

# **EXHIBIT 3**

# WordPress Trademarks: A Legal Perspective

Automattic · October 2, 2024

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It's a simple question: Does Automattic own the right to the WordPress trademarks, or does the WordPress Foundation?

It's also a simple answer: Yes.

I'll explain.

When lawyers talk about property rights, they sometimes refer to them as a “bundle of sticks,” with each stick representing a different aspect of ownership. For example, I could have the right to use a ski house every third Saturday in the winter, while someone else has the right to use it in the month of July. The result is that we both “own” the ski house, albeit different aspects of it.

Let's apply this to the WordPress trademarks (also called simply “marks”). The WordPress Foundation owns the right to use the WordPress marks for non-commercial purposes. It can also sublicense out this right for particular events (e.g., WordCamps) and to people supporting the WordPress project and community. The Foundation also licensed the name WordPress to the non-profit WordPress.org, which runs a website that facilitates access to WordPress-related software.

The right to use the WordPress marks for commercial purposes (e.g., selling software, hosting, and agency services) is owned by Automattic. Automattic, in its sole discretion, can sublicense the WordPress marks to others who wish to use them for commercial purposes. The concept of “sole discretion” also means that Automattic can refuse to license the marks to anyone it deems inappropriate.

## How did we end up with two owners of the WordPress trademarks?

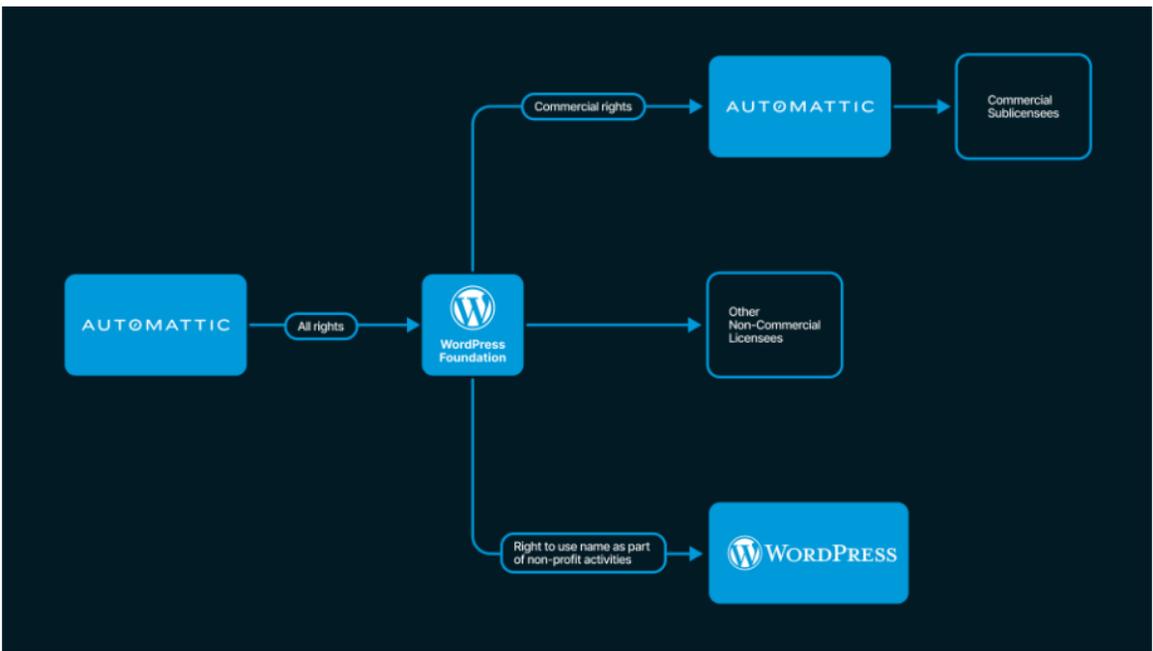
In olden times (i.e., before 2010), there was only one owner of the WordPress trademarks: Automattic Inc. In 2010 the WordPress Foundation was created and Automattic essentially signed over all non-commercial rights to the WordPress marks to the Foundation. This was accomplished by having Automattic turn over all rights to the WordPress marks to the WordPress Foundation and then simultaneously having the WordPress Foundation license the *commercial* rights to the marks back to Automattic.

