

Model Trademark Guidelines

From Model Trademark Guidelines

These guidelines are available under a Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>), which means that you can modify the content as much as you like.

However, one of the goals of the Model Trademark Guidelines is to create some common understanding in the open source community about the appropriate use of other's trademarks. For that reason, we hope that you retain the major concepts embodied in the guidelines and bring any changes that you believe would be beneficial in general back to this site for discussion in the further evolving drafts of the guidelines. And please don't forget the attribution in your version: "Derived from Model Trademark Guidelines, available at www.modeltrademarkguidelines.org."

The Guidelines use the convention of enclosing portions in double carets (<< >>) that need to be customized for your individual use. Also, we have used "~Mark" (a tilde before the word "Mark") for those places where you should insert your own trademark and "~MarkOwner" for the name of the owner of the trademarks.

Model Trademark Guidelines 1.0

Contents

- 1 Model Trademark Guidelines 1.0
- 2 Introduction^[1]
- 3 Our commitment to open source principles^[2]
- 4 Trademarks subject to the guidelines^[3]
 - 4.1 Our trademarks
 - 4.2 The trademarks we are not licensing in this Policy
- 5 Universal considerations for all uses^[4]
- 6 Use for software^[5]
 - 6.1 Uses we consider non-infringing
 - 6.1.1 Distribution of unmodified source code or unmodified executable code we have compiled
 - 6.1.2 Distribution of executable code that you have compiled, or modified code
 - 6.1.3 Statements about compatibility, interoperability or derivation
 - 6.1.4 Use of trademarks to show community affiliation
 - 6.2 Uses for which we are granting a license
 - 6.2.1 Distribution of modified software
 - 6.2.2 Distribution of software preloaded on hardware
 - 6.3 Uses we consider infringing without seeking further permission from us
- 7 Use for non-software goods and services^[6]
 - 7.1 Uses we consider non-infringing

- 7.1.1 Websites
 - 7.1.2 Publications and presentations
 - 7.1.3 Events
- 7.2 Uses for which we are granting a license
 - 7.2.1 User groups
 - 7.2.2 Promotional goods
- 7.3 Uses we consider infringing without seeking further permission from us
- 8 General Information^[7]
 - 8.1 Trademark marking and legends
 - 8.2 What to do when you see abuse
 - 8.3 Where to get further information
- 9 General considerations about trademarks and their use^[8]
 - 9.1 What trademark law is about
 - 9.1.1 What is a trademark?
 - 9.1.2 What is "likelihood of confusion"?
 - 9.1.3 What is "nominative" use?
 - 9.2 Proper trademark use
 - 9.2.1 Use of trademarks in text
 - 9.2.2 Use of Logos
- 10 Footnotes
- 11 Working Revision

The Guidelines use the convention of enclosing in double carets (<< >>) the portions that need to be customized by the end user. Also, "~Mark" (a tilde before the word "Mark") is used in the places where the end users of the Guidelines will insert their own trademark and likewise "~MarkOwner" is for the name of the owner of the trademarks and "~ProjectName" is for the name of the project.

These Guidelines are designed to be used in association with brand standards, a separate document provided by the project that describes the proper design form of the logo and that may also offer authorized designs for CD labels, icons, T-shirts, stickers, etc.

Introduction^[1]

This document, the "Policy," outlines the <<~ProjectName>> project's (the "Project") policy for the use of our trademarks. While our software is available under a free and open source software license, the copyright license does not include an implied right or license to use our trademark.

The role of trademarks is to provide assurance about the quality of the products or services with which the trademark is associated. But because an open source license allows your unrestricted modification of the copyrighted software, we cannot be sure that your modifications to the software are ones that will not be misleading if distributed under the same name. Instead, this Policy describes the circumstances under which you may use our trademarks.

In this Policy we are not trying to limit the lawful use of our trademarks, but rather describe for you what we consider the parameters of lawful use to be. Trademark law can be ambiguous, so we hope to provide enough clarity for you to understand whether we will consider your use licensed or non-infringing.

