Sa'id Vakili, Esq. (SBN: 176322)
vakili@vakili.com
David N. Schultz, Esq. (SBN: 123094)
Schu1984@yahoo.com
Stephen P. Hoffman, Esq. (SBN: 287075)
hoffman@vakili.com
VAKILI & LEUS, LLP
3701 Wilshire Boulevard, Suite 1135
Los Angeles, CA 90010-2822
(213) 380-6010 | Fax: (213) 380-6051
Attorneys for Plaintiff Software Freedom Conservancy, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE – CENTRAL JUSTICE CENTER

SOFTWARE FREEDOM CONSERVANCY, INC., a New York Non-Profit Corporation,

Plaintiff,

v.

VIZIO, INC., a California Corporation; and DOES 1 to 50, Inclusive,

Defendants.

CASE NO.: 30-2021-01226723-CU-BC-CJC

[*Hon. Sandy Leal / Dept. C33*]

APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES

[*Notice of Motion and Motion; Memorandum of Points and Authorities; Declarations of Bradley M. Kuhn, Paul Visscher, Sa'id Vakili and Zoe Kooyman; Proposed Order; and Request for Judicial Notice submitted concurrently herewith*]

Date: October 16, 2025

Time: 10:00 a.m.

Dept.: C33

APPENDIX OF EXHIBITS

Exhibit "1": June 1991—GNU General Public License (the "GPLv2"), Version 2, June 1991, at https://www.gnu.org/licenses/old-licenses/gpl-2.0-standalone.html;

Exhibit "2": February 1999—GNU Lesser General Public License ("LGPLv.2.1"), version 2.1, February 1999, at https://www.gnu.org/licenses/old-licenses/lgpl-2.1-standalone.html;

Exhibit "3": 04/22/2022—Exhibit 5 to the Declaration of Michael E. Williams in support of VIZIO, Inc.'s Opposition to Software Freedom Conservancy, Inc.'s Motion to Remand, filed in *Software Freedom Conservancy, Inc. v. VIZIO, Inc.*, United States District Court, Central District of California, Case No. 8:21-cv-01943 (the "USDC Removal Action");

Exhibit "4": 04/26/2023—Five screenshots from online live chat between Paul Visscher (Systems Administrator for Software Freedom Conservancy, Inc.) and VIZIO Support;

Exhibit "5": 04/22/2022—Declaration of Michael E. Williams in support of VIZIO, Inc.'s Opposition to Software Freedom Conservancy, Inc.'s Motion to Remand, filed in the USDC Removal Action (without exhibits thereto);

Exhibit "6": 05/13/2022—Judge Josephine L. Staton's Order in the USDC Removal Action, granting SFC's Motion to Remand and remanding this action to this Court, dated May 13, 2022;

Exhibit "7": 12/29/2023—Court's Minute Order, dated December 29, 2023, in *Software Freedom Conservancy, Inc. v. VIZIO, Inc.*, Orange County Superior Court, Case No. 30-2021-01226723-CU-BC-CJC;

Exhibit "8": 03/26/2024—Court's Minute Order, dated March 26, 2024, in *Software Freedom Conservancy, Inc. v. VIZIO, Inc.*, Orange County Superior Court, Case No. 30-2021-01226723-CU-BC-CJC;

Exhibit "9": Printout of webpage at https://www.vizio.com/en/tv/overview, entitled "America's Smart TV";

Exhibit "10": 07/06/2023—Printout of an article from Wikipedia entitled "Smart TV," at https://en.wikipedia.org/wiki/Smart_TV, last visited July 6, 2023;

Exhibit "11": 03/01/2021—Selected pages from a Form S-1 Registration Statement Under The Securities Act of 1933, filed by VIZIO Holding Corp. with the United States Securities and Exchange Commission on March 1, 2021;

Exhibit "12": 05/22/2025—"Frequently Asked Questions about the GNU Licenses," printed from https://www.gnu.org/licenses/gpl-faq.html#WhoHasThePower on May 22, 2025; and

Exhibit "13": 06/06/2023—Relevant pages from the June 6, 2023 Transcript of the Deposition of Bradley M. Kuhn, in *Software Freedom Conservancy, Inc. v. VIZIO, Inc.*, Orange County Superior Court, Case No. 30-2021-01226723-CU-BC-CJC.

DATED: May 23, 2025

VAKILI & LEUS, LLP

By: _____

Sa'id Vakili, Esq.
David N. Schultz, Esq.
Attorneys for Plaintiff Software Freedom Conservancy, Inc.

Exhibit: “1”

GNU General Public License, version 2

- The latest version of the GPL, version 3
- What to do if you see a possible GPL violation
- Translations of GPLv2
- GPLv2 Frequently Asked Questions
- The GNU General Public License version 2 (GPLv2) in other formats: plain text, Texinfo, LaTeX, standalone HTML, Docbook, Markdown, ODF, RTF

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Version 2, June 1991

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Version 2.1, February 1999


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```
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```

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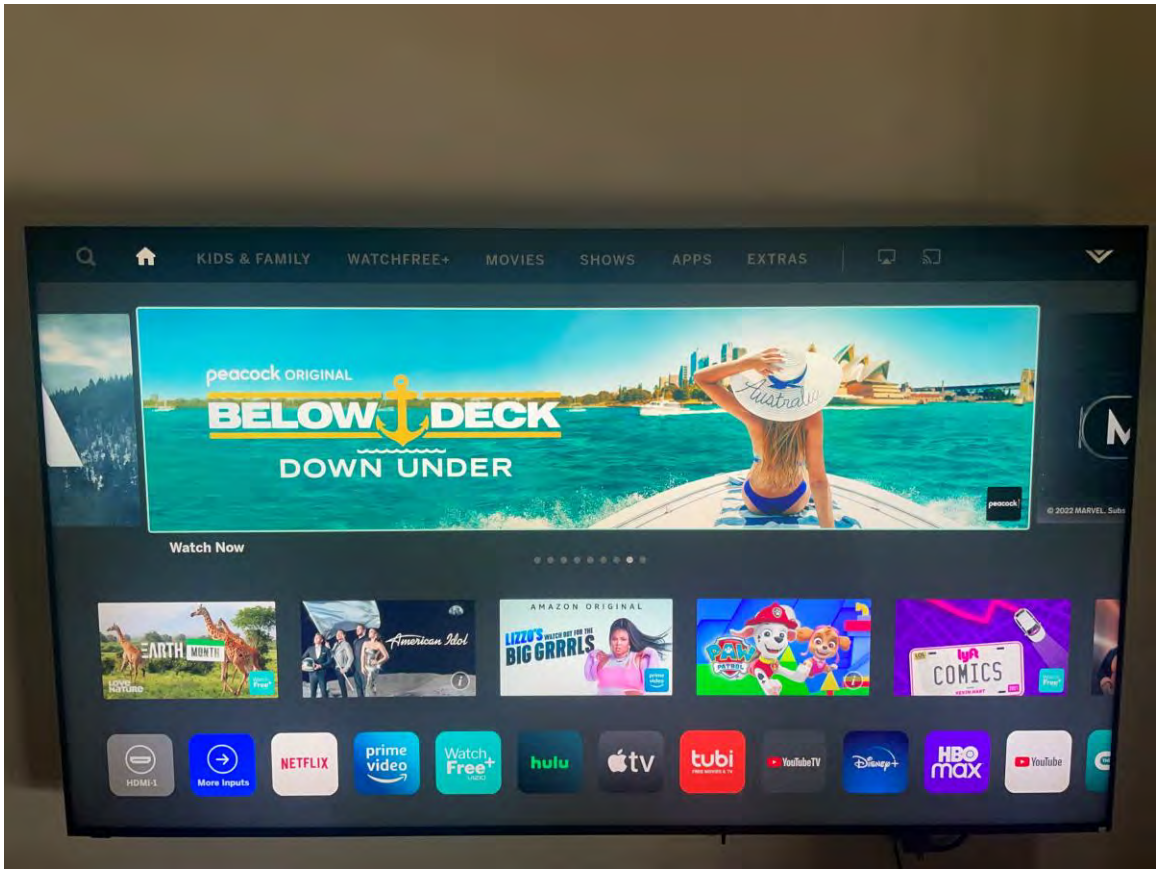
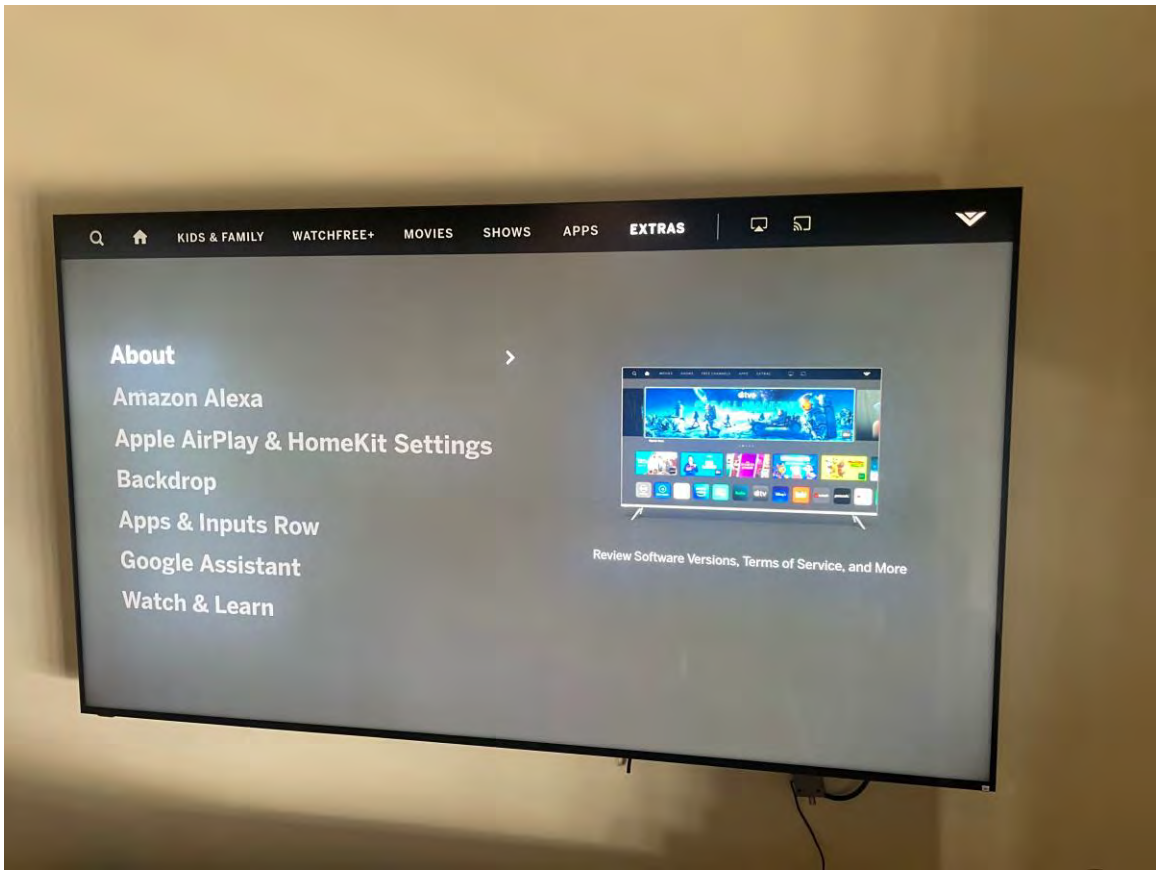
```
Yoyodyne, Inc., hereby disclaims all copyright interest in
the library `Frob' (a library for tweaking knobs) written
by James Random Hacker.

signature of Ty Coon, 1 April 1990
Ty Coon, President of Vice
```

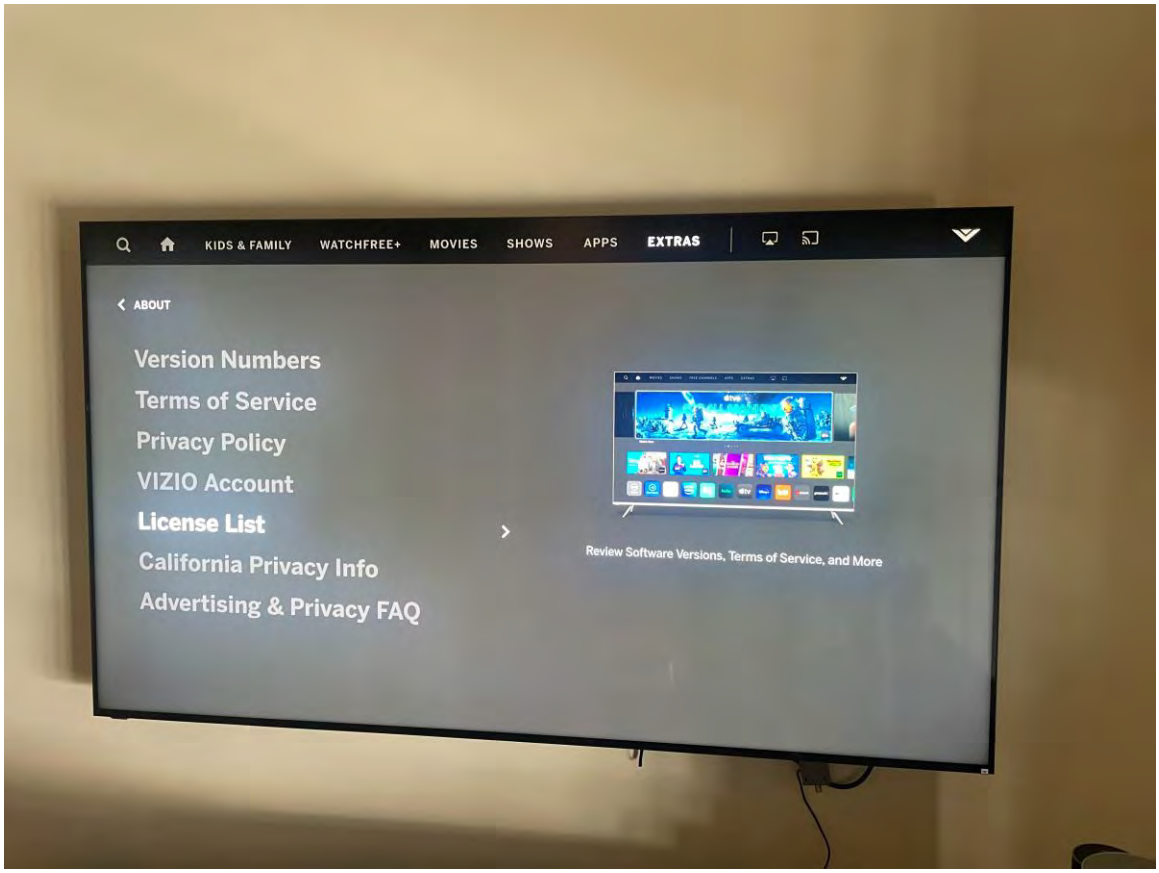
That's all there is to it!

