



Vizio sued for breach of Copyleft Open-Source Software License

November 11, 2021

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On October 19, 2021, the Software Freedom Conservancy (SFC) sued Vizio, Inc. for alleged violations of the GNU General Public License covering software incorporated into certain Vizio smart TVs.

Use of open-source software has become increasingly popular in the development of proprietary commercial computer software, including software embedded in hardware devices such as consumer electronic devices. Open-source software can provide important and useful functionality, and is increasingly used by developers to reduce development time.

The licensing models under which open-source software is made available can be thought of as falling into two broad categories: permissive licenses and copyleft licenses. Permissive open-source licenses typically do not create significant obstacles to incorporating the open-source software into proprietary commercial software products. Copyleft licenses, however, can be extremely problematic for developers of proprietary software and hardware. The terms of such licenses may require that, if any software that incorporates or otherwise interacts with the open-source software and is distributed, then the distribution of such modified software is governed by the same copyleft license. For this reason, some refer to these types of open-source licenses as “viral”. This term is intended to refer to the licenses’ effect of capturing (some use the term “infecting”) an ever-growing amount of software code.

The requirement of copyleft licenses that tends to be the most incompatible with the proprietary software model is the requirement that the source code for the modified software be made available to the public.

One of the most commonly used copyleft licenses is the GNU General Public License, in all of its versions: GPLv2, GPLv3, LGPLv2.1, AGPL, etc. The language of the GPL is notoriously vague, which can make it difficult to determine when a software product is sufficiently connected to the open-source software to fall under the copyleft regime. A number of popular open-source projects are licensed under copyleft licenses, such as the Linux kernel and many associated programs, which have their source code released under the GPLv2 and the LGPLv2.1.

In its Complaint, the SFC alleges that Vizio included the Linux kernel and several associated open-source programs in its SmartCast system for smart televisions. SFC further alleges that the sale of these Vizio smart televisions constitutes a distribution of the GPL licensed software, and thus Vizio is in breach of its obligations under the GPL license. Specifically, SFC claims that the SmartCast system is covered by the terms of the GPL, and therefore, the source code for the SmartCast system must be made available by Vizio.

The SFC has framed^[1] this litigation as championing consumer rights, including the rights to repair products and to speed up development of improvements to the products that incorporate the copyleft-licensed open-source software.

The SFC alleges that, starting in August 2018, SFC repeatedly requested that Vizio provide the source code for its SmartCast system in accordance with its obligations under the GPL license. Versions of the SmartCast source code were provided by Vizio at various times after August 2018, but in each case the SFC alleges that its representatives were not able to compile the source code provided by Vizio.



The California court and jury will have to decide a number of interesting issues in this case, including the level of source code disclosure that is required to comply with the GPL.

While copyleft license litigation is infrequent, there have been several prior cases. In 2008, a lawsuit was initiated by the Free Software Foundation (FSF) against Cisco Systems (*Free Software Foundation, Inc. v. Cisco Systems, Inc*[2]). The FSF alleged that several of Cisco's consumer network routers[3] used GPL licensed code. The litigation was settled and Cisco released the source code, made a contribution to the FSF, and appointed a compliance officer.

There have also been several open-source licensing cases litigated in Germany[4]. In a first case *Welte v. Sitecom*, a plaintiff Welte (a developer of an open-source networking software released under the GPL) alleged that a German subsidiary of Sitecom used their GPL licensed code in one of its wireless products without following its obligations under the GPL. The German court held that Sitecom's subsidiary was required to provide notice of the license, including the GPL license text, and was required to distribute their code under the same license. The case also resulted in an injunction against Sitecom.

Welte won another case in Germany, *Welte v. D-Link*, in which it alleged that D-Link (a Taiwanese network solutions manufacturer) distributed a network storage device that used a Linux-based operating system. On September 6, 2006, the German district court issued its judgement in favour of Welte.

The Vizio lawsuit is just the most recent reminder of the importance of understanding the requirements and risks around using open-source software, and in particular, around incorporating it in proprietary commercial products. While open-source software can be a powerful tool in agile software development, it is critical for developers of proprietary software to create robust strategies and policies for understanding of and compliance with the applicable open source licenses. Many software developers still take open-source licenses for granted and believe the code can be used without obligations. This lawsuit against Vizio is the latest reminder that the risks are not theoretical.

[1] <https://sfconservancy.org/copyleft-compliance/vizio.html>

[2] Case no. 08-CV-10764, United States District Court for the Southern District of New York.

[3] Linksys models EFG120, EFG250, NAS200, SPA400, WAG300N, WAP4400N, WIP300, WMA11B, WRT54GL, WRV200, WRV54G, and WVC54GC, and in the program QuickVPN.

[4] including *In Re Welte v. Sitecom Deutschland GmbH*, No 21 0 6123/04 (LG München 1) (May 19 2004) [*Welte v. Sitecom*] and *In Re Welte v. D-Link Deutschland GmbH*, No 2-6 0 0224/06 (LG Frankfurt) (September 22, 2006) [*Welte v. D-Link*].

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