 1, 2007 and include newSAGE's balanced budget for 2007.
 - Successfully complete Step 2 of the viability review above.

- o newSAGE will document to USENIX its substantial fulfillment of its obligations under the LISA conference agreement.

Booklets

For several years, USENIX has been publishing a series of oldSAGE booklets (25-90 pages) on various topics. These have been available for sale as general merchandise, and as a member service:

- First time oldSAGE members get a copy of the most recent booklet.
- oldSAGE members get access to PDFs of all the published booklets.

Currently, the publishing pipeline for the booklets has 3 titles in process; one (on Oracle) is scheduled to be published by Dec 2005, and the other two in 2006.

- USENIX will publish, print, and distribute the pending Oracle booklet.
- USENIX gives all rights to the series over to newSAGE as of the EDA.
- USENIX will transfer any rights it has to the 3 titles in process and all previously published titles, as long as newSAGE does the work of securing permissions (from authors) as necessary.
- newSAGE will pay USENIX \$6750 as compensation for work done on the two 2006 titles, to be paid within two weeks of the EDA.
- newSAGE will need to renegotiate the current agreements with the two 2006 authors and the series editor.
- USENIX will have no access, electronic or otherwise, to any booklets, except it may offer electronic access to the System Administrator Job Description booklet.

Timeline/Process

This section documents the expected flow of short-term activities.

- Technical work can start on transition
- Conference call of negotiating team to approve agreement
- Reviewed and approved by both Boards in parallel
- SAGE prepares legal contract form of the agreement
- USENIX reviews contract.
- USENIX signs contract
- SAGE signs contract
- EDA occurs
- Transition period: Transfer of physical and electronic assets from USENIX to newSAGE for step 1 occurs, with exact handover dates for specific assets to be determined by the transition committee, but all to occur between the EDA and December 15, 2005.

Key Dates

This section summarizes the key dates and actions associated actions described in this agreement:

- *To be determined:* Date of signing.
- *To be determined:* Effective date of agreement (EDA). The EDA shall be the first business day after the date of signing. Transition period begins. SAGE members notified of updated status by USENIX. USENIX to transfer prorated LISA '04 and membership funds to newSAGE. Orderly transfer of services begins.
- Dec 15, 2005: Transition period ends. newSAGE fully providing SAGE services. USENIX stops offering SAGE memberships. Membership database transferred to newSAGE.
- April 1, 2006: newSAGE presents balanced 2006 budget (including LISA '05 actuals) to USENIX to have Conference Agreement apply to LISA '06.
- Dec 15, 2006: Online method for USENIX testing newSAGE memberships for purposes of granting newSAGE members access to LISA content and for LISA '06 registrations working and tested.
- Dec 15, 2006: Date by which newSAGE membership must have met criterion 6. (One year after USENIX stops offering SAGE memberships.)
- Feb 1, 2007: Deadline for newSAGE to deliver year 2006 audited financial report and balanced 2007 budget to USENIX.
- Feb 1, 2007: Deadline for newSAGE to request application of the Conference Agreement to LISA '07.
- Mar 1, 2007: Deadline for USENIX to determine whether step 2 has been successfully completed, triggering trademark ownership transfer.
- Mar 1, 2007: Deadline for USENIX to determine whether newSAGE has substantially fulfilled their obligations under the Conference Agreement for LISA '05 and LISA '06, and successfully completed step 2, triggering application of the Conference Agreement to LISA '07.

desiderata

- USENIX will not modify the June 2004 agreement until it receives proof of the 501(c)(3) application and proof of the bank account required under that agreement and promised us in November 2004. Until this agreement is signed, the June 2004 agreement and timelines remain in effect.

As part of initial board approvals of this agreement, form transition committee, which generates transition plans.