The sections that follow describe what trademarks are covered by this Policy, as well as uses of the trademarks that are allowed without additional permission from us. If you want to use our trademarks in ways that are not described in this Policy, please see "Where to get further information" below for contact information. Any use that does not comply with this Policy or for which we have not separately provided written permission is not a use that we have approved, so you must decide for yourself whether the use is nevertheless lawful.

Our commitment to open source principles^[2]

We want to encourage and facilitate the use of our trademarks by the community, but do so in a way that still ensures that the trademarks are meaningful as a source and quality indicator for our software and the associated goods and services and continue to embody the high reputation of the software and the community associated with it. This Policy therefore tries to strike the proper balance between: 1) our need to ensure that our trademarks remain reliable indicators of the qualities that they are meant to preserve and 2) our community members' desire to be full participants in the Project.

Trademarks subject to the guidelines^[3]

Our trademarks

This Policy covers:

1. Our word trademarks and service marks (the "Word Marks"):

<<List below what you consider to be your word marks, including any umbrella name, like "Apache," as well as individual project names>>

Mark	Common descriptive name for the goods or services
<<~Mark 1>>	<<e.g., software, application, script, plug-in, etc.>>
<<~Mark 2>>	<<e.g., software, application, script, plug-in, etc.>>
<<~Mark 3>>	<<e.g., software, application, script, plug-in, etc.>>

2. Our logos (the "Logos"):

<<Insert your logos, including standalone logos, like the Hadoop elephant; any logotype of a word, like the color and font weight treatment used for "LibreOffice"; or a combination of a logo and word, like the Debian swirl with the word "Debian">>

3. And the unique visual styling of our website and packaging (the "Trade Dress").

This Policy encompasses all trademarks and service marks, whether Word Marks, Logos or Trade Dress, which are collectively referred to as the "Marks." Some Marks may not be registered, but registration does not equal ownership of trademarks. This Policy covers our Marks whether they are registered or not.

The trademarks we are not licensing in this Policy

The following trademarks are ones that are reserved exclusively to our use and are not covered by the Policy:

<<List marks that you don't want others using without permission>>

Contact us as described in "Where to get further information" below if you have questions or want to ask permission to use any of these excluded trademarks.

Universal considerations for all uses^[4]

Whenever you use one of the Marks, you must always do so in a way that does not mislead anyone, either directly or by omission, about exactly what they are getting and from whom. The law reflects this requirement in two major ways described in more detail below: it prohibits creating a "likelihood of confusion" but allows for "nominative use." For example, you cannot say you are distributing the <<~Mark>> software when you're distributing a modified version of it, because people would be confused when they are not getting the same features and functionality they would get if they downloaded the software directly from us. You also cannot use our logo on your website in a way that suggests that your website is an official website or that we endorse your website. You can, though, say you like the <<~Mark>> software, that you participate in the <<~Mark>> community, that you are providing an unmodified version of the <<~Mark>> software, or that you wrote a book describing how to use the <<~Mark>> software.

This fundamental requirement, that it is always clear to people what they are getting and from whom, is reflected throughout this Policy. It should also serve as your guide if you are not sure about how you are using the Marks.

In addition:

You may not use the Marks in association with the use or distribution of software if you are also not in compliance with the copyright license for the software.

You may not use or register, in whole or in part, the Marks as part of your own trademark, service mark, domain name, company name, trade name, product name or service name.

Trademark law does not allow your use of names or trademarks that are too similar to ours. You therefore may not use an obvious variation of any of our Marks or any phonetic equivalent, foreign language equivalent, takeoff, or abbreviation for a similar or compatible product or service. We would consider the following too similar to one of our Marks:

<<Example for UBUNTU: "Any mark ending with the letters UBUNTU or BUNTU">>

<<Example for ARCHLINUX: "Any mark beginning with the letters ARCH">>

You agree that you will not acquire any rights in the Marks and that any goodwill generated by your use of the Marks inures solely to our benefit.

