

HACKING TRADEMARK LAW: RECONCILING TRADEMARK REQUIREMENTS WITH COLLABORATIVE COMMUNITIES.

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The principles of trademark law were not developed with collaborative communities in mind.¹ Trademark law requires centralized control and certain formalities in trademark licensing. Collaborative communities, on the other hand, thrive on their lack of centralized control. Examples of projects developed by collaborative communities include Wikipedia and the other Wikimedia projects, the Linux operating system, and Mozilla's Firefox browser. These projects are largely enabled by the Internet, which allows collaborators around the world to participate in the development of code and content. They are also facilitated by open source and free culture licenses, which allow members of these communities to reuse and improve upon work of other members. For that and other reasons, the members tend to be ideologically opposed to traditional intellectual property rights. At the same time, they also want their work to be protected from abuse. Trademark law can protect the goodwill developed by collaborative communities, but it imposes certain limitations on how community members can use logos that are associated with their projects.

This paper will outline the Catch 22 problem faced by lawyers working on protecting collaboratively developed projects. It will further propose a number of solutions to reconcile the tension between trademark law and the values of collaborative communities. The solutions include a collaboratively developed trademark policy, streamlined trademark licensing procedures, development of separate marks to represent the collaborative effort of the community rather than the end product, the registration of those marks as a collective membership mark to avoid licensing for community uses, and the use of unregistered community logos or mascots. This paper will use the forthcoming Wikimedia Trademark Policy as a case study to illustrate these solutions. Some of the solutions discussed in this paper are largely unprecedented, while a number of them have been applied by collaborative communities in the past.

¹ See Pamela S. Chestek, *The Uneasy Role of Trademarks in Free and Open Source Software: You Can Share My Code, But You Can't Share My Brand*, 102 Trademark Rep. 1028 (2012); Tiki Darea and Harvey Anderson, *Passport Without A Visa: Open Source Software Licensing and Trademarks*, 1(2) Int. Free & Open Source Software L. Rev. 99 (2009).