ABSTRACT

Do you know who runs the projects behind the code you run – or contribute to? It's not always obvious, and while you can always try forking the code, successfully attracting contributors to your fork is hard.

You don't have to get involved in branding: but you do need to know who truly controls the direction of the open source technologies that you rely on every day. Far too many individual developers and companies rely on a wide variety of open source tools that come from different projects. How do you accurately evaluate the security, stability, and potential for future support around an open source project? How can you find if your chief competitor truly has a lock on a project's governance and future direction?

The power behind a project's brand is not always obvious. Come discover who governs some key open source project brands, and what might happen to governance when someone goes IPO or gets bought out. Learn how to keep governance of the project truly independent and welcoming – or how to properly own and run your own open source brand.

Surprises guaranteed!

WHO OWNS THAT
OPEN SOURCE BRAND?

@ShaneCurcuru
Punderthings Consulting
http://ShaneSlides.com

Hello, and welcome - my name is Shane Curcuru. I've been involved in open source at Apache since 1999, and volunteer as the Vice President of Brand Management there.
I'm also launching my own consulting business called Punderthings, where I can help you better understand open source brands and communities.

TOPICS

- Brands, Trademarks, and Open Source

- Why Trademarks Matter

- Three Levels Of Open

- Quiz Time!

We see brands every day, but understanding the legal trademarks lying inside of brands is something we rarely think about - and even when we do, misunderstandings about trademark law abound.
More importantly, there are a few cases where understanding the basics of trademarks and ownership will really matter to your company or open source career.
Exploring trademark ownership in the open source ecosystem also leads us to the three levels of openness: source, governance, brands.

CODE - COMMUNITY - BRAND

- **Code** is least interesting - open source is infinitely forkable

- **Community** drives existing projects - constantly changing

- **Brand** is more powerful than we think - and least understood

When we talk about open source projects, there are a lot of aspects - but there is a simple way to categorize these.

The code itself in any specific project is the least interesting aspect - open source is infinitely forkable. The code in any particular project's repositories is a commodity - anyone else can fork it and build their own version.

The community is what drives a project. These are all the different people who work on a project - often each for their own reason.

The brand - the name, logo, and images that draw people into the project are actually the most interesting aspect to focus on for the future. Brands - and trademarks in particular - are the least understood aspect of this equation.

"An open source project's
most important asset is its **brand**."

–Shane Curcuru

Here's my premise**: The most important asset for any open source project is its brand.** A *project* brand - and it's trademarks - are how people find out about the project over the long term. It's also the only part of a *project* that you **can't fork**.

Let's investigate some popular open source project brands, see who runs them, and think about how control over a project's image and brand can affect the future. We'll see what you think about my premise - that brand is most important - at the end of the talk.
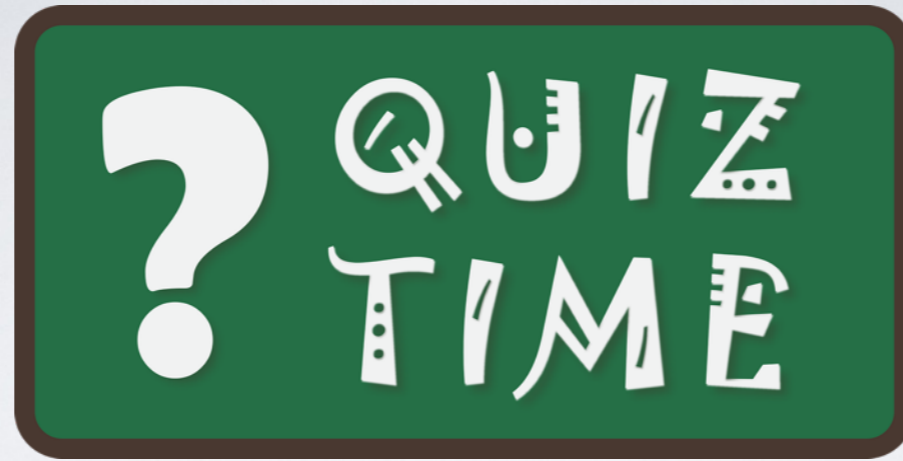
WHO OWNS THIS BRAND?

