



Q&A

Q: Who is the defendant in this lawsuit?

The defendant is Vizio, Inc., a U.S.-based TV maker and media company that has been publicly traded on the New York Stock Exchange since March 2021.

Q: What did Vizio do wrong?

The lawsuit alleges that Vizio's TV products, built on its Smartcast system, contain software that Vizio unfairly appropriated from a community of developers who intended consumers to have very specific rights to modify, improve, share, and reinstall modified versions of the software.

Q: So, Vizio didn't create Smartcast?

It appears from extensive research that the core components of Smartcast were not created by Vizio, but rather, are based on various components licensed to the public under free and open-source software (FOSS) licenses. Most notably, many of the programs that are part of the Smartcast system are licensed under the GPL.

Q: What is copyleft?

Copyleft is a term used to describe a license that uses the rights granted under copyright—not to restrict usage, but instead to ensure that the software is always shared freely.

Q: What is FOSS?

“FOSS” stands for free and open-source software that allows for software freedom. “Software freedom” means the freedom of a user to run, study, (re)distribute, and (re)install (modified) versions of a piece of software. More generally, it is the idea that we are entitled to rights when using software and there should be equal protections for privacy and redistribution. The rights should treat everyone equally: big businesses and individual consumers and users alike.

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Q: I thought FOSS allowed companies to simply take software from the commons and put it into their products whenever they wanted? Isn't that the whole point of FOSS—for companies to get components for their products and lower their cost of production?

While that is the main advantage that big corporations get from FOSS, it was never the primary impetus behind FOSS. Particularly through special licensing terms like the GPL, this licensing approach creates an egalitarian community of users, developers, and consumers. When functioning correctly, each individual and organization that participates in FOSS stands on equal footing with everyone else. Licenses like the GPL have rules to assure everyone's rights in that ecosystem are treated with equal respect and reverence. This is why compliance with these rules is important and why people must stand up against companies who refuse to comply.

Q: But, I'm not a software developer. Why should I care at all that Vizio won't let me modify and reinstall GPL'd components in its Smartcast system?

Right-to-repair software is essential for everyone, even if you don't know how to make the repairs yourself. Once upon a time, we had lots of local vendors that could repair and fix TVs when they broke. That's because TVs were once analog hardware devices that could be taken apart and understood merely by inspection from someone with the sufficient knowledge. TVs today are simply a little computer attached to a large display. As such, the most important part that needs repairs is usually when the software malfunctions, has bugs, or otherwise needs upgrades and changes. The GPL was specifically designed to assure such fixes could be done, and that consumers (or agents those consumers hire on the open market) can make such repairs and changes.

Q: Alright, that makes sense, but I'm happy with Vizio's Smartcast right now. What difference does it make to me if Vizio won't give me the rights under the GPL?

Time and time again, companies stop supporting the software build for the device long before the computer inside the device fails. In other words, these devices are built for planned premature obsolescence.

By refusing to comply with the pro-consumer terms of the GPL, Vizio has the power to disable your TV at any time it wants, over your internet connection, without your knowledge or consent. If Vizio complied with the GPL, all would not be lost in this scenario: volunteers and third-party entities could take GPL'd software as a basis for a replacement for Smartcast. Without these rights, consumers are essentially forced to purchase new devices when they could be repaired.

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Q: Creation of a replacement for Smartcast seems far-fetched to me. After all, most of the software in Smartcast is not actually GPL'd, only a portion of the components and programs are GPL'd. How will Vizio's compliance with the GPL actually lead to an alternative firmware?

Years ago, people said the very same thing about wireless routers, which had only partially GPL'd firmwares. However, thanks to actions to enforce the GPL in the wireless router market, the OpenWrt project was born! That project is now the premiere replacement software for wireless routers from almost every major manufacturer on the market. There is now healthy competition and even occasional cooperation between a hobbyist and community-led firmware project and the wireless router manufacturers. We believe the same can happen for TVs, but the first step is assuring the entire TV market complies with the GPL.

Q: What indications do you have that compliance with the GPL will be a catalyst for alternative firmwares?

Beyond the OpenWrt example, Software Freedom Conservancy sued 14 defendants for GPL violations in 2009, including Samsung for its 2009-era TV models. Thanks to the source release that was achieved through the settlement of that lawsuit, a community-led SamyGo project was created for that era of TVs. ([source](#))

Q: Who is the plaintiff in the lawsuit?

Software Freedom Conservancy is the plaintiff in this case. The organization is filing as a third-party beneficiary, as the purchaser of a product which has copylefted code on it. A consumer of a product such as this has the right to access the source code so that it can be modified, studied, and redistributed (under the appropriate license conditions).