Use for software^[5]

See Universal considerations for all uses, above, which also apply.

Uses we consider non-infringing

Distribution of unmodified source code or unmodified executable code we have compiled

When you redistribute an unmodified copy of our software, you are not changing the quality or nature of it. Therefore, you may retain the Word Marks and the Logos we have placed on the software to identify your redistribution -- whether that redistribution is made by optical media, memory stick or download of unmodified source and executable code. This kind of use only applied if you are redistributing an official distribution from this Project that has not been changed in any way. You can find files for the Logos and approved designs for packaging on our <<Brand Standards>> page.

Distribution of executable code that you have compiled, or modified code

You may use the Word Marks, but not the Logos, to truthfully describe the origin of the software that you are providing, that is, that the code you are distributing is a modification of our software. You may say, for example, that "this software is derived from the source code for <<~Mark>> software."

<<Example #1: This source code is distributed with an "--enable-official-branding" flag. By default, this software will compile without official branding. As long as you do not modify the code or enable this flag before compiling, any use of the <<~Mark>> in the compiled code is noninfringing.>>

Of course, you can place your own trademarks or logos on versions of the software to which you have made substantive modifications, because by modifying the software you have become the origin of that exact version. In that case, you should not use our Logos. Our source code version therefore does not contain our Logo data files.

Statements about compatibility, interoperability or derivation

You may use the Word Marks, but not the Logos, to truthfully describe the relationship between your software and ours. Our Mark should be used after a verb or preposition that describes the relationship between your software and ours. So you may say, for example, "Bob's software for the <<~Mark>> platform" but may not say "Bob's <<~Mark>> software." Some other examples that may work for you are:

[Your software] works with <<~Mark>> software
[Your software] uses <<~Mark>> software
[Your software] is compatible with <<~Mark>> software
[Your software] is powered by <<~Mark>> software
[Your software] runs on <<~Mark>> software
[Your software] for use with <<~Mark>> software
[Your software] for <<~Mark>> software

Use of trademarks to show community affiliation

This section discusses the use of our Marks for software such as application themes, skins and personas. The use of our Marks on websites is discussed below.

You may use the Word Marks and the Logos in themes, personas, or skins for applications to show your support for the Project, provided that the use is non-commercial and the use is clearly decorative, as contrasted with a use that appears to be the branding for a website or application.

Uses for which we are granting a license

Distribution of modified software

<<Example #1: You may use the Word Marks and the Logos for the distribution of code (source or executable) on the condition that any executable is built from the official Project source code and that any modifications are limited to switching on or off features already included in the software, translations into other languages, and incorporating bug-fix patches.>>

<<Example #2: You may use the Word Marks and the Logos for the distribution of executable code on the condition that it is made from official Project source code using the procedure documented for creating an executable found at <<location of build instructions.>>>>

Distribution of software preloaded on hardware

<<Example #1: You may use the Word Marks and the Logos in association with hardware devices on the condition that the executable installed on the device is the official source executable for the Project, and that you do not suggest that the Project is the source of the hardware device itself but rather than the Marks are for the software incorporated into the device.>>

<<Example #2: You may use use the Word Marks and the Logos in association with hardware devices on the condition that the software installed on the device is modified only so far as necessary to operate on the hardware platforms and the essential functions of the software are unchanged, and that you do not suggest that the Project is the source of the hardware device itself but rather than the Marks are for the software incorporated into the device.>>

Uses we consider infringing without seeking further permission from us

We will likely consider using the Marks in a software distribution that combines our software with any other software program an infringement of our Marks. We would consider your software "combined" with ours if you create a single executable for both software programs, as well as if by installing our software it automatically installs yours. We would not consider your software "combined" with ours if it is on the same media but requires separate, independent action to install it.

Use for non-software goods and services^[6]

See Universal considerations for all uses, above, which also apply.