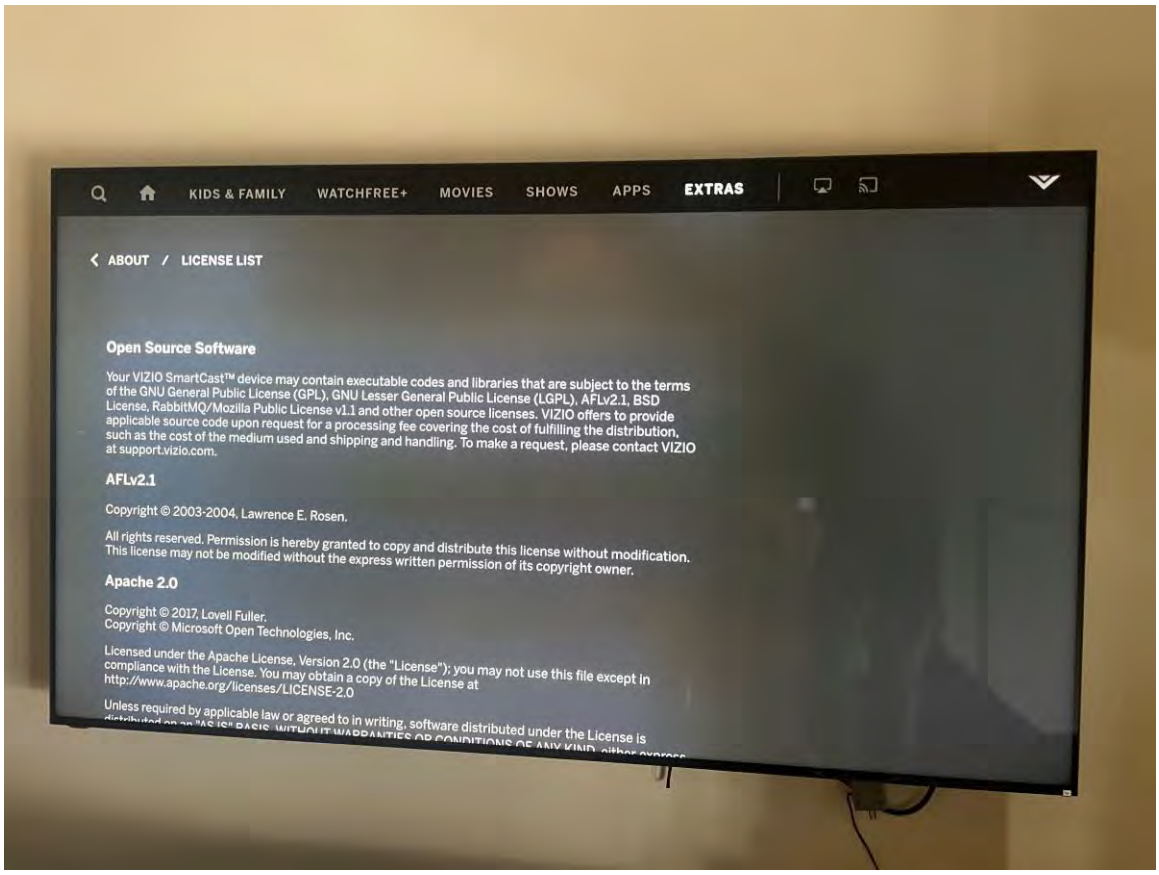
Copyright notice above.

Exhibit: “3”


KIDS & FAMILY
WATCHFREE+
MOVIES
SHOWS
APPS
EXTRAS
peacock ORIGINAL
BELOW DECK
DOWN UNDER
Watch Now
AMAZON ORIGINAL
COMICS
HDMI-1
More Inputs
NETFLIX
prime video
Watch Free+
hulu
tv
tubi
YouTube TV
Disney+
HBO max
YouTube


KIDS & FAMILY
WATCHFREE+
MOVIES
SHOWS
APPS
EXTRAS
About
Amazon Alexa
Apple AirPlay & HomeKit Settings
Backdrop
Apps & Inputs Row
Google Assistant
Watch & Learn
Review Software Versions, Terms of Service, and More


KIDS & FAMILY
WATCHFREE+
MOVIES
SHOWS
APPS
EXTRAS
ABOUT
Version Numbers
Terms of Service
Privacy Policy
VIZIO Account
License List
California Privacy Info
Advertising & Privacy FAQ
Review Software Versions, Terms of Service, and More


KIDS & FAMILY
WATCHFREE+
MOVIES
SHOWS
APPS
EXTRAS
ABOUT / LICENSE LIST
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AFLv2.1
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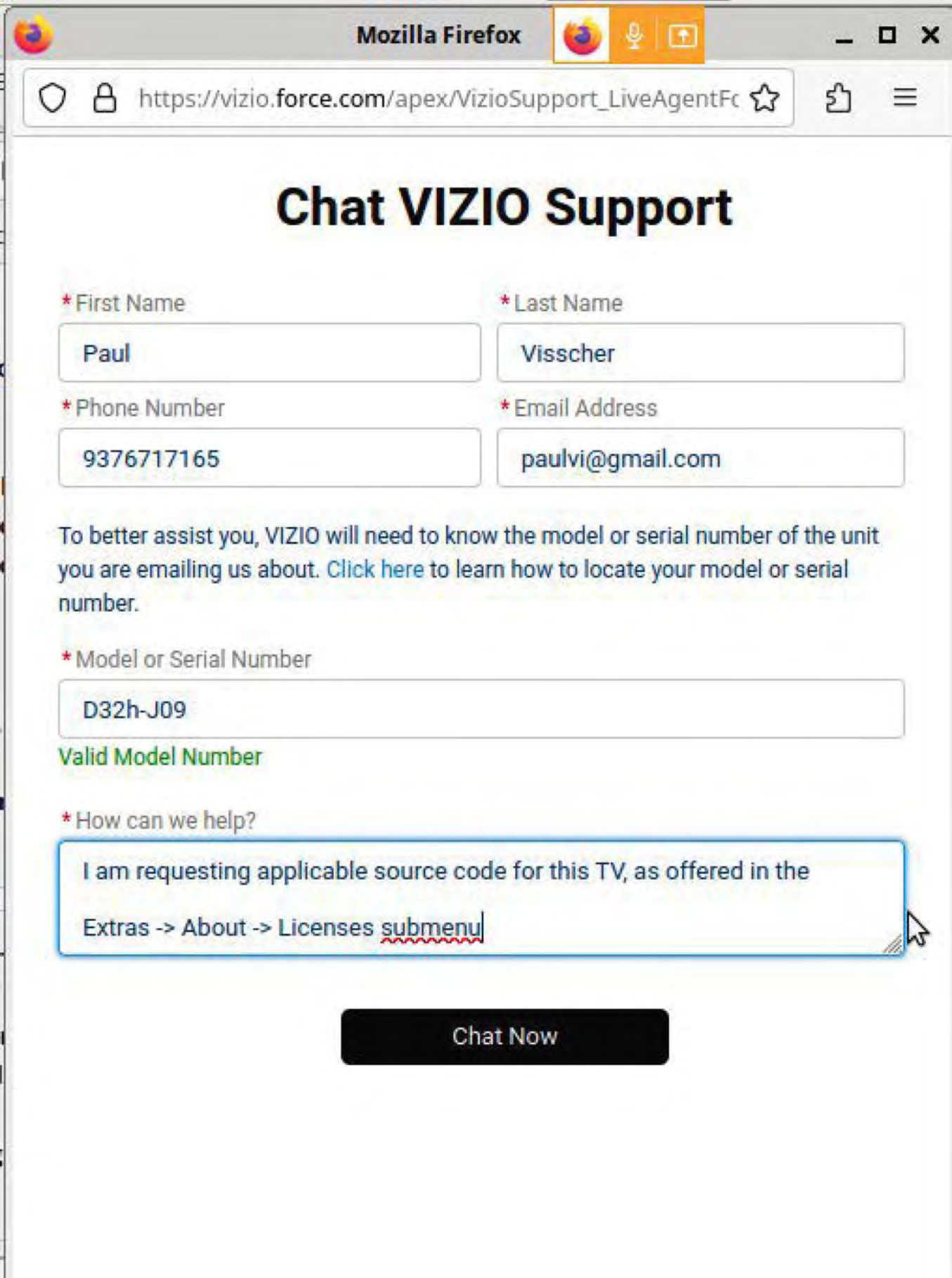
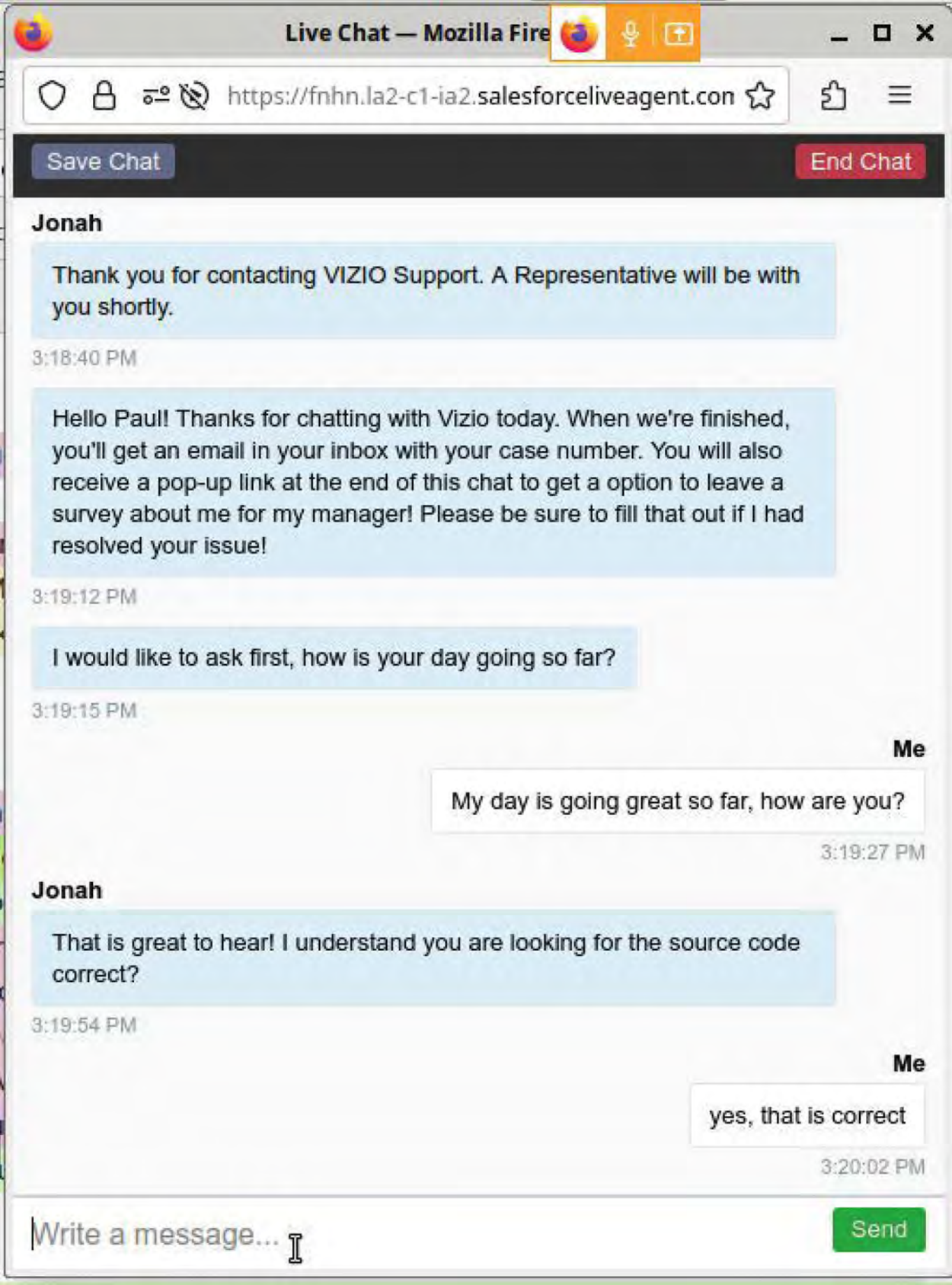
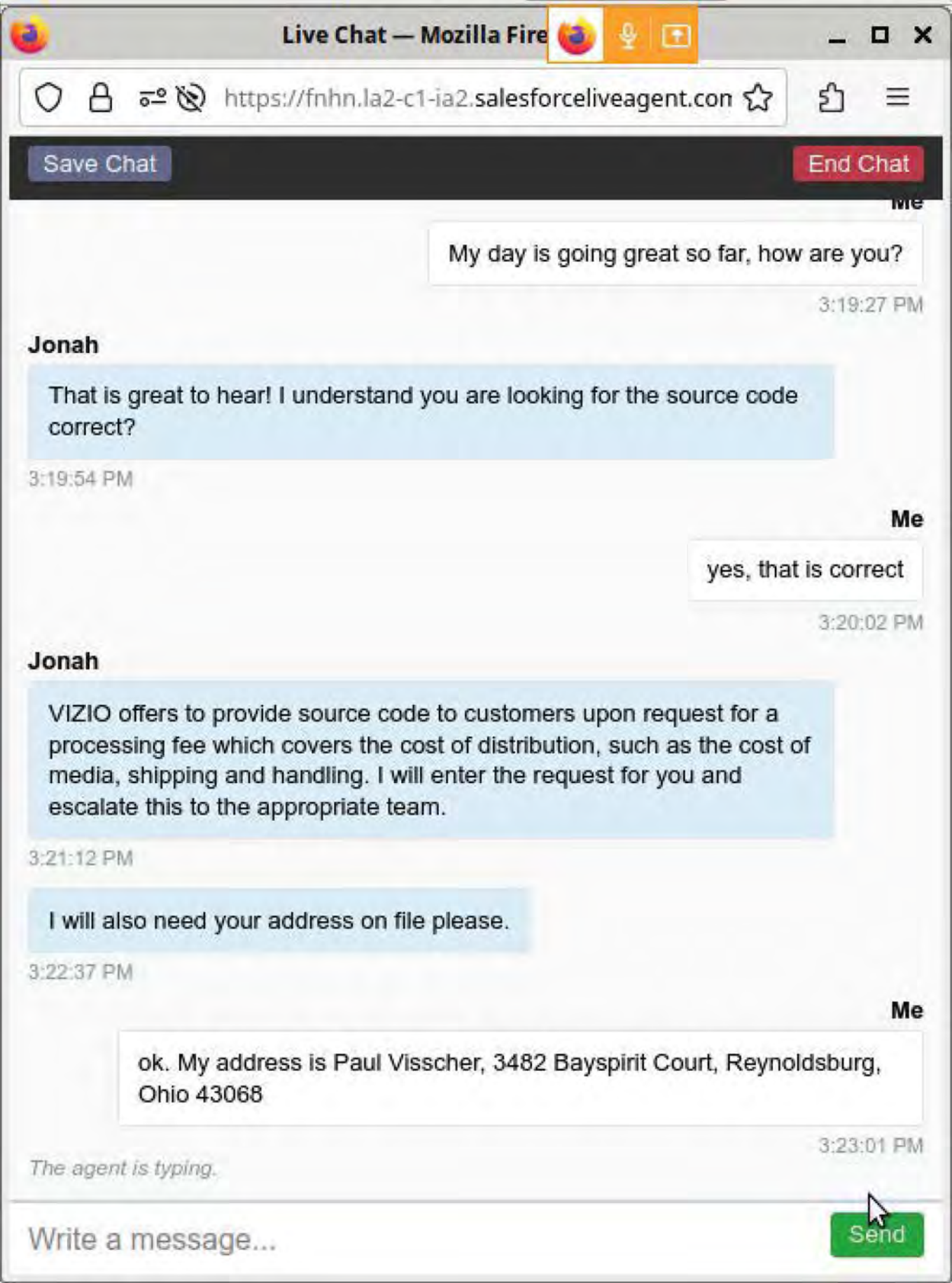
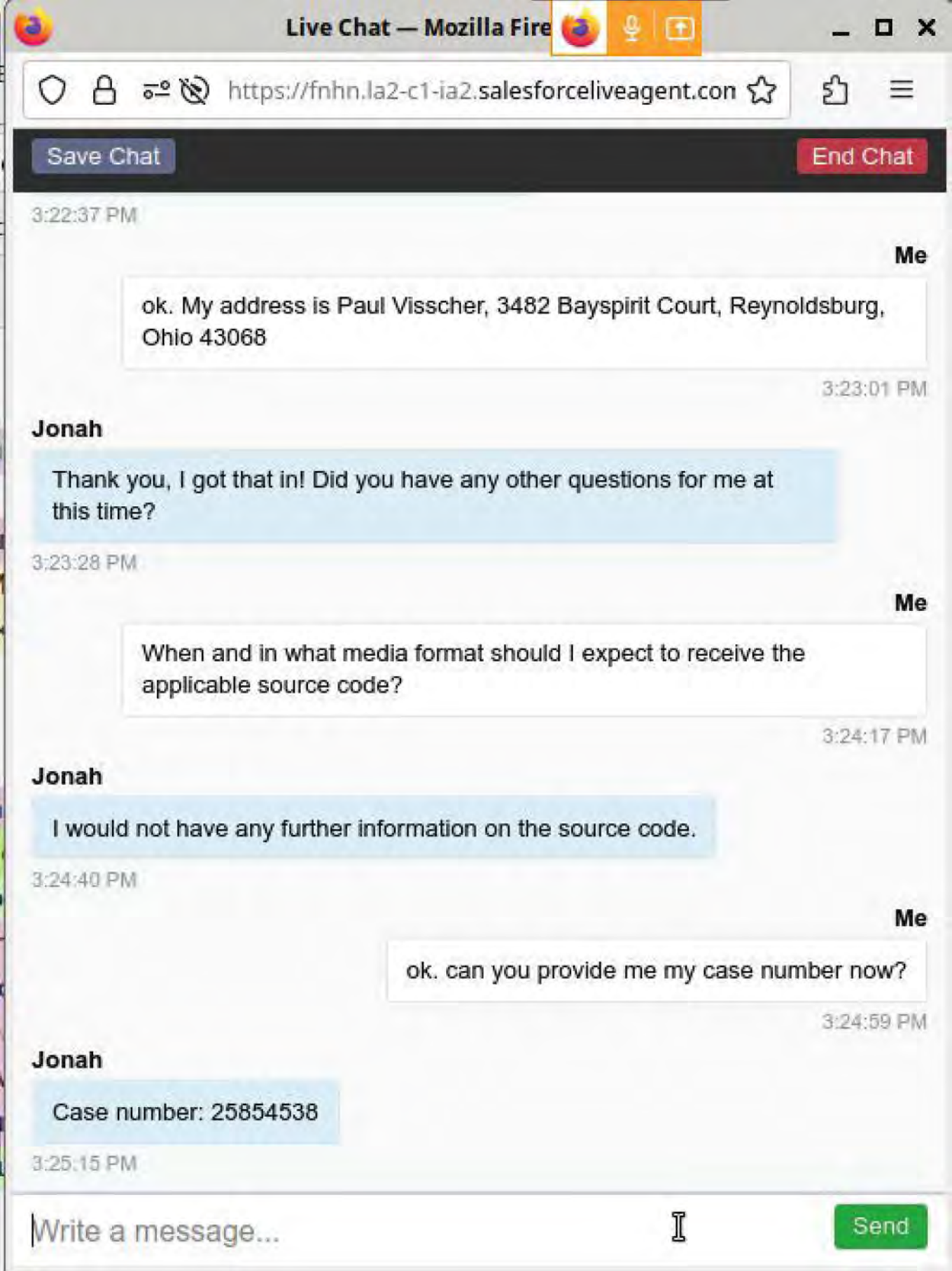
Exhibit: “4”