- That Cloud-y company
- That Horton-y company
- A business trade association (501C6)
- A non-profit charity (501C3)
- Doug Cutting

We'll start with a really easy one - who owns the Hadoop brand and trademark?

Well, judging from the marketing I see, perhaps this one isn't that easy a question. We're **not** asking who's writing the code for Hadoop, but rather: **who controls the brand, and owns the trademark**?

WHO OWNS THIS BRAND?

- *That Cloud-y company*
- *That Horton-y company*
- *A business trade association (501C6)*
- **A non-profit charity (501C3)**
- *Doug Cutting*

Apache® Hadoop® - Big Data

The Apache Software Foundation

The answer is: A non profit group. The Apache Software Foundation owns the Hadoop brand and registered trademark on behalf of the Apache Hadoop Project Management Committee.

USPTO Reg# 85377777

Here's another simple one - recognize this tiny hardware maker? Who owns this brand?

Is it:
- A commercial company, out to make money?
- A business trade association (501C6 in the US) - non-profit, but out to build ecosystems for the member companies that pay sponsorships?
- A non-profit public charity (501C3 in the US) - where the purpose is truly for the broader public good, and not for specific corporate interests?
- Or a BFDL - Benevolent Dictator For Life? Some projects are unincorporated, and simply run by the founders or whoever has admin rights to the actual code repository.

The Arduino trademarks are owned by a commercial company - Arduino AG Switzerland. You may have heard in the past about trademark disputes between two separate companies named Arduino, which probably cost both companies a lot of legal money as well as dimmed their reputation. But in the past year or so, they have made amends and merged - including the trademarks (in various countries).

But imagine how much better an Arduino would be if they hadn't spent that much effort litigating the trademark?

USPTO Reg# 85144567

As the world's most popular blogging platform, Wordpress has a long history and a simple logo. The question today is: who owns the brand?

WHO OWNS THIS BRAND?

- Commercial company
- Business trade association (501C6)
- **Non-profit charity (501C3)**
- BFDL / Individual

WordPress® - Blogging Engine   **WordPress Foundation**

The WordPress Foundation, legally a non-profit 501C3 company in the US, owns the trademarks for WordPress. Note that legally this is a separate company from Automattic, the company that runs wordpress.com and offers hosting (among other things). However, **leadership of the two organizations is closely tied,** since officers from Automattic are also on the board of the Foundation.

https://projects.propublica.org/nonprofits/organizations/205498932

USPTO Reg# 78826734

WHY ARE BRANDS IMPORTANT?

I can hear you ask: what's so important about brands? Brands are how newcomers hear about a project, and how users make decisions on what to download, buy, or contribute to.
Open source is fundamentally an attention economy - the more attention focused on a project through it's brand tends to mean the more contributors and velocity in the project.

But brands are a complicated topic - let's make this simpler and just focus on the underlying trademarks.

BRAND

TRADEMARK

A trademark is the legal instantiation of a brand.

The core of most brands is one (or more) trademark(s). Trademarks are the legal instantiation of a brand, and have specific laws and definition. Are there any lawyers in the room? If so, prepare to twitch as we…

TRADEMARKS IN 30 SECONDS

- A trademark is the legal instantiation of a brand

- **Specific** and **consistent** name or logo for a product or service

- Trademarks prevent **consumer confusion** as to source of goods

Define trademarks in 30 seconds!
Trademarks are a legal asset governed in the US by the Lanham act and other laws. Each country around the world has their own trademark laws, although the basic purpose is the same.

- Legal instantiation of the brand - brands are not (generally) regulated by law, but trademarks are.
- A trademark is the **specific symbols** associated with goods or services available in commerce. Providing a software product for free (like open source) to the public still counts.
- The purpose of trademarks is not for us, the producers - it's really for the end user or consumers. Trademarks are designed to ensure that when users purchase or download a product based on the trademark, that they are getting it from the expected producer of that product. Trademarks allow producers a legal way to capitalize on the goodwill and association of qualities their brand(s) build up.
- **And…**

TRADEMARKS
IN 30 SECONDS

- A trademark is the legal instantiation of a brand

- **Specific** and **consistent** name or logo for a product or service

- Trademarks prevent **consumer confusion** as to **source of goods**

Trademarks ensure consumers understand **which producer is providing the goods**.
Trademarks are a direct legal tie between the organization producing something, and the goods produced, so that consumers can be assured of getting what they expect. Thus whoever owns the legal trademark can control this relationship.
AND…

