

Amsterdam

Registry/Registrar Meeting



Registry Contract Discussion

Panellists

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Overview

- “One size fits all” doesn’t fit
- Draw means applicants penalised for negotiating – never envisaged during previous consultation
- Many elements of draft contract are still [*come back later*]
- Certain clauses will cause issues for every applicant - Jurisdiction/Arbitration/Liability/Indemnity
- WHOIS requirements may conflict with data protection laws
- RAA, TMCH, URS, EBERO – acronym limitations
- IDN applicants now prioritised so issues are urgent

Key questions

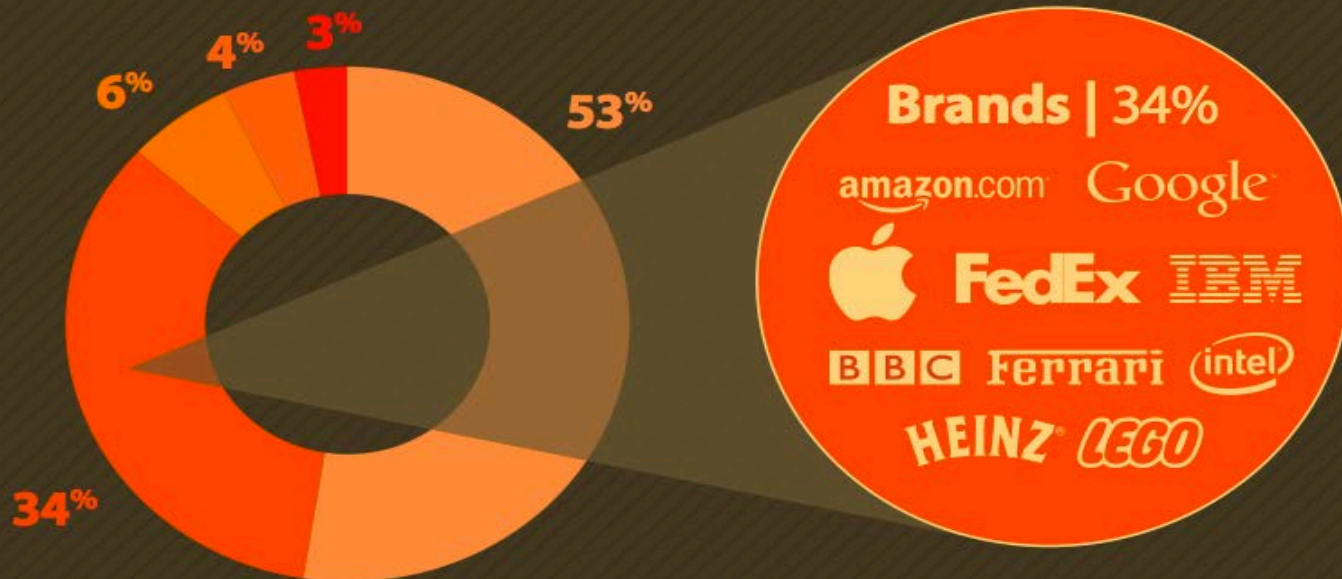
- Is the current draft reasonable, particularly in light of the global mandate of ICANN?
- What are the legal and contractual risks and how can they be managed?

Fairness

- Jurisdiction
- National law
- Late entry is disadvantage



TYPES OF APPLICATIONS



● Generic | 53%

Names not associated with a company or country and not applying for special "community" provision. From "academy" to "yoga" and everything in between.



● Brand | 34%

Mostly US corporates, although a few European companies too. Most intend to use extension for exclusive use. See large bubble above for most well known.



● IDN | 6%

Names represented in different scripts from around the world. Most applications came from China. Covered everything from brands to city names to religion.



