

[REDACTED]

April 9, 2024

BY EMAIL [REDACTED] AND FIRST-CLASS MAIL

[REDACTED]

Re: HashiCorp, Inc. (“HashiCorp”) and OpenTofu, a Series of LF Projects, LLC (“OpenTofu”)

Dear [REDACTED]:

My name is [REDACTED]. I represent OpenTofu a Series of LF Projects LLC (“OpenTofu”) and I am writing in connection with your April 3, 2024 letter (“Letter”) to the chief executive officers of OpenTofu contributors Spacelift, Inc. and envZero, Inc. Your Letter fundamentally misrepresents the source code origination (“SCO”) history and nature of the OpenTofu project (“Project”), and therefore it erroneously complains of violations of HashiCorp’s intellectual property rights that simply did not occur. Our OpenTofu open source project community has prepared an analysis of the mischaracterizations in your Letter in the SCO analysis, Exhibit-A (“SCO Analysis”). My client is confident that the following will redirect the conversation to more productive ground.

As you are aware, HashiCorp made source code and other aspects of its Terraform software available under the open-source Mozilla Public License Version 2.0 (“MPL-2.0”).

After HashiCorp announced it would continue development and publication of the software under the source available Business Software License (“BUSL”), OpenTofu was created as a project to continue the community’s source code development under MPL-2.0. HashiCorp has simultaneously pursued its Terraform development under its BUSL license.

Your letter seems to suggest that similarities between source code files HashiCorp placed in its Terraform code under the BUSL license and those that comprise the current OpenTofu Project ineluctably show that OpenTofu has improperly appropriated the BUSL-licensed Terraform code for its own purposes. The more accurate explanation, however, is that both the OpenTofu files to which you refer and HashiCorp’s Terraform files to which you compare them are **both** derived (at least to some degree) from the pre-fork MPL-2.0 files – code that was made publicly available under the MPL. This is explained in great detail in the attached SCO analysis report which highlights the moved block functions were seemingly used as a starting point by both

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the OpenTofu developers and Terraform developers as they independently created new remove block functions.

**To my client's knowledge, none of the Terraform code subject to the BUSL has been improperly copied, incorrectly sourced, or used for any purpose.**

While you contend in your Letter that "OpenTofu has used HashiCorp code made available only under BUSL license terms in violation of those terms," that simply does not appear to be the case. Further, the use of pre-fork MPL-2.0 source code by the Project explains why OpenTofu files reference both HashiCorp and the MPL, but not the BUSL. OpenTofu's community has taken great care to ensure no copyright management information would be removed from files for which its source code was derived.

It is also necessary to note that, while you complain that a comparison of HashiCorp's Terraform code to OpenTofu files show "substantial similarity" between the two, the diff files you attach to your Letter actually show the compared files to be quite dissimilar.

The attached SCO Analysis also points out public and nonpublic processes the developers have used as they develop their code independent of Terraform. They are very sensitive to and have put explicit measures in place to prevent incorporation of BUSL source code into the OpenTofu project. These measures include specifically, among others:

- Detailed development and contribution controls ensuring that the Project is not using any HashiCorp code that is subject only to the BUSL license; particularly including
  - comprehensive coding standards and contribution guide to which any contributors must adhere, covering a clear and unambiguous statement to its community that BUSL licensed code cannot and will not be accepted into OpenTofu's MPL-2.0-licensed repositories and educating contributors about the importance of respecting third party intellectual property rights and license terms;
  - the Developer Certificate of Origin (DCO) issued by every contributor, stating that - if the contribution is based on the previous work - is covered under an appropriate open source license; and
  - the policy of the "taint team", as described further in the attached SCO Analysis;
- Thorough review and acceptance processes, ensuring appropriate attention and verification of every submission, which in the past has resulted in rejecting proposed contributions that did not meet the above standards in terms of copyright;

Going forward, OpenTofu would be open to establishing developer liaison contacts between OpenTofu and Terraform who would be available to review and address any intellectual property concerns with submitted contributions to OpenTofu or Terraform.

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We expect that your developers have similar policies and processes in place to ensure newly created or modified MPL-2.0 source code in OpenTofu is not used or included in any Terraform BUSL-licensed source code files, as such a combination could violate the terms of the MPL-2.0 license and infringe OpenTofu copyrights [see MPL-2.0 license, Sections 1.4 (definition of "Covered Software"), 1.7 (Definition of "Larger Work"), 1.10 (definition of "Modifications"), 3.1 ("Distribution in Source Form"), and 3.3 ("Distribution of a Larger Work")].

In the future, if you should have any concerns or questions about how source code in OpenTofu is developed, we would ask that you contact us first. Immediately issuing DMCA takedown notices and igniting salacious negative press articles is not the most helpful path to resolving concerns like this.

[REDACTED]

[REDACTED]

cc:

[REDACTED]