

# FLOSS and Trademarks

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# Introduction

Most of the time, FLOSS licences:

- ▼ Focus on copyright and patent
- ▼ Make no reference to trademarks.

Increasing popularity of FLOSS / a real industry sector

Increasing number of registered trademarks linked to FLOSS projects

**Question** : Is Trademark registration an advantage for the FLOSS community or is it an obstacle to FLOSS development?



# Advantages/Drawbacks of trademark protection for a FLOSS developer (1)

Without Trademark registration

- ▼ Risk of Trademark registration by a third party
- ▼ Risk of infringement claim



# Advantages/Drawbacks of trademark protection for a FLOSS developer (2)

With trademark registration

- ▼ A way to ensure the origin of the software for the user
- ▼ A way to control software orientation
- ▼ For companies, a way to show value of their company and the software
- ▼ Cost
- ▼ Exploitation of the Trademark



# Is trademark registration an obstacle to FLOSS development? (1)

Trademark infringement: commercial use of the trademark / risk of confusion

Is Trademark registration a way to forbid distribution of FLOSS?

▼ A solution: exhaustion of rights?

Is Trademark registration a way to forbid the performance of services around FLOSS?

▼ A solution: the use of a trademark as a reference?

Is Trademark registration a way to forbid the development of forks?

# Is trademark registration an obstacle to FLOSS development? (2)

Is Trademark registration a way to forbid the development of forks?

▼ A solution: the distribution of forks without using the trademark?

A possible issue if the Trademark is included in the source code



# Conclusion

Trademark registration may be necessary

Trademark registration should not be an obstacle for the development of FLOSS

A balance must be reached in order to convince developers to continue contributing and protect reputation and brand image

Such balance should be reached through trademark policy: hypothesis in which trademarks can or cannot be used: use by the community, modification of the software...

