



How To Keep Your Apache® Project's Independence

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Introduction

- Shane Curcuru - VP, Brand Management, The Apache Software Foundation
- Volunteer, appointed by Apache Board of Directors
- Define and implement trademark & brand policy for all 200+ Apache project communities
- Provide trademark support for projects
- Involved at Apache since 1999
- Not a lawyer
- Questions? <trademarks@apache.org>

Topics

- Apache Project Independence
- Trademark concepts brief overview
 - Adjectives, nominative use, consumer confusion, and registration
- PMC Branding Responsibilities
 - Policing Third Party Brand Use
 - Granting Third Party Permissions
- When To Work With trademarks@
- Resources / Q&A



Apache Project Independence

PMCs: Be independent

- **Apache projects** are governed independently
 - Treat all participants / contributors fairly
- **Apache software products** are also independent
 - Clearly branded, eg, Apache Foo
 - Independence = Apache Foo software performs useful functions, without additional (proprietary) software

<http://community.apache.org/projectIndependence>

This is **required** of all Apache projects

PMCs: Be inclusive

- An inclusive community relies on independence from commercial influence (a requirement for Apache projects)
- Committer & PMC member diversity is the best way to maintain long-term independent project governance
- Actively seek out new contributions with “low hanging” bugs; review patches quickly and thoughtfully
- Encourage positive contributions; mentor new contributors to become committers and PMC members
- Promote real-world stories of how project software helps end users



Trademark Concepts in 30 Seconds

What are trademarks?

- A trademark is the **legal instantiation** of your brand
- Your trademark is the **specific name or logo** a consumer (user of your software) associates with a **downloadable software program**
- Trademarks are about **preventing consumer confusion** as to the **source of goods** within a specific field of commerce
- Trademarks **protect consumers** by ensuring expectations of quality, functionality, etc. available from a specific vendor
- **Trademark vs Brand:**
- A **brand** includes many elements – names, logos, look and feel – parts of which are specific trademarks that signify your product or service

Trademarks are adjectives

- Trademarks legally are used to **describe** the actual goods: I buy Kleenex® brand tissues
- We run Apache CouchDB™ software and Apache Hadoop® software
 - ... but in common usage we just write: we're running Python
- Use as an adjective and marking with TM and (R) is important on your homepage & download page
 - ... not as important in other places
- Your project name is not *necessarily* a trademark, although it may be a service mark

Registered trademarks

- In most countries, common law rights accrue from actual use of a name™ or logo™ to identify goods – without any registration
- Trademarks may also be registered® with the USPTO, the EU/Community Trade Mark, and other individual country governments – improves our rights
- Every country has different registration laws
 - Some are “first to file” like China, Korea; most are “first to use”
- Apache PMCs may request registration – now recommended
 - Email tm-registrations@apache.org to request registration

Nominative use is OK

- Nominative use for trademarks ~ = fair use for copyright
- Other people may use the trademark to **describe** your goods
- Personal blogs, newspaper articles, technical mailing list discussions are almost always nominative use
- Nominative use even allows people/companies to post bad reviews of your software product
- **Not OK:**
- **Infringement** is when a third party uses your marks in a way that may **mislead consumers** as to the true source of goods, or confuse users as to **which company** provides a software product

