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Answers. Not theories.

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What is this Open Sources Software? Dr. Bedii Kaya Answers Your Questions

1) First of all, could you briefly summarize for our readers why 'open source' is such a significant topic today? Why do you think it has become so prominent on our agenda?

The public availability of the source code in open source software provides transparency about how the software works, and its continuous development with community support makes it highly attractive to both individual users and large companies. The support of a large community of users is one of the greatest strengths of open source software. For these reasons, it has become an indispensable part of the technology world. Many open source software programs are also free or very affordable. This is advantageous particularly for individuals and small businesses with limited budgets. Open source software can also be easily customized according to users' needs. In this way, users can tailor the software to their business processes and requirements. In the future, open source software will become more widespread in areas such as artificial intelligence, machine learning and cloud computing. It is also likely to become more common in industrial applications and be used in complex tasks such as big data analysis. Consequently, it seems that this topic will remain on our agenda.

2) Before we move on to our specific questions, can you briefly explain what "open source software" is?

Open source software is software whose source code is publicly available, allowing users to inspect, modify, and distribute it. Unlike closed-source software, it encourages broad community participation in the development process. The open source model is founded on the principles of transparency, collaboration, and freedom, creating a robust ecosystem. However, for open source software to be accessible to everyone under copyright law and to uphold principles like transparency and freedom, it must be governed by a licensing mechanism. These licenses establish the legal framework that dictates how the software can be used, modified, and distributed. Open source software is not confined to a single type of license; instead, it may operate under various licenses, offering different degrees of freedom. These license types are generally categorized into two main groups: rigid licenses and flexible licenses.

3) Before we discuss the types of open source software licenses, it's important to recognize that there are other types of software. Is it accurate to say that the opposite of open source software is proprietary or closed software? What are the key differences between them?

Yes, it is accurate to refer to proprietary software or closed source software as the opposite of open source software. Proprietary or closed source software refers to software where access to the source code is restricted, typically allowing only the software owner or a designated group of developers to modify it. The rights granted to the user are usually limited and defined by the software's license agreement.

In contrast, open source software has its source code publicly available, allowing anyone to inspect, modify, and distribute it, often free of charge and with more flexible usage terms. Proprietary software, on the other hand, is generally developed for commercial purposes, imposes strict restrictions on usage, is usually sold for a fee, and users are subject to specific limitations in how they can use the software.

4) We would like to hear from you whether a common perception is correct: Can we use open source software as we wish?

To answer this question clearly, the ability to use open source software "as you wish" depends on the license used and the restrictions imposed by that license. The basic principle of open source software is that users can review, modify and distribute the software, but these freedoms are not completely unlimited and are subject to certain rules.

First of all, strict type licenses in open source software are designed to protect the freedom of the software. These licenses require that modified versions of the software be distributed under the same license, guaranteeing that the open source code will always remain open. An example of a strict license is a license such as GPLv2 or GPLv3, which requires those who modify or distribute software to release the resulting new software under the same license. This may limit the use of the software as closed source in a commercial project. Otherwise, there is a breach of license, which can lead to legal consequences, such as a claim for damages.

Flexible licenses, on the other hand, provide users with greater flexibility and impose fewer restrictions on modifying and distributing software. Users can redistribute modified software under different licenses. Flexible licenses, such as the Apache or MIT licenses, offer more freedom, allowing the software to be used in both open source and closed source projects. However, it's important to note that the ability to 'use as we wish' is still governed by the rights and obligations defined in the open source license. Adhering to the terms of the license is crucial for using the software legally and ethically. In summary, open source software offers significant freedom, but this freedom is framed by the specific license in use. Therefore, it is essential to carefully review the license terms and comply with them.

5) Then, what should we understand by open source software licenses? As far as we know, there are open source software licenses that can be easily used by simply declaring copyright. But we also know that there are different types of licenses. In general, how do the terms of use differ from each other?

In response to the question of what we should understand by open source software licenses, we can say that these licenses are essentially legal contracts that define how software can be used, distributed, and modified.

As I mentioned in the previous question, the terms of use for open source software

licenses can vary significantly depending on the license type. For example, some open source licenses, such as Apache or MIT, only require that copyright notices be included and the original license be preserved. Users are free to use, modify, and distribute such software, provided they credit the original author and maintain the license. However, stricter licenses, such as the GPL, require that any modified versions of the software be released under the same license terms, which can be a limitation for those wishing to use the software in closed-source projects.