● Community | 4%

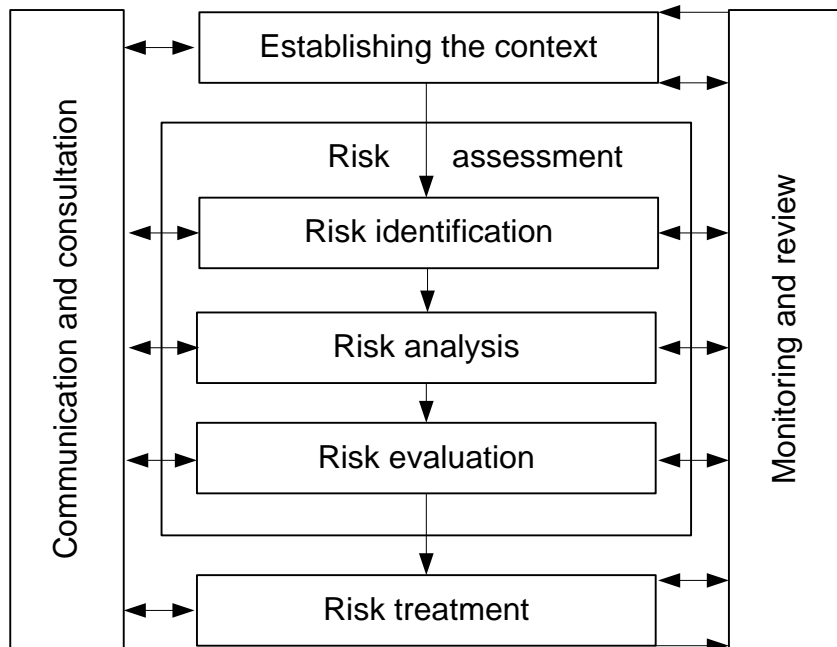
Category for those that self-identify with a group e.g. "gay", "radio". Get priority over other applications for the same name. Also in the list: "bank", "insurance".



● Geographic | 3%

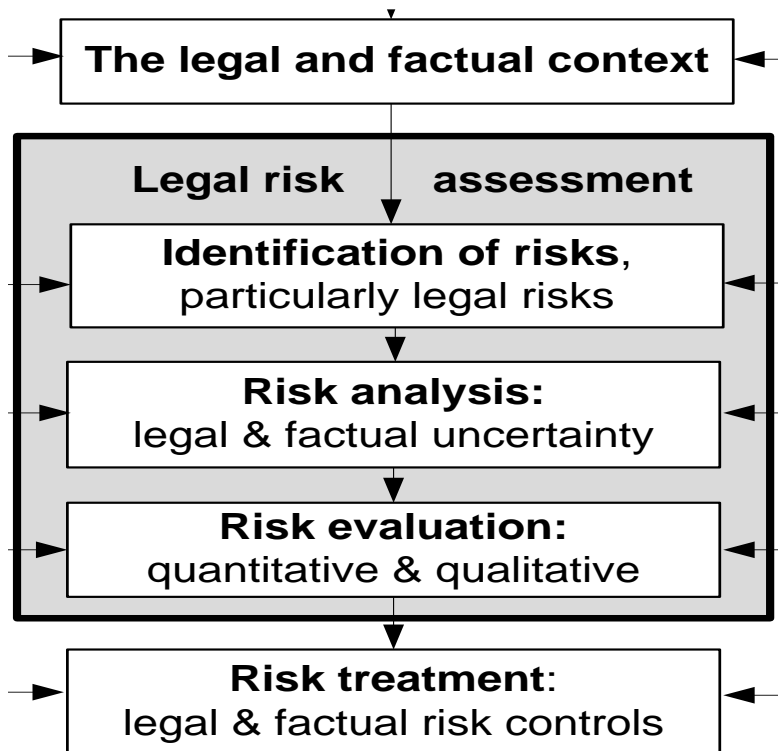
Smallest group with just 66 applications, probably since most require government approval. Mostly cities e.g. Sydney, London, Abu Dhabi, Paris. But also "africa", "arab".

Legal risks



ISO 31000:2009

Legal risks



- Liability
- Indemnity
- Conflict with applicable law
- Personal data

Key issues I

- Liability (5.2 & 5.3)
 - unlimited punitive and exemplary damages ordered by an arbitrator
- Indemnity (7.1 (a))
 - Registry Operator to indemnify and defend ICANN
 - For IOGs: only best efforts
- Jurisdiction (5.2)
 - Los Angeles
 - For IGOs: Geneva or mutually agreed location

Key Issues II

- Warranty: no violation of law
 - Registry Operator warrants that no ICANN Requirement conflicts with or violates any Applicable Law
 - ICANN requirement: very broad
- Personal data
 - Compliance with data protection laws

Next steps

- Open conversation here & at other ICANN meetings
- Work within the NTAG
- Multi-party white paper?
- Recognition of immediacy for some applicants, particularly IDNs
- Timeframe for submission of “agreed” general text appropriate for all applicants
- Expectations of bi-lateral negotiations which slow delegation



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