

Jabber Trademark Enforcement Agreement

This Agreement effective May 2, 2003 (the "Effective Date") is entered into by and between Jabber, Inc., a Delaware corporation ("JINC") and the Jabber Software Foundation, a not-for-profit membership organization ("JSF").

WHEREAS, JINC and the JSF have developed a Jabber Trademark Position Statement ("JTPS"), a copy of which is attached hereto as Exhibit A, which contemplates the grant to the JSF by JINC of a perpetual royalty-free license to use the Jabber trademark, Reg. No. 2623241 (the "Mark") to further the goals and interests of the JSF, JINC and the Jabber.org open-source community (the "Community").

WHEREAS, JINC has granted the JSF a perpetual royalty-free license to use the Mark.

WHEREAS, JINC desires to retain the JSF and the JSF desires to demonstrate its willingness and ability to administer the use of the Mark to protect the integrity of the Mark and to ensure the proper use of the Mark in connection with the XMPP protocol and the protocol's use as an internet standard for instant messaging and awareness recognition.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, JINC and the JSF agree as follows:

1. Protection of Mark. Commencing with the Effective Date and for the twelve-month period thereafter (the "Trial Period"), the JSF shall administer the use of the Mark and shall take any and all actions, including legal action, the JSF deems necessary and reasonably required to ensure that the use of the Mark by third parties is consistent with the guidelines set forth in the JTPS. The JSF shall notify JINC at the time that the JSF first becomes aware of a questionable use of the Mark by a third party, including with such notification an outline of the actions the JSF is taking to ensure that the third party ceases the questionable use and uses the Mark in a proper manner consistent with the JTPS. Thereafter, the JSF shall periodically advise JINC of the status of its actions with respect to such use by the third party and such party's compliance with the JTPS. In the event the JSF believes legal action is required, it will so notify JINC and the JSF and JINC will mutually agree on the action to be taken, it being understood that JINC will, so long as it is the owner of the Mark, be responsible for and shall pay the legal costs associated with such action. At least once every three months during the Trial Period, one or more representatives of the JSF and one or more representatives of JINC shall meet to review the JSF's administration of the use of the Mark. In the event that JINC is not satisfied with the JSF's administration of the Mark, it shall so advise the JSF and the JSF and JINC shall use their respective best efforts to resolve the issues raised by JINC.
2. Transfer of Mark. Representatives of JINC and the JSF shall meet during the fourth quarter of the Trial Period to review the JSF's actions with respect to the administration of the Mark. If JINC determines, in its sole discretion, that the JSF's administration of the Mark has been effective and that the JSF has the ability to pay the legal and other costs associated with

the administration of the Mark, the JINC and the JSF shall develop the terms upon which JINC shall transfer ownership of the Mark to the JSF at the end of the Trial Period, including the terms of the license to use the Mark which JINC will retain in connection with such transfer.

3. Term and Termination. The term of this Agreement shall commence on the Effective Date and continue for a period of twelve months unless sooner terminated in accordance with the terms of this Section. This Agreement may be terminated by the JSF by sending a notice of termination to JINC at least 10 business days before the proposed termination date. JINC may terminate this Agreement if the JSF has failed to correct a failure to administer the Mark in a manner acceptable to JINC if the JSF does not cure such failure to JINC's reasonable satisfaction within 30 days after receipt of written notice of such failure. Upon termination of this Agreement other than in connection with the transfer of the ownership of the Mark to the JSF, JINC shall again become solely responsible for administration of the Mark. In the event that the JSF was actively involved in an effort to enforce the proper use of the Mark by a third party at the time of the termination of this Agreement, the JSF shall take all actions reasonably required to transfer the administration of such action to JINC.

4. Governing Law. This Agreement is governed by the laws of the State of Colorado without regard to conflicts of law principles.

5. Notices. All notices will be in writing and, except as otherwise provided herein, will be deemed given when delivered personally or two days after they are sent by first class mail or pre-paid express courier to the other party at its respective address as set forth in this Agreement.

6. No Partnership or Joint Venture. Nothing in this Agreement shall be construed as making either party the agent of the other.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized representatives as of the date set forth below.

JABBER, INC.

Dated: 5/1/03
By [Signature]
Its CEO

Address: 1899 Wynkoop St.
Suite 600
Denver, CO 80202

JABBER SOFTWARE FOUNDATION

Dated: 5.1.3
By [Signature]
Its CHAIRMAN OF BOARD

Address: 4363 S. QUEBEC ST 5101
DENVER CO 80237

EXHIBIT A

Jabber Trademark Position Statement

I Introduction

This document represents a position statement from Jabber, Inc. to the Jabber Software Foundation regarding recommendations and guidelines for on-going representation and management of the "Jabber" trademark. It proposes an arrangement whereby the JSF will publish and manage Jabber trademark usage guidelines on behalf of the greater Jabber community. Jabber, Inc. wishes to establish an arrangement that allows flexible use of the Jabber trademark while ensuring its proper protection and enforcement as required under trademark law.