Mozilla Firefox
https://vizio.force.com/apex/VizioSupport_LiveAgentFc
Chat VIZIO Support
* First Name
Paul
* Last Name
Visscher
* Phone Number
9376717165
* Email Address
paulvi@gmail.com
To better assist you, VIZIO will need to know the model or serial number of the unit you are emailing us about. Click here to learn how to locate your model or serial number.
* Model or Serial Number
D32h-J09
Valid Model Number
* How can we help?
I am requesting applicable source code for this TV, as offered in the
Extras -> About -> Licenses submenu
Chat Now


Live Chat — Mozilla Fire
https://fnhn.la2-c1-ia2.salesforceliveagent.con
Save Chat
End Chat
Jonah
Thank you for contacting VIZIO Support. A Representative will be with you shortly.
3:18:40 PM
Hello Paul! Thanks for chatting with Vizio today. When we're finished, you'll get an email in your inbox with your case number. You will also receive a pop-up link at the end of this chat to get a option to leave a survey about me for my manager! Please be sure to fill that out if I had resolved your issue!
3:19:12 PM
I would like to ask first, how is your day going so far?
3:19:15 PM
Me
My day is going great so far, how are you?
3:19:27 PM
Jonah
That is great to hear! I understand you are looking for the source code correct?
3:19:54 PM
Me
yes, that is correct
3:20:02 PM
Write a message...
Send


Live Chat — Mozilla Fire
https://fnhn.la2-c1-ia2.salesforceliveagent.con
Save Chat
End Chat
Me
My day is going great so far, how are you?
3:19:27 PM
Jonah
That is great to hear! I understand you are looking for the source code correct?
3:19:54 PM
Me
yes, that is correct
3:20:02 PM
Jonah
VIZIO offers to provide source code to customers upon request for a processing fee which covers the cost of distribution, such as the cost of media, shipping and handling. I will enter the request for you and escalate this to the appropriate team.
3:21:12 PM
I will also need your address on file please.
3:22:37 PM
Me
ok. My address is Paul Visscher, 3482 Bayspirit Court, Reynoldsburg, Ohio 43068
3:23:01 PM
The agent is typing.
Write a message...
Send


Live Chat — Mozilla Fire
https://fnhn.la2-c1-ia2.salesforceliveagent.com
Save Chat
End Chat
3:22:37 PM
Me
ok. My address is Paul Visscher, 3482 Bayspirit Court, Reynoldsburg, Ohio 43068
3:23:01 PM
Jonah
Thank you, I got that in! Did you have any other questions for me at this time?
3:23:28 PM
Me
When and in what media format should I expect to receive the applicable source code?
3:24:17 PM
Jonah
I would not have any further information on the source code.
3:24:40 PM
Me
ok. can you provide me my case number now?
3:24:59 PM
Jonah
Case number: 25854538
3:25:15 PM
Write a message...
Send

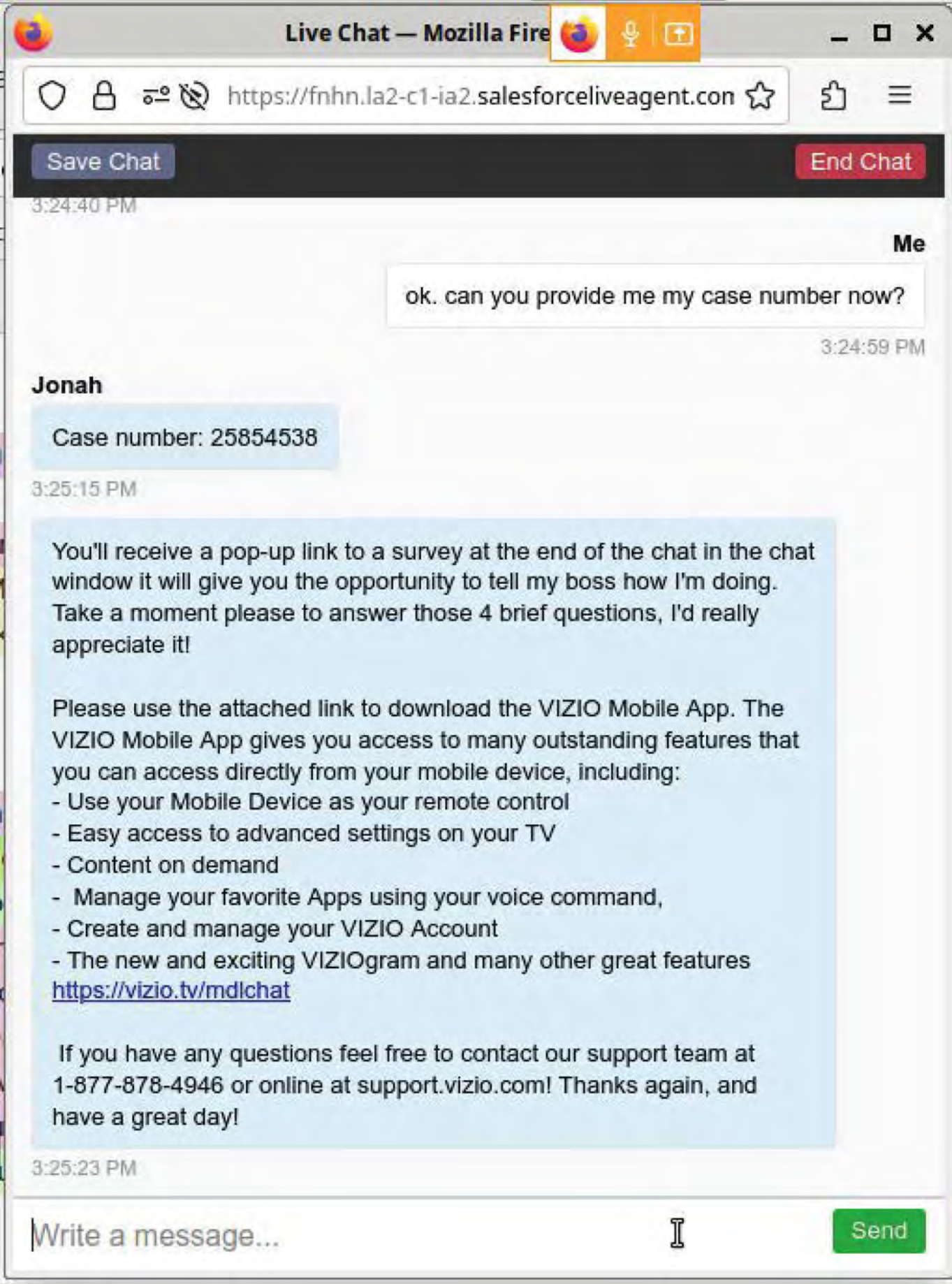

Live Chat — Mozilla Fire
https://fnhn.la2-c1-ia2.salesforceliveagent.com
Save Chat
End Chat
3:24:40 PM
Me
ok. can you provide me my case number now?
3:24:59 PM
Jonah
Case number: 25854538
3:25:15 PM
You'll receive a pop-up link to a survey at the end of the chat in the chat window it will give you the opportunity to tell my boss how I'm doing. Take a moment please to answer those 4 brief questions, I'd really appreciate it!
Please use the attached link to download the VIZIO Mobile App. The VIZIO Mobile App gives you access to many outstanding features that you can access directly from your mobile device, including:
- Use your Mobile Device as your remote control
- Easy access to advanced settings on your TV
- Content on demand
- Manage your favorite Apps using your voice command,
- Create and manage your VIZIO Account
- The new and exciting VIZIOgram and many other great features
https://vizio.tv/mdlchat
If you have any questions feel free to contact our support team at 1-877-878-4946 or online at support.vizio.com! Thanks again, and have a great day!
3:25:23 PM
Write a message...
Send

Exhibit: “5”

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Michael E. Williams (Bar No. 181299)
(michaelwilliams@quinnemanuel.com)
Daniel C. Posner (Bar No. 232009)
(danposner@quinnemanuel.com)
John Z. Yin (Bar No. 325589)
(johnyin@quinnemanuel.com)
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Facsimile: (213) 443-3100

Attorneys for Defendant VIZIO, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOFTWARE FREEDOM CONSERVANCY, INC., a New York Non-Profit Corporation

Plaintiff,

vs.

VIZIO, INC., a California Corporation; and DOES 1 to 50, Inclusive,

Defendants.

CASE No. 8:21-cv-01943

DECLARATION OF MICHAEL E. WILLIAMS IN SUPPORT OF DEFENDANT VIZIO, INC.'S OPPOSITION TO PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S MOTION TO REMAND

DECLARATION OF MICHAEL E. WILLIAMS

1. I am a member of the bar of the State of California and the Central District of California. I am a partner at Quinn Emanuel Urquhart & Sullivan, LLP, attorneys for defendant VIZIO Inc. I make this declaration of personal, firsthand knowledge, and if called and sworn as a witness, I could and would testify competently hereto.

2. Attached as **Exhibit 1** is a true and correct copy of a webpage titled "Frequently Asked Questions about the GNU Licenses" downloaded from the Free Software Foundation website on March 26, 2022, accessible at https://www.gnu.org/licenses/gpl-faq.en.html.

3. Attached as **Exhibit 2** is a true and correct copy of a letter from Denver Gingerich at the Software Freedom Conservancy to Jerry Huang, General Counsel of VIZIO, Inc., dated August 7, 2018, and titled "Copyright Infringement by D24f-F1 Television and XR6P Tablet."

4. Attached as **Exhibit 3** is a true and correct copy of an email from Denver Gingerich to Aaron Fennimore of VIZIO, Inc., dated November 1, 2018, and titled "Re: Copyright Infringement by D24f-F1 Television and XR6P Tablet."

5. Attached as **Exhibit 4** is a true and correct copy of an email from Denver Gingerich to Aaron Fennimore, dated April 18, 2019, and titled "Re: [EXTERNAL] Vizio - D24f-F1 - Round 1 ('Re: Copyright Infringement by D24f-F1 Television and XR6P Tablet')."

6. Attached as **Exhibit 5** is a true and correct copy of a collection of screenshots taken from a VIZIO television showing step-by-step navigation to the "License List" menu on the user interface of the television.

7. Attached as **Exhibit 6** is a true and correct copy of an email from Denver Gingerich to Aaron Fennimore, dated November 8, 2019, and titled "Vizio - D24f-F1 - Round 5 ('Re: Copyright Infringement by D24f-F1 Television and XR6P Tablet')."

8. Attached as **Exhibit 7** is a true and correct copy of an email from Denver Gingerich to Aaron Fennimore, dated November 27, 2019, and titled "Re: [EXTERNAL] Vizio - D24f-F1 - Round 6 ('Re: Copyright Infringement by D24f-F1 Television and XR6P Tablet')."

9. Attached as **Exhibit 8** is a true and correct copy of a webpage titled "Vizio Lawsuit Q & A" downloaded from the Software Freedom Conservancy website on March 26, 2022,

accessible at https://sfconservancy.org/press/qanda.html.

10. Attached as **Exhibit 9** is a true and correct copy of the complaint filed by Software Freedom Conservancy in *Software Freedom Conservancy, Inc. v. Best Buy Co.*, Case No. 1:09-cv-10155-SAS (S.D.N.Y. 2009), at Dkt. 1 on December 14, 2009.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 22, 2022 at Los Angeles, California.

DATED: April 22, 2022

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By */s/ Michael E. Williams*
Michael E. Williams
Attorneys for Defendant
VIZIO, Inc.

Exhibit: “6”

JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:21-cv-01943-JLS-KES Date: May 13, 2022
Title: Software Freedom Conservancy, Inc. v. Vizio, Inc. et al

Present: **HONORABLE JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

D. Rojas	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING PLAINTIFF'S MOTION TO REMAND (Doc. 14)

Before the Court is Plaintiff's Motion to Remand. (Mot., Doc. 14.) Defendant opposed and Plaintiff replied. (Docs. 24, 26.) Having heard oral argument and considered the pleadings, the parties' briefs, and for the reasons stated below, the Court GRANTS the Motion.

I. BACKGROUND

Plaintiff Software Freedom Conservancy, Inc. ("SFC") is a not-for-profit corporation whose "primary mission is to ensure the right to repair, improve, and reinstall software," and it "promotes and defends these rights by fostering free (in the sense of 'freedom' not 'gratis') and open source software ('FOSS') projects, driving initiatives that make technology more inclusive, and advancing policy strategies that defend FOSS." (Compl., Doc. 1-2, ¶¶ 5, 6.) Defendant Vizio, Inc. ("Vizio") is a corporation that, among other things, manufactures smart TVs, "which are essentially televisions with computers built in to enable streaming and sophisticated user interfaces." (*Id.* ¶¶ 9, 10.)

SFC filed the present action against Vizio in the Superior Court of the State of California for the County of Orange asserting claims for (1) breach of contract and (2) declaratory relief. (*See id.* ¶¶ 87-134.) SFC's claims stem from Vizio's use of software

covered by two software license agreements, known as the GPL Agreements. The two agreements—the GNU General Public License version 2 ("GPLv2") and its close cousin, the GNU Lesser General Public License version 2.1 ("LGPLv2.1")—are two of the "most vital and ubiquitous software license agreements in existence," and SFC claims that they "play a central role in the development of 'free' and open source software." (Mot. at 3-4.) The GPL Agreements require "those who distribute software in an executable form—i.e., in a form that may be read (and executed) by computers—also make the software available as 'source code,' i.e., in a form that may be read and understood by those who are familiar with the relevant programming language, thus allowing them to further develop the software." (Mot. at 4 (citing Compl. ¶¶ 20-23).) In particular, the GPLv2 provides:

> You may copy and distribute the Program (or a work based on it . . .) in object code or executable form under the terms [above] provided that you also do one of the following:
> (a) Accompany it with the complete corresponding machine-readable source code. . . .; or.
> (b) Accompany it with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code. . .