Regarding the legal aspects of open source licenses, it's important to remember that these licenses are generally regulated like American copyright licenses, and their compatibility with Turkish law has not yet been fully tested. In Turkish law, the transfer and use of copyrights are governed by specific rules, raising questions about whether open source licenses are fully compatible with Turkish legal standards. There is particular debate over whether open source licenses adequately provide for the transfer of copyrights in accordance with Turkish law. Therefore, when using open source software licenses, it is crucial to consider not only the terms outlined in the license but also their enforceability under Turkish law. Although open source software is widely used globally, it may be necessary to evaluate whether these licenses align with local legal systems and to seek legal advice when needed.

6) Where can we access the terms of use of these different open source software licenses? Where do you recommend we look to find the most reliable information?

You have touched on an important point here. Open source licenses are usually written in English and the legal terms in these licenses may contain concepts that do not have exact equivalents in Turkish law. This can create ambiguities as to how the license terms apply to Turkish law. For example, terms such as "copyleft" or "derivative works" may not have clear equivalents in Turkish law, which may lead to difficulties in interpreting the license. It is important that you read the individual licenses carefully and interpret the terms correctly in order to properly understand and apply these license terms.

In addition, the presence of "GPL" or a similar license name at the beginning of a license document does not necessarily mean that the content of that document is exactly the same as that license. It is therefore necessary to carefully examine the contents of each license, as there may be additions or changes that are not consistent with the license name. In such a case, it is important to read the full text of the license and, if necessary, consult a lawyer to understand exactly what the license covers and what terms it contains.

7) We understand that there are many different terms of use for this software. Which open source software licenses would you recommend to a user as being more appropriate/less risky for commercial uses?

There are a few important considerations when choosing between open source software licenses that are more suitable or less risky for commercial uses. First of all, as I mentioned in the previous question, it is critical to carefully examine the terms of use of the license and evaluate the equivalence of these terms in Turkish law and to evaluate that the license name stated at the beginning of the license document and the content of the document are compatible with the license.

Regarding your question; it is possible to say that open source software licenses, which are considered more suitable and less risky in terms of commercial use, are generally flexible type licenses. Strict licenses, such as the GPL, require more caution in terms of commercial use. Therefore, if you want to choose a license that is less risky in terms of commercial use, it may be more appropriate to choose flexible type licenses such as MIT, Apache 2.0, or BSD. However, in any case, the best approach is to carefully read and understand all the terms of the license and consult a lawyer if necessary..

8) From all these explanations, we understand that the use of open source software is very convenient for companies. Nevertheless, is it possible to have a problem in integrating open source software with other creations/resources of companies?

It is true that open source software offers many advantages for companies, such as flexibility, cost savings and broad community support. However, it is important to note that there are some potential problems when integrating this software with other company creations or resources. Since open source software is offered under different licenses, conflicts between licenses may arise when multiple open source components are combined. These conflicts may make it difficult for the company to fulfill its legal obligations and increase the risk of license infringement during the distribution of the software. In addition, the vulnerabilities and maintenance responsibility of open source software must also be taken into account. While the open source community is often quick to identify vulnerabilities and provide patches, careful consideration should be given to whether these patches are compatible with the company's existing systems.

9) Are there any other issues to be considered when using open source software besides the terms of use in the software licenses? What else should users pay attention to?

When using open source software, in addition to the license terms, there are some other important issues that should be considered. As I mentioned earlier, security and compatibility are the main ones. In terms of security, open source software is usually updated quickly by the community and vulnerabilities are patched. However, it is the users' responsibility to apply these patches in a timely manner. Keeping software up-to-date is critical to minimizing security risks. Before using the software, it is necessary to assess whether it is fully compatible with existing systems.

10) Finally, what is the process for users when these types of software are not used in accordance with the terms and conditions and there is a breach? What is the worst case scenario?

If the terms of these types of software are not used in accordance with the terms and there is a breach, users can expect very serious consequences. In the worst case scenario, you could face serious damages for infringement, or even the risk of not being able to use the product you have developed. This can lead to both financial losses and reputational damage, which is why it is so important to comply with license terms.

New Era for Consumer and E-Commerce Legislation

Regulations in Turkey are constantly evolving. Now, amendments to consumer protection and e-commerce legislation are on the agenda.

