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Legal Playbook

NETAPP COPYRIGHT AND TRADEMARK NOTICES

Legal Department, NetApp  
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PURPOSE:

This playbook aims to provide guidance to NetApp release engineering groups, writers, editors, technical publication, marketing, press release and public relations teams, and other employees, contractors, and vendors for generating proprietary rights notices (including copyright, trademark, proprietary rights, and government restricted rights notices) to protect NetApp intellectual property in software, documentation, marketing collateral, website content, and other content created for NetApp.

This playbook is not designed nor intended for use in licensing NetApp intellectual property.

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# Introduction to Copyright notices

A copyright is an intellectual property (IP) right that extends to original works of authorship, including literary, dramatic, musical, and artistic and certain other intellectual works. Generally, a copyright does not extend to ideas, procedures, processes, and systems, methods of operation, concepts, principles or discoveries, but rather extends to the *tangible form* in which such ideas are expressed. Ideas themselves may be protected, however, as confidential information under certain circumstances.

Under a copyright, a copyright owner retains certain exclusive rights, including the rights to:

* Reproduce the work (including making electronic copies);
* Create adaptations (derivative works) based on the work; and
* Distribute copies of the work (by license, sale, or rental).

In the United States, a copyright arises when an original work is first fixed in a tangible medium (for example, written on paper, stored in computer memory or recorded on film), and lasts for a set period, most often the life of the author plus 70 years. In addition, a copyrighted work need not be registered through a central copyright registry office (U.S. Copyright Office), although registration does confer certain legal advantages. It should be noted, however, that copyrights are territorial (i.e., country-specific), so copyrights laws may vary from country to country.

To protect NetApp's intellectual property rights (e.g., copyrights, patents, trademarks, and similar rights), NetApp must give adequate notice on its products, documentation and marketing materials of those proprietary rights. Additionally, NetApp is sometimes required by contract to attribute the intellectual property rights of certain licensors.

A copyright notice is a written statement that puts the user on notice that NetApp (and/or its licensor) owns or has rights to a technology, document, specification, and that the use of the technology, document, specification or other item is subject to these rights and to certain restrictions. Typical examples of copyright notices include the legal wording on the face of software distributed on CD-ROM, DVD, tape, or other physical media; the legend at the end of a press release or advertisement; and the so-called others: (1) copyright notice; (2) trade secret notice; (3) trademark attributions; (5) third party trade mark attributions; (6) U.S. Government rights notice; (7) license restrictions; and (8) export control notice.

# International Copyright Overview

Although most countries recognize copyrights under domestic copyright laws, such laws rarely protect a copyright owner when copyrighted works are reproduced or used outside the owner’s resident country. However, international [copyright law](http://copyright.laws.com/)s do exist which are based on co-operative agreements between participating countries for the common recognition of [copyright](http://copyright.laws.com/)s between such countries. Various agreements, such as the Berne Convention, the Universal Copyright Convention, and the WIPO Copyright Treaty establish copyrights commonly recognized between participating countries.

In general, authorized copies of an author’s work must display a copyright notice on or in the material that require protection, including the name of the copyright owner and the year of publication. While the use of a prescribed format is not mandatory in some countries, such prescribed format of the copyright notice does provide certain legal advantages to a copyright owner as explained further below.

# NetApp Copyright Notice Guidelines

To protect NetApp copyrights, the following guidelines comprise the NetApp Copyright Notice Guidelines:

1. Always use the phrase “Copyright ©”, adding the relevant year the work is published.
2. Always identify “NetApp, Inc.” as the owner of the copyright. NetApp, Inc. is the principal holding company since it affords advantages in terms of central copyright management and control, ease of administration as well as tax, and accounting reasons.
3. Always use the phrase “All rights reserved.” to preserve NetApp rights in countries which require express reservation of related rights.
4. A copyright notice provides public notice of one’s copyright in a work and is required to protect the copyright. The notice must be legible and adequate in size and font, and must be conspicuous on or in a product, documentation or marketing materials (please refer to Appendix C). Typical examples of copyright notices include the legal wording on the face of software distributed on CD-ROM, DVD, or other physical media; the legend at the end of a press release or advertisement. Hiding or minimizing this information may result in an ineffective notice which impacts the enforceability of the copyright.

Additionally, NetApp may be contractually required to provide notice regarding the intellectual property rights of certain licensors or suppliers whose work NetApp may incorporate in part or in full in its own published works or products.

If you know or have grounds to believe any work you wish to incorporate into NetApp works or products is copyrighted by another party, and need help verifying this or the wording of the notice or any related query, please contact NetApp Legal (dl-legal).