(*See* Ex. A to Compl., Doc. 1-2, at ECF 32; Compl. ¶ 28.)

SFC's Complaint alleges, however, that although Vizio uses "at least twenty-five programs, including the Linux kernel software" in its smart TVs that are covered by the GPL Agreements, Vizio does not make the corresponding source code for these programs available to purchasers of its smart TVs. (Mot. at 5 (citing Compl. ¶¶ 50-51).) Accordingly, the Complaint "seeks to enforce [SFC's] right to have access to the source code corresponding to the executable code resident on Vizio's devices covered by the GPL Agreements." (*Id.* at 14 (citing Compl. ¶ 121).) Accordingly, as a remedy to its breach of contract claim, SFC seeks to compel Vizio to make the source code available.

Vizio filed a Notice of Removal ("NOR"), (*see* NOR, Doc. 1), alleging that this Court has subject matter jurisdiction because SFC's action "is removable on the basis of federal question jurisdiction" because SFC's "claims are completely preempted by the laws of the United States, specifically, the federal Copyright Act." (*Id.* ¶¶ 5, 7.) In response, SFC filed the present Motion to Remand the case to state court.

II. LEGAL STANDARD

"A defendant may remove an action originally filed in state court only if the case originally could have been filed in federal court." *In re NOS Commc'ns, MDL No. 1357*, 495 F.3d 1052, 1057 (9th Cir. 2007) (citing 28 U.S.C. § 1441(a)). There is a "strong presumption" against removal jurisdiction, and the defendant seeking removal bears the burden of establishing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). "[R]emoval statutes are strictly construed against removal." *Luther v. Countrywide Home Loans Serv., LP*, 533 F.3d 1031, 1034 (9th Cir. 2008).

For removal to be proper based on federal question jurisdiction, a federal question must appear on the face of the complaint. *See Chesler/Perlmutter Prods. v. Fireworks Entm't, Inc.*, 177 F. Supp. 2d 1050, 1055 (C.D. Cal. 2001). "The plaintiff is the master of the complaint," and ordinarily, a plaintiff "may avoid federal jurisdiction by exclusive reliance on state law. *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Moreover, a defendant "cannot, merely by injecting a federal question into an action that asserts what is plainly a state-law claim, transform the action into one arising under federal law." *Id.* at 399.

The rare exception to the plaintiff's mastery of the complaint rule is the complete preemption doctrine. *See Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1107 (9th Cir. 2000). Some federal statutes have such a strong preemptive force that they "completely preempt" an area of state law, and even state law claims in such areas are treated as if they are federal claims, and therefore, they may be removed to federal court. *See id.* "Because complete preemption often applies to complaints drawn to evade federal jurisdiction, a federal court may look beyond the face of the complaint to

determine whether the claims alleged as state law causes of action in fact are necessarily federal claims." *Parrino v. FHP, Inc.*, 146 F.3d 699, 704 (9th Cir. 1998), *overruled by statute on other grounds*.

III. DISCUSSION

There is no dispute that SFC's complaint alleges only state law claims, and the Parties agree that the action is removable only if SFC's claims are completely preempted. Accordingly, the sole issue for the Court to decide is whether the federal Copyright Act completely preempts SFC's claims for breach of contract and declaratory relief to create federal jurisdiction.

"The Copyright Act specifically preempts 'all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright.'" *Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1089 (9th Cir. 2005) (quoting 17 U.S.C. § 301(a)). "The rights protected under the Copyright Act include the rights of reproduction, preparation of derivative works, distribution, and display." *Id.* (citing 17 U.S.C. § 106). The Ninth Circuit has applied a two-part test to determine whether a state law claim is preempted by the Copyright Act. *Laws v. Sony Music Entm't*, 448 F.3d 1134, 1137-38 (9th Cir. 2006). Courts must first "determine whether the 'subject matter' of the state law claim falls within the subject matter of copyright as described in 17 U.S.C. § 102 and 103." *Id.* at 1137. Second, "assuming that it does," courts "must determine whether the rights asserted under state law are equivalent to the rights contained in 17 U.S.C. § 106, which articulates the *exclusive rights of copyright holders*." *Id.* at 1137-38 (emphasis added).

SFC challenges only the second prong of the test. To satisfy the equivalent rights part of the preemption test, the alleged misappropriation must be equivalent to rights within the general scope of copyright, including the exclusive rights of reproduction, preparation of derivative works, distribution, and display. *Id.* (citing *Del Madera Props. v. Rhodes & Gardner*, 820 F.2d 973, 977 (9th Cir. 1987), *overruled on other grounds*). "To survive preemption, the state cause of action must protect rights which are

qualitatively different from the copyright rights," and the "state claim must have an extra element which changes the nature of the action." *Id.* (quoting *Del Madera*, 820 F.2d at 977).

"Most courts have held that the Copyright Act does *not* preempt the enforcement of contractual rights." *See Altera Corp.*, 424 F.3d at 1089; *see also Bowers v. Baystate Techs. Inc.*, 320 F.3d 1317, 1324 (Fed. Cir. 2003) ("[M]ost courts to examine this issue have found that the Copyright Act does not preempt contractual constraints on copyrighted articles."). For instance, in *Altera Corp. v. Clear Logic*, the Ninth Circuit held that Altera's state law claim for intentional interference with a contract was not preempted by the Copyright Act because its claim focused on the improper *use* of its software, rather than a violation of any exclusive rights under the Copyright Act to reproduction, preparation of derivative works, distribution, and display. 424 F.3d at 1089-90. Altera's software licensing agreement required customers to use the software only for the programming of Altera products, but Clear Logic induced customers to use the software to create a bitstream providing information to Clear Logic. *Id.* The Court found that "[t]he right at issue [was] not the reproduction of the software," but instead, "[was] more appropriately characterized as the use of the bitstream," and it held that "the unauthorized use of the software's end-product [was] not within the rights protected by the federal Copyright Act." *Id.*

Quite relevant to the present case, a district court in the Western District of Texas held that a defendant's breach of contract counterclaim based on violations of the GPL was not preempted by the Copyright Act. *See Versata Software, Inc. v. Ameriprise Fin., Inc.*, 2014 WL 950065, at *4-*5 (W.D. Tex. Mar. 11, 2014). The court found that the GPL's imposition of an affirmative obligation on any license holder to make the code of any derivative work freely available and open source was "separate and distinct from any copyright obligation," as "[c]opyright law imposes no open source obligations," and the defendant had not sued for infringement of copyright. *Id.* The Court found that because the defendant sued based on plaintiff's breach of "an additional obligation: an affirmative promise to make its derivative work open source because it incorporated an open source

program into its software," the defendant's counterclaim required an extra element in addition to reproduction or distribution—"a failure to disclose the source code of the derivative software." *Id.*

The Court finds *Versata*'s reasoning persuasive, and it finds here, as the court found there, that the enforcement of "an additional contractual promise separate and distinct from any rights provided by the copyright laws" amounts to an "extra element," and therefore, SFC's claims are not preempted. *Id.* at *5. There is an extra element to SFC's claims because SFC is asserting, as a third-party beneficiary of the GPL Agreements, that it is entitled to *receive* source code under the terms of those agreements. There is no right to receive certain works—or source code in particular—under the Copyright Act; indeed, the Act's primary purpose is to *limit* who may reproduce, prepare derivative works, distribute, and display protected works. As SFC points out in its briefing, the right to receive the source code would appear to be "*the very opposite*" of those exclusive rights. (Reply, Doc. 26, at 17.) The fact that SFC claims status as a third-party beneficiary to the GPL Agreements and not the actual copyright holder—and therefore, has no authority to impose limitations on the reproduction and distribution of the software—only underscores that the contractual right at issue is qualitatively different from the rights under the Copyright Act. Thus, there can be no question that the extra element—that SFC is third-party enforcing its right to receive source code under the terms of a contract—transforms the nature of the action.[1]

Vizio's Opposition is largely driven by the argument that SFC has taken a contrary position in other litigation, specifically, *Software Freedom Conservancy, Inc. v. Best Buy Co.*, Case No. 1:09-cv-10155-SAS (S.D.N.Y. 2009) (the "Busy Box Litigation"). (*See* Opp., Doc. 24, at 12.) But Vizio cites only to SFC's legal arguments; nowhere does it cite to the holdings of the court deciding that case. SFC's legal arguments in another case have no bearing on whether this Court has jurisdiction to decide this action.

[1] The Court here determines only that the claim is not preempted; whether SFC can successfully show it is a third-party beneficiary of the GPL Agreements is a question of state law that is not before this Court.

Additionally, Vizio contends that because there may be a copyright claim here, Vizio's claims must be construed to assert rights equivalent to those protected by copyright. (*Id.* at 11-14.) But this contention runs counter to the principle that a plaintiff is generally the master of its own complaint. "It is well-established that the party who brings a suit is master to decide what law he will rely upon, and if he can maintain his claim on both state and federal grounds, he may ignore the federal question and assert only a state law claim and defeat removal." *Garcia v. Lopez*, 2009 WL 292492, at *2 (C.D. Cal. Feb. 5, 2009) (quotations omitted). "That Plaintiffs could potentially state a Copyright Act claim based on the facts alleged does not mean they must. Plaintiffs are free to limit their causes of action as they wish." *Id.* Potentially, there is an argument that Vizio's distribution of the software violates various the conditions of the software's copyright; however, SFC has not chosen to bring such claim. And, indeed, because SFC is not the copyright holder, it cannot even assert one. Thus, the Court declines to find that Vizio's potential violation of a non-party's copyright right controls the nature of the claims SFC asserts here.

Vizio also relies heavily on *Jacobsen v. Katzer*, 609 F. Supp. 2d 925, 933 (N.D. Cal. 2009). (*See* Opp. at 16-17.) Vizio contends that there, the court held that the Copyright Act preempted a plaintiff's breach of contract claim based on another open source license, the Artistic License. (*Id.* at 16.) But there, the plaintiff was also the copyright holder and asserted a copyright claim. Moreover, as SFC points out, the provision of the contract defendant allegedly breached amounted to little more than "a promise not to infringe copyright." (Reply at 21; *see also Jacobsen*, 609 F. Supp. 2d at 933 ("The breach of contract claim alleges violations of the exact same exclusive federal rights protected by Section 106 of the Copyright Act, *the exclusive right to reproduce, distribute, and make derivative copies*." (emphasis added)).) Thus, in contrast to the case here, the rights being asserted under the contract were equivalent to those under the Copyright Act, and further, the plaintiff was actually in a position to assert its rights under copyright. Additionally, plaintiff sought rescission of the agreement, disgorgement of the value conferred to defendants, and interests and costs, which would effectively

prevent defendant from reproducing, preparing derivative works, or distributing plaintiff's software—the very remedies available under the Copyright Act. *See* Second Amended Compl., 2007 WL 5138282, at ¶ 492. By contrast, here, SFC seeks only to compel Vizio to provide it with the source code—a remedy not available under the Copyright Act. (*See* Compl. at 24-25.) Thus, *Jacobsen* is readily distinguishable from the present case.

Finally, Vizio contends that the source code provision is a "condition" to the license, and therefore, its breach "constitute[s] copyright infringement," rather than a breach of contract, and accordingly, SFC's contract claim is transformed into one for copyright infringement. (Opp. at 19-20 (citing *MDY Indus., LLC v. Blizzard Entm't, Inc.*, 629 F.3d 928, 939 (9th Cir. 2010)). Vizio misreads *MDY Industries*; that case limits which types of breaches are sufficient to state a copyright infringement claim. *See MDY Indus.*, 629 F.3d at 939-40. Specifically, the court held that only a breach of a condition—under Delaware law, "an act or event that must occur before a duty to perform arises"—may constitute copyright infringement; breaches of all other license terms, or covenants, "are actionable only under contract law." *Id.* at 939. It also clarified that "[w]herever possible, equity construes ambiguous contract provisions as covenants rather than conditions." *Id.* Thus, the court restricted what types of breaches may be construed as copyright infringement, but if anything, created a presumption that most breaches of licensing agreements will not create a copyright claim, but instead, merely a breach of contract claim. If anything, the distinction between conditions and covenants only underscores that the disclosure obligation here is best characterized as a covenant actionable only under breach of contract.

In sum, the Court finds that SFC's claims are not completely preempted by the Copyright Act; accordingly, as there is no federal question presented, this Court lacks jurisdiction and the Motion to Remand is GRANTED.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Motion. The case is

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.: 8:21-cv-01943-JLS-KES Date: May 13, 2022
Title: Software Freedom Conservancy, Inc. v. Vizio, Inc. et al

REMANDED to the Superior Court of the State of California County of Orange, Case No. 30-02021-01226723-CU-BC-CJC.

Initials of Deputy Clerk: droj

Exhibit: “7”

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 12/29/2023 TIME: 01:36:00 PM DEPT: C33

JUDICIAL OFFICER PRESIDING: Sandy Leal
CLERK: R. Burns
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: J. Kempf

CASE NO: **30-2021-01226723-CU-BC-CJC** CASE INIT.DATE: 10/19/2021
CASE TITLE: **Software Freedom Conservancy, Inc. vs. Vizio, Inc.**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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EVENT ID/DOCUMENT ID: 74180392

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the Motion for Summary Judgment under submission on 10-5-23 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Defendant Vizio, Inc.'s Motion for Summary Judgment or in the Alternative Motion for Summary Adjudication is DENIED.

Plaintiff's Request for Judicial Notice Submitted in Opposition (ROA 90) is GRANTED as to Exhibits 5-8, and DENIED as to Exhibits 1, 2, 9, 10, 11. As to Exhibits 3 and 4, the Court need not take judicial notice of the filings in this case. The Court does not take judicial notice of the truth of factual matters asserted in the documents. "A court may take judicial notice of the [e]xistence of each document in a court file, but can only take judicial notice of the truth of facts asserted in documents such as orders, findings of fact and conclusions of law, and judgments." (*People v. Franklin*, 63 Cal. 4th 261, 280 (2016)). (2016)).

Vizio's Request for Judicial Notice Submitted on Reply (ROA 127) is GRANTED as to Exhibit 1. The Court does not take judicial notice of the truth of factual matters asserted in the documents.

Plaintiff's Evidentiary Objections to Vizio's Compendium of Evidence and Declaration of Michael Williams (ROA 96)

Objection Nos. 1-17: The Court OVERRULES the "Objections to Vizio's Motion for Summary Judgment" and the "Objections to Vizio's Separate Statement of Undisputed Material Facts." Plaintiff's objections are not in compliance with Rule 3.1345 as Plaintiff objects to argument versus evidence.

The Objections to the Declaration of Michael Williams, are ruled upon as follows:

Objection Nos. 18, 22, 23, 27, 29, 36, 39, 40, 40, 47, 59: OVERRULE

Objection Nos. 26, 42, 44, 45, 46, 49, 56, 25: SUSTAIN

Objection Nos. 19, 21, 25, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 43, 48, 50, 51, 52, 53, 54, 55, 57: DECLINE TO RULE

Defendant Vizio does not cite to these exhibits in either the MSJ/MSA or the supporting Separate Statement. A MSJ must be accompanied by a "separate statement setting forth plainly and concisely all material facts which the moving party contends are undisputed." (Code Civ. Proc. § 437(b).) Facts stated elsewhere need not be considered by the court. (*See Fleet v. CBS,* 50 Cal.App.4th 645, 648 n. 3 (1996)). Accordingly, the Court does not consider these documents as evidence supportive of Defendant Vizio's motion. Therefore, the Court declines to rule on these evidentiary objections as the evidence will not be considered in ruling on this motion. All objections not ruled upon are preserved for appeal. (Code Civ. Proc. § 437c(q).)
The Court notes that Plaintiff's Objection No. 24 is duplicative of Objection No. 23.

Defendant Vizio's Objections to Plaintiff's Declaration in Support of Plaintiff's Opposition - Declaration of Bradley Kuhn

Objection No. 1 – Overrule
Objection No. 2 – Overrule
Objection No. 3 – Overrule
Objection No. 4 – Sustain
Objection No. 5 – Overrule
Objection No. 6 – Overrule
Objection No. 7 – Overrule
Objection No. 8 – Overrule
Objection No. 9 – Sustain
Objection No. 10 – Overrule

Vizio's Objections to Plaintiff's Declaration in Support of Plaintiff's Opposition - Declaration of Denver Gingerich

Objection No. 11 – Overrule
Objection No. 12 - Overrule

MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

Standard of Review

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding." (CCP § 437c(a)(1).) "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages . . . , or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (CCP § 437c(f)(1).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (*Id*.)