The Law on the Amendment of the Law on the Protection of Consumers and Certain Laws (**Draft Bill**) was submitted to the Grand National Assembly of Turkey (**TBMM**) Presidency on 18 July. Draft Bill is currently on the agenda of the TBMM.

These amendments are of particular interest to you, particularly if you are an e-commerce actor or a commercial advertiser. We have compiled the significant amendments in the Draft Bill below.

Consumer Loan and Housing Finance Agreements: As per the Consumer Protection Law (**TKHK**), consumer loan agreements and housing finance agreements must be in written form. Draft Bill includes amendments to allow these types of agreements to be concluded "at a distance". Although it could be said that it will bring convenience in terms of the signing process, will it make it more difficult for consumers to review and follow-up, and will it be more difficult for them to present their objections on the points they can object to? Several different criticisms can be made on this issue.

Commercial Advertisements: Draft Bill redefines the lower and upper limits of the administrative fines to be imposed in case of violation of the basic principles regarding commercial advertisements regulated in the TKHK. With these amendments, the authority of the Advertisement Board to impose administrative fines is increased up to **6 million Turkish Liras**. According to the 2024 revaluation rate, this amount was 1,100,129 Turkish Liras.

In addition, if the Draft Bill is adopted by TBMM, administrative fines imposed by the Advertising Board will also be within the scope of reconciliation.

Obligation to obtain an electronic commerce license: With recent regulations, electronic commerce intermediary service providers were required to obtain a license, and this regulation was widely discussed and criticized. In these regulations, some exceptions were stipulated in the calculation of the license fee in terms of sales abroad. With the Draft Bill, it is envisaged that additional exceptions regarding license fee calculation be introduced. Accordingly, the following amounts will be deducted from the net transaction volume in the following calendar year, unless the net transaction volume of the electronic commerce intermediary service provider exceeds 20% of the total net transaction volume of electronic commerce intermediary service providers and service providers calculated using the Electronic Commerce Information System data:

- Total amount of sales made abroad through electronic commerce marketplaces,
- Twice the expenditure amount of the investments realized by obtaining an investment incentive certificate from the Ministry of Industry and Technology.

For the years 2024 and 2025, different arrangements are envisaged. In the calculation of the license fee for 2024, it is stated that the 20% limit will not be sought and four times the specified amounts will be deducted from the net transaction volume. In 2025, it is stipulated that three times these amounts will be deducted from the net transaction volume of the electronic commerce intermediary service provider.

You can access the full text of the Draft Bill, here (**only available in Turkish**).

Another Postponement in Compliance with the Regulation on Distance Contracts

The amendments made to the electronic commerce legislation in August brought significant regulations concerning consumers as well as e-commerce actors. The entry into force date of certain articles of the regulation regarding distance contracts concluded through distance communication tools, where the consumer and the seller/provider are not in the same physical environment, has been postponed again.

With the amendment published in the Official Gazette dated 10 August 2024, the effective date of some articles of the Regulation on Distance Contracts had been postponed to 1 January 2026. We have compiled a summary of these postponed articles below:

- **Prior Information:** When the right of withdrawal is exercised, the costs can be charged to both the seller/provider and the consumer.
- **Right of Withdrawal Period:** If the consumer exercises the right of withdrawal, the return period will be 14 days.
- **Intermediary Service Providers:** Intermediary service providers will be jointly and severally liable with the seller for the return of payments to the consumer as a result of the right of withdrawal in distance contracts made through the platform.
- **Cases where the Right of Withdrawal cannot be exercised:** Among the cases where the right of withdrawal cannot be exercised; mobile phones, smart watches, tablets and computers, contracts for products that require installation or assembly by the seller or authorized service will also be included.

The rapid growth of electronic commerce increases the importance of distance contracts daily. Although this postponement has delayed the implementation of these regulations, which are critical for consumers, the aim of the legislation to protect consumer rights continues.

You can reach the full text of the Regulation Amending the Regulation on Distance Contracts here (**only available in Turkish**).

Microsoft's Statement Making a Sound: Standard Contract Provisions of the Personal Data Protection Board Included in Corporate Agreements

The long-awaited amendments to the Personal Data Protection Law (**Law**) were finally introduced. Following these amendments, Turkish Personal Data Protection Board (**Board**) published the Regulation on the Procedures and Principles Regarding the Transfer of Personal Data Abroad on 10 July 2024. You can access our TFP July issue, which includes our detailed assessment of the subject here.