Uses we consider non-infringing

Websites

You may use the Word Marks and Logos, but not the Trade Dress, on your webpage to show your support for the Project as long as:

- The website has branding that is easily distinguished from the Project Trade Dress;
- You own branding or naming is more prominent than any Project Marks;
- The Logos hyperlink to the Project website;
- The site does not mislead customers into thinking that either your website, service, or product is our website, service, or product; and
- The site clearly states that you are not affiliated with or endorsed by the Project.

Publications and presentations

You can use the Word Marks in book and article titles, and the Logo in illustrations within the document, as long as the use does not suggest that we have published, endorse, or agree with your work.

Events

You can use the signage in the <<Brand Standards>> to promote the software and Project at events.

Uses for which we are granting a license

User groups

You can use the Word Marks as part of your user group name provided that:

- The main focus of the group is the software;
- Any software or services the group provides are without cost;
- The group does not make a profit;
- Any charge to attend meetings are to cover the cost of the venue, food and drink only.

Note that the Universal considerations for all uses, above, still apply, specifically, that you may not use or register the Marks as part of your own trademark, service mark, domain name, company name, trade name, product name or service name.

Promotional goods

"Promotional goods" are non-software goods that use the Marks and that are intended to advertise the Project, promote the Project, or show membership in the Project community.

<<Example #1>> You may make promotional goods for free giveaway at open source conferences and events using only the designs found on our <<Brand Standards>> site.

<<Example #2>> You may make promotional goods for free giveaway at open source conferences and events provided that the goods are obtained from <<contractor for promotional goods.>>

Uses we consider infringing without seeking further permission from us

We will likely consider using the Marks as part of a domain name or subdomain an infringement of our Marks.

We would likely consider using the Marks on promotional goods for sale an infringement of our Marks.

General Information^[7]

Trademark marking and legends

The first or most prominent mention of a Mark on a webpage, document, packaging, or documentation should be accompanied by a symbol indicating whether the mark is a registered trademark ("®") or an unregistered trademark ("™"). See our Trademark List for the correct symbol to use.

Also, if you are using our Marks in a way described in the sections "Uses for which we are granting a license," please put following notice at the foot of the page where you have used the Mark (or, if in a book, on the credits page), on any packaging or labeling, and on advertising or marketing materials: "<<~Mark>> is trademark of <<~MarkOwner>><<", registered in the United States and other countries" if correct>>. Used with permission from the <<~MarkOwner>>."

What to do when you see abuse

If you are aware of any confusing use or misuse of the Marks in any way, we would appreciate you bringing this to our attention. Please contact us as described below so that we can investigate it further.

Where to get further information

If you have any questions about this Policy, would like to speak with us about the use of our Marks in ways not described in the Policy, or see any abuse of our Marks, please <<insert contact information.>>

General considerations about trademarks and their use^[8]

What trademark law is about

What is a trademark?

A trademark is a word, phrase, symbol or design, or a combination of words, phrases, symbols or designs, that identifies and distinguishes the source of the goods of one party from those of others. A service mark is the same as a trademark, except that it identifies and distinguishes the source of a service rather than a product. "Trade dress" or "get up" refers to the look and feel of the packaging, which in this context can include the layout, colors, images, and design choices in a web page. Throughout this Policy, the terms "trademark" and "mark" refer to both trademarks, service marks and trade dress.

However, the use of a word is "not as a trademark" when it is used functionally as part of the software program, for example, in a file, folder, directory, or path name. Use in this way is not a trademark infringement.

What is "likelihood of confusion"?

There is trademark infringement if your use of a trademark has created a "likelihood of confusion." This means using a trademark in a way that will likely confuse or deceive the relevant consuming public about the source of a product or service using the mark in question. For example, if the "Foo" software extension removes all double spaces after periods, but someone else later creates "Foo" software that adds a third space after periods, consumers would be confused between the two and the newcomer will likely be a trademark infringer. As another example, if a company makes "Foobar" software and a third party offers training called "Foobar Certification," a person is likely to believe, wrongly, that the certification is being offered by the makers of Foobar software. The third party has likely misled consumers about the source of its training and is a trademark infringer.