"[T]he party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 850 (2001)). "That is because of the general principle that a party who seeks a court's

action in his favor bears the burden of persuasion thereon." (*Id*.) Further, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Id*.) "[T]he opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." *(Id*.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Id*.)

"If the defendant fails to meet this initial burden, it is unnecessary to examine the plaintiff's opposing evidence; the motion must be denied." (*Orange Cty. Water Dist. v. Sabic Innovative Plastics US, LLC*, 14 Cal. App. 5th 343, 367 (2017)). "If the defendant 'carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact.'" (*Id*.) "[T]o determine whether there is a triable issue, we review the evidence submitted in connection with summary judgment, with the exception of evidence to which objections have been appropriately sustained." (*Id*. at 367-68.)

Issue No. 1 – Whether Defendant Vizio is entitled to summary adjudication on Plaintiff's first cause of action for breach of contract because it is preempted by the Copyright Act.

When the issues regarding federal preemption involve undisputed facts, it is a question of law whether a federal statute or regulation preempts a state law claim. (See *Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1476.)

In this case, the undisputed facts are whether Plaintiff's claim for breach of contract arising out of Vizio's failure to provide the source code under the GPLs to third parties, such as Plaintiff, is preempted by the Copyright Act.

"Most courts have held that the Copyright Act does not preempt the enforcement of contractual rights." *(Altera Corp. v. Clear Logic, Inc.*, 424 F.3d 1079, 1089 (9th Cir. 2005)). Copyright preemption is governed by Section 301(a) of the Copyright Act, which states that the Act preempts "'all legal and equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified in section 106 …" (*Kabehie v. Zoland*, 102 Cal.App.4th 513, 519 n 3 (2002) ("*Kabehie*"), quoting 17 U.S.C. § 301(a).) The rights exclusively reserved to a copyright owner under Section 106 of the Copyright Act are reproduction, adaptation, distribution, public performance, public display, and public performance of sound recordings by digital audio (the "Exclusive Rights"). (17 U.S.C. § 106.) "[F]or preemption to occur under the Act, two conditions must be met: first, the subject of the claim must be a work fixed in a tangible medium of expression and come within the subject matter or scope of copyright protection ..., second, the right asserted under state law must be equivalent to the exclusive rights contained in section 106." Id. at 520 (cleaned up).

Under *Kabehie*, determining whether a contract claim enforces a right equivalent to an exclusive right under the Copyright Act requires a "fact-specific analysis of the particular promise alleged to have been breached and the particular right alleged to have been violated." (*Kabehie*, 102 Cal.App.4th at 521.) All "breach of contract actions seeking to enforce the plaintiffs' exclusive right to reproduce, perform, distribute or display copyrightable material" are preempted. (Id. at 523.) To avoid preemption, the "particular promise" and "particular right" must involve an "extra element" that "makes the causes of action qualitatively different from a copyright infringement action." Id. at 529. For example, "a right to payment, a right to royalties, or any other independent covenant" would constitute an extra element sufficient to avoid preemption, as these rights are not exclusive rights under the Copyright Act. (Id. at 528.)

. - **Does the source code fall within the subject matter of copyright?**

Plaintiff's claims fall within the subject matter of copyright as they are based on computer software programs and source code, some of which are subject to the GPLs. Plaintiff does not dispute this fact in opposition.

. - **Does Plaintiff seek to enforce an Exclusive right?**

California courts have held that the Copyright Act only preempts claims that assert state law rights "equivalent to the exclusive rights contained in section 106" of the Act. (*Kabehie*, 102 Cal.App.4th at 520; *Fleet v. CBS, Inc.*, 50 Cal.App.4th 1911, 1919 (1996) ("*Fleet*")). A state law right is equivalent to the Exclusive Rights protected by copyright "when it is infringed by the mere act of reproducing, performing, distributing, or displaying the work at issue. A claim asserted to prevent nothing more … is subsumed by copyright law and preempted." (*Fleet*, supra, 50 Cal.4th at 1924.) By contrast, if a state law right requires assertion of an "extra element … instead of or in addition to the acts of reproduction, performance, distribution or display," then it is not equivalent to copyright "and there is no preemption." (*McCormick v. Sony Pictures Entm't*, 2008 U.S. Dist. LEXIS 145812, at *25 (C.D. Cal. Nov. 17, 2008) (quoting *Computer Assoc. Int'l v. Altai, Inc.*, 982 F.2d 693, 716 (2d Cir. 1992).) Thus, under the "extra element test," breach of contract claims are not preempted when "they require elements that are qualitatively different from the elements of a federal copyright infringement claim," such as "a contractual promise creating a right not existing under federal copyright law." (*Kabehie*, 102 Cal.App.4th at 517-18; *see also Altera*, 424 F.3d at 1089.)

Defendant Vizio argues that Plaintiff's breach of contract claim seeks to enforce rights equivalent to a copyright owner's Exclusive Right to control the copying and distribution of their copyrighted software. Specifically, Plaintiff seeks to enforce the GPLs' "Terms and Conditions for Copying, Distribution and Modification" of the copyrighted software. (Compendium at 12, Ex. 3.) The licenses state that " [a]ctivities other than copying, distribution and modification are not covered by th[e GPLs]; they are outside its scope." (*Id.* at 12, Ex. 3.) Thus, the GPLs grant a license to copy, modify, and distribute copyrighted software provided that the recipient complies with specified conditions, including the source code condition at issue, which states:

You may copy and distribute the Program (or a work based on it, under Section 2) in object code or executable form under the terms of Sections 1 and 2 above provided that you also do one of the following:

a) Accompany it with the complete corresponding machine-readable source code…
b) Accompany it with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code[.]

Plaintiff alleges that Defendant Vizio breached this source code provision when it distributed Smart TVs incorporation GPL licensed software without providing the underlying source code. The ability to place restrictions or conditions on the copying and distribution of software, Defendant argues, is an Exclusive Right.

Moreover, Defendant asserts, the drafters of the GPLs, the FSF, publicly confirmed its intent that the GPLs are copyright licenses and that the right to enforce the GPLs, including the source code condition, belongs exclusively to the copyright holder. The website maintained by the FSF includes a link to Frequently Asked Questions about the GPLs. (Compendium at 68 (Exh. 8 (GNU FAQs)).) The "Frequently Asked Questions about the GNU Licenses" includes the following statements:

Q: Who has the power to enforce the GPL?
A: Since the GPL is a copyright license, the copyright holders of the software are the ones who have the

power to enforce the GPL. If you see a violation of the GPL, you should inform the developers of the GPL-covered software involved. They either are the copyright holders, or are connected with the copyright holders.

Similarly, SFC's president, Bradley Kuhn, has admitted that "[a] GPL violation occurs when someone fails to meet the license requirements and thereby infringes copyright. The copyright rules themselves then are the only remedy to enforce the license . . . the parties who may enforce are copyright holders (and their designated agents)." (Compendium at 93 (Exh. 11 ("Some Thoughts on Conservancy's GPL Enforcement")) (emphasis added).) But as noted in Plaintiff's opposition, Vizio fails to explain how statements by business personnel (made outside these proceedings) at some unknown point in time should be somehow binding on this Court.

Vizio cannot rely on Exhibit 8 as the Court has sustained the objection to this exhibit on the grounds that it is inadmissible hearsay. The FSF is not a party to this action and the documents cited by Vizio do not represent the FSF's testimony. There is no evidence regarding what entity maintains gnu.org and/or who created and maintains the content on the website. More importantly, any statements by FSF regarding its understanding of who can enforce the GPLs are not legal authority and not binding on the Court's consideration of this case.

Yet even assuming Exhibit 8 was admissible, nothing in the quoted language is contrary to a copyright holder's rights under the Copyright Act to bring claims for copyright violations. But that is not the situation here. Plaintiff asserts that failure to provide the source code is not a copyright infringement claim and nothing in Exhibit 8 contradicts or disproves that assertion.

Defendant Vizio further argues that failure to provide the source code is a "condition" to the license, and therefore, its breach constitutes a copyright infringement. In *MDY Industries, LLC v. Blizzard Entertainment, Inc.*, 629 F.3d 928, 939 (9th Cir. 2010), the Ninth Circuit explained how to determine whether the violation of a term in a copyright license gives rise to a claim for copyright infringement or instead for breach of contract. "[C]ontractual terms that limit a licensee's scope [are referred to] as 'conditions', the breach of which constitute copyright infringement. We refer to all other license terms as 'covenants,' the breach of which is actionable only under contract law. We distinguish between conditions and covenants according to state contract law, to the extent consistent with federal copyright law and policy." (*Id.*) Courts thus look to state law to determine whether the license provision at issue constitutes a condition (resulting in copyright infringement) or a covenant (resulting in breach of contract). (*See*, *e.g.*, *Jacobsen v. Katzer*, 535 F.3d 1373, 1383 (Fed. Cir. 2008) (applying state law to conclude that the terms of an open-source license were "enforceable copyright conditions" giving rise to copyright infringement)).

In *Jacobsen*, the plaintiff alleged copyright infringement of an open-source license, contending that the defendant distributed software without including, as required, "a description of how the files or computer code had been changed from the original source code." (*Id.* at 1376.) The Federal Circuit stated if the terms are conditions, "they may serve to limit the scope of the license and are governed by copyright law." (*Id.*) The Federal Circuit began by explaining the either-or analysis it needed to apply: "The heart of the argument on appeal concerns whether the terms of the Artistic License are conditions of, or merely covenants to, the copyright license. "If the terms are "merely covenants," they would be governed by contract law and support only a claim for breach of contract. (*Id.*)

Applying California law, the *Jacobsen* court found that the Artistic License provided for conditions that govern the rights to modify and distribute software. First, the Artistic License states on its face that the document creates conditions. (*Id.* at 1381.) Second, the Artistic License also uses the traditional language of conditions by noting that the rights to copy, modify, and distribute are granted "*provided that* " the conditions are met. Under California contract law, "provided that" typically denotes a condition. (*Id.*) The Federal Circuit found that "[t[he District Court's interpretation of the conditions of the Artistic License does not credit the explicit restrictions in the license that govern a downloader's right to modify and

distribute the copyrighted work. The copyright holder here expressly stated the terms upon which the right to modify and distribute the material depended and invited direct contact if a downloader wished to negotiate other terms. These restrictions were both clear and necessary to accomplish the objectives of the open source licensing collaboration, including economic benefit." (*Id.* at 1381-1382.) Therefore, the District Court erred in finding that the terms of the Artistic License were not enforceable copyright conditions. (*Id.*)

Defendant Vizio concludes that like the Artistic License in *Jacobsen*, the GPLs condition the recipient's right to copy and distribute software on providing the source code itself. Section 3 of the GPLv2 is the source code condition. It provides that software covered by GPLv2 may be distributed, but only "provided that [Vizio]" also "[a]ccompany it with the complete corresponding machine-readable source code" or "with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code . . . ." (*Id.*; Exh. 3 (GPLv2 § 3)). Thus, the use of the term "provided that" establishes a "condition" under California law (*see Jacobsen*, 535 F.3d at 1381), the violation of which gives rise to a claim for copyright infringement.

Plaintiff points out that Defendant Vizio has already unsuccessfully argued that the breach of contract claim is preempted by the Act. The District Court in ruling on the motion to remand this case back to state court found that "the right to receive the source code would appear to be 'the very opposite' of" the Exclusive Rights under the Copyright Act. (Remand Order at 6, Plaintiff Exh. 7.) Because such remedy was not available under the Act, no federal question was presented, and the District Court found it lacked jurisdiction.

In rendering its opinion, the District Court found the reasoning in *Versata Software, Inc. v. Ameriprise Fin., Inc.*, 2014 WL 950065, at *4-*5 (W.D. Tex. Mar. 11, 2014) ("*Versata*"), to be persuasive. In *Versata*, plaintiff *Versata's* software incorporated a program governed by the GPLs into its own larger software program. (Id. at *3- *4.) When Versata sued its licensee, Ameriprise, for breach of a broader master license agreement, Ameriprise counterclaimed for breach of the GPL's Source Code Provision. (Id. at *4.) Versata moved for summary judgment, arguing that Ameriprise's counterclaim was preempted by copyright law because the Source Code Provision in the GPLs "amounts to nothing more than a promise to not commit copyright infringement." (Id. at *13.) The *Versata* court rejected this argument, ruling that Ameriprise's claim was based on "Versata's breach of an additional obligation: an affirmative promise to make its derivative work open source because it incorporated an open source program into its software. The court stated:

Copyright law imposes no open source obligations, and Ameriprise has not sued Versata for infringing XimpleWare's copyright by distributing VTD–XML without permission. Instead, Ameriprise has sued based on Versata's breach of an additional obligation: an affirmative promise to make its derivative work open source because it incorporated an open source program into its software. Ameriprise's claim therefore requires an "extra element" in addition to reproduction or distribution: a failure to disclose the source code of the derivative software. The presence of an additional contractual promise separate and distinct from any rights provided by the copyright laws means Ameriprise's claim is not preempted.

(*Id.* at *5., internal citations omitted.)

Versata was followed by the Northern District of California in *Artifex*, which held that the Copyright Act did not preempt a contract claim alleging a breach of the GPL's requirement to share source code. (*Artifex Software v. Hancom, Inc*., 2017 U.S. Dist. LEXIS 62815 (N.D. Cal. Apr. 25, 2017) ("*Artifex*").) In *Artifex*, defendant Hancom, incorporated GPL-licensed software in its own larger program. Like plaintiff in *Versata* and Vizio here, Hancom failed "to distribute its software with the accompanying source code." *(Id.* at *4.) Hancom argued that Artifex's contract claim was preempted by the Copyright Act because it alleged violations of the exact same exclusive federal rights to reproduce, distribute and make derivative copies protected by Section 106 of the Copyright Act. (*Id.* at *9-*10.) The *Artifex* court rejected Hancom's

argument, followed *Versata*, and concluded that "a failure to disclose the source code of the derivative software" constitutes the required "'extra element' in addition to reproduction or distribution." (*Id.* at *9, *quoting Versata*, 2014 U.S. Dist. LEXIS 30934, at *5.)

This Court also finds *Versata* and *Artifex* to be persuasive, especially since both cases involved source code violations similar to those alleged here.

But Defendant Vizio argues that the District Court's remand order was inconsistent with controlling law and should not be followed. First, the District Court assumed that most breach of contract claims are not preempted. *Kabehie*, however, states the contrary, noting that "Congress intended to preempt most breach of contract actions, but not all." (*Kabehie*, supra, 102 Cal.App.4th at 522.)

Second, the District Court relied on *Versata*, an unpublished remand ruling from the Western District of Texas. Vizio asserts that the *Versata* court's holding ignores that the copyright holder is free to place conditions or restrictions on the copying, distribution or transfer of the software on the condition that the source code is provided, the violation of which constitutes copyright infringement.

Third, the District Court made much of the fact that SFC, as the master of its complaint, was not suing for copyright infringement and, in fact, could not assert such a claim because it "is not the copyright holder," as was the case of the plaintiff in *Jacobsen*. (Compendium at 107 (Exh. 13 (Remand Order at 7)).) "The fact that one may not successfully sue for copyright infringement because he or she is not the copyright holder does not mean he or she is not preempted from attempting to sue on a claim that amounts to copyright infringement . . . it is the nature of the action not the identity of the plaintiff that controls." (*Civic Partners Stockton, LLC v. Youssefi* , 218 Cal. App. 4th 1005, 1017 (2013)).

The Court does not find Defendant Vizio's arguments persuasive. *Kabehie* does not foreclose the finding of a breach of contract claim. In fact, it states that a breach of contract claim can arise in certain situations where "the breach of contract action includes an extra element that makes it qualitatively different from a copyright infringement action, and therefore, avoids preemption." (*Kabehie*, supra, 102 Cal.App.4th at 521.) Moreover, the District Court's reliance on the rationale in *Versata* is not impermissible, especially where a California District Court in *Artifex* also found *Versata* persuasive on this issue.

