

# Free licensing of trademarks

A tool to expand the scope of free licenses to a wider scope of works.  
Including physical objects.

This version is intended for reading rather than being used in a talk.

Disclaimer of interests. Julian Daich is the founder and a board member of Linds Corp a 501(c)3 non profit.

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# Two constrains

The costs and investments to develop a work vs the resources and chances of others to exploit it

You have no control of how your work or contribution will be used or how others will affect you with it

These are constraints we have to live with in free licensing and sometimes they can be problematic

# Costs vs chances

For example the case of biomedical technology. Development and validation costs are high and, if you are a new coming, other well established parties will have more chances to produce, distribute and market your work in a fashion that they can brand your development and in fact erasing you and your efforts from the picture.

# Affecting vs being affected

You write an useful piece of Free Software and now its is used in a server of a branded platform that distributes proprietary software against your principles.

# Exercising power in society

Providing information or knowledge asymmetrically to persons A and B.

Increasing momentum

Resource allocation. You provide or deny a resource or asset to another person.

Well established

Rhetoric Conveying ideas, concepts or perceptions overcoming the capability of another person to process her/ his own ones.

# Knowledge

You provide knowledge how to make pizza to person A but not to person B. Now the probabilities to find a pizza either at A house or at B house are different. The realities of A and B became different.

# Resource allocation

You provide or deny a resource or asset to another person. When you provide a resource to a person A, but not to a person B you create a difference of possibilities between and a eventually difference of power.

# Rhetoric

Conveying ideas, concepts or perceptions overcoming the capability of another person to process her/ his own ones.

People perceive, process, and communicate things for different purposes at different rates with different priorities.

Trough the way you communicate things through words, signals, and symbols you can influence others in their focus of thinking and acting.

By making a person to prefer A over B it can even results that the provability of A to happen will be higher than the one of B.

An action mode often performed in certain fields like marketing and politics.



# Knowledge vs assets

By providing an asset to another person you are left with less of such asset. If you has an apple and you give half to another person you now retain half of the apple instead the whole one.

By providing information or knowledge to another persons will not left you with less from it. If you know a cooking recipe and you tell it to a friend you will not know less for doing that.

# Knowledge vs rhetoric

In rhetoric a first idea or concept can prevail over a second one independently of their veracity. You convince a person that sugar is good or bad associating its consumption with experiences that may even be not valid for this person.

In knowledge two ideas can coexist depending on their veracity. You provide evidence of cases that sugar can be good or bad for a person based on what may make these cases different.

In rhetoric you will often prefer either a fact A or B instead of accepting both with different probabilities.

# Knowledge and intangible assets

Patents. Knowledge that involves know how

Copyrights. Aesthetics and ways to represent information

Trademarks. Association with an image

# Knowledge and trademarks

A trademark is a type of intangible asset consisting of a recognizable sign, design, or expression that identifies products or services from a particular source and distinguishes them from others. A trademark can associate the knowledge enclosed in a product or service with an image or the person/ entity behind such image. Trademarks also serve to identify the origin and quality of a product or services.

# Knowledge and patents

A patent is a type of intangible asset that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of time in exchange for publishing an enabling disclosure of the invention. A patent converts in an asset knowledge that involves a know how.

# Knowledge and copyrights

A copyright is a type of asset that gives its owner the exclusive right to copy, distribute, adapt, display, and perform a creative work for life or a limited time depending on the jurisdiction and other circumstances. Copyright is intended to cover the original expression of an idea in the form of a creative work, but not the idea itself. Computer programs can be copyrighted. The copyright of a computer program without its source code is equivalent to the copyrighting of a trade secret.

# Problems with intangible assets

The empowerment by knowledge loss its properties. The knowledge, or part of it, enclosed in a work becomes an asset. Like an apple. The possibilities to multiply and distribute it are significantly limited.

These assets threat freedom. They can legally stop you from use, copy, distribute, trade or make products or services based on the knowledge enclosed in these assets.

