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Israel's Information and Communications Technology Authority Bows to Pressure to Comply with Affero GPL

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Under pressure from open source advocates, the Israeli Information and Communications Technology (ICT) Authority recently shared its first open source software, extensions made by the ICT Authority to the CKAN data portal platform to help make the platform usable in Hebrew.

The CKAN software is an open source data portal platform used since 2016 by the ICT Authority to make Israeli government data open and available on its government database website. The CKAN software is licensed under the GNU AGPL Version 3 license, an “ultra-strong” open source license that requires users of modified versions of CKAN software to offer its source code, even in the absence of distribution, to users interacting with software over the Internet.

Despite this requirement and requests from the open source community, the ICT Authority only first released its CKAN code extensions in fall of 2017, after earlier formal complaints to the Israeli State Comptroller by Gai Zomer and more recent threats of legal action by open source advocate Lior Kaplan. This pressure appears to have worked; shortly after Mr. Kaplan's letter, the CKAN extensions were made available on the ICT Authority website.

This development is particularly interesting because it was not a formal legal action. AGPL has never been enforced in a formal lawsuit. “Copyleft” open source licenses like AGPL contain a condition that requires a licensee

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to make source code available to recipients of software binaries in certain circumstances. But that condition is imposed by the upstream copyright licensor who placed the code under AGPL, and legal remedies for violating that condition belong only to that upstream copyright licensor. There is no clear legal basis for a legal remedy by a downstream recipient, even though the recipient may be the practical beneficiary of that condition. So, recipients who want to remedy a violation sometimes resort to other means, such as political or social pressure. This happens frequently in informal open source enforcement efforts worldwide, as members of the open source community attempt to induce compliance without resorting to litigation. In this case, the practice was notable because the license was AGPL.

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