

To Linux® Trade Mark Users

**URGENT**

Dear Sir or Madam

### Use of Linux® Trade Mark in Australia

#### The purpose of this letter

I act for Linus Torvalds, and I am writing to you about your use of the trade mark "Linux". This is not a letter of demand, but rather a request for your assistance, and an attempt to inform or remind you of the rights and obligations associated with the use of the trade mark "Linux".

My client is the owner of the trade mark "Linux", which is a registered trade mark in the United States and various other countries, and currently an unregistered (or "common law") trade mark in Australia.

My client has appointed a non-profit corporation called the Linux Mark Institute ("LMI") as the worldwide exclusive licensee of the Linux trade mark for purposes of protecting that trade mark from misuse. As part of its mission, LMI (through Linux Australia) has authorised me to apply for registration of the trade mark "Linux" in Australia for Mr Torvalds.

The success of Mr Torvalds' application for registration of "Linux" as a trademark depends on your assistance. It appears that you have used "Linux" as part of the name or brand for your own products or services, without formally obtaining a licence from the Linux Mark Institute.

You may or may not be aware that it is your legal responsibility to obtain a licence from the Linux Mark Institute before you are allowed to use the word "Linux" as part of your product or service name or brand. (For more information about this, please see <http://www.linuxmark.org>.) If you have failed to do so, then this could make Mr Torvalds' application more difficult.

#### What can you do to help?

Firstly, if you *have* obtained a formal licence from the Linux Mark Institute already, please let me know and provide me with some proof of this that I can use it in support of Mr Torvalds' application.

Secondly, if you *have not* obtained a licence, the success of Mr Torvalds' application will depend on us establishing that your use of the "Linux" trade mark was at least informally licenced by LMI. Normally a licence from LMI costs USD\$300 to USD\$600, however LMI is prepared to ratify your previous use of the "Linux" trade mark and to

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waive its rights against you for any previous trade mark infringements, provided that you complete, sign and return the declaration that is attached to this letter. This ratification and waiver will apply to any marks that would have been approved if a formal license application had been made to LMI.

Thirdly, although it is not required for the success of Mr Torvalds' application, it will be necessary for you to obtain a formal licence from LMI for your continued use of the "Linux" trade mark in association with your products and services. More information is available from the LMI Web site referenced above.

### **Conclusion**

As a valued member of the open source community, my client is confident that you will be keen to assist him in protecting the "Linux" trade mark from misuse in Australia. The registration of the mark will ensure that it remains available for use on fair terms by all participants in the open source community, and cannot be monopolised by a single person or company.

I therefore look forward to receiving your urgent reply (please by **12 August 2005** if possible) containing your signed declaration or evidence of your existing formal licence to use the "Linux" trade mark. If you have any questions in the meantime, please feel welcome to telephone or email me to discuss further.

Thank you in anticipation of your assistance. I look forward to hearing from you very shortly.

Yours faithfully



Jeremy Malcolm