

## **Summary of Trademark Clearinghouse Database Framework Agreement**

On 21 December 2012, ICANN entered into a Trademark Clearinghouse Database Framework Agreement with International Business Machines of Belgium (IBM). The agreement provides the general terms and conditions under which various statements of work will be performed by IBM for ICANN related to the Trademark Clearinghouse. The first statement of work provides for IBM's creation and maintenance of the Trademark Clearinghouse database. The second statement of work outlines IBM's role in providing trademark claims and sunrise notification services.

The initial term of the agreement expires on the fifth anniversary of ICANN's entry into a registry agreement under the new gTLD program, with consecutive one year renewals thereafter unless either party provides 180 days' notice of intent not to renew. ICANN may extend the final expiration of the term of the agreement for up to 90 days to facilitate the transition of the database related services from IBM to a successor provider.

Either party may terminate the agreement under customary circumstances, including due to breach. ICANN may also postpone the effective date of a termination for up to 270 days to allow for the transition of the database related services to a successor provider. In either the case of expiration or termination of the agreement, if additional time is necessary to properly transition the database related services to a successor provider, the parties will negotiate an extension in good faith.

Prior to the expiration or termination of the agreement, IBM has agreed to cooperate with ICANN and any successor service provider to transition the database related services. Additionally, IBM will provide ICANN with the data IBM has escrowed under the agreement, as well as any materials specifically developed or prepared by IBM relating to the services.

Under the agreement, IBM grants to ICANN an irrevocable license to any software specifically developed by IBM to provide the contracted services to ICANN. In addition, IBM has granted to ICANN an irrevocable license to certain materials created by IBM to the extent they are related to the database related services covered by the agreement or any applicable statement of work. IBM will not have a legal interest in the trademark holders' data included in the Trademark Clearinghouse database.

The parties have also agreed to customary indemnification provisions, subject to a reciprocal cap on liability. Neither party will be liable to the other for any lost profits or consequential, special or punitive damages. Disputes between ICANN and IBM will be resolved through a dispute resolution procedure or ultimately through arbitration. The agreement also provides ICANN with certain audit rights to monitor IBM's contractual compliance.

IBM has represented that it does not have any organizational conflicts of interest with respect to ICANN and will notify ICANN if such a conflict arises in the future.