# COPYRIGHT Notice Format

The NetApp copyright notice should appear as follows:

|  |
| --- |
| Best Practice |
| Copyright © [year] NetApp, Inc. All Rights Reserved. |

Use the current calendar year for the date on a copyright notice unless the situations below are applicable to the version, release, or revision of the work:

When product or documents will be shipping in the next calendar year and it is close to the end of the current calendar year, then the next calendar year should appear in the legal notice.

Example: If today’s date is December 15, 2011, and copyright notices are being prepared for a product that will ship in January 2012, then 2012 should be the calendar year appearing on the copyright notice.

If copyrights notices are being prepared for Beta and FCS/RC1 versions of a product, the date may differ if there are substantial changes between versions.

Example: If the Beta version is being released in December of 2011, but FCS/RC1 is scheduled for May 2012, the copyright notice will differ between the Beta and FCS/RC1 versions. In this case, a separate notice needs to be generated for each release if there are substantial changes between versions. If a particular release is not made available to the general public (e.g., Beta release), the IP Legal Group (dl-legal-ip) should further be consulted to ensure patent protection of NetApp.

In the case of compilations or derivative works incorporating previously copyrighted material, include the year the source of the compilation or derivative work was first published.

Multiple date ranges should be used when the work is substantially modified over a period of time. Date ranges like “2008-2011” and multiple dates like “2008, 2009, 20010, 2011” should be used when the work is substantially revised each and every year during that range. In other words, a year should not be listed unless substantial changes to the work were made in that year. Substantial changes may include the addition of major new functionalities to software or a new section, chapter or appendix to a manual.

|  |
| --- |
| Notes to Client: |
| * Many copyright laws impose sanctions on both those who willfully remove copyright management information and those who distribute copyrighted works, knowing the copyright management information has been altered or removed. Copyright management information includes any information about ownership, such as notice and attributions, as well as information about terms and conditions of use, such as license terms. Accordingly, if a NetApp product contains 3rd party materials or contributions, no 3rd party copyright management information should be removed from either the 3rd party management information without express written permission from the 3rd party. * A copyright notice is NOT a license to use the product. The release of a NetApp product requires a license such as an End User License Agreement (EULA) for released products or a Beta Agreement for pre-release products. NetApp Legal (dl-legal) can further assist with the appropriate licensing agreements. |

# Confidentiality Notice

A confidentiality notice should be included at the end of a copyright notice in the appropriate text and location for certain categories of products.

The “NETAPP PROPRIETARY/CONFIDENTIAL” confidentiality notice should be included at the end of the copyright notice if the answer is “yes” to any of the following questions:

The Product:

1. has not and will not be published or released to the public;
2. is source code that will not be distributed outside NetApp except under an obligation of confidentiality (in other words, most source code);
3. is source code, specifications, or any other product or document that either
4. will not be distributed outside of NetApp;
5. will be distributed outside of NetApp to a limited number of recipients who will be bound by written confidentiality obligations; or
6. is an internal web page for the NetApp Intranet.

The NetApp confidentiality notice should appear as follows:

|  |
| --- |
| Best Practice |
| **CONFIDENTIALITY NOTICE**: THIS SOFTWARE CONTAINS CONFIDENTIAL INFORMATION OF NETAPP, INC. USE, DISCLOSURE OR REPRODUCTION IS PROHIBITED WITHOUT THE PRIOR EXPRESS WRITTEN PERMISSION OF NETAPP, INC. |

Additional information regarding NetApp’s information classification policy is available at:. <http://legal-web.corp.netapp.com/legal/igb/IT%20Information%20Classification%20Policy.htm>

# Trademarks

## Trademark Overview

A trademark is another type of IP which allows customers or potential customers to identify a name, sound, symbol, or slogan with NetApp. A service mark is the same as a trademark except that it identifies and distinguishes a NetApp service rather than a product. The terms “trademark” and “mark” are commonly used to refer to both trademarks and service marks.

Rights in trademarks may be used to prevent others from using a “confusingly similar” mark to sell their products and services. In other words, a trademark owner may prevent another party from using the same or similar mark (whether in sight, sound or meaning) to sell the same or similar product/service.