TRADEMARKS
IN 30 SECONDS

- A trademark is the legal instantiation of a brand

- **Specific** and **consistent** name or logo for a product or service

- Trademarks prevent **consumer confusion** as to **source of goods**

- A trademark is **owned by a single organization**

The upshot? A trademark is generally owned by a single organization. Trademarks are not (normally) forkable - they exist to tell consumers (end users) what company or individual is providing a software product. If the original user of the trademark wishes to assert ownership, they can do so legally. This means they can use trademark law to prevent anyone else from using that same trademark - name or logo - to refer to a similar kind of product.
Or to put it in simpler terms…

Trademarks are <u>not</u> forkable.

I can't say this too often: trademarks are not forkable.
Unlike code (infinitely forkable) and community (constant change), trademarks are not forkable. There must be a single owner, and in general, only a single source of goods - i.e. when users come to FooProject to get a software product, they should always be getting it from the same organization - not multiple organizations.

Trademarks are the biggest - often only! - control point any open source project has.

WHO OWNS THE TRADEMARKS?

It's about the **trademarks - and most importantly, who owns them.**

Trademarks are legal assets - and they can't (really) be forked. They also can have a clear owner, who can **prevent others from using the marks**.

WHO OWNS THIS BRAND?

solaris

- Commercial company
- Business trade association (501C6)
- Non-profit charity (501C3)
- BFDL / Individual

Let's look at an example where trademark ownership is important - who owns this long-lived brand?

Oracle - a commercial company owns the SOLARIS trademarks.

For the few people who still run Solaris, there is no open source offering anymore - it's now purely a fully commercial product just from Oracle.

So you're still using Maria DB, and you want to evaluate their long-term chances - so who's behind the MariaDB seal trademark?

WHO OWNS THIS BRAND?

- **Commercial company**
- *Business trade association (501C6)*
- *Non-profit charity (501C3)*
- *BFDL / Individual(s)*

MariaDB Corporation Ab

While there is a MariaDB Foundation that governs much of the development, the trademark is legally owned by the for-profit corporation, not the community.

FOR COMPANIES

Understanding brand ownership helps with:

• Risk management - know where a project is going

• Understand project velocity, maintenance, innovation levels

• Ability to influence direction / prevent disruption to your market

When you're using open source for any significant part of your business, or when you want to invest in an open source technology, you want to manage your risk. We've seen plenty of examples this week of how to review the technology and the community to understand project and community behaviors. Now lets look at how branding changes and trademark ownership can affect the risk level.

Let's see an example.

WHO RECOGNIZES THIS BRAND?

Anyone?