Nominative use is OK

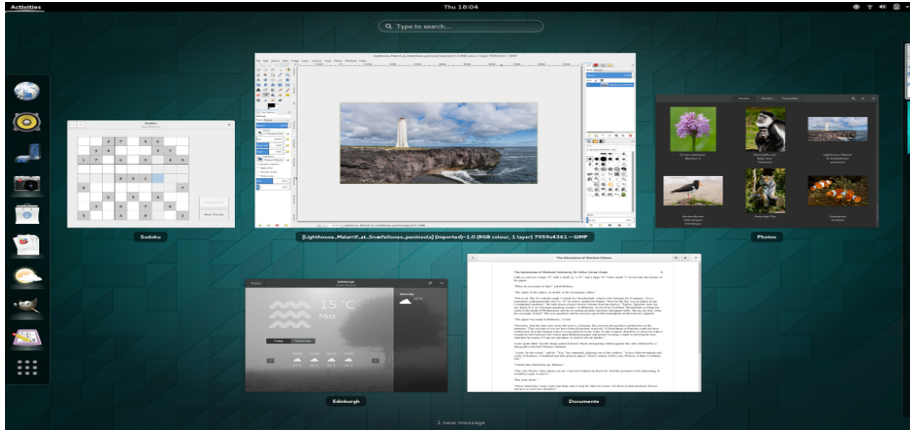
GNOME ALERT!

- Nominative use is OK
- Other uses are not OK
- Personal information and photos are not OK
- Nominative use of your name is OK
- **Not OK**
- **Infringement** of Apache Con's trademark or copyright



discussions
reviews of
that
, or
the product

Brands really matter





PMCs: Branding Responsibilities

PMCs: Be responsible

- PMCs are **responsible** for their own brand:
- Have a **consistent** brand and use it
- Be **aware** of how your brand is used in the marketplace
- Be **respectful** of other brands and the Apache brand

<http://www.apache.org/foundation/marks/responsibility>

PMCs: Be consistent

- Your use of your Apache Foo™ brand is the **reference implementation**
- Annotate your own trademarks (both words and logos) with ™ or ® to make their status clear to others
- Ensure consistency in your website
 - In your documentation, first and most prominent uses
 - On your download page: download Apache Foo™ software
 - In publicly visible parts of your product UI
- Trademark law is not a compiler: the general consumer perception is what counts, and that is what you can actively manage

PMCs: Be aware

- Be aware of how other companies use your project brand
 - Situations that require your action to protect your brand/trademark:
 - Inappropriate third party use of your brand may cause confusion as to the source of software products
 - It is important for the PMC to review and respond here
 - Fairness to all users is critical – both with outsiders and with companies who are contributing to your project
- <http://www.apache.org/foundation/marks/reporting>
- Unlikely to be a problem: personal blogs, press articles, software reviews, benchmark reports, forum discussions, emails on dev@...

PMCs: Be respectful

- Treat other organizations' trademarks respectfully
- Charitable or community-based projects have no business infringing on others' trademarks
- Be liberal in attribution and giving credit to other communities or companies
- Respond calmly and professionally if a third party asks for/demands changes; always cc: trademarks@

PMCs: Register your mark

- Recommended policy is to register your software product name
- The ASF will register most Apache product names for software goods in the US, **if requested by the PMC**
- If your project is very popular, you can request additional registrations in other jurisdictions like the EU/CTM

<http://www.apache.org/foundation/marks/register>



PMCs: Policing Use Of Your Project Brand

Police brand use privately

- When a third party is improperly using your project's brand, the PMC needs to take action and ask for corrections!
- Assume ignorance rather than malice
- Use reporting guidelines to determine if the use is (or is **not!**) a problem
 - <http://www.apache.org/foundation/marks/reporting>
- Always contact third parties privately (but be sure to cc: trademarks@)
 - Private, direct contact allows all parties to save face
 - Public confrontations often escalate, potentially damaging everyone's reputation

Be professional and polite

- Whenever contacting anyone about improper brand use:
 - Be **professional** – you are talking to managers/marketers
 - Be **polite** – many cases are resolved through simple discussion
 - Be **firm** – state the ASF's clear ownership of the marks
 - Be **specific** – quote specific uses that we request to be changed
- Most potential infringements cases are resolved through discussion between private@, trademarks@, and the other party
 - Be **patient** – discussions take time to resolve
- Legal threats are **never** the first step

Get legal advice

- The ASF has pro bono corporate counsel from DLA Piper
- Send any legal questions, especially any from outside the ASF, to:
 - trademarks@ for anything brand-related (**private** archive)
 - legal-internal@ for any specific legal question the PMC has on behalf of the project (**private** archive)
 - legal-discuss@ for any general legal questions that can be discussed publicly (**public** archive)
- **Never** grant exception to brand policy without trademarks@ approval
- **Never** give legal advice (unless you actually are an ASF counsel)
- **Never** respond to an outside lawyer without asking ASF counsel



PMCs: Granting Third Party Permissions

New Policy!