Similar to copyrights, a trademark right is usually country-specific and in most countries, arises upon registration with the country’s central trademark registry. In the EU a party can apply for a single Community Trade Mark (CTM) which if granted is valid throughout all countries in the EU on the same legal basis as a trade mark registered in the national Trade Mark office of that EU country. In common law countries like Australia, UK and the United States, however, commercial use of a mark alone may confer certain trademark rights but it is advisable to register the mark because a registered mark confers upon the owner a presumption of ownership and validity, and it is usually quicker, and cheaper to protect one’s ownership by bringing a trade mark infringement action rather than having to initiate a passing off action. Also, unregistered marks extend only to the geographical area in which the mark is used and is known by consumers.

## PROPER USAGE of trademarks

Proper use of a trademark is critical to establish and maintain NetApp trademark rights. A trademark can be weakened through the public’s or even a company’s own misuse. In particular, a trademark can be lost entirely if the trademark becomes generic (e.g., KLEENEX, ESCALATOR, YO-YO) by using the trademark as a *formal name* for a *type* of product/service. Consistent use of, strict control over, and continued policing of how the trademark is used will serve to maintain and increase the strength of a trademark.

|  |
| --- |
| Best Practice |
| Proper use of a NetApp trademark will clarify that the mark is a brand (e.g., used as an **adjective**) and not a name of product (e.g., used as a **noun**). Refer to the NetApp Trademark List (<http://www.netapp.com/us/site/netapptmlist.html>) and Guidelines for Using NetApp Trademarks (<http://www.netapp.com/us/site/tmguidelines.html>) for additional information on using NetApp trademarks. |

## Trademark symbols

In the U.S., a trademark symbol or trademark notice may be used in connection with a mark to provide notice of a trademark’s owners rights to a particular mark. The TM (trademark) or SM (service mark) symbols may be used regardless of whether a trademark application has been filed. Once a trademark is registered, however, the ® (registration) symbol should be used.

The TM, SM, and ® symbols are not recognized outside the U.S., so a trademark notice must accompany all works which include a NetApp trademark.

Requests for review of proper trademark markings and notices may be submitted to Corporate Editorial Services (dl-editorial).

## Trademark Notice

The NetApp trademark notice should appear as follows:

|  |
| --- |
| Best Practice |
| NetApp, the NetApp logo and Go Further, Faster are trademarks or registered trademarks of NetApp, Inc. in the United States and/or other countries. |

If additional NetApp trademarks appear in a work, such additional trademarks should be accompanied by the proper trademark symbol and/or included in the trademark notice.

Example: Where [X] is a NetApp trademark and used in a documentation, the following trademark notice applies: “NetApp, the NetApp logo, Go Further, Faster, and XXX are trademarks or registered trademarks of NetApp, Inc. in the United States and/or other countries.”

# Open Source

**OPEN SOURCE OVERVIEW**

Some NetApp products include software that is publicly available under an open source, public source or freeware software license (“Open Source”). NetApp products that include Open Source code are distributed under the licensing terms and conditions attributable to the Open Source code.

The Copyright notices and licensing terms and conditions for a particular piece of Open Source code must be compiled and incorporated into a NOTICE file by the NetApp Information Engineering (IE) team.

The NOTICE file must be made available to licensees at http://now.netapp.com, on the media on which the licensee receives the NetApp product, within the downloaded files, and/or reproduced within the materials or documentation accompanying the NetApp product.

**PRE-APPROVAL PROCESS**

The download, testing, or use of Open Source at NetApp requires legal pre-approval through the software licensing BURT process.

|  |
| --- |
| Best Practice |
| Please submit a BURT for approval before including any Open Source code in a NetApp product. A new BURT is required (unless the approval chances are marked as 'A' on the Licenses Wiki at [**http://wikid.netapp.com/w/Licenses**](http://wikid.netapp.com/w/Licenses)) even if the code has been used by another NetApp product and if a product is utilizing a different version of the code then the one currently used.  Please refer to <http://wikid.netapp.com/w/HHG/Software-4.0/3rd-Party/license_burts> for more information. If you have any questions, please contact: dl-legal. |

#### PRE-RELEASE PROCESS

#### Prior to the release of a NetApp product, the product may require a Black Duck scan. A scan plan meeting must be scheduled to determine if such a scan is required. Please refer to <http://thebrewery-web.corp.netapp.com/Brewery/brewery/dev/Governance/3rdPartySoftware/3rdPartyCodeProcess/index.html> for more information.

|  |
| --- |
| Notes to Client: |
| For guidance on drafting copyright notices for: (a) minor contributions of bug fixes to an open source project, (b) contributions of NetApp code to an open source project, or (c) releases of NetApp code under an open source licensing scheme, please refer to the guidelines for the NetApp Open Source Contribution Policy and Process at: <http://legal.corp.netapp.com/?page_id=178> |

1. **U.S. GOVERNMENT AND U.S. EXPORT CONTROL NOTICES**

## United States Government Rights Notice

For all products (including all software available to commercial customers) that may be used or in any manner procured by the U.S. Government or its contractors, a U.S. Government Rights notice will need to be included.