Regarding *Jacobsen*, the plaintiff in that case was the holder of the license and asserted a copyright claim. The provision in the contract the defendant allegedly breached amounted to little more than "a promise not to infringe copyright." (*Jacobsen*, supra, 609 F.Supp.2d at 933 ("The breach of contract claim alleges violations of the exact same exclusive rights protected by Section 106 of the Copyright Act, the exclusive right to reproduce, distribute, and make derivative copies.").)

In this case, Plaintiff is not the holder of the license and is not alleging violations of any license that it holds. The Copyright Act's primary purpose is to limit who may reproduce, prepare derivative works, distribute, and display protected works. Plaintiff's claims do not invoke any of these remedies. Rather, Plaintiff seeks only to compel Defendant Vizio to provide it with the source code – a remedy that is not available under the Copyright Act.

Additionally, *MDY Industries* is not supportive of Vizio's argument. As the District Court noted in its Remand Order, Defendant Vizio "misreads" *MDY*, which did not involve a contract claim and merely "limit [ed] which types of breaches are sufficient to state a copyright infringement claim. (Remand Order at 8, found at App., Exh. "7".) "[I]f anything, [MDY] created a presumption that most breaches of licensing agreements will not create a copyright claim, but instead, merely a breach of contract claim." (*Id.*)

Lastly, Defendant Vizio's argument that Plaintiff has asserted inconsistent positions by alleging in the BusyBox Complaint that "[i]f a distributor fails to [comply with the source-code provision], they are not

fulfilling the terms of the license" and "lose[] all rights granted under the License," resulting in "Copyright Infringement." (BusyBox Complaint, ¶¶ 14, 18.) However, as noted by the District Court in its Remand ruling: "It is well-established that the party who brings a suit is master to decide what law he will rely upon, and if he can maintain his claim on both state and federal grounds, he may ignore the federal question and assert only a state law claim and defeat removal. *Garcia v. Lopez*, 2009 WL 292492, at *2 (C.D. Cal. Feb. 5, 2009) (quotations omitted)." (Remand at p. 7.)

For the foregoing reasons, the Court finds that Plaintiff's claim for breach of contract is not preempted by the Copyright Act, and Vizio's motion for summary adjudication on this issue is DENIED.

Issue No. 2 – Whether Plaintiff is entitled to summary adjudication on the first cause of action for breach of contract because Plaintiff is not an intended third-party beneficiary to the open source software license at issue.

"Generally, it is a question of fact whether a particular third person is an intended beneficiary of a contract." (*Spinks v. Equity Residential Briarwood Apartments*, 171 Cal.App.4th 1004, 1025 (2009), internal citation omitted.) If the issue can be answered by interpreting the contract as a whole and doing so in light of the uncontradicted evidence of the circumstances and negotiations of the parties in making the contract, the issue becomes one of law that the court can resolve independently. (*Id.*)

Defendant Vizio argues that, separate and apart from the preemption argument, Plaintiff cannot establish it is an intended third-party beneficiary of the GPLs.

To show the contracting parties intended to benefit it, a third party must show that, under the express terms of the contract at issue and any other relevant circumstances under which the contract was made, (1) "the third party would in fact benefit from the contract"; (2) "a motivating purpose of the contracting parties was to provide a benefit to the third party"; and (3) permitting the third party to enforce the contract "is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Goonewardene v. ADP, LLC*, 6 Cal.5th 817, 830 (2019)).

In *Goonewardene*, the California Supreme Court rejected third-party standing under the "contractual objectives" prong because the real party to the contract was "fully capable of pursuing a breach of contract action" itself. (*Id.* at 836.) Vizio contends that there is no reason that they copyright holder, FSF, cannot pursue this action itself. Only the legal or beneficial owner of an exclusive right under a copyright has standing to sue. (*See* 17 U.S.C. § 501(b); *see also*, *Tresona Multimedia, LLC v. Burbank High Sch. Vocal Music Ass'n,* 953 F.3d 638, 645 (9th Cir. 2020) (holding that a licensee has no standing to sue unless granted exclusive rights by all owners of the copyright)).

But in this case, Plaintiff is not suing over an "exclusive right" under a copyright. In fact, the right it is suing is a right of third parties, such as Plaintiff, to receive the source code. Therefore, the Court does not find *Tresona Multimedia* applicable to this case.

Defendant Vizio does not dispute the first two elements of the *Goonewardene* test. What it disputes is that third party standing is inconsistent with the reasonable expectations of the contracting parties as well as those of the GPLs creator, the FSF. Unlike a traditional contract negotiation between two parties where there is give and take, the parties to the GPLs are prohibited from negotiating or changing the terms of the GPLs. The GPLs expressly state: "[e]veryone is permitted to copy and distribute verbatim copies of this license document, but changing it is not allowed." Defendant Vizio argues that nothing in the text of the GPLs suggest that third parties have the right to allege violations of the GPLs.

But much of Defendant Vizio's argument is based on inadmissible evidence, and there is no competent evidence that suggests that the intent of FSF was to preclude recipients of the source code as beneficiaries to the GPLs.

Plaintiff counters that the plain language of the GPLs makes clear that allowing recipients of GPL licensed software, such as SFC, to enforce their right to source code is consistent with the "objectives of the contract." As the Preamble to the GPLs states:

General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software (and charge for this service if you wish), that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things …

"For example, if you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights."

Moreover, the source code provision specifically mentions third party rights, stating that distributors of GPL-licensed programs must provide the source code for such programs or "a written offer … to give any third party … a complete machine-readable copy of the corresponding source code."

Allowing third parties such as SFC to enforce their rights to receive source code is not only consistent with the GPLs' objectives; it is both essential and necessary to achieve these objectives. Recipients of GPL-licensed software will be assured of their right to receive source code only if they have standing to enforce that right.

Defendant Vizio's assertion that copyright holders are fully capable of enforce the source code provision is incorrect. A review of Professor Eisenberg's discussion of "donee beneficiaries" relied upon by the *Goonewardene* Court demonstrates the need of donee beneficiaries right to enforce contracts under which they will benefit from. As Professor Eisenberg's article states:

A third-party beneficiary is a donee beneficiary when a performance objective of the contracting parties . . . is to give effect to a donative intention of the promisee by obliging the promisor to render a performance that will benefit the third party. Seaver v. Ransom is the paradigmatic case. An analysis of the facts of that case shows why a donee beneficiary should be permitted to enforce a contract ...

Recall that a performance objective of the contracting parties in that case, Judge and Mrs. Beman, as manifested in the contract read in the light of surrounding circumstances, was that a gift be made to Mrs. Beman's niece Marion through the instrumentality of a contract that obliged Judge Beman to leave Marion a certain amount in his will. After Mrs. Beman's death, Judge Beman broke the contract.

On these facts, allowing Marion to enforce the contract was an important if not necessary means of effectuating that performance objective. If the contract could not be enforced by Marion, it could be enforced only by Mrs. Beman's estate. Mrs. Beman's estate, however, would have had no economic incentive to enforce the contract, because the estate would bear all the costs of enforcement while Marion would reap all the benefits….

(Melvin Aron Eisenberg, Third-Party Beneficiaries, 92 Colum. L. Rev. 1358, 1389-90 ("*Eisenberg*"); *see also Goonewardene*, supra, 6 Cal.5th at 829 n.3 (referring to *Seaver v. Ransom* as "the classic donee-beneficiary case").) Recipients of GPL licensed software will be assured of their right to receive source code only if they have standing to enforce the right. Like Mrs. Berman's estate in *Seaver v. Ransom*, the copyright holders would have no economic incentive to enforce the source code provision in the GPLs because they would bear all the enforcement costs with no real benefit themselves.

Plaintiff also disagrees with Defendant Vizio's contention that third-party standing is not consistent with the objectives of the contract whenever "the real party to the contract [is] 'fully capable of pursuing a

breach of contract action' itself." (Memo at 17:19-21, *quoting Goonewardene*, 6 Cal.5th at 836.) The rule invented by Defendant Vizio is illogical, however, and would essentially eliminate third party standing altogether; theoretically, a party to a contract is always fully capable of enforcing the contract.

Defendant Vizio counters on reply that permitting application of the "reasonable expectations" standard, which explained that permitting third-party enforcement would be inconsistent with the parties' reasonable expectations when it would involve an unexpected and unwanted increase in litigation costs. (*Goonewardene*, 6 Cal.5th at 836.) If third parties such as Plaintiff should be able to sue to enforce the GPLs, this would open the potential for literally tens of thousands of lawsuits. But, as stated above, forcing the licensor of the GPLs would expose them to potentially millions of dollars in enforcement costs, with no real benefit themselves. Defendant Vizio, as the licensee, is responsible for ensuring that it complies with the terms of the license. As such, it would be more equitable to allow third parties to assert claims against a licensee who fails to adhere to the terms and conditions of the license.

None of the evidence submitted by Defendant Vizio strongly suggests that the GPLs intended to preclude third parties from bringing a claim against Defendant Vizio for violating the terms of the GPL license. There is no exclusionary language in the GPLs, and there is no evidence from FSF that speaks to this issue. Moreover, the language of the GPLs is not so certain so as to preclude other interpretations.

On the other hand, Plaintiff has presented sufficient evidence, including language from the license itself that suggests third parties were intended to benefit from the license through the right to receive the source code.

In light of the foregoing, the Court finds that a triable issue of material fact exists as to whether Plaintiff is a third beneficiary under the GPL license. Therefore, the Court DENIES the motion for summary adjudication on this issue.

Issue No. 3: Whether Vizio is entitled to summary adjudication on Plaintiff's second cause of action for declaratory relief because that claim is duplicative of Plaintiff's failed breach of contract claim.

Plaintiff's Second Cause of Action for Declaratory Relief seeks, among other things, judicial declarations of its right to source code and that Defendant Vizio's failure to provide source code is a material breach of the GPLs. Because Defendant Vizio is not entitled to judgment as a matter of law on Plaintiff's breach of contract claim, for all the reasons discussed above, it likewise is not entitled to judgment as a matter of law on SFC's declaratory relief claim. Therefore, summary adjudication on this issue is DENIED.

Moving party to give notice.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Software Freedom Conservancy, Inc. vs. Vizio, Inc.

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2021-01226723-CU-BC-CJC**

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 12/29/23, was transmitted electronically by an Orange County Superior Court email server on December 29, 2023, at 1:40:21 PM PST. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
DANPOSNER@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
JOHNYIN@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
MICHAELWILLIAMS@QUINNEMANUEL.COM

RICHARD G SANDERS, PLLC
RICK@RICKSANDERSLAW.COM

SHADES OF GRAY LAW GROUP, P.C
DON@TCO.LAW

SHADES OF GRAY LAW GROUP, P.C
DTHOMPSON@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NERMAKOVA@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NGRAY@SHADESOFGRAY.LAW

VAKILI & LEUS, LLP
VAKILI@VAKILI.COM

Clerk of the Court, by: Richard B S, Deputy

Exhibit: “8”

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 03/26/2024 TIME: 03:40:00 PM DEPT: C33

JUDICIAL OFFICER PRESIDING: Sandy Leal
CLERK: V. Do
REPORTER/ERM:
BAILIFF/COURT ATTENDANT: J. Kempf

CASE NO: **30-2021-01226723-CU-BC-CJC** CASE INIT.DATE: 10/19/2021
CASE TITLE: **Software Freedom Conservancy, Inc. vs. Vizio, Inc.**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

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EVENT ID/DOCUMENT ID: 74257468

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 02/15/2024 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Plaintiff Software Freedom Conservancy Inc.'s Motion for Summary Adjudication is DENIED as to Issue No. 1 and GRANTED as to Issue No. 2.

Plaintiff's Request for Judicial Notice is GRANTED as to Exhibits 3, 5-7 and DENIED as to 1, 2, 8 and 9. As to Exhibits 4 and 10, the Court declines to rule as the documents are immaterial to the determination of this motion.

Vizio's Objections to Plaintiff's Exhibits & Declaration of Bradley Kuhn: Objections Nos. 1-7: Defendant does not dispute the facts which the exhibits are cited to as evidence. Therefore, the court declines to rule on these evidentiary objections. All objections not ruled upon are preserved for appeal. (Code Civ. Proc. § 437c(q).)

Plaintiff's Objections to Vizio's Evidence: Overruled

Vizio argues this motion is moot and/or barred by judicial estoppel because the court found a triable issue of material fact exists as to whether Plaintiff is a third party beneficiary under the GPL license. The Court found that "the language of the GPLs is not so certain so as to preclude other interpretations." Plaintiff has not presented any additional evidence to resolve that issue in its favor.

"Judicial estoppel applies where a party takes inconsistent positions that effect the orderly administration of justice. Requirements for application of the rule include a party's taking two positions in judicial or administrative proceedings, success in the assertion of the first position, inconsistency between the two positions, and a lack of ignorance, fraud, or mistake in asserting the first position. The doctrine requires that the positions be clearly inconsistent 'so that one necessarily excludes the other.'" (*Kitty-Anne Music*

Co. v. Swan (2003) 112 Cal.App.4th 30, 35 [cleaned up].)

In *Kitty-Anne*, the Court of Appeal rejected a similar argument as that put forth by Vizio.

A party successfully opposes a summary judgment motion. He then moves for summary judgment based upon the same evidence used in the summary judgment motion he resisted. The rule of judicial estoppel does not apply against the party because he has not taken inconsistent positions, nor has he disrupted the orderly administration of justice.

(Id. at 32.)

The Court finds *Kitty-Anne* controlling here. In opposing Vizio's motion for summary judgment, Plaintiff presented sufficient evidence to raise a triable issue of fact. It then decided to move for summary adjudication of the issue of duty, and now bears the burden of proving that it is entitled to an adjudication of this issue as a matter of law. Plaintiff is not taking any inconsistent positions nor is it attempting to take an unfair advantage. Accordingly, the rule of judicial estoppel does not apply here.

Plaintiff moves for summary adjudication on two issues – duty and as to the fifth affirmative defense.

A motion for summary adjudication may be granted if "it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c(f)(1).) As used in this section, a "cause of action" means the invasion of a primary right, i.e., an injury, rather than a theory of liability. (*Lilienthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854.)

"Summary adjudication motions are 'procedurally identical' to summary judgment motions. Summary judgment 'shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' (Code Civ. Proc., § 437c, subd. (c).) To be entitled to judgment, the moving party must show by admissible evidence that the "action has no merit or that there is no defense" thereto. (*Id.*, subd. (a)(1).) A defendant moving for summary adjudication meets this burden by presenting evidence demonstrating that one or more elements of the cause of action cannot be established or that there is a complete defense to the claim. (*Id.*, subds. (o), (p)(2).) Once the defendant makes this showing, the burden shifts to the plaintiff to show that a triable issue of material fact exists as to that cause of action or defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Material facts are those that relate to the issues in the case as framed by the pleadings. There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Zamora v. Security Industry Specialists, Inc.* (2012) 71 Cal.App.5th 1, 28-29 [cleaned-up].)

Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party. (Code Civ. Proc. § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843.) "[A]ll doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party. The court focuses on finding issues of fact; it does not resolve them. The court seeks to find contradictions in the evidence or inferences reasonably deducible from the evidence that raise a triable issue of material fact." (*Trop v. Sony Pictures Entertainment, Inc.* (2005) 129 Cal.App.4th 1133, 1144-1145 [internal citations omitted].)

