



DENIC's View on Internet Governance Submission to the WGIG

It is with pleasure that DENIC, the registry for the German Top Level Domain .de, takes the opportunity to share its view on basic issues of Internet governance that are currently also being looked at by the WGIG.

The composition of the WGIG as well as the level and breadth of stakeholder participation in the WGIG process make DENIC hope that the WGIG's work will put forth a view on Internet governance that appropriately reflects and suits the Internet's core character as a multi-stakeholder instrument in general as well as the special and unique character of country code Top Level Domains (ccTLDs) in particular.

Internet Governance and Multiple Stakeholders

The exceptionally successful development of the Internet and particularly the Domain Name System (DNS) to date has been made possible not by top down (intergovernmental) regulation but by bottom up coordination and private initiative. It is of paramount importance to stay aware of this elementary insight as the considerations on Internet governance continue and focus shifts to details.

In light of this, DENIC is pleased with and wholeheartedly agrees to the WGIG's statements that Internet "governance" does not only and not necessarily at all mean "government activities" but implies a new kind of steering by multiple stakeholders, encompassing both, the private and the public sector.

Accordingly, the general concept of Internet governance has to be and is as broad as possible. It includes, above all, the coordination and cooperation of those stakeholders providing the technical infrastructure and services that make the Internet work as well as decentralization to the largest possible extent – as the Internet's technical set-up itself is decentralized. In fact, the Internet's decentralized nature is the most important reason for its vast technical robustness and resilience in that decentralization means, for example, better scaling, more security, and, in case of technical failures, less severe (because locally limited) consequences. Therefore, the centralization of policies and policy-

making would be detrimental to the Internet's stability and with that ultimately harm the Internet at its core.

Any attempt to define Internet governance requires a broad vision of the Internet as a complex organism with multiple technical, administrative, legal, political, and socio-economical facets naturally eluding central and one-sided attempts of governing.

Contrary to this insight, to some, Internet governance appears to mean primarily additional and special governmental or intergovernmental regulation. Presumably, this is due to the widespread fallacy that the Internet is currently unregulated. In fact, however, the Internet is subject to all the same laws and rule-making that affects the physical world, obviously including national and international law.

For example, trademark law is, of course, fully applicable on the Internet - and to date, numberless court judgments have shown that the application of trademark law to trademark violations on the Internet is entirely possible and leads to the same results as in the offline world. If these results are being seen as satisfactory in the offline world there is no reason why they wouldn't be sufficient when the Internet is concerned. Not even the global nature of the Internet makes any difference in this regard as the physical world is, naturally, not less global, and cross-border trademark disputes occurred and were solved also before the Internet came into being.

Consequently, Internet governance cannot be a matter of additional and special regulation or law-making (albeit, as in the offline world, it is obviously and always possible that new developments require the reform of existing or the introduction of new laws).

Multiple Stakeholders and Multiple Issues

DENIC understands that the WGIG's core mission is to explore how a multiple stakeholder approach to Internet governance can be implemented.

In this instance, it would be impossible as well as insufficient to aim at determining the role of the different stakeholders in general - as the issues brought up by the Internet are manifold and their characters and with that their requirements differ widely. This means that not all stakeholders can, must, or will (and possibly want to) participate in every Internet issue to the same degree. Instead, it is of utmost importance to explore and define for every single concrete

issue which level and which kind of participation it requires or allows for from which stakeholder group.

For example, Internet users constitute an important stakeholder group - however, they obviously cannot define the rules for law enforcement in the Internet. Also, governments are, in general, another stakeholder group – however, there is hardly a role for them in the development of technical standards to ensure technical interoperability as this is simply a matter of applying technical expertise and recognizing technical facts and necessities.

Accordingly, the starting point of exploring and defining the roles of different stakeholders for each different issue must be to investigate which material aim is supposed to be achieved and which material problems need to be solved. It would be inappropriate to call for a higher or lower degree of involvement of, say, governments in a certain issue without having determined what the aim is and how more or less government involvement can support it. That is because neither the involvement of governments nor its absence is a value in itself but needs to serve (and be fit to serve) a specific purpose.