Quote from Karen M. Sandler, executive director, Software Freedom Conservancy:

“We have found that without constant vigilance, compliance is not maintained. We had hoped (and much of our historical rhetoric assumed) that companies ultimately had good intentions. We thought that once they were educated about proper compliance with the GPL, companies would incorporate those practices into their processes. Unfortunately, it has become very clear in recent years that we must repeatedly open compliance matters regarding companies that we've previously educated about compliance issues, and we face serious resistance regarding compliance. We continue to monitor and work on compliance issues of many companies, and now that this lawsuit—which has required significant resources—has been filed, we hope to turn our attention to a wider group of companies who are out of compliance.”

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Q: What makes this different than other GPL compliance lawsuits?

In the past, the plaintiffs have always been copyright holders of the specific GPL code. In this case Software Freedom Conservancy is demonstrating that it's not just the copyright holders, but also the receivers of the licensed code which are entitled to their rights.

Q: What type of case is this? How does it compare to previous litigation by Software Freedom Conservancy regarding the GPL?

Previously, Software Freedom Conservancy filed as a copyright holder in federal court, or coordinated or funded litigation by other copyright holders in copyright cases in the U.S. and Germany. This is an example of how, historically, GPL litigation has focused on the rights of the developers. However, the rights assured by the GPL are actually not intended primarily for the original developers, but rather for people who purchase products that contain GPL'd software. That is what makes this litigation unique and historic in terms of defending consumer rights. It is the first case that focuses on the rights of individual consumers as third-party beneficiaries of the GPL.

Q: Why are you filing a third-party beneficiary claim instead of a copyright claim?

For too long, GPL enforcement has focused only on the rights of developers, who are often not the ones impacted by the technology in question. Some of those same developers even have lucrative jobs working for the various companies that violate the GPL. The GPL was designed to put the rights of hobbyists, individual developers, consumers, small companies, and nonprofit organizations on equal footing with big companies. With the advent of more contributions to GPL'd software coming from for-profit multinational corporations and fewer from individuals, the rights of these other parties are often given second-class billing. The third-party beneficiary claim prioritizes the consumers, who are the users and the most important beneficiaries of the rights under GPL.

third-party beneficiary

A legal term for someone who isn't a direct signatory to a contract, but who specifically is contemplated as having some kind of benefit they are owed by the main parties under that agreement.

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Q: Are you saying the rights of developers under the GPL are not important?

Not at all! Most would agree that individual developers care deeply about the software freedom of users. They are the artists who create the amazing FOSS on which all of us rely. However, as Francis Ford Coppola once said (paraphrased), “to understand who holds the power in any culture, look not to the artists but who employs the artists”—a quote which suits this situation well. Large multinational corporations have co-opted FOSS for their own bottom lines. While many developers privately cheer Software Freedom Conservancy’s efforts and donate money to this cause, they fear the power that their employers exert and have asked Software Freedom Conservancy to fight for the software freedom of users.

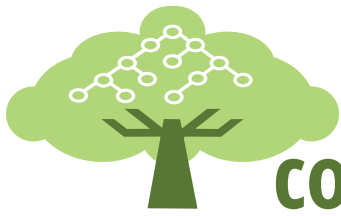
Q: Why is this important for the future of developers?

The next generation of developers comes from the users of today. The golden age of FOSS that the industry now enjoys came to fruition from the counterculture created by FOSS activists in the 1990s and early 2000s. During this time, Linux and other GPL’d software was considered just a curiosity (and was even accused of being anti-American). Nevertheless, the rights assured by the GPL ultimately led to a new generation of software developers learning how to build Linux and all the amazingly useful FOSS around it. To recruit a diverse group of the next generation of enthusiastic developers, we must ensure that the rights under GPL are available to every single individual, consumer and hobbyist around the globe. That is what this lawsuit is about.

Q: If the goal is to fight for all consumer rights, why not file this lawsuit as a class action?

Forcing consumers to fight for their individual rights is one way that for-profit corporations exert their inappropriate power. Actions such as this lawsuit seek to disrupt this power dynamic by asserting that all consumers of copylefted code deserve the opportunity to know, access and modify the code on their devices. However, expecting all consumers to have to personally participate in that process not only puts an undue burden on them, it simply is not realistic. It is not how change happens. Furthermore, pursuant to “The Principles of Community Oriented GPL Enforcement,” the lawsuit does not prioritize financial remedy over compliance. This lawsuit seeks the most important remedy for the public good: release of the Complete, Corresponding Source (CCS) for all GPL’d components on Vizio TVs. Once that is achieved, the benefit is immediately available to not only all who purchased a Vizio TV, but also to the entire FOSS community.