History of the Trademark

Prior to the development of Jabber instant messaging software by anyone (including Jeremie Miller, Webb Interactive Services, Inc., or Jabber, Inc.), a company named Oquirrh Technologies was using the trademark JABBER for its voice compression software (as of March 1996). When Jeremie teamed up with Webb (which later created a new subsidiary, Jabber, Inc.), Webb realized that potentially the IM software would not be able to be called JABBER, because such a use might infringe the trademark rights of the senior user, Oquirrh Technologies. Oquirrh also owned a federal registration for the mark JABBER (Reg. No. 2148182), which would prevent federal registration for the mark JABBER for IM software. Webb had Oquirrh assign its registration of the mark and its domain name (Jabber.com) to Webb, for which Webb paid \$75,000. Since that time, Webb has assigned its rights to Jabber, Inc., which has since paid several thousand dollars in attorney's fees for advice related to the trademark and to file applications for federal and foreign registrations of the Mark for use in connection with IM software.

Why Jabber, Inc. (through Webb) Purchased the Trademark

Jabber, Inc. had several reasons for purchasing the trademark:

First, it wanted to ensure that instant messaging software based on the Jabber protocols could legitimately use the JABBER name and not infringe on existing intellectual property claims.

Second, Jabber, Inc. wanted to make sure that anyone selling or giving away Jabber software is actually using the Jabber open source code, Jabber commercial software, or the Jabber protocols, rather than providing products or services unrelated to the Jabber protocols, but calling it "Jabber" in order to sell or distribute more copies (this is called "Passing off"). Everyone in the Jabber Community should share this goal, in order for the term JABBER to maintain its distinctive meaning. If there were no trademark right owned by anyone, Microsoft, for example, could develop a completely unrelated IM or non-IM product and call it JABBER.

Finally, at the time of purchasing the trademark, Jabber, Inc. wanted to ensure that it would be the only IM-related company called JABBER and that any other commercial or open-source entities using JABBER in their name did so in a manner that was deemed good for the Jabber Community and not detrimental to Jabber, Inc.

What Does the Trademark Cover?

The Jabber trademark covers the use of the word "Jabber," when applied to the general category of computer software, including its use in product names and company names. Trademark rights are associated with specific goods and services, so that DELTA is a trademark owned by Delta Airlines for air travel services and is also a trademark owned by Delta Faucets for plumbing fixtures. Similarly, even if Jabber, Inc. owns a JABBER trademark in the area of computer software, Toyota could name its new car model JABBER. The standard is whether consumers would be confused and think that the products came from the same source. Software is so different from cars, that it is unlikely that a consumer would conclude that Toyota made the software, and vice versa.

II Proposal

Preamble:

To protect a trademark, the owner is required to "police" or control the use of the mark by others, under penalty of loss of the mark. Others may use or refer to a trademark in some circumstances without a license from the owner if it is for a so-called "fair use", or in other cases they may need to obtain a license for the use.

Intention Statement:

The Jabber Mark should represent well the interests of the Jabber Community, products and services based on Jabber-derived standards and protocols and related commercial and open-source initiatives. To further this goal, Jabber, Inc. is prepared to enter into an agreement with the Jabber Software Foundation, granting the JSF a perpetual license to use the trademark and "assigning" trademark administration to the JSF. The JSF will be expected to manage and enforce the trademark usage based upon well-defined usage guidelines and to demonstrate the availability of adequate and sustainable financial, legal and operational resources to defend the Mark. After a period of 12 months of trademark administration by the JSF, Jabber, Inc. will review the advisability of transferring ownership of the Mark to the JSF.

Jabber, Inc. will not impose any royalties or fees for use of the Jabber trademark. However, the JSF may choose to impose a service charge for managing and reviewing trademark license applications.

The following are proposed guidelines for trademark administration. These guidelines will be discussed and refined between JINC and the JSF. Once mutually agreeable guidelines have been defined, the JSF will follow these parameters in managing and enforcing the JABBER trademark. JINC will honor the JSF's decisions regarding trademark enforcement as long as they fall within the agreed guidelines.

Proposed Guidelines:

Using JABBER® on an Unlicensed Basis

JABBER® may be used in a descriptive, fair-use manner without a license (or other written approval) in the following ways.

Publications, Seminars and Services:

If you refer to JABBER in the titles of books, magazines, e-zines, other publications, seminars, or user groups, you must use your own trademark in conjunction with the goods or service provided and may not claim rights in the portion of the title referring to the Jabber Trademark. Examples of appropriate titles include: "**Your Name Jabber®** Protocol User's Guide," "**Your Name Jabber®** User Group," "**Your Trademark** Supporting *Jabber®* Services" and "**Your Brand Jabber®** Training." Your name or trademark must appear in a prominent location on all materials relating to the publication, seminar, or services.