What is "nominative" use?

So-called "nominative use" (or "nominative fair use"), which is the name of the doctrine under U.S. trademark law, allows the use of another's trademark where it is necessary for understanding. Other countries' trademark laws also have similar provisions. For example, a car repair shop that specializes in a particular brand of automobile, VW for example, must be allowed to say that they repair VW cars. Here is what you should consider when deciding whether your use of a trademark is a nominative fair use:

- Whether you can identify the product or service in question without using the trademark;
- Whether you are avoiding a likelihood of confusion in the way that you have used the trademark; and
- Whether you have used only as much as is necessary to identify the product or service.

With our "Foobar Certification" example above, the person offering the certification would be allowed to say, under the nominative fair use doctrine, that she is offering "Maude's Certification for Foobar software."

It is almost never the case that using a Logo will be a nominative fair use since it will be a rare case where the logo is needed for strictly informational purposes.

Proper trademark use

These rules hold true for all trademarks, not just ours, so you should follow them for our Marks as well as anyone else's.

Use of trademarks in text

Always distinguish trademarks from surrounding text with at least initial capital letters or in all capital letters.

Unacceptable: <<~mark>>

Acceptable: <<~Mark, ~MARK>>

Always use trademarks in their exact form with the correct spelling, neither abbreviated, hyphenated, or combined with any other word or words.

Unacceptable: <<~Mark misspelled or wrong case>>

Acceptable: <<~Mark>>

Don't pluralize a trademark.

Unacceptable: I have seventeen <<~Marks>> running in my lab.

Acceptable: I have seventeen <<~Mark>> systems running in my lab.

Don't use "a" or "the" to refer to an instance of the trademark.

Unacceptable: I put a <<~Mark>> on my mom's computer.

Acceptable: I put a <<~Mark>> system on my mom's computer.

Always use a trademark as an adjective modifying a noun. You can see the nouns we prefer under "Our trademarks."

Unacceptable: This is a <<~Mark>>. Anyone can install it.

Acceptable: This is a <<~Mark>> application. Anyone can install it.

Don't use a trademark as a verb. Trademarks are products or services, never actions.

Unacceptable: I <<~Markified>> my computer today!

Acceptable: I installed <<~Mark>> software on my computer today!

Don't use a trademark as a possessive. Instead, the following noun should be used in possessive form or the sentence reworded so there is no possessive.

Unacceptable: <<~Mark's>> desktop interface is very clean.

Acceptable: The <<~Mark>> desktop's interface is very clean.

Don't translate a trademark into another language.

Acceptable: Quiero instalar <<~Mark>> en mi sistema.

Unacceptable: Quiero instalar <<~Mark translated into Spanish>> en mi sistema.

Use of Logos

You may not change any Logo except to scale it. This means you may not add decorative elements, change the colors, change the proportions, distort it, add elements, or combine it with other logos.

However, when the context requires the use of black-and-white graphics and the logo is color, you may reproduce the logo in a manner that produces a black-and-white image.

These guidelines are based on the Model Trademark Guidelines, available at <http://www.modeltrademarkguidelines.org>., used under a Creative Commons Attribution 3.0 Unported license: https://creativecommons.org/licenses/by/3.0/deed.en_US

Footnotes

1. ↑ Go to the Commentary page for the Introduction.
2. ↑ Go to the Commentary page for Our commitment to open source principles.
3. ↑ Go to the Commentary page for Trademarks subject to the guidelines.
4. ↑ Go to the Commentary page for Universal considerations for all uses.
5. ↑ Go to the Commentary page for Use for software.
6. ↑ Go to the Commentary page for Use for non-software goods and services.
7. ↑ Go to the Commentary page for General Information.
8. ↑ Go to the Commentary page for General considerations about trademarks and their use.

Working Revision

Here's the current working draft.

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