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Russia launches open-source experiment

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NIKITA
MALTSEV

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The Russian internet technology (IT) sector evolves rapidly and gains new opportunities for legislative developments. Among other legislative initiatives, the government recently adopted a decree launching an experiment to promote and develop the use of open-source projects in Russia.

Key points

Dated 10 October 2022, government Decree No. 1804, called "An experiment on granting the right to use software, algorithms, databases and their documentation, including the exclusive right to which belongs to the Russian Federation, under an open licence and creating conditions for the use of open-source software". This decree provides for:

- the creation of a national repository of open-source software;
- storage and publication of open-source (including state-owned) software in a repository so that it can be reused in various projects; and
- the creation of the Russian state open licence that government agencies and corporations will use when publishing their software.

The experiment starts on 1 November 2022 and ends on 30 April 2024.

In addition to the Russian state authorities and corporations, legal entities (companies) and natural persons may also become participants in the experiment on a voluntary basis if they file an application before 1 April 2023. Currently, there are no restrictions regarding non-Russian participants. However, there may be some additional criteria in the applications selection procedure (which is not yet approved).

National software repository

The Russian IT development fund is responsible for adopting the rules and requirements of the national software repository. The functionality of the repository should be similar to the GitHub platform.

Among other requirements, the repository must ensure the possibility of international cooperation and access for use by individuals and legal entities without any restrictions on national, territorial and other grounds. Therefore, non-Russian users would also be able to use it.

However, only a Russian non-profit organisation may be the repository's operator. Foreign companies and states may not directly or indirectly determine decisions of this organisation.

State open licence

The decree is the first act under Russian law that clearly establishes criteria of an "open licence" in the field of software. According to the decree, this licence should comply with:

- article 1286.1 of the Russian Civil Code (thus, the licence should be non-exclusive and exist in the form of a standard contract); and
- criteria that are similar to the open-source definition (OSD), created by the open source initiative, with several exceptions.

The first criteria of the OSD that the decree formulates in a broader way is the free redistribution – "free usage (including the distribution of a software)" – and it allows, among other requirements added to the licence text, to distribute:

- derivative (modified) software on the same terms as the licensed (used) software (so-called "copyleft requirement");
- the licence text and copyright information along with the software; and
- additional functions to users on a fee basis or upon fulfilment of conditions specified by the licensor.

In addition to the definition of an "open licence", the decree provides for the specific type of licences – the Russian state open licence (its full text is published as an annex to the decree).

The state open licence gives the licensee rights to use, copy, modify, publish, distribute, sublicense the software, as many popular open licences do. At the same time, its text, which is up-to-date, complies with the current legislation in this field and explicitly states that Russian law is applicable.

Only government funds, agencies and corporations are obliged to publish their software under the terms of the licence. Even though it is not expressly stated, it appears that other right holders may choose to publish their software under the terms of other open licences that comply with the definition of an "open licence" stated in the decree.

Consequences for foreign developers

Many recent legislative amendments in Russia primarily support domestic companies and government agencies. However, the open-source experiment in Russia may have a positive outcome not only for government agencies or Russian-based IT companies – it also

creates new opportunities for users outside Russia and new possible channels of distribution for foreign open-source developers.

In case a foreign IT company is oriented towards the Russian market, it should keep track of the experiment and legislative amendments in order to take advantage of new business opportunities.

For further information on this topic please contact [Nikita Maltsev](#) at [Gorodissky & Partners](#) by telephone (+7 495 937 6116) or email (maltsevn@gorodissky.com). The [Gorodissky & Partners website](#) can be accessed at www.gorodissky.com.