NODE-FORWARD

A notable project fork of Node.js in early 2014 (discontinued)
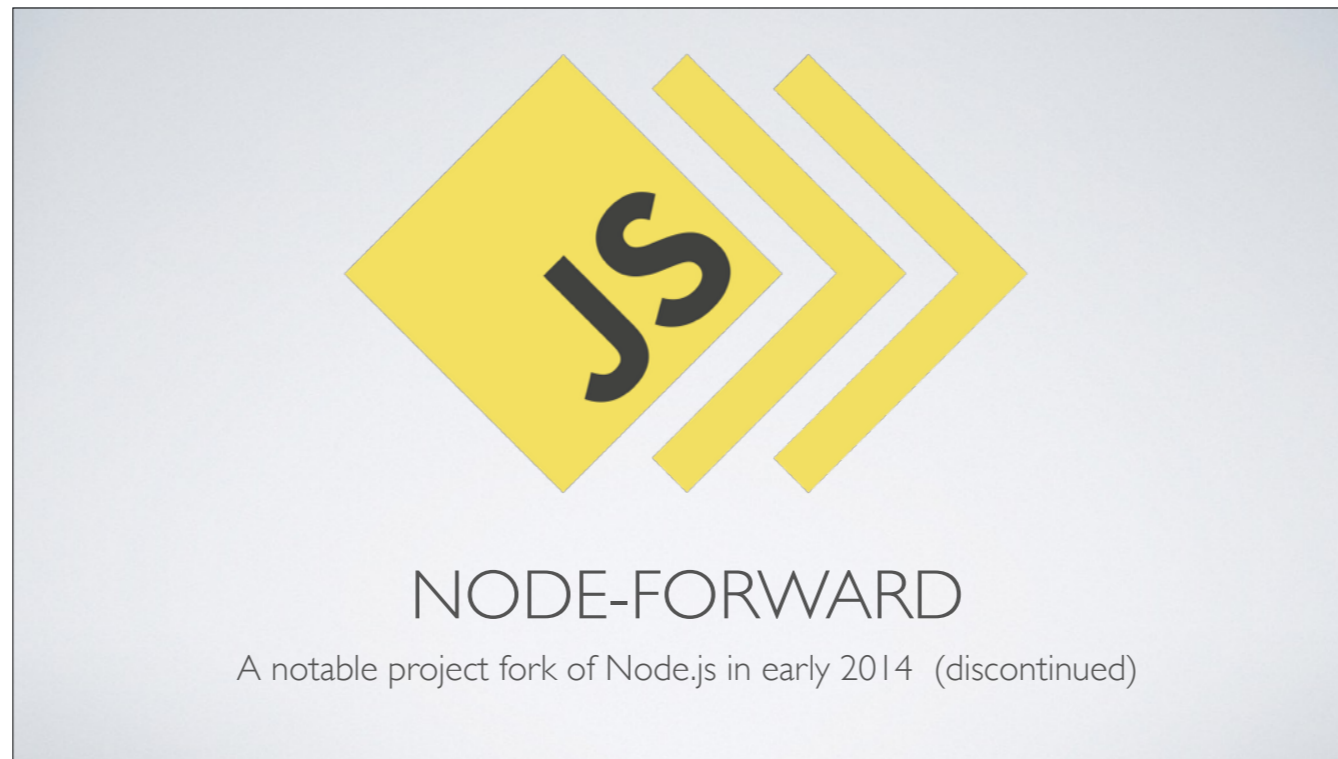
This was a widely reported fork of Node.js that never really got traction, but clearly got people talking.

Trademark ownership: immaterial - it's a dead project and code.

WHO RECOGNIZES THIS BRAND?

Recognize this logo, with the "IO"?

IO.JS

A major project fork of Node.js in 2014-2015 (discontinued)

This was a major Node.js fork that did significant development with slightly different community, which eventually merged back to node.js itself.
Trademark ownership: immaterial - it's a dead project, and explicitly ended to rejoin node.js.

How about this brand, pronounced "IO" but spelled "Ayo"?

AYO.JS

A project fork of Node.js from 2017 (effectively dead)

This is a major but inactive fork of Node.js from early 2017. This was primarily a governance and inclusivity issues fork, not a technical one. It made a lot of noise and had some strong supporters, but now seems to have fizzled; last commit was in December.
Trademark ownership: immaterial, unless they become popular somehow.

WHO RECOGNIZES THIS BRAND?

Here's an easy one.

OK, THAT ONE IS PRETTY OBVIOUS

This is the popular Node.js project

That's pretty obvious. But!

Who owns this trademark? The one that no-one could fork, even though several groups tried to fork the code?

Joyent - a single commercial company (now owned by Samsung). While governance and project direction is generally controlled in the community of the Node.JS Foundation as a LF collaborative project, legally the trademark is owned by a single company.

WHO OWNS THIS BRAND?

https://tsdr.uspto.gov/
#caseNumber=85262623&caseType=SERIAL_NO&searchType=statusSearch

Now do you see a little more risk?

I'm sure the foundation and Joyent have a stable relationship and trademark agreement day-to-day - but there's no getting around that Joyent will always be able to control use of the Node.js brand if they want to.

Who was surprised to learn this today?

Imagine if all the efforts around
forks had gone into innovation.

Unlike code (infinitely forkable) and community (constant change), trademarks are not forkable. There must be a single owner, and in general, only a single source of goods - i.e. when users come to FooProject to get a software product, they should always be getting it from the same organization - not multiple organizations. Similarly forks split the attention - both of the community doing the work, but also within the users and larger ecosystem, who are left wondering which fork's brand they should pay attention to.

Trademarks are the biggest - often only! - control point any open source project has.

WHY THIS IS IMPORTANT
FOR YOU - A CONTRIBUTOR

So what about us as individuals? What do we need to look for?