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Q: What are “The Principles of Community Oriented GPL Enforcement”?

In 2016, Software Freedom Conservancy published “The Principles of Community-Oriented GPL Enforcement” in response to those who might use copyleft licenses for their own financial gain. Software Freedom Conservancy is part of a long tradition of using copyleft enforcement as intended: to further the rights and freedoms of individual users, consumers, and developers. Pursuant to those principles, Software Freedom Conservancy never prioritizes financial gain over assuring the rights guaranteed by the GPL are upheld.

Q: Are the court documents released? Does that relate to why the litigation was brought in the U.S.?

Software Freedom Conservancy brought this litigation within the U.S. specifically because litigation in this country is completely public. Historically, Germany has been one of the most popular venues for GPL litigation but it also has a huge downside: the German legal system keeps all details of the cases private and there is little transparency.

Q: Who is funding this lawsuit?

This lawsuit is central to the mission of Software Freedom Conservancy. The organization has received grants from Amateur Radio Digital Communications (ARDC) to support GPL compliance work. As a nonprofit, charitable donations are also an important source of funding to carry out the work. This combined financial support allowed for this litigation to begin. However, continued donor support will be vital since litigation like this is quite expensive.

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Quotes from Karen M. Sandler, executive director, Software Freedom Conservancy:

“Copylefted software empowers consumers to create their own digital destinies with the technology they rely on. This case is about showing that we, as consumers and purchasers of the device, can get access to the complete source code from a company, even if it means having to take them to court and that anyone else can do the same. Once an individual has that software, they can freely distribute it to all. When we receive the complete source code we’ll be sharing it widely and hope that other consumers will participate in exploring that source code to improve our TVs.”

“We appreciate so much the historic work of our colleagues like Harald Welte in Germany. Given that so many GPL violators are based here in the U.S. (including Vizio) and because of the transparency of the U.S. legal system, it makes sense as a venue for this litigation. In particular, we listened to individuals in the FOSS legal community who complained that the Hellwig vs. VMWare case in Germany—which we partially funded—was not transparent. We worked very hard to compel more transparency in the German legal system, but we were simply unable to do so. We heard those complaints and listened to the FOSS legal community and its suggestion that transparent litigation about the GPL was the right way to go.”



PRESS KIT

MEDIA CONTACT
Hannah Gregory
Media Rep for Good Causes
sfc@shoestringagency.org

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Q: How can someone make a donation?

To make a tax-deductible donation to Software Freedom Conservancy, go to sfconservancy.org/donate. The best way to support this important work is to join as an official Sustainer. Details on that program are available at sfconservancy.org/sustainer.

Q: Why must you file a lawsuit? Isn't there any other way to convince Vizio to comply with the GPL?

Vizio has a long history of violating copyleft. The company has also stopped replying to inquiries from Software Freedom Conservancy. Vizio has been benefiting from the use of an abundance of existing copylefted software, but completely ignores the responsibilities that come with using the licenses. Furthermore, Vizio has already been subject to a large class-action suit that alleged that Vizio was misusing its customers' private information (Vizio settled that class action for \$17 million).

Q: What GPL code has been discovered in Vizio's Smartcast?

Smartcast is a Linux-based operating system. That means that not only do multiple copies of the Linux kernel appear in the firmware, other GPL'd and LGPL'd programs were found, including U-Boot, bash, gawk, tar, glibc, and ffmpeg.

Q: How can I verify Software Freedom Conservancy's technical findings above?

Object code can be found on the TVs and source code/binaries on the filesystem. There are multiple models in which Software Freedom Conservancy can confirm the findings. Go to sfconservancy.org/vizio for details.

Quote from Karen M. Sandler, executive director, Software Freedom Conservancy:

"As is the standard with our compliance work, we tried first to operate through diplomacy but to no avail. As explained in the complaint, we first raised the issue of non-compliance with the GPL in August 2018, and after a year of discussion, Vizio was still refusing to comply. As of January 2020, Vizio simply stopped responding to Software Freedom Conservancy's inquiries about its GPL compliance. By July 2021, the model that we originally complained was non-compliant was discontinued. When we purchased new models, we found that despite our efforts they still had no source code included with the device, nor any offer for source code. People buying these models would never know that there was anything special about the software in these devices, or that they had any rights whatsoever connected with the software on their TVs."

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