

The IPC thanks ICANN for the opportunity to provide public comments on Draft Applicant Guidebook version 4. The IPC and its members have expended thousands of hours, including substantial participation in both the IRT and the STI, in an attempt to help ICANN implement adequate Rights Protection Mechanisms for the new gTLDs. We wish that we could support the RPMs in DAG4; however, we cannot. Unfortunately, DAG4 contains watered down RPMs which are insufficient. As a threshold matter, the current version of the RPMs contain the following deficiencies which are provided only by way of example:

- A proposed “rapid” suspension mechanism (with a more onerous burden of proof) that in some cases will take longer than UDRP proceedings and will likely only be two days faster.
- The potential exclusion from Sunrise processes of all trademark rights which originate in the European Union, depending on how the undefined term “substantive review” is later defined by a party who is not required to take and act on public comment on the definition.
- No protection for brands that are deemed globally protected by virtue of their documented worldwide protection.

For a more specific list of deficiencies, the IPC believes the comments submitted by its members, along with other intellectual property owners, provide an in-depth guide for ICANN.

The proposed RPMs simply will not be effective in substantially reducing what ICANN’s own “economic framework” recognizes is a significant external cost imposed by new gTLDs on brand owners, consumers, and ultimately on the public interest by which ICANN is supposed to be guided. The trademark community will not accept these watered down “protections.” Instead, as promised by Mr. Twomey in his June 2009 congressional testimony, trademark owners expect ICANN to fix the problems that ICANN will create and implement trademark protections designed to ensure that consumers are not misled. Until it does so, this “overarching issue” in the new gTLD launch has not been resolved. In order to solve these serious problems, ICANN should revert to and adopt in whole the IRT recommendations.