The broad diversity of ccTLDs with their different government relationships clearly proves this point: Different types and grades of governmental involvement have been developed locally according to the needs and necessities of the respective ccTLD. This is the very reason why the government-run ccTLD registry in one country works as well as the entirely private ccTLD registry in another.

DENIC itself, for example, is legally established as a cooperative without any formal involvement of the German Federal Government. Yet the Federal Government supports DENIC and its private nature and maintains a close and good informal relationship with DENIC. In turn, DENIC keeps the Federal Government up to date on all relevant issues and keeps an open ear to its suggestions. This model has made .de by far the largest ccTLD and, behind .com, the second largest TLD altogether, with currently more than 8.5 million domain names registered.

Internet Governance and ccTLDs

With respect to the administration of ccTLDs, the one truly fundamental and most important aim is to ensure the technical functioning of the DNS.

For this is not at all a political but an entirely technical task, there is hardly any room for Internet governance considerations. Instead, this is a matter of technical

expertise as well technical interoperation, not political coordination, let alone political oversight. Obviously, this is not to say that ccTLDs shouldn't comply with technical necessities in order to ensure their functioning and interoperability – however, ccTLDs already do this in their own best interest so that there is no need to create mechanisms to force them to do so, let alone on the global level.

Additionally, the introduction of such mechanisms would especially impair the opportunities of ccTLDs in developing countries to independently gain experience and proficiency: Obviously, it would not be a problem for the ccTLD registries in highly developed countries to meet any requirements that can possibly be imposed on them – yet such requirements would eventually leave many developing countries no choice but to outsource operation of their ccTLDs and with that lose their sovereignty in this regard.

Besides such basic technical considerations, it must be kept in mind that the whole concept of ccTLDs is to provide places in the DNS for local communities and with that cater to local cultural, political, or legal needs. This is the reason why the ccTLDs can be and are so diverse in any possible instance and in particular when it comes to registry structures and registration policies. It would be diametrically opposed to the concept of ccTLDs itself if attempts were made to subject them to global rules or policies.

At the same time, this diversity clearly shows that in Internet governance as it concerns ccTLDs, there can and shall be no “one size fits all” policies. Instead, in the spirit of subsidiarity (as enshrined in the revised GAC Principles for ccTLDs), practices and structures can and must be developed by the relevant local communities to meet and reflect their specific cultural and societal needs as well as their specific legal frameworks. In fact, it is such diversity that constitutes the unique character of ccTLDs and guarantees their success.

Even with regard to the “delegation” of new ccTLDs or the “redelegation” of existing ones to new registry managers, (other than in the case of gTLDs) a global policy is neither needed nor would it be appropriate. Since any current and future ccTLD is per se linked to a certain country or territory, the decision by whom the registry should be run can and should be made locally (with the IANA then merely implementing such local decision).

The recent introduction of the new ccTLD .eu for the European Union is a good example for this: Why would it have been necessary or reasonable to let anyone else but the European Union pick the registry and set the registration rules? An exception might only be needed in those cases where an existing ccTLD registry

has its seat not in the country that the ccTLD relates to and thus is not subject to that country's jurisdiction.

Conclusion

As stated at the beginning, DENIC hopes that the WGIG will present to the WSIS a view on Internet governance that is appropriate to the Internet in general and the role that ccTLDs play in it in particular. DENIC believes that all of the multiple Internet stakeholders can be confident in this instance if the WGIG bears in mind its own assertion that "the overwhelming majority of the private sectors actors have demonstrated their capability to fulfill their tasks and to make their contribution to the functioning of the Internet. With regard to the practical management there is no specific weakness in the system".

If this is the case, the WGIG should then follow the wisdom of Montesquieu who knew that when it is not necessary to regulate, it is necessary not to regulate.

Frankfurt, May 15, 2005