In addition, if the work consists of any form of documentation that is being released as part of a product package (and not as a standalone document) with a product that may be used or in any manner procured by the U.S. Government or its contractors, the government restricted rights notice must appears as its own “standalone” paragraph at the end of the NetApp copyright notice.

|  |
| --- |
| Best Practice |
| U.S. Government Rights -- Commercial Computer Software.  Government users are subject to the NetApp, Inc. standard license agreement and applicable provisions of the FAR and its supplements. |

A U.S. Government Rights notice is not unique and many other foreign governments seek to assert copyright and other intellectual property rights in products that are shipped to foreign countries. Acknowledgment of foreign rights is sometimes negotiable and other times not, especially if the products are subject to a public issued tender which contains government purchasing terms and conditions. For specific questions on government purchasing terms and conditions, contact dl-legal.

## U.S. Export Control/Global Trace Compliance (GTC) Issues

Almost all NetApp products and documentation are subject to U.S. export control laws. You should always contact the GTC team by e-mailing [gtc@netapp.com](mailto:gtc@netapp.com) for compliance guidelines.

# APPENDIX A – Placement of Notices

There are two equally important components to copyright notices (for copyrights and trademarks): content of the notice and proper placement of the notice in NetApp's materials and products. The purpose of this Appendix is to provide guidance on how and where to place the notices once generated.

The goal of legal notices is to make the user aware of NetApp's rights in the product or material. Thus, copyright notices should be included in a variety of locations. For example, copyright notices appear on and in products, media, documentation, and specifications, as well as in all marketing materials and sometimes in end-user license agreements.

The type and location of which copyright notice to use will depend on the work.

THE FOLLOWING provides guidance on proper PLACEment of a COPYRIGHT NOTICE:

1. Hardware
   * Printed on the device or on a sticker permanently affixed to the hardware device

OR

* + At the beginning of any related documentation

1. Software
   * + In the physical media and Internet download sites (if space is a constraint)
     + On any splash screens, launch screens, or welcome screens
     + In a Help? About box (if space is a constraint)

OR

* + - In a Help? About box (in lieu of Mini Form notice, if space allows?)
    - On the media, including Internet download sites (in lieu of Mini Form notice, where space is available)
    - At the top of the source code, in a header file
    - In a command-line interface available each time a user starts up the software anon demand through a command
    - At the beginning of any related documentation
    - In a Help? Box (in lieu of Mini or Short form notice, where space is available)
    - As part of the click-wrap terms or license documentation
    - Embedded in the object code

1. Written Materials/Documents
   * + In the body of a specification that will be kept confidential
     + In the body of advertisements and marketing materials3
     + In the header or footer of each screen or printable page of online documentation presented in HTML
     + At the beginning or end of each block of online documentation that can only be printed in blocks or chapters
     + In the first footnote of a journal, magazine or other article by NetApp to be published in a third party compilation.
     + Near the beginning or end of the text of a specification, if the specification is to be released (if space is a constraint)
     + In any “doclets,” README files, release notes or other very short documentation that accompanies a product
     + In all documentation, including online documentation
     + Near the beginning or end of the text of a specification, if the specification is to be released (if space is a constraint)
     + On the inside or outside of the front or back cover of a book
     + Immediately after the title page of a white paper or PDF document
     + On the copyright page of a journal, magazine or other compilation, if NetApp is the author of the compilation
2. Web Pages
   * NetApp's web pages, by default, include the standard NetApp web pages “footer” which includes the proper legal notices so individual/separate legal notices on each page are not required. However, pdf pages whose content appears on a web page and which may be downloaded to be a standalone document should include the proper legal notices.
3. **Affix Copyright Notice in each location identified.**

Copyright Notices should be affixed on all possible locations associated with the work or product. For example, if the product is software, notices should be included in the program's screens, interfaces, code, and documentation that NetApp releases into the public domain. If the product is a hardware device that contains software, notices should be affixed on the hardware itself, on the screens, interfaces and code of the software, and in the documentation and related websites. Contact NetApp Legal (dl-legal) if space constraints make notice compliance difficult.