FOR CONTRIBUTORS

Understanding brand ownership helps you:

• Know how to participate in project governance

• Secure reputation in the gift economy around FOSS

As a contributor, you want to know if your voice will be heard.
Also, that your contributions will be recognized and will be visible to the world - when github is part of your resume, this is a critical part of any job: getting recognized for personal accomplishments, and especially doing so in an open and public community that draws attention.

If you know project governance is controlled by a single company, you need to understand if your contributions - as a non-employee - will still be valued.

Here's an example of when trademark ownership becomes important.
Who recognizes this brand - a dapper butler? And who do you think owns this brand?

WHO OWNS THIS BRAND?

- **Commercial company**
- *Business trade association (501C6)*
- *Non-profit charity (501C3)*
- *BFDL / Individual*

Hudson® - Continuous Integration

Oracle

This is of course the Hudson butler, a open source CI tool. Currently, the project is run in two places, both at Eclipse and at java.net. However the HUDSON registered trademark #85193459 is legally owned by Oracle, meaning they can control who is allowed to produce software using that mark.
Why is this important? Well, perhaps people are more familiar with this logo:

Here's another butler - for the Jenkins continuous integration server!
Years ago when some developers were unhappy with how Oracle was moving the Hudson project roadmap along, they decided to fork the code.
Oracle declined to license them the trademark - forcing the new project fork to choose a completely new name.

Jenkins is an SPI (Software In The Public Interest) project. SPI is a 501C3 public charity that acts as a fiscal and trademark steward for the people who actually run the day-to-day Jenkins project. So in this case, the registered JENKINS trademark #85447465 is owned by SPI on behalf of the actual individuals running the project - not for the benefit of any specific company.

Here, the brand is open - owned by a 501C3 non-profit public charity.

WHO OWNS THIS BRAND?

- Commercial company

- Business trade association (501C6)

- Non-profit charity (501C3)

- BFDL / Individual

WHO OWNS THIS BRAND?

Drupal™

Drupal® - CMS system

- *Commercial company*
- *Business trade association (501C6)*
- *Non-profit charity (501C3)*
- **BFDL / Individual**

Dries Buytaert

The DRUPAL registered trademark is legally owned by Dries as an individual. Obviously, he has a close relationship with the Drupal Association, a US 501C3 nonprofit - but Dries maintains personal ownership of the trademark.

While the Drupal foundation will always have strong governance, Dries as an individual will always have his own, personal say over the project, immaterial of other changes.
https://tsdr.uspto.gov/#caseNumber=86464584&caseType=SERIAL_NO&searchType=statusSearch

THREE LEVELS OF OPEN

THREE LEVELS OF OPEN

- Open **source** - public code that uses an OSI-approved license

- Open **governance** - documented leader elections / decision making

- Open **brand** - trademark owned by 501C3 non-profit charity

We all understand what makes an open source project - publicly available code under an OSI approved license.
Plenty of projects practice open governance - where there is a documented governance model and roadmap that allows productive contributing newcomers to get a seat at the table.
And…

THREE LEVELS OF OPEN

- Open **source** - public code that uses an OSI-approved license

- Open **governance** - documented leader elections / decision making

- Open **brand** - trademark owned by **501C3 non-profit charity**

There are **Open Brands**. To start with, it's where the ownership of the trademarks used by the project are obvious and publicly known.
To be truly open, they are owned by a 501C3 non-profit public charity - so that control of the trademark stays with the organization and individuals actually doing the work itself, and not outside corporations.

"An open source project's
most important asset is its **brand**."

–Shane Curcuru

So what do you think about my premise now?
Yes - having useful code and an engaged community are important. But thinking at the higher level, a project is defined (to the world - of both users and contributors) solely by it's brand.

Question Time?
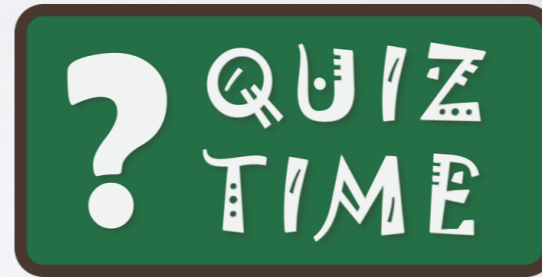
QUIZ TIME

Here's a beloved penguin we all know. But who owns the trademark?

