

The term free or open-source software (FOSS or OSS)

The idea of the free software model has existed since the 1980s. At that time, it was still called “free software”. The term “open-source software”, as commonly used today, was not coined until 1998 and owes its characteristics to the efforts of the free software sceneⁱ. The current definition of OSS is taken from the Open Source Initiative (OSI) which sets out the main criteria of OSS as followsⁱⁱ:

1. Free access to the source code

The entire source code of software made available on an open-source basis must be disclosed. If the source code is not included, the source code must be made publicly available in some other way (e.g. on a website)ⁱⁱⁱ.

2. Free redistribution of the software

Software made available on an open-source basis may be redistributed to any third party. This means that no restrictions may be placed on the redistribution by the author in any given case. Nor is it realistic, due to the free redistribution policy, to charge licence fees, although this is not strictly prohibited^{iv}.

3. No restriction on modifications to the software

OSS developers must allow any number of third-party modifications to their software. It must be taken into account, however, that the software resulting from the modification in any given case should be redistributed under the same conditions as the original software. Nevertheless, it is possible for the developers of the original software to impose licence conditions for the use of their OSS, stipulating that modified software must be offered as a separate patch. Imposing such conditions will allow the developers to safeguard the integrity of the original software^v.

4. No restrictions on use

The software must be derestricted for use by anyone for any purpose. This means that no restrictions may be imposed on certain user groups or on certain types of use. Nor may the use of the software be linked to the use of other products or to a non-disclosure agreement^{vi}.

Any software which meets all four criteria at the same time can be assumed to be OSS. In contrast to commercially licensed software, OSS affords users, operators, developers, etc. full copyright exploitation rights, such as free copying, editing, testing and distribution.

ⁱ cf. Jaeger/Metzger (2016), Open Source Software - Rechtliche Rahmenbedingungen der Freien Software, p. 1 [legal framework for free software]

ⁱⁱ The full version of the OSI definition of open source can be found at <http://www.opensource.org/docs/definition.php>

ⁱⁱⁱ cf. Fraunhofer (2005), Open Source Software Einsatzpotenziale und Wirtschaftlichkeit, p.12 [potential applications and economic viability]

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^v cf. Fraunhofer (2005), Open Source Software Einsatzpotenziale und Wirtschaftlichkeit, p.13 [potential applications and economic viability]

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