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A Brief Introduction To Copyright And Trademark Law As They Relate To Software

The guidelines in this document are based on United States law. Although many countries follow the same principles discussed below, the laws of other countries may also differ on some points.

Copyright

Copyright law protects the expression of an idea. When Red Hat develops new software, it owns the copyright in the software. Red Hat® Linux® consists of hundreds of software modules, some developed by Red Hat and many developed by other members of the open source community. Those authors hold the copyrights in the modules or code they developed. At the same time, the combined body of work that constitutes Red Hat® Linux® is a collective work which has been organized by Red Hat, and Red Hat holds the copyright in that collective work. Red Hat then permits others to copy, modify and redistribute the collective work. To grant this permission Red Hat usually uses the GNU General Public License ("GPL") version 2 and Red Hat's own End User License Agreement. Although software licensed under the GPL is "open source software," Red Hat retains ownership of the copyright in its collective work. If someone violates the GPL regarding that collective work, only Red Hat, as the copyright owner and licensor of that collective work, has legal authority to enforce the GPL against the violator. Although Red Hat "owns" the collective work, in licensing it under the GPL, Red Hat grants broad rights in the collective work to others. Neither the GPL nor Red Hat's End User License Agreement grant any right to use Red Hat's trademarks in the redistribution of the collective work.

Protection of Trademarks

Under trademark law, owners of trademarks who use their trademarks improperly or who fail to police the use of their trademarks by others may lose their rights in those trademarks. For instance, now-common words such as "zipper" and "elevator" were trademarks at one time. Their owners allowed the marks to be widely known and used as generic names for the associated products, and, as a result, all trademark protection was lost. Some examples of trademarks that are protected by their owners at great lengths today from such "genericide" include Kleenex® brand facial tissues, Band-Aid® brand bandages and Xerox® brand photocopiers. In addition to monitoring the use of trademarks by others, policing also requires maintaining control over the nature and quality of the goods and services that are marketed under the trademarks.

Red Hat has registered the trademarks Red Hat® and the Red Hat "Shadow Man" logo in the United States Patent and Trademark Office. We have also registered those marks in many other countries around the world, have filed applications to register the marks in still other countries, and we will continue to aggressively register our trademarks in countries where we do business.

Our unregistered trademarks are also protected under trademark law. Unregistered trademarks of Red Hat include, but are not limited to, RPMTM, PowertoolsTM, Maximum RPMTM and Official Red Hat LinuxTM.

Fair Use" of Trademarks

Although a trademark owner should take action to police the use of its trademarks by others, it cannot prevent others from using its trademarks under all circumstances. For instance, a company may refer to the trademarks of competing products in marketing its own products. As an example, Burger King might choose to state in advertisements that "Burger King® french fries were preferred over McDonald's® french fries in a taste test." Although McDonald's® is a trademark of McDonald's Corporation, Burger King could mention it in its marketing in this fashion so long as the statement is truthful and not misleading, does not imply an improper association with or sponsorship by McDonald's and otherwise complies with applicable laws. A key element in evaluating whether the use of someone else's trademark is acceptable is whether the use is likely to cause confusion in the marketplace as to the source or sponsorship of a product. Burger King's use of "McDonald's®" in the statement above is not likely to lead consumers to believe that Burger King® french fries are a product of McDonald's or that Burger King® french fries emanate from or are sponsored or approved by McDonald's Corporation.

Use of Red Hat Trademarks

It occasionally comes to our attention that some companies or individuals are producing CD-ROM and other products that contain the software which Red Hat distributes as Red Hat® Linux®. Although they are entitled to do this under the GPL and other applicable licenses, they do not have the right to use the name or brand their products "Red Hat," or to use the Red Hat trademarks in any way on their products or in related advertising, except under certain limited circumstances (See the sections entitled "Fair Use of Trademarks" and "Publishing And Marketing Red Hat® Linux® That Has Been Modified"). Doing so would cause confusion among the customers who purchase those products, because they may believe they are purchasing a product produced or sponsored by Red Hat, Inc. but, in reality, it is a product of another company altogether.

To address this issue, we have developed the following guidelines for the use of our trademarks. These guidelines are designed to serve both consumers of open source products, to ensure that they know the source of the products they purchase, and publishers of open source products, so that they can avoid improperly generating confusion in the marketplace.