WHO OWNS THIS BRAND?

- *Commercial company*
- *Business trade association (501C6)*
- *Non-profit charity (501C3)*
- **BFDL / Individual(s) ?**
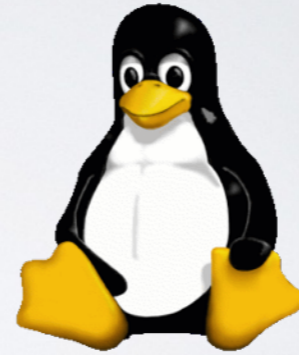
Larry Ewing (design copyright, not trademark)

The original trademark registration by Tux LLC has expired because it wasn't maintained. Since Tux has been used in so many different formats, by different vendors for different kinds of products, there is no clear ownership.
Copyright and design ownership is from the original author, Larry Ewing
http://isc.tamu.edu/~lewing/linux/

WHO OWNS THIS BRAND?

LINUX

- Commercial company
- Business trade association (501C6)
- Non-profit charity (501C3)
- BFDL / Individual

How about the wordmark LINUX itself? Know who owns that?

While Linus legally owns the registration for LINUX software products individually, it is licensed to the Linux Foundation for all management purposes.

Here's an old one - something that was moving emails before some of us were adults.

WHO OWNS THIS BRAND?

- **Commercial company**
- *Business trade association (501C6)*
- *Non-profit charity (501C3)*
- *BFDL / Individual(s)*

Although it started out as a mark of Eric Allman, it then was owned by SendMail, Inc. as a small company, which was bought out by ProofPoint, a much larger company, who owns the USPTO # 75979292 registration today.

This one seems kinda obvious, doesn't it?

WHO OWNS THIS BRAND?

NetBeans

- Commercial company
- Business trade association (501C6)
- Non-profit charity (501C3)
- BFDL / Individual

TRICK QUESTION!

Oracle is in the process of donating the trademark to Apache!

As part of the Apache Incubation process, any registered trademarks must be legally transferred to the ASF before graduating as an Apache project.

ownCloud is a commercial company in Germany running the ownCloud software project, that lets you run your own cloud software. Some of the lead developers - including a leader of the company itself! - decided to fork the software, leading to…

USPTO Reg# 85474057

nextCloud - a fork of ownCloud software by some of the lead developers. nextCloud is also open source, but is run by a commercial company. While some of the code is shared open source, it is not possible to fork the brand, so they started with a new name and logo.
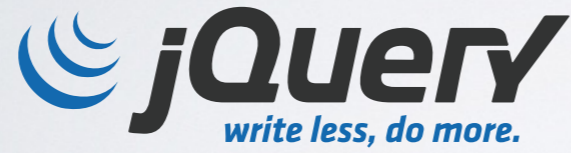
USPTO Reg#85306921

WHO OWNS THIS BRAND?

- *Commercial company*
- *Business trade association (501C6)*
- **Non-profit charity (501C3)**
- *BFDL / Individual*

Software In The Public Interest, Inc.

DEBIAN registered word mark is owned by SPI, Inc., a 501C3 non-profit that holds the assets on behalf of the Debian maintainers. The Debian group itself manages their own affairs, but since they aren't legally incorporated, SPI holds the legal assets for them.
This shows a common structure for some FOSS projects, where the technical governance is led by the people doing the work, and the legal ownership is brought to a non-profit foundation like SPI, Software Freedom Conservancy, or the Apache Software Foundation - all 501C3 public charities in the US.
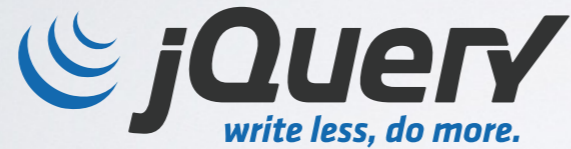
Here's an interesting story along the way…

While jQuery was hosted for a while at the Software Freedom Conservancy, a 501C3 public charity, governance and the trademark have moved to a collaborative project of the Linux Foundation, essentially being under a 501C6 business association.

QUESTIONS?

Thanks for attending!

http://shaneslides.com/2018/05/Who-Owns-That-FOSS-Brand/