

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 Two Questions Concerning Unincorporated Associations

DATE: June 15, 2015

Overview

This memorandum responds to the two questions concerning unincorporated associations assigned to Sidley Austin LLP and Adler & Colvin on June 11, 2015. Our responses below supplement our joint responses on June 11 to Rafael Pérez Galindo’s questions on unincorporated associations (“Responses to the Pérez Galindo Questions”) ([Link](#)), Adler & Colvin’s comments from June 1 to the CCWG’s FAQ on Unincorporated Associations (“Comments to the FAQ”) ([Link](#)), and our joint memorandum “Use of Unincorporated Associations in ICANN Governance” from May 3 (“Unincorporated Association Memorandum”) ([Link](#)), as well as the other written and oral guidance we have given on the issue of unincorporated associations.

Qualifications

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 reactions to 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

1. Is registration of a UA necessary or can legal personality be acquired through other means for a UA ?

As we indicated in the Responses to the Pérez Galindo Questions and the Comments to the FAQ, filing a Statement of Unincorporated Association with the California Secretary of State is not necessary to create a UA in California. California law requires only that a UA be constituted by “two or more persons joined by mutual consent for a common lawful purpose.” Counsel recommends registration as evidence of the existence of the UA.

To establish the required consent to create a UA, counsel advises adopting Articles of Association, in addition to filing a Statement of Unincorporated Association with the California Secretary of State. (Please refer to the Unincorporated Association Memorandum for additional details.) However, for an SO/AC that does not wish to register, adopting the Articles of Association alone is sufficient to create a UA.

2. Would existing arrangements for the SO/ACs as described in the ICANN Bylaws be sufficient to recognize each of them as UAs ?

No. Two or more persons must mutually consent to create a California UA. The ICANN Bylaws, without more, do not demonstrate that the members/participants of the SO/ACs intended or consented to those SO/ACs existing as distinct legal persons. Distinct legal entities typically have their own governing documents. Without some evidence of intent or consent to create a separate legal entity outside the bylaws, any group described, even at length, in an organization’s bylaws will be construed as an internal governance component of the organization, rather than as a separate entity.