This threatening discourages innovation. If you have an idea of a new product/ service( or how to improve an existing one), but somebody else has exclusive rights needed to make possible this idea it may not be worthwhile for you to develop it.

# Free licensed trademark

A trademark that can be freely distributed or replicated as part of the work, but not being removed from it. The LINDS-GPA is a license that was created to incorporate free licensed trademarks.



# Free licensing of trademarks

A free licensed trademark is added to the work. This trademark is a visual logo that must be held and controlled by the original copyright holders.

Any contributor of a functional feature can add a free licensed trademark as far as the contributor is the holder of both, the trademark and the copyright that describes the contribution.

Free licensed trademarks cannot be removed. They may remain as they are in any derived version or distributed copy.

Proprietary trademarks can be added only after authorization. This authorization (rebranding) can be gratis or for a fee.

# Few desired outcomes

Contributors can prevent undesired branding. Anybody whose interests do not align with the ones of the contributors cannot add a proprietary brand to distribute or identify the work.

Providing a tool to monetize licensing. Contributors can create a proprietary quality stamp that can be included in copies distributed by others for a fee, or can charge others for using proprietary trademarks.

The same freedoms as those provided by the GPL are guaranteed. Having the free licensed trademark does not impede you to copy, distribute, modify( as far you keep the trademarks) or use the work for commercial or non commercial purposes.

# Free licensed trademarks

The Marks and Contributor Marks are intended to identify the origin of the Work (including the Product) as well as the licensing model defined by the terms and conditions of this Agreement.

You shall, and are granted a license subject to the conditions and instructions of this Agreement to, retain, use and display the Marks and Contributor Marks only in association with the manufacturing, making, distribution, propagating, conveying and sale of the Work. The Marks, Contributor Marks and the Marks Code cannot be removed from the Work or their modified versions.

The LINDS-GPA, the license, is clear and explicit. The free licensed trademarks are associated to the licensing terms of the work rather than the work itself and they cannot be removed.

# Trademark abandonment needs to be avoided

The trademark is associated to the licensed conditions of the work

Continuity and maintenance of trademark enforcement. The use of this agreement enforces the obligation of keeping the Marks and Contributor Marks in the Work and distributing, propagating or conveying them under the terms of this Agreement. The free-of-charge license to distribute the Mark and Contributor Marks is to be understood as an enforcement of the Mark and Contributor Marks as a way to designate and promote the Empowerment and Freedoms granted by the Agreement and never as an abandoning of the Marks and Contributor Marks.

A trademark is abandoned when it ceases to be used for three or more years, with no intention of using the trademark again in the future. This frees the trademark so that anyone else can use it without recourse from the original trademark owner.

Licensing terms have to be very specific in order to differentiate abandonment from free distribution and use of free licensed trademarks in the context of the licensed work.

# Trademark abandonment needs to be avoided

Other special conditions have to be requested

Any non authorized action on the Marks and Contributor Marks will be considered trademark infringement, unless otherwise permissible under law. Non authorized actions for example include to ...adversely affect the value of the Marks, Contributor Marks or the Intentions of this Agreement, or engage in any conduct that would constitute infringement of, or otherwise harm, the trademark rights of any third parties.

Trademark infringement of the Marks or Contributor Marks, or their use in association with false advertising claims will revoke this Agreement from you under the terms of section 10.

Trademark licensing terms of many licenses commonly request that the trademark will not be used against the licensor's goodwill as a way to control licensees and also a tool to prevent abandonment. However such terms are ambiguous and can lead to arbitrary outcomes that undermine the freedom of users. Instead goodwill an intention for the license was defined.

Also to preserve a minimum of quality and to prevent damage to contributors the association of free licensed trademarks to false claims is not allowed.

# Trademark holder's goodwill

The intention of the license is well defined in a fashion that cannot threaten empowerment or freedom to users

The "Intention" of this Agreement means the willingness and capability to equate the Freedom and Empowerment between recipients of the Work, including you and any other. Executing this Agreement is a preferred modality to perform its Intention.

