



Review of the GAC Principles for the Delegation and Administration of ccTLDs (ccTLD Meeting, March 24, 2003, Rio de Janeiro)

**Attorney-at-Law Stephan Welzel
Head of Legal Department, DENIC eG**

GAC Principles

- issued February 2000
- nature
 - „suggest principles that will assist in the development of best practice for the delegation and administration of ccTLDs“ (Section 2.)
 - no description of actual situation
 - vision for future situation
 - „with respect to future delegations“ (Section 7.4.)
 - as if starting from scratch

Legal Impact of GAC Principles

- binding in general?
 - on governments
 - no, as no international treaty and not ratified by countries
 - on ccTLDs
 - no, as not transferred into law
 - on ICANN
 - no, as GAC itself cannot set rules for ICANN
 - no, as never adopted by ICANN formally
- ccTLDs with triangular contract
 - binding as far as implemented in contract

Political Impact of GAC Principles

- individual governments
 - some ignore them
 - some reject them
 - very few have implemented (parts of) them
- GAC
 - tries to adhere to them
- ICANN
 - tries to act on them
- ccTLDs
 - are aware of them

Basic Principle

- triangular relation
 - government
 - „designates“ (i. e. appoints) ccTLD manager
 - ICANN
 - „delegates“ ccTLD to (i. e. recognizes) designated manager
 - ccTLD manager
 - is „trustee“ for ccTLD
- „communication“
 - between government and ICANN
 - between government and ccTLD manager
 - between ICANN and ccTLD manager

Role of Government

- government „ultimately represents the interest of the people of the country“, thus government to „ensure that the ccTLD is being administered in the public interest“ (Section 5.1.)
- governments „maintain ultimate policy authority over their respective ccTLDs“ (Section 5.2.)

Change of ccTLD Manager I

- mandatory
 - „when ICANN is notified by the relevant government“ that ccTLD manager has „contravened the terms of the communication“ (Section 7. 1.)
 - government orders change
 - ICANN executes without any possibility to check or object
- possible
 - „when ICANN notifies the relevant government“ that ccTLD manager „threatens the stability of the DNS“ or „has breached and failed to remedy“ the contract with ICANN (Section 7.3.)
 - either: government and ICANN force ccTLD manager to remedy situation
 - or: government „effects“ change of ccTLD manager

Change of ccTLD Manager II

- where GAC principles not implemented
 - „upon the tendering of evidence“ by government that ccTLD manager „does not have the support of the relevant local community and of the relevant government“ (Section 7.2.)
 - since government represents local community, practically government orders change
 - ICANN executes without any possibility to check or object
 - „upon tendering of evidence“ by government that ccTLD manager „has breached and failed to remedy other material provisions of RFC 1591“ (Section 7.2.)
 - government determines whether ccTLD follows RFC 1591
 - if government thinks no, it orders change
 - ICANN executes without any possibility to check or object

Most Problematic Issues

- expansion of governmental power over ccTLD
 - without consent of ccTLD manager
 - without national legal procedure followed
- government can order a change of ccTLD manager
 - without following according national procedure
 - without being accountable or liable
 - without ICANN being able to object
- various conflicts with national law
 - containment of governmental competence
 - lawful procedures
 - material law, e. g. on data protection

Some Problems in Detail I

- uniform approach
 - no consideration of various models, traditions, and cultures
 - strength of ccTLDs is variety
 - also from governments' perspective
- assumption on representation of local community
 - government formally represents people in general
 - interests of Internet users represented (also) by others specifically
- view on ICANN and ccTLD manager
 - ICANN as executor of governmental will
 - ccTLD manager as object of governmental will
 - bypassing of protection enjoyed under national law

Some Problems in Detail II

- lack of realism
 - no reflection of actual situation with most ccTLDs
 - no path to implementation
- silence on important practical issues
 - scope of ICANN policies regarding ccTLDs
 - procedural questions
 - even within GAC principles framework
- conflicts with material law
 - constant availability of zone files and registration data to ICANN (Section 10.2.1.)
 - data protection
 - copyright protection of databases
 - fiduciary duties of ccTLD managers

Some Problems in Detail III

- application of gTLD rules?
 - ADR (Section 9.1.6.) and possible additional policies (Section 9.1.8.)
 - ccTLDs that allow registrations from non-residents
 - at the same time: ccTLDs in EU legally obliged to allow such registrations
- coverage of unrelated issues
 - protection of country names under new gTLDs (Section 8.3.)

Review of GAC Principles

- need for GAC principles at all?
 - why uniform approach?
 - why not deal with relation government-ccTLD locally?
- general relation
 - ICANN-governments-ccTLDs
- details
 - practicability
 - legality

A decorative L-shaped line consisting of a vertical line on the left and a horizontal line on the top, meeting at a small circle at the top-left corner.

- stephan@denic.de