Trade Shows, Conferences and Expos:

Unless Jabber, Inc. or the JSF is sponsoring your show or conference under a written sponsorship agreement, the name of any trade show, conference or exposition concerning a *Jabber* product, service or technology should begin with the producer's or sponsor's brand or name, and should then follow a "for *Jabber®*" format. For example, "**YourName** Expo for *Jabber®* Development" or "**YourName** Conference for *Jabber®* Developers." The producer's or sponsor's own name or trademark must be prominently displayed on all materials that advertise, promote or are otherwise associated with the conference.

Domain Names:

Use of a domain name that incorporates JABBER will constitute a fair, descriptive use if the following conditions are met:

- It is not misleading (or likely to cause confusion) that the domain name or associated web site is sponsored by or affiliated with Jabber, Inc.
- It is not misleading (or likely to cause confusion) that a Jabber product or technology associated with the domain name or web site is from Jabber, Inc.
- The web site owner does not use the Jabber Trademark in its associated company, product or service names unless properly licensed.
- It is not derogatory or demeaning to Jabber technology or the Jabber Community.

In any reference to JABBER that merely refers to it as the Instant Messaging and Presence technology, the use of the "®" symbol is requested, but not required. It is not necessary to obtain or hold a trademark license to refer to the name of the technology. This type of use is called "descriptive use" under the trademark laws and requires no license.

Space allowing and if you want to be especially law abiding, you should place a short legend at the bottom of the image or text that says

"JABBER® is a registered trademark of Jabber, Inc., and its use is licensed through the Jabber Software Foundation."

This places everyone else on notice that they cannot use the Mark improperly and protects it for use by everyone interested in promoting it.

Using JABBER® on a Licensed Basis

JABBER® may be used as all or part of an organization, software, service, or site name only upon written approval and/or under a license agreement, available through the Jabber Software Foundation. Unlicensed or otherwise unauthorized use of JABBER or of marks that are confusingly similar to JABBER® may constitute an infringement of trademark rights.

Products:

1. JABBER may NOT be used as the standalone name of any software product (e.g. The Jabber Server) or pre-pended to other words or characters as the standalone name of any software product (e.g. The JabberLinux Client).
2. JABBER may be used in the name of software products licensed under an OSI approved open source license (e.g. GPL, JOSL) providing that:
 - a. An application to use the trademark has been completed (from the JSF web site).
 - b. It has received a license to use the trademark from the JSF.
 - c. The following legend is conspicuously placed in the source code

"Jabber® is a registered trademark and its use is licensed through the Jabber Software Foundation."

- d. It is compliant with the Jabber protocol specification/standard;
 - e. It does not conflict with documented product or service names already registered (with the JSF) by a third party.
3. JABBER may be used in the name of software products licensed under a commercial/proprietary license providing that:
 - a. An application to use the trademark has been completed (from the JSF web site).
 - b. It has received a license to use the trademark from the JSF as well as written approval from Jabber, Inc. (note: This may result in a more specific required use of the trademark symbol and legend as defined by Jabber, Inc.).
 - c. The following legend is conspicuously placed on each copy of the products sold and on the title page of all product documentation:

"Jabber® is a registered trademark and its use is licensed through the Jabber Software Foundation."

(note: Jabber, Inc. reserves the right to modify the required text of the legend on a case-by-case basis. For example, "Jabber® is a registered trademark of Jabber, Inc., its use is licensed through the Jabber Software Foundation.")

- d. It is compliant with the Jabber protocol specification/standard;
 - e. It does not conflict with documented product or service names already registered (with the JSF) by a third party.

Company/Organization Names:

1. JABBER can only be used in the official name of any commercial (for profit) business or entity through a license from the JSF and written approval from Jabber, Inc.
2. JABBER can only be used in the official name of any non-commercial (non-profit) organization or entity through a license from the JSF.

General Tips on Using Trademarks:

A trademark should be used as an adjective immediately preceding a generic noun such as in "Jabber® protocol" or "Jabber® software." A trademark should not be used as follows.

Not Possessives: A trademark should never be used in possessive form. Use "Jabber[®] protocol's benefits," not "Jabber's benefits."

Not Plurals: A trademark should never be used in plural form. Use "All your Jabber[®] bases," not "All your Jabbers."

Not Verbs: A trademark should never be used as a verb. Use "Send me a Jabber[®] message," not "Jabber me."

Terminology

Usage conventions:

JABBER or the "Mark" – The Jabber trademark

Jabber, Inc. or "JINC" – The commercial company

Jabber Software Foundation or the "JSF" – The supporting organization for the greater Jabber community

Jabber Community or the "Community" – The common and/or complementary interests of .org, JINC, the JSF, and other commercial and open source entities that leverage the Jabber protocol.