As far as the agreement is executed to perform its intention the trademark is considered in use and not abandoned.

# Licensed background information

Similar to the GPL source code. It is a continuous that includes all the information and knowledge enclosed in the work. The difference is that the source code of a program is a discrete set.

The background information is important to describe works that are not necessarily software. It involves an implicit continuous of information and an explicit discrete form to express it. This explicit form is equivalent to the corresponding source of the GPL.

In the LINDS-GPA a Source Work is defined to express the background information. It involves physical and conceptual aspects of the work. The corresponding source is defined in equal terms as those of the GPL

# Licensed background information

When the background information explicit description is included at the corresponding source, it involves a copyright. A minor decorative aspect of the work may may not be part of the corresponding source. If an user figures out a feature from the decorative aspect and improves the feature, then the improvement is incorporated as part of the corresponding source of the modified work in a fashion that generates a copyright and this user becomes a contributor who is a holder of the new copyright.

Not any component of the work may be freely replicable, but full disclosure is requested and trade secrets are avoided. If there is a component of the work that it is patented by somebody who is not a contributor, then it may be restrictions to add this component from sources not authorized by the patent holder. In any case the license request that the corresponding source of the patented component will be included as part of the corresponding source of the work.



# Patented parts of the work

An essential patent claim is a patent claim that will be otherwise infringed by using, distributing, making or otherwise performing the work without a permission from the patent claim holder. Essential patents claims hold by contributors are automatically licensed. The LINDS-GPA and the GPL are equals in this aspect.

The LINDS-GPA also requests explicit declaration of the essential patent claims from part of the contributors that hold them. In this aspect it is different from the GPL.

# Avoiding patent trolling

Person A is an essential patent claim holder and person B an user. A sues B contrary to the license

Person A may loss, but going to trial can cost much more to B than A

Patent claims can be traded and pass from one holder to another. This can make the above case possible and for that reason making licensed patent claims explicitly declared is important in free licenses in general.

# The mix

Licensing of patents, trademarks and copyrights are combined

A “Work” refers to one or more items, regardless of the items’ nature or how they are expressed. This Agreement governs the use, modification and/or distribution of the Work and any modified version or derivative based on it, whether or not they are covered by a copyright, patent or trademark rights granted by law. The ‘Work’ includes the collective work that bundles the discrete items governed by this Agreement together into a compilation.

The licensed work may comprise parts that are covered by trademark, patent or copyright laws. In order to be granted with permission to use, distribute, modify, make or study these parts it necessary to comply with the terms and conditions with the parts that are not covered by these laws, however the license can be only enforced if a patent, copyright or trademark is infringed.

# Overall

<b>Trademarks</b>	<b>LINDS-GPA</b>	<b>Other free licenses; AFAIK</b>
Freely added	Only from contributors	Yes
Can be removed	No	Yes
Freely distributed	Only from contributors	No
Monetizing branding	Yes	Tricky( almost no)

# Future developments

Simplifying the incorporation of trademarks to be licensed. The LINDS-GPA currently request to declare at least one trademark from the original author in a form embedded a the license text while trademarks from odder contributors are declared in separated forms. This first approach was implemented to avoid any possible ambiguity. Future versions of the license may simplify trademark declaration in a unified procedure for any trademark holder.

Improving compatibility with other licenses as the GPL. Current terms of the LINDS-GPA for licensing works containing trademarks are not compatible with the GPL and most other free licenses. If free licensing of trademarks shows to be useful these issues can be solved adapting updated versions of existing licenses and maybe creating stand alone free trademark licenses.

Dealing with non human generated content. Simulated intelligence software and systems that generate content similar to the one created by persons are proliferating. This machine created content may have uncertain licensing attributes depending if it was generated by modifying existing copyrighted materials or not. Increasing the relying of free licenses more in patents and trademarks should be considered for these cases.

# Thanks

Happy hacking!!

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