Issue No. 1:

Defendant VIZIO, Inc. ("VIZIO") has a duty under the GNU General Public License version 2 ("GPLv2") and GNU Lesser General Public License version 2.1 ("LGPLv2.1") (together, the "GPLs") to produce to

SFC:

. - the complete source code (as defined in Section 3 of GPLv2 and in Section 0 of LGPLv2.1) for any GPL-licensed software on VIZIO Smart TV Model Nos. V435-J01, D32h-J09, or M50Q7-J01; and

. - the complete source code or object code for any software that links to an LGPLv2.1-licensed library on VIZIO Smart TV Model Nos. V435-J01, D32h-J09, or M50Q7-J01 (or otherwise comply with LGPLv2.1 § 6

"A third party beneficiary may enforce a contract made for its benefit." (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 524 (citing Civ. Code § 1559).) "Generally, it is a question of fact whether a particular third person is an intended beneficiary of a contract." (*Spinks v. Equity Residential Briarwood Apartments (2009) 171 Cal.App.4th 1004, 1025 [internal citation omitted].) If the issue can be answered by interpreting the contract as a whole and doing so in light of the uncontradicted evidence of the circumstances and negotiations of the parties in making the contract, the issue becomes one of law that the court can resolve independently. (Id.)*

To show the contracting parties intended to benefit it, a third party must show that, under the express terms of the contract at issue and any other relevant circumstances under which the contract was made, (1) "the third party would in fact benefit from the contract"; (2) "a motivating purpose of the contracting parties was to provide a benefit to the third party"; and (3) permitting the third party to enforce the contract "is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (Goonewardene v. ADP, LLC (2019) 6 Cal.5th 817, 830.)

A "contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code § 1636.) Although "the intention of the parties is to be ascertained from the writing alone, if possible" (Civ Code § 1639), "[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates" (Civ. Code § 1647). "However broad may be the terms of a contract, it extends only to those things ... which it appears that the parties intended to contract." (Civ. Code § 1648.)

Vizio does not dispute the first two elements of the *Goonewardene* test. Vizio disputes the third element - that third party standing is inconsistent with the reasonable expectations of the average licensee such as Vizio.

The third element of the *Goonewardene* test "does not focus upon whether the parties specifically intended third party enforcement but rather upon whether, taking into account the language of the contract and all of the relevant circumstances under which the contract was entered into, permitting the third party to bring the proposed breach of contract action would be 'consistent with the objectives of the contract and the reasonable expectations of the contracting parties.' [Citation.] In other words, this element calls for a judgment regarding the potential effect that permitting third party enforcement would have on the parties' contracting goals, rather than a determination whether the parties actually anticipated third party enforcement at the time the contract was entered into." (Id. at 830-832.)

Plaintiff argues the plain text of the GPLs governs the "reasonable expectations of the contracting party." (See *Hess v. Ford Motor Co.* (2002) 27 Cal. 4th 516, 524 ("Ascertaining . . . intent [to benefit a third party] is a question of ordinary contract interpretation").) The "motivating purpose" of the contracts was to benefit recipients of GPL-licensed software, such as SFC. The contracts say so in plain terms:

General Public Licenses are designed to make sure that you have the freedom to distribute copies of free software (and charge for this service if you wish), that you receive source code or can get it if you want it, that you can change the software or use pieces of it in new free programs; and that you know you can do these things . . .

[I]f you distribute copies of such a program, whether gratis or for a fee, you must give the recipients all the rights that you have. You must make sure that they, too, receive or can get the source code. And you must show them these terms so they know their rights.

It further states:

You may copy and distribute [GPL-licensed software] . . . provided that you also . . . a) Accompany it with the complete corresponding machine-readable source code . . . or, b) Accompany it with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code . . .

Vizio asserts that Plaintiff has not presented any evidence on this point and thus fails to meet its initial burden of production. The Court has already rejected Plaintiff's reliance on the GPL's text alone.

By contrast, Vizio has presented evidence that FSF intended the copyright holders of the software as the ones who have the power to enforce the GPL. In response to a FAQ posted by FSF it advises "[i]f you think you see a violation of the GNU GPL [or] LGPL . . . you should send a precise report to the copyright holders of the packages that are being wrongly distributed"; "only the copyright holder or someone having assignment of the copyright can enforce the license."

Vizio contends that these statements are not hearsay because they are not offered for the truth of what they assert. They are offered to prove what the average party to the GPLs would think about third party enforcement. Further, "the author's testimony is not required to authenticate a document; instead, its authenticity may be established by the contents of the writing or by other means. As long as the evidence would support a finding of authenticity, the writing is admissible. The fact conflicting inferences can be drawn regarding authenticity goes to the document's weight as evidence, not its admissibility." (*People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435 [cleaned up].) Thus, *Valdez* held that statements on a social media page were authenticated because there were various signs that "the page belonged to Valdez rather than someone else by the same name, who happened to look just like him." (Ibid.) The situation is the same here, where numerous signs point to control by the FSF. These include the fact that www.fsf.org interlinks repeatedly with www.gnu.org; the fact that both websites display copyright notices from the FSF; and the fact that both websites display the FSF's logos.

Additionally, Plaintiff's statements confirm that third-party enforcement would disrupt the reasonable expectations of the parties. As far back as 2012, Bradley Kuhn, SFC's President, stated "the parties who may enforce are copyright holders[.]" In a tutorial and guide published as a joint project by SFC and FSF, it states that copyright holders are "ultimately the sole authorities" to "protect the right of users" and "have historically been the actors in GPL enforcement."

Plaintiff counters on reply that even if the online commentary by FSF and SFC were admissible, which it is not, the language is not found in the agreements. A standardized agreement is "interpreted wherever reasonable as treating alike all those similarly situated, without regard to their knowledge or understanding of the standard terms of the writing." (Restatement Second of Contracts § 211(2).) Vizio implies that licensees who read online commentary will have a different understanding of the GPLs licensees than those that do not. But this does not treat all the parties alike. Moreover, it cannot be presumed that all parties have read and relied on the commentary especially since they were published long after the GPLs.

Even if a contract benefits a third party, however, it may still be inconsistent with the objectives of the contract and reasonable expectations of the contracting parties to permit the third party to sue one of the contracting parties. (See *Goonewardene*, 6 Cal.5th at 837 [finding that an employee did not have third-party standing to sue the payroll company for an alleged breach of its contract with the employer].) In this case, Vizio has presented evidence that FSF did not intend for third parties to enforce the rights

under the license agreement. This is sufficient to create a triable issue of fact as to whether allowing third parties, such as Plaintiff, to enforce the GPLs is consistent with the objectives of the contract or the intent of the parties. If FSF has published or caused to be published statements which call into question this issue, then it is possible that it never intended to create such a right at the time the licensing agreement was created. The language of the GPLs is not so certain as to preclude other interpretations. Accordingly, a triable issue of fact exists as to whether Plaintiff is a third party beneficiary.

Furthermore, the Court cannot fully adjudicate the issue of duty as framed by Plaintiff. "[O]n a motion for summary adjudication, the court may rule whether a defendant owes or does not owe a duty to plaintiff without regard for the dispositive effect of such ruling on other issues in the litigation, except that **the ruling must completely dispose of the issue of duty**." (*Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508, 522 [emphasis added].)

Plaintiff has narrowed the issue of duty to only include Vizio's alleged duty to provide the source code to third parties. But the language of the GPLs provides as follows:

You may copy and distribute [GPL-licensed software] . . . provided that you also . . . a) Accompany it with the complete corresponding machine-readable source code . . . **or**, b) Accompany it with a written offer . . . to give any third party . . . a complete machine-readable copy of the corresponding source code . . .

(UMF 5, 6; FAC 28.)

Therefore, under the license agreement, Vizio can either accompany the product which utilizes the GPL technology with the source code **or** give a written offer on how to obtain the source code.

Plaintiff presented evidence the Vizio Smart TV contained executables in binary form and shared libraries in binary form (as opposed to the source code) that were versions of software subject to the GPL license. (UMF 13.) But there is no evidence Vizio did not accompany the product with a written offer to give any third party a complete machine-readable copy of the source code. The only fact included in Plaintiff's Separate Statement that could be construed as relating to the issue is the following: "The executable binary file called bin/busybox on the TV provided the following notice: "BusyBox is copyrighted by many authors between 1998-2015. Licensed under GPLv2. See source distribution for detailed copyright notices. … BusyBox v1.32.0.git (2021-04-30 23:57:35 UTC)." (UMF 15.) This fact, however, does not indicate that a written offer was not included. There are no undisputed material facts that, 1) Vizio failed to provide a written offer on how third parties could obtain the source code or 2) that Vizio provided such an offer, and Plaintiff accepted, but was denied the source code by Vizio when requested. Without such facts established, the Court cannot fully adjudicate the issue of duty, even assuming Plaintiff had established it was a third party beneficiary under the licensing agreement.

For the foregoing reasons, summary adjudication is DENIED as to Issue No. 1.

Issue No. 2

VIZIO's Fifth Affirmative Defense---—which asserts that Plaintiff's claims are barred, in whole or in part, because they are preempted by the United States Copyright Act—has no merit.

This Court previously ruled on Vizio's Motion for Summary Judgment and found that Plaintiff's breach of contract claim was not preempted by the Copyright Act. In light of the Court's prior ruling, the motion for summary adjudication is GRANTED as to Issue No. 2.
Moving party to give notice of the ruling.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Software Freedom Conservancy, Inc. vs. Vizio, Inc.

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2021-01226723-CU-BC-CJC**

I certify that I am not a party to this cause. I certify that that the following document(s), Minute Order dated 03/26/24, was transmitted electronically by an Orange County Superior Court email server on March 27, 2024, at 8:11:11 AM PDT. The business mailing address is Orange County Superior Court, 700 Civic Center Dr. W, Santa Ana, California 92701. Pursuant to Code of Civil Procedure section 1013b, I electronically served the document(s) on the persons identified at the email addresses listed below:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
DANPOSNER@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
JOHNYIN@QUINNEMANUEL.COM

QUINN EMANUEL URQUHART & SULLIVAN, LLP
MICHAELWILLIAMS@QUINNEMANUEL.COM

RICHARD G SANDERS, PLLC
RICK@RICKSANDERSLAW.COM

SHADES OF GRAY LAW GROUP, P.C
DON@TCO.LAW

SHADES OF GRAY LAW GROUP, P.C
DTHOMPSON@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NERMAKOVA@SHADESOFGRAY.LAW

SHADES OF GRAY LAW GROUP, P.C
NGRAY@SHADESOFGRAY.LAW

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VAKILI@VAKILI.COM

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Exhibit: “9”

America's Smart TV.

Make any space a place for TV.

THE NEW D-SERIES

Everything for everyone.

★★★★★ 4.7 | Reviews (463)

24" - 43"
Full HD Smart TV

WiFi 5

Explore D-Series

Make family night the favorite night.

THE NEW V-SERIES

Smart. Fast. It's 4K for all.

★★★★★ 4.7 | Reviews (969)

43" - 70"
4K UHD Smart TV

WiFi 6E

Explore V-Series

Take your gaming to the next level.

THE NEW M-SERIES

Experience the extraordinary.

★★★★★ 4.8 | Reviews (409)

50" - 75"
4K Quantum Color Smart TV

WiFi 6E

Explore M-Series

Get cozy with a home theater.

P-SERIES

Powerfully immersive picture quality.

★★★★½ 4.6 | Reviews (306)

65" - 85"
4K Quantum Color Smart TV

WiFi 6E

Explore P-Series

Bask in unbounded beauty.

OLED

Masterful engineering. Artful design.

★★★★½ 4.4 | Reviews (670)

55" - 65"
4K OLED

WiFi 5

Explore OLED

MORE FROM VIZIO

Everything you need for endless entertainment.

Streaming

Built to be intuitive. Stream your go-to favorites, from your TV or phone.

Learn More →

Sound Bars

Audio sets that will change how you experience sound. In the best way.

Learn More →

WatchFree+

260+ Free channels, 6,000+ movies and shows on demand. No login or subscription needed.

Learn More →

Your questions, answered.

Find answers, How-Tos and more through our Support page.

Visit VIZIO Support ↗

Chat With Our Product Pros

Sometimes figuring out smart devices takes a little help from your friends.

Chat with us →

Stay updated on the latest from VIZIO.

Email address →

Exhibit: “10”

Contents [hide]

Smart TV

From Wikipedia, the free encyclopedia

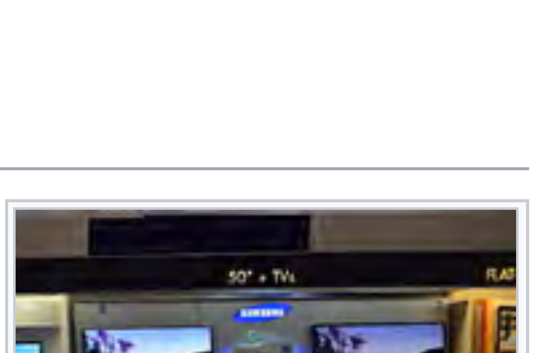
A **smart TV**, also known as a **connected TV** (**CTV**), is a traditional television set with integrated Internet and interactive Web 2.0 features, which allows users to stream music and videos, browse the internet, and view photos. Smart TVs are a technological convergence of computers, televisions, and digital media players. Besides the traditional functions of television sets provided through traditional broadcasting media, these devices can provide access to over-the-top media services such as streaming television and internet radio, along with home networking access.[1][2][3]

Smart TV should not be confused with Internet TV, IPTV, or streaming television. *Internet TV* refers to receiving television content over the Internet instead of traditional systems such as terrestrial, cable, and satellite, regardless of how the Internet is delivered. IPTV is one of the Internet television technology standards for use by television broadcasters. *Streaming television* is a term used for programs created by many producers for showing on Internet TV.

In smart TVs, the operating system is preloaded into the television set's firmware, which provides access to apps and other digital content. In contrast, traditional televisions primarily act as displays and are limited to vendor-specific customization. The software applications can be preloaded into the device or updated or installed on demand via an application store or marketplace, in a similar manner to how applications are integrated into modern smartphones.[4][5][6][7][8]

The technology that enables smart TVs is also incorporated in external devices such as set-top boxes and some Blu-ray players, game consoles, digital media players, hotel television systems, smartphones, and other network-connected interactive devices that utilize television-type display outputs.[9][10] These devices allow viewers to find and play videos, movies, TV shows, photos, and other content from the Web, cable or satellite TV channels, or a local storage device.

Definition [edit]



Smart TVs on display

A *Smart TV* device is either a television set with integrated Internet capabilities or a set-top box for television that offers more advanced computing ability and connectivity than a contemporary basic television set. A Smart TVs is an information appliance and may be thought of as the computer system of a mobile device integrated with a television set unit. A Smart TV runs a complete operating system or mobile operating system that may provide a platform for application developers. Thus, a Smart TV often allows the user to install and run more advanced applications or plugins/addons based on its specific platform.[1][11][12]

A Smart TV platform has a public software development kit (SDK) or native development kit (NDK) with which third-party developers can develop applications for it, and an app store so end-users can install and uninstall apps. The public SDK enables third-party application developers to write applications once and see them run successfully on any device that supports the Smart TV platform architecture it was written for, regardless of the hardware manufacturer.

Smart TVs deliver content (such as photos, movies and music) from other computers or network attached storage devices on a network using either a Digital Living Network Alliance (DLNA) / Universal Plug and Play (UPnP) media server or similar service program like Windows Media Player or Network-attached storage (NAS), or via iTunes. It also provides access to Internet-based services including traditional broadcast TV channels, catch-up services, video-on-demand (VOD), electronic program guide, interactive advertising, personalisation, voting, games, social networking, and other multimedia applications.[13] Smart TV enables access to movies, shows, video games, apps and more. Some of those apps include Netflix, Hulu, Spotify, YouTube, and Amazon.[14]

History [edit]

In the early 1980s, "intelligent" television receivers were introduced in Japan. The addition of an LSI chip with memory and a character generator to a television receiver enabled Japanese viewers to receive a mix of programming and information transmitted over spare lines of the broadcast television signal.[15] A patent was filed in 1994[16] (and extended the following year)[17] for an "intelligent" television system, linked with data processing systems, by means of a digital or analog network. Apart from being linked to data networks, one key point is its ability to automatically download necessary software routines, according to a user's demand, and process their needs.

