

**MEMORANDUM**

TO: Legal Sub-team of the Cross-Community Working Group on Enhancing ICANN Accountability

FROM: Sidley Austin LLP and Adler & Colvin

RE: Responses to Questions from Rafael Pérez Galindo Concerning Certain Unincorporated Association Formalities

DATE: June 11, 2015

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**Overview**

This memorandum responds to the questions posed by Rafael Pérez Galindo to Sidley Austin LLP and Adler & Colvin, assigned to us on June 2, 2015.

**Qualifications**

We have assumed in our responses that each unincorporated association will have no assets and will conduct no activity, other than holding and exercising certain member, contract, and other rights with respect to ICANN.

Furthermore, please note that our legal analysis is provided on a level in keeping with that of the questions posed. Our legal analysis is tailored to the questions assigned by the Legal Sub-team, and is provided for the benefit of the Legal Sub-team, to help facilitate its consideration of the governance models discussed to date, and should not be relied upon by any other persons or for any other purpose. These responses reflect Sidley's and Adler & Colvin's preliminary reactions regarding the questions and have not been reviewed by any outside third parties. The legal analysis contained herein is based on California law, and in particular, the laws governing California unincorporated associations. Please note that the qualifications from our prior memoranda to the Legal Sub-team apply to this memorandum as well.

**Questions from Rafael Pérez Galindo**

***Question 1:***

It is stated in the report that the new association would have to file a statement with the California Secretary of State indicating some information, in order to establish a record

with regulatory authorities of the unincorporated association's existence. The question is whether this inscription in the record is subject to any fee, and if yes, the amount of that fee.

***Attorney Response:***

The submission of a Statement of Unincorporated Association with the California Secretary of State is optional. We recommend filing it to establish a record of the unincorporated association's existence, helping ensure that it will be recognized as a legal person and also avail itself of the liability protections California law provides to the members of such associations.

Filing the statement is a very simple and inexpensive process. Currently, there is a fee of only USD 25.00 to file a Statement by Unincorporated Association (Form UA-100) with the California Secretary of State. The fee must be paid upon filing. The same fee must be paid each time the filing is updated with new information or is renewed (a Statement by Unincorporated Association expires 5 years from December 31 following the date of filing with the Secretary of State). This fee is subject, of course, to change by the Secretary of State.

***Question 2:***

In addition, would this unincorporated SO/AC be subject to the payment of any kind of taxes, duties, tariffs, charges, rates or tributes? I guess that is not the case, since it would have no economic activity, but just to be sure.

***Attorney Response:***

An unincorporated association is not subject to any additional taxes, duties, tariffs, charges, rates, or tributes simply because of its existence (for example, California franchise taxes).

If the unincorporated association realizes income in California in a given tax year, it would be subject to U.S. federal income and California state income taxes, unless it took the necessary steps to establish U.S. federal and California state tax-exempt status. With no income, however, an unincorporated association would have no tax liability in this respect.

Certain other California state taxes—for example, sales tax and property tax—may apply when an unincorporated association engages in commerce or owns property. Assuming that an unincorporated association does neither, however, these taxes should also not apply.

If the unincorporated association had substantial activities and income in other states or nations, those states' and nations' laws would presumably apply to determine any tax or similar liability. However, the reference model assumes the unincorporated associations formed

to be the members of ICANN (or otherwise participate in ICANN governance) will have no economic activity, in which case no such liabilities should arise.

***Question 3:***

Last, would the unincorporated SO/AC have any duties regarding administrative burdens or periodic obligations, such as the handing over of some kind of annual balance or activity report? In other words, are there any legal obligations regarding the need to demonstrate that the association is active?

***Attorney Response:***

There is no legal obligation to report or otherwise demonstrate to any regulator or other body that the unincorporated association is active.

It is only if there is economic activity that reporting, in the form of tax filings, is required. If the unincorporated association had income, it would be required to report income on annual returns filed with the U.S. Internal Revenue Service (IRS) and the California Franchise Tax Board (FTB). In our experience, unincorporated associations with no financial activity do not make these filings.