If that sounds confusing, here's another analogy: this is like telling your friends that they can drive your car on the weekend, and then accomplishing that by giving them your entire car outright and simultaneously having them sign an agreement allowing *you* to use the car (which is now theirs) on weekdays.

In order to effect a valid license agreement, there needs to be an actual exchange of value from both sides, which lawyers call “consideration.” For the licensing of the commercial use of the WordPress marks to Automattic, the consideration was Automattic turning over the entire trademarks to the WordPress Foundation.

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**What about users of WordPress software?**

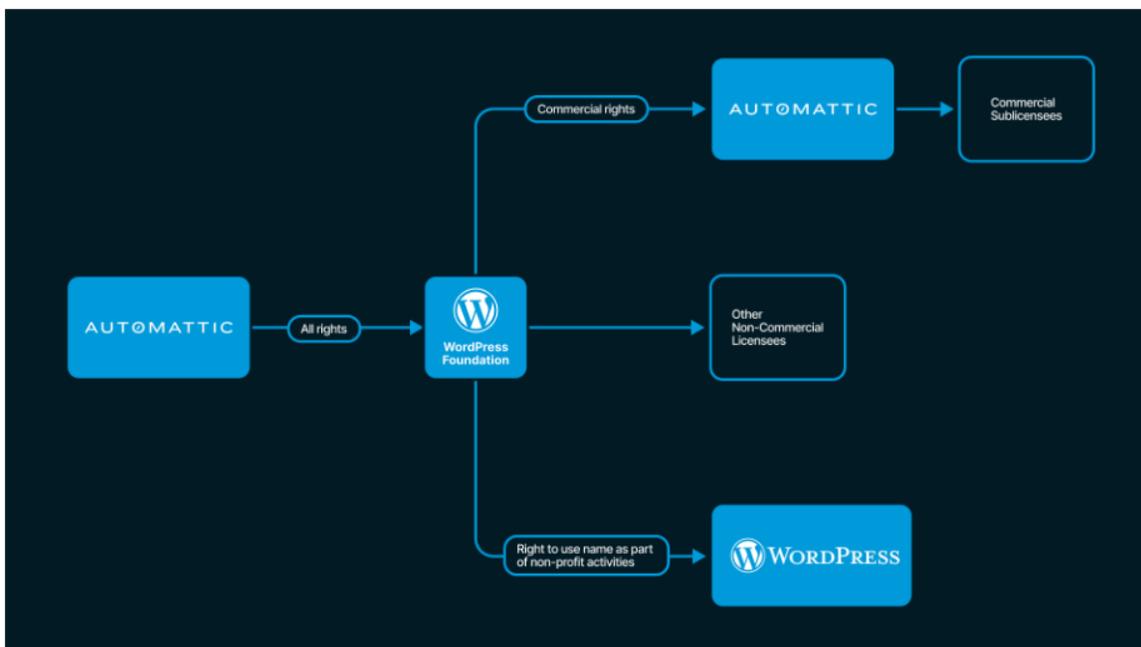
In the bundle of sticks that is the WordPress trademarks, users of WordPress software have a twig of rights as well, called nominative fair use. This means users have the right to refer to genuine WordPress software by name. (Genuine WordPress software comes only from a WordPress Foundation- or Automattic-approved repository.) For example, they are allowed to say: "I built a website with WordPress."

The right to nominative fair use has clear limits under the law: it doesn't include logos and it does not include the right to use the WordPress marks in a manner that suggests one is offering a product or service that comes from WordPress or is officially affiliated with WordPress. For example, calling a service "WordPress Hosting" would not be nominative fair use because it makes many people think it is a hosting service offered by WordPress. By contrast, offering "Hosting for websites built on WordPress software" would not lead anyone to think the hosting service itself is offered by WordPress. Thus, calling a service "Hosting for websites built on WordPress software" would be fair use of the WordPress marks.

**What about the rights of software developers (and copiers)?**

WordPress and WooCommerce software is typically released to the community via a GPL open source software license. It's important to note that an open source software license is a copyright license, not a trademark license. That means the right to use, modify, look at, and share open source software related to WordPress and WooCommerce does not give you the right to use the WordPress or WooCommerce names.

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