1. **Technical suggestions for affixing legal notices.**

Source code notice should be placed in the comments at the top of each separable and significant module of code that was developed or modified by NetApp and in each software package (e.g., directories or files).

|  |
| --- |
| Note |
| Only files that were modified for a given release need to include a modified (updated) legal notice. |

Object code notice should be made an inescapable part of the executable code that will be readable in a print out of the executable file. There are multiple methods to accomplish this when writing the source code. One method is to define a literal value to be the copyright notice text. A second method is to declare a variable to have a literal value, define the literal value as the copyright notice text in ASCII and then refrain from using that variable elsewhere. The compiler or assembler will create a variable with this value in the code; the variable is unused but causes the copyright notice to show up in ASCII in the object code when a disassembler or debugger is used to view the object code.

Notices attached to physical media or hardware must be permanently and durably affixed.

# APPENDIX B – Frequently Asked Questions (FAQs)

1. **What are Copyright Notices?**

Copyright Notices appear on and in NetApp's software, product documentation, marketing collateral, websites, and other published material to provide notice to the public that NetApp owns intellectual property rights under copyright and trademark laws to the published material. For more detailed information about legal notices and their proper usage, consult the NetApp Copyright Notices Playbook.

1. **What are the differences between a copyright notice and license?**

A copyright notice is a type of legal notice which notifies others of NetApp’s copyright in a published work. In contrast, a license is an agreement between parties which identifies the terms and conditions under which certain material (e.g., licensed, copyrighted material) may be used, displayed, or modified.

1. **When is a confidentiality notice necessary?**

In general, when a possibility exists for NetApp proprietary information to be shared outside of NetApp (including a partner, vendor or other 3rd party), then a confidential notice should be attached. Additional information regarding NetApp’s information classification policy is available at: <http://legal-web.corp.netapp.com/legal/igb/information_classification.html>.

1. **When is a copyright notice required?**

A copyright notice informs or notifies the public of NetApp’s rights in a copyrighted work. As a general policy, all original, published works should include a copyright notice. However, the type and placement of the notice may vary depending on the nature of the work. Consult the NetApp Copyright Notices Playbook or contact Legal for further information on notice requirements.

1. **When should a multiple range of years be used?**

Under current U.S. law, single-date copyright notices are always proper. However, in the case of compilations, or derivative works incorporating previously published material, the year of first publication of the source and each year significant modifications are made to the source may comprise the multiple range of years in a copyright notice.

Example: If version 1.0 of a software program is released in 2007, and version 2.0 in 2009, then a proper copyright notice for version 2.0 would be "Copyright © 2007 NetApp, Inc. All rights reserved." For the copyright notice that appears in source code files, a single copyright date should be used. The copyright date is updated if the source code file is changed for a new software revision; files not changed in the revision retain their old copyright dates.

Multiple-date notices are optional, but may provide certain legal benefits as it relates to establishing the senior rights of a copyright owner or the expiration of a copyright. If a published work has multiple versions and each version is sufficiently different from earlier versions, that version's date may be added to the list of dates in the copyright notice.

Example: A program called My Program appears in the following versions:

version 1.0 -- 2000

version 1.1 -- 2000

version 1.2 -- 2001

version 2.0 -- 2003

version 2.1 -- 2004

version 3.0 -- 2006

version 3.1 -- 2009 (current version)

Then the following copyright notice may be used for version 3.1: “Copyright © 2000, 2003, 2006, 2009 NetApp, Inc. All rights reserved.”

Example: NetApp's corporate external web site is routinely updated on a continuous basis. Thus, the following notice may be used: “Copyright © 1994-2009 NetApp, Inc. All rights reserved.”

In this example, the copyright date range includes the first (1994) and the current (2009) years of publication. Content (e.g., graphics, individual web pages) is modified or added to the site as time goes on to result in a derivative compilation work with each new change. Individual contributions to the compilation, such as individual web pages, can also bear their own, single-date copyright notices, in addition to the notice for the compilation as a whole.

1. **Which date should be used for software coded in the previous year but released in the current year?**

A copyright notice should include the year in which the software will release, even if the software was written the year before.

1. **Can I remove Copyright notices related to 3**rd **party materials or contributions contained in the product?**

If the product contains both NetApp and 3rd party materials and contributions, no legal information or license information of the 3rd party should be removed from licenses or legal notices without express written permission from the 3rd party owner. Please contact Legal if you have further questions.

© NetApp, Inc. All rights reserved. No portions of this document may be reproduced without prior written consent of NetApp, Inc. Specifications are subject to change without notice. NetApp, the NetApp logo, Go further, faster, are trademarks or registered trademarks of NetApp, Inc. in the United States and/or other countries.

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