With the new regulation, a three-stage and alternative transfer regime for the transfer of personal data abroad became distinct. In practice, it was understood

that the most frequently used method for transferring data abroad would be standard contracts and binding company rules.

In the final days of the compliance window, there was a significant development on the Microsoft front.

Microsoft announced that it has integrated the standard contract provisions published by the Authority into its corporate agreement package. Microsoft Turkey General Manager Levent Özbilgin announced that existing and new corporate customers in Turkey now include the standard contract provisions published by the Authority in their agreement packages when using Microsoft cloud services. However, how the signed versions of the standard contracts will be presented to the Board is still a matter of debate.

It is eagerly awaited to see when other world giants will make these standard contract compatibility announcements starting with Microsoft.

Turkey Determined its 4-Year International Investment Strategy Including Digital Transformation Goals

The Investment Office of the Presidency of Turkish Republic has announced its international direct investment strategy and action plans covering 2024-2028. Among the determined policies are goals related to the digital transformation process, which has gained significant momentum in recent years.

The main focus of the action plans outlined for digital transformation goals is to implement the necessary regulations for production and trade by following international standards, data policies and regulations.

The first of the policies and actions determined to achieve the digital transformation goals is to complete the harmonization process of the Personal Data Protection Law with European Union regulations, particularly the European Union General Data Protection Regulation.

Another noteworthy policy and action are the arrangements to ensure national cyber security. The main lines of action to be taken are as follows:

- A regulation aimed at ensuring national cybersecurity and enhancing cyber deterrence will be published.
- A regulatory effort focused on the security of the Internet of Things (IoT) will be conducted, and cybersecurity scans will be performed on IoT devices.
- Secondary regulations required in connection with the ongoing national cybersecurity framework legislation will be identified.
- Studies regarding the Electronic Signature Law No. 5070 and other relevant legislation will be carried out.
- Awareness initiatives will be undertaken to promote the use of remote signature services in public institutions and the private sector.

It is also noteworthy that these studies on cyber security will be carried out by taking into account the European Union Network and Information Security Directive (NIS2) and other new international cybersecurity initiatives and practices.

Strengthening the physical digital infrastructure is also among the targeted policies. The noteworthy action is the aim to open higher education programs in the fields of artificial intelligence, big data and cyber security. It is also emphasized in the policy that efforts to train qualified manpower in developing technology fields will be emphasized.

Apart from digital transformation policies, action plans have also been determined in areas such as investment environment competitiveness, green transformation, global supply chains, qualified human resources, communication, and promotion. It is also possible to say that global developments are taken into account while determining these action plans.

You can access detailed information about the investment strategy and action plans here **(only available in Turkish)**.

Historic Success Against Cybercrime: United Nations Convention against Cybercrime

In a historic diplomatic step, the United Nations **(UN)** announced the final version of the draft convention on combating cybercrime **(UN Draft Convention on Combating Cybercrime / Draft)** on 9 August 2024. In addition to being a historic achievement in terms of international law, Draft is also the first global agreement on cybercrime.

Draft will be implemented by UN member states in the following matters as a rule:

- Preventing, investigating and prosecuting the criminal offences identified under the Draft, including the freezing, seizure, confiscation and extradition of the proceeds of cybercrime.
- Collecting, obtaining, preserving and sharing evidence electronically for the purposes of criminal investigations or prosecutions.

Draft also covers a wide range of cybercrimes, such as data breaches, computer-related offences, content-related offences and money laundering, while encouraging the harmonization of national laws.

It includes a comprehensive action plan that provides member states with the necessary legal tools and mechanisms to effectively combat cybercrime.

Recognizing the challenges in investigating and prosecuting cybercrime, Draft provides a framework to promote international cooperation in the collection of electronic evidence. It also paves the way for more efficient procedures by accelerating judicial co-operation, extradition, transfer of criminal cases and information sharing.

UN Convention against Cybercrime Draft has been adopted by the United Nations Ad Hoc Committee and is now pending final approval by the UN General Assembly. If adopted by the UN General Assembly, this Draft will be the first of its kind.

The full text of the UN Convention against Cybercrime is Draft available here.

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