A. Use of the Brand "Red Hat"
 Red Hat® is a registered trademark of Red Hat, Inc. and may be used only with Red Hat Inc.'s express written permission. You may not use "Red Hat" or any confusingly similar mark as a trademark for your product,

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B. Use of the Red Hat "Shadow Man" Logo

The Red Hat "Shadow Man" logo is also a registered trademark of Red Hat, Inc. It may not be used on any products without Red Hat's express written permission. The only way to obtain permission to use Red Hat's "Shadow Man" logo is by entering into a written license agreement with Red Hat, Inc., signed by both Red Hat and the licensee or by qualifying under or complying with the "Trademark Permissions" set forth in these Guidelines . Absolutely no exceptions. If you are a publisher of software, books, t-shirts or any other products, you may not use the Red Hat "Shadow Man" logo unless you have entered into a written agreement with Red Hat that allows you to do so or you qualify for use under the "Trademark Permissions". If you are a consumer of a product that contains the Red Hat "Shadow Man" logo, and you believe it is not an official product of Red Hat, Inc., please bring it to our attention by contacting Legal Affairs, 1801 Varsity Drive Raleigh, NC 27606.

C. "Plays On Words" And Other Actions That May Cause Confusion Are Also Prohibited

There is no connection between the words "Red Hat" and Linux-based computer software, products and services other than the association created by the Red Hat® brand of Linux-based products and services. Red Hat, Inc. has created this association by spending time and money to establish goodwill in its products, services and trademarks. As a result, you may not use the words "Red Hat" (together or individually), words with similar connotations or pronunciations, translations of those words, or other words that may cause confusion in the market as a trademark for your products. Some examples of prohibited uses include, but are not limited to, "Red Cap" Linux, "Sombrero Rojo" ("Red Hat" translated into Spanish) Linux, "Redd Hatte" Linux, "RH" Linux, and "Green Hat" Linux.

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Example and FAQ
Janet Smith decides to download Red Hat® Linux® 9 from Red Hat's ftp site. She makes no modifications to the software and manufactures CDs containing Red Hat® Linux® 9 and no other software. She wants to market her CDs.

Q: Can she sell the CDs?
A: Yes, provided she follows the guidelines stated in this document, the applicable license agreements for the software, and provided she abides by all other applicable laws.

Q: Can she call or brand her product "Red Hat Linux"?
A: No, not unless she has received express permission from Red Hat either in writing or by qualifying and complying with the "Trademark Permissions". Such unpermitted use would be an infringement of the Red Hat® trademark and would cause confusion in the market among consumers as to the source of the product.

Q: Janet decides to brand her product "Smith Linux." On her product packaging, she prints "Smith Linux" in the upper left corner in a large typeface. In the middle of the product, she prints in a smaller typeface "Contains Red Hat Linux 9." Is this acceptable?
A: No. Such use of "Red Hat Linux" violates the guidelines regarding Red Hat's trademarks and is likely to cause confusion in the market.

Q: Can Red Hat determine what price Janet charges for her product?
A: No. Janet may charge any price she wishes, including a price substantially less than the prices charged by Red Hat for its CD-ROM products.

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A. You must comply with all applicable licenses for the software and the guidelines in this document.

B. You may not name or brand your product "Red Hat," or use the Red Hat trademarks in any way, either on your product or in related advertising. You must use a different trademark for your product that will not cause confusion with the trademarks of Red Hat, will not indicate or imply that your product originates from or is sponsored or approved by Red Hat, and which otherwise complies with applicable trademark laws. Please also refer to the guidelines for use of the brand "Red Hat" and for plays on the words "Red Hat."

C. You may not state that your product "contains "Red Hat® Linux® X.X." or "Red Hat® Enterprise Linux® X.X." This would amount to impermissible use of Red Hat's trademarks. You may resell the boxed version of your software that you purchased from Red Hat so long as you sell the original discs and documentation included with the boxed version. However, if you have registered the product with Red Hat for purposes of obtaining support services, you may not transfer your right in those support services, and you must advise the purchaser that they are not receiving support services.

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Conclusion

This document is designed to assist both publishers of Linux-based products and consumers of those products. If you are aware of violations of them, please contact us at Legal Affairs, 1801 Varsity Drive Raleigh, NC 27606.

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