Granting third party permissions

- PMCs may **directly grant certain third party permissions for specific uses** (events, domains, swag / merchandise) of their project marks
- Best practices / improved how-to guides being rolled out
 - Respond promptly: acknowledge the question even if the answer is not ready yet
 - Respond professionally: many requesters are marketers or lawyers, not coders
 - Respond privately: keep on private@ unless OP used dev@

Responding to third party requests

- Only grant specific permissions as noted in policy
 - Events; domain names; services; merchandise
- Do **not** grant exceptions dealing with software **product** names
 - But: you can allow “Powered By” names/icons (For..., Plugin...)
- Be consistent and fair when granting permissions
- Does a use of your project's brand by a third party / other company:
 - Maintain clarity about the source of Apache software?
 - Help the image, impact, or reach of your project community?
- **Ask trademarks@** for help anytime you have a question!



When To Work With Trademarks@

Trademarks@ sets policy

- The ASF owns all Apache trademarks on behalf of the projects
- PMCs are required to comply with **trademark policy**; PMCs otherwise define and promote their **own brand**
- Project brand design, like technical direction, is completely up to PMCs
- trademarks@, like press@, operations@, infra@, etc. are here to serve the needs of all Apache projects

Dealing with difficult parties

- Any time a third party responds negatively, or when another company lawyer is involved – ask trademarks@ to help craft your reply
- Any difficult negotiations should be done by VP, Brand Management, with appropriate legal counsel
- Most corporations respond to official titles
- Patience is required: trademark issues are rarely time critical
- Legal threats are **never** the second step

Trademark enforcement & legal action

- A Cease & Desist (C&D) is considered a **last resort**, when all other approaches have failed
 - Trademark litigation is expensive and risky
 - Consider the public image of “attacking” a third party
- Most issues can be resolved with polite, firm, and private discussion with the right parties
- A very few serious issues end up being resolved with more visible actions: making a public case; restricting PMC or commit access; or the board unilaterally restructuring a project



Thank You & Resources

Thank You!

- Thanks to all Apache Members
- Thanks to all Apache committers and PMCs
- Thanks to members of Apache Trademarks Committee
- Thanks to DLA Piper counsel: Mark Radcliffe, Dash McLean, Nikkya Williams, Carol Anne Bashir
- Thank you to companies who respect Apache brands

Trademark Resources - External

- Formal policy for third party use
 - <http://www.apache.org/foundation/marks/>
- Third party requesting permission for events
 - <http://www.apache.org/foundation/marks/events>
- Third party requesting permission for domains
 - <http://www.apache.org/foundation/marks/domains>
- All other questions
 - <http://www.apache.org/foundation/marks/contact>

Trademark Resources – For PMCs

- Policy for PMC websites
 - <http://www.apache.org/foundation/marks/pmcs>
- Linking to third party sites/products/services
 - <http://www.apache.org/foundation/marks/linking>
- Project Independence is required for PMCs
 - <http://community.apache.org/projectIndependence>
- Questions? <trademarks@apache.org> and relevant <private@project.apache.org>

Questions?

Please feel free to find Shane with any questions this week!

Or, Look for the Ask Me! Buttons, and just ask!

@ShaneCurcuru

<http://communityovercode.com/>

The background of the slide is a photograph of the Arizona State Capitol building in Phoenix. The building is a large, classical-style structure with a prominent central dome. In the foreground, there are several bronze statues on pedestals, including one of a man in a suit and another of a man in a hat holding a staff. The sky is blue with some white clouds.

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But it's open source!

- **Apache License, v2.0**
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