However, descriptions of the elements of a smart television can be found in public discourse from the beginning of the 1980s, if not earlier, with the introduction of videotex services, particularly teletext information for reception by television sets, leading commentators to consider that televisions and accessories would evolve to encompass a range of related activities. In the words of one commentator: "In the long run, this machine is likely to develop into a multi-purpose receiver, for electronic mail, dealing with the bank, calculations, remote information - and 'Not the nine o'clock news' or 'Casablanca' on video."[18]

The mass acceptance of digital television in the mid-late 2000s and early 2010s greatly improved Smart TVs. Major TV manufacturers have announced production of Smart TVs only for their middle-end to high-end TVs in 2015.[19][20][21] Smart TVs became the dominant form of television during the late 2010s. At the beginning of 2016, Nielsen reported that 29 percent of those with incomes over $75,000 a year had a Smart TV.[22]

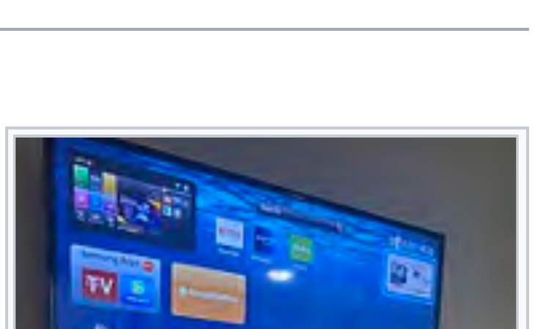
Typical features [edit]

LG Smart TV using the Web browser

Smart TV devices also provide access to user-generated content (either stored on an external hard drive or in cloud storage) and to interactive services and Internet applications, such as YouTube, many using HTTP Live Streaming (also known as HLS) adaptive streaming.[23] Smart TV devices facilitate the curation of traditional content by combining information from the Internet with content from TV providers. Services offer users a means to track and receive reminders about shows[24] or sporting events,[25] as well as the ability to change channels for immediate viewing. Some devices feature additional interactive organic user interface / natural user interface technologies for navigation controls and other human interaction with a Smart TV, with such as second screen companion devices,[26][27] spatial gestures input like with Xbox Kinect,[28][29] and even for speech recognition for natural language user interface.[30] Smart TV develops new features to satisfy consumers and companies, such as new payment processes. LG and PaymentWall have collaborated to allow consumers to access purchased apps, movies, games, and more using a remote control, laptop, tablet, or smartphone. This is intended for an easier and more convenient way for checkout.

Platforms [edit]

See also: List of smart TV platforms



Samsung's discontinued Orsay platform

Smart TV technology and software is still evolving, with both proprietary and open source software frameworks already available. These can run applications (sometimes available via an 'app store' digital distribution platform), play over-the-top media services and interactive on-demand media, personalized communications, and have social networking features.[31][32][33][34]

Android TV, Boxee, Google TV, Horizon TV, Inview, Kodi Entertainment Center, Mediaroom, MeeGo, OpenTV, Plex, RDK (Reference Development Kit), Roku, Smart TV Alliance, ToFu Media Platform, Ubuntu TV, Vewd, and Yahoo! Smart TV are framework platforms managed by individual companies. HbbTV, provided by the Hybrid Broadcast Broadband TV association, CE-HTML, part of Web4CE, OIPF, part of HbbTV, and Tru2way are framework platforms managed by technology businesses. Current Smart TV platforms used by vendors are Amazon, Apple, Google, Haier, Hisense, Hitachi, Insignia, LG, Microsoft, Netgear, Panasonic, Philips, Samsung, Sharp, Sony, TCL, TiVO, Toshiba, Sling Media, and Western Digital. Sony, Panasonic, Samsung, LG, and Roku TV are some platforms ranked under the best Smart TV platforms.[35]

Sales [edit]

According to a report from research group NPD In-Stat, in 2012 only about 12 million U.S. households had their Web-capable TVs connected to the Internet, although an estimated 25 million households owned a set with the built-in network capability. In-Stat predicted that by 2016, 100 million homes in North America and western Europe would be using television sets blending traditional programming with internet content.[36] By the end of 2019, the number of installed Connect TVs reached 1.26 billion worldwide.[37]

The number of households using over-the-top television services has rapidly increased over the years. In 2015, 52% of U.S. households subscribed to Netflix, Amazon Prime, or Hulu Plus; 43% of pay-TV subscribers also used Netflix, and 43% of adults used some streaming video on demand service at least monthly. Additionally, 19% of Netflix subscribers shared their subscription with people outside of their households. Ten percent of adults at the time showed interest in HBO Now.[38]

Use [edit]

Social networking [edit]

See also: Social media and television

Some Smart TV platforms come prepackaged or can be optionally extended, with social networking technology capabilities. The addition of social networking synchronization to Smart TV and HTPC platforms may provide an interaction both with on-screen content and with other viewers than is currently available to most televisions, while simultaneously providing a much more cinematic experience of the content than is currently available with most computers.[39]

Advertising [edit]

Some Smart TV platforms also support interactive advertising (companion ads), addressable advertising with local advertising insertion and targeted advertising,[40] and other advanced advertising features such as ad telescoping[41] using VOD and DVR, enhanced TV for consumer call-to-action, and audience measurement solutions for ad campaign effectiveness.[42][43] The marketing and trading possibilities offered by Smart TVs are sometimes summarized by the term t-commerce. Taken together, this bidirectional data flow means Smart TVs can be and are used for clandestine observation of the owners. Even in sets that are not configured off-the-shelf to do so, default security measures are often weak and will allow hackers to easily break into the TV.[44]

2019 research, "Watching You Watch: The Tracking Ecosystem of Over-the-Top TV Streaming Devices", conducted at Princeton and University of Chicago, demonstrated that a majority of streaming devices will covertly collect and transmit personal user data, including captured screen images, to a wide network of advertising and analytics companies, raising privacy concerns.[45]

Digital marketing research firm eMarketer reported a 38 percent surge – to close to $7 billion, a 10 percent television advertising market share – in advertising on connected TV like Hulu and Roku, to be underway in 2019, with market indicators that the figure would surpass $10 billion in 2021.[46][47]

Security [edit]

There is evidence that a Smart TV is vulnerable to attacks. Some serious security bugs have been discovered, and some successful attempts to run malicious code to get unauthorized access were documented on video. There is evidence that it is possible to gain root access to the device, install malicious software, access and modify configuration information for a remote control, remotely access and modify files on TV and attached USB drives, access camera and microphone.[48]

There have also been concerns that hackers may be able to remotely turn on the microphone or webcam on a smart TV, being able to eavesdrop on private conversations. A common loop antenna may be set for a *bi*directional transmission channel, capable of uploading data rather than only receiving. Since 2012, security researchers discovered a similar vulnerability present in more series of Smart TVs, which allows hackers to get an external root access on the device.[49]

Anticipating growing demand for an antivirus for a Smart TV, some security software companies are already working with partners in the digital TV field on the solution. It seems like there is only one antivirus for Smart TVs available: "Neptune", a cloud-based antimalware system developed by Ocean Blue Software in partnership with Sophos. However, antivirus company Avira has joined forces with digital TV testing company Labwise to work on software to protect against potential attacks.[50] The privacy policy for Samsung's Smart TVs has been called Orwellian (a reference to George Orwell and the dystopian world of constant surveillance he depicted in *1984*), and compared to Telescreens because of eavesdropping concerns.[51][52]

Hackers have misused Smart TV's abilities such as operating source codes for applications and its unsecured connection to the Internet. Passwords, IP address data, and credit card information can be accessed by hackers and even companies for advertisement. A company caught in the act is Vizio.[*citation needed*] The confidential documents, codenamed Vault 7 and dated from 2013 to 2016, include details on CIA's software capabilities, such as the ability to compromise Smart TVs.[53]

Restriction of access [edit]

Internet websites can block Smart TV access to content at will or tailor the content that will be received by each platform.[54] Google TV-enabled devices were blocked by NBC, ABC, CBS, and Hulu from accessing their Web content since the launch of Google TV in October 2010. Google TV devices were also blocked from accessing any programs offered by Viacom's subsidiaries.[55]

Reliability [edit]

In 2017, high-end Samsung Smart TVs stopped working for at least seven days after a software update.[56] Application providers are rarely upgrading Smart TV apps to the latest version; for example, Netflix does not support older TV versions with new Netflix upgrades.[57]

See also [edit]

- 10-foot user interface
- Automatic content recognition
- Digital Living Network Alliance (DLNA)
- Digital media player
- Home automation
- Home theater PC
- Hotel television systems
- Hybrid Broadcast Broadband TV
- Interactive television
- Internet of things
- List of mobile app distribution platforms
- List of smart TV platforms
- Over-the-top media service (OTT)
- PC-on-a-stick
- Second screen
- Smartphone
- Space shifting
- Smart speaker
- Telescreen
- Tivoization
- TV Genius
- Video on demand

Television portal
Linux portal

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V · T · E Computer sizes [show]

Authority control: National Japan · Czech Republic

Categories: Smart TV | Digital television | Information appliances | Interactive television | Internet broadcasting | Internet of things | Streaming television | Japanese inventions | Multimedia | Streaming media systems | Television technology | Television terminology | Video on demand

Exhibit: “11”

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As filed with the Securities and Exchange Commission on March 1, 2021

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-1
REGISTRATION STATEMENT
Under
The Securities Act of 1933

VIZIO HOLDING CORP.

(Exact name of registrant as specified in its charter)

Delaware	3651	85-4185335
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

VIZIO Holding Corp.
39 Tesla
Irvine, California 92618
(949) 428-2525
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

William W. Wang
Chairman and Chief Executive Officer
VIZIO Holding Corp.
39 Tesla
Irvine, California 92618
(949) 428-2525
(Name, address, including zip code, and telephone number, including area code, of agent for service)

	Copies to:	
Katharine A. Martin **Rezwan D. Pavri** **Lisa L. Stimmell** **Mark G.C. Bass** **Wilson Sonsini Goodrich & Rosati, P.C.** **650 Page Mill Road** **Palo Alto, California 94304** **(650) 493-9300**	**Jerry C. Huang** **Scott V. Becker** **VIZIO Holding Corp.** **39 Tesla** **Irvine, California 92618** **(949) 428-2525**	**Alan F. Denenberg** **Emily Roberts** **Davis Polk & Wardwell LLP** **1600 El Camino Real** **Menlo Park, California 94025** **(650) 752-2000**

Approximate date of commencement of proposed sale to the public:
As soon as practicable after the effective date of this Registration Statement.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Class A common stock, par value $0.0001 per share	$100,000,000	$10,910

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes the aggregate offering price of additional shares of Class A common stock that the underwriters have the option to purchase.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a) may determine.

The information in this preliminary prospectus is not complete and may be changed. We and the selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities, and neither we nor the selling stockholders are soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus dated , 2021

VIZIO Holding Corp.

Shares

Class A Common Stock

$ per share

This is the initial public offering of shares of Class A common stock of VIZIO Holding Corp. We are selling shares of Class A common stock and the selling stockholders are selling an additional shares of Class A common stock. We will not receive any proceeds from the sale of shares of our Class A common stock by any of the selling stockholders.

We anticipate the initial public offering price of our Class A common stock will be between $ and $ per share. Currently, no public market exists for our Class A common stock. We have applied to list our Class A common stock on the New York Stock Exchange under the symbol "VZIO."

We have three classes of authorized common stock, Class A common stock, Class B common stock, and Class C common stock. The rights of the holders of Class A common stock, Class B common stock and Class C common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to 10 votes per share and is convertible at any time into one share of Class A common stock. Shares of Class C common stock have no voting rights, except as otherwise required by law, and will convert into Class A common stock, on a share-for-share basis, following the conversion or exchange of all outstanding shares of Class B common stock into shares of Class A common stock and upon the date or time specified by the holders of a majority of the outstanding shares of Class A common stock voting as a separate class. Upon the completion of this offering, no shares of Class C common stock will be issued and outstanding.

Upon the completion of this offering, all shares of Class B common stock will be held by William Wang, our Founder, Chairman and Chief Executive Officer, and his affiliates. Accordingly, upon completion of this offering, assuming an offering size as set forth above, the shares beneficially owned by Mr. Wang (including shares over which he has voting control) will represent % of the total voting power of our outstanding capital stock. Mr. Wang will be able to determine or significantly influence any action requiring the approval of our stockholders, including the election of our board of directors, the adoption of amendments to our certificate of incorporation and bylaws, and the approval of any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction. As a result, we will be a "controlled company" within the meaning of the rules of the New York Stock Exchange.

Investing in our Class A common stock involves a high degree of risk. See "Risk Factors" beginning on page 17 of this prospectus.

	Per share	Total
Initial public offering price	$	$
Underwriting discount(1)	$	$
Proceeds to VIZIO Holding Corp., before expenses	$	$
Proceeds to selling stockholders, before expenses	$	$

(1) We refer you to "Underwriting" beginning on page 176 for additional information regarding underwriter compensation.

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price through a directed share program. See the section titled "Underwriting—Directed Share Program" for additional information.

The underwriters may also exercise their option to purchase up to an additional shares of Class A common stock from us and the selling shareholders, at the initial public offering price, less the underwriting discount, for 30 days after the date of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed on the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The shares of Class A common stock will be ready for delivery on or about , 2021.

J.P. Morgan **BofA Securities**

Wells Fargo Securities **Guggenheim Securities**

Needham & Company **Piper Sandler**

Roth Capital Partners

The date of this prospectus is , 2021.

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Through and including , 2021 (the 25th day after the date of this prospectus), all dealers effecting transactions in the Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

Neither we, nor the selling stockholders, nor the underwriters have authorized anyone to provide any information or to make any representations other than those contained in this prospectus or any related free writing prospectus. Neither we, nor the underwriters nor the selling stockholders take responsibility for, nor can provide any assurance as to the reliability of, any other information that others may give you. We and the selling stockholders are offering to sell, and seeking offers to buy, our Class A common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus and any applicable free writing prospectus is accurate only as of its date, regardless of the time of delivery or of any sale of our Class A common stock. The information may have changed since that date.

For investors outside the United States: No action is being taken in any jurisdiction outside the United States to permit a public offering of our Class A common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable to that jurisdiction.

Tax laws are regularly re-examined and evaluated globally. New laws and interpretations of the law are taken into account for financial statement purposes in the quarter or year that they become applicable. Tax authorities are increasingly scrutinizing the tax positions of multinational companies. If U.S. or other foreign tax authorities change applicable tax laws, our overall liability could increase, and our business, financial condition and results of operations may be harmed.

In December 2017, the legislation commonly referred to as the Tax Cuts and Jobs Act (the Tax Act) was enacted, which contains significant changes to U.S. tax law, including a reduction in the corporate tax rate and a transition to a new territorial system of taxation. The primary impact of the new legislation on our provision for income taxes was a reduction of the future tax benefits of our deferred tax assets as a result of the reduction in the corporate tax rate. Certain provisions of the Tax Act were modified by legislation enacted in March 2020, entitled the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) and the impact of the Tax Act will likely be subject to ongoing technical guidance and accounting interpretation, which we will continue to monitor and assess. As we expand the scale of our business activities, any changes in U.S. or foreign taxation of such activities may increase our worldwide effective tax rate and harm our business, financial condition and results of operations.

Risks Relating to Intellectual Property

Third parties may claim we are infringing, misappropriating or otherwise violating their intellectual property rights and we could be prevented from selling our devices, or suffer significant litigation expense, even if these claims have no merit.

The media entertainment devices industry, and especially the television industry, is characterized by the existence of a large number of patents and frequent claims and litigation regarding patent, trade secret and other intellectual property rights. There is no easy mechanism through which we can ascertain a list of all patent applications that have been filed in the United States or elsewhere and whether, if any applications are granted, such patents would harm our business. Furthermore, the rapid technological changes that characterize our industry require that we quickly implement new processes and components with respect to our devices. Often with respect to recently developed processes and components, a degree of uncertainty exists as to who may rightfully claim ownership rights in such processes and components. Uncertainty of this type increases the risk that claims alleging that such components or processes infringe, misappropriate or otherwise violate third-party rights may be brought against us. We may also be unaware of intellectual property rights of others that may cover some of our devices.

Leading companies in the television industry, some of which are our competitors, have extensive patent portfolios with respect to television technology. From time to time, third parties, including these leading companies, have asserted and currently are asserting patent, copyright, trademark and other intellectual property related claims against us and demand license or royalty payments or payment for damages, seek injunctive relief and pursue other remedies including, but not limited to, an order barring the import of our devices. We expect to continue to receive such communications and be subject to such claims, and we review the merits of each claim as they are received.

The cost to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Claims of intellectual property infringement, misappropriation or other violation against us or our manufacturers have required and might in the future require us to redesign our devices, rebrand our services, enter into costly settlement or license agreements, pay costly damage awards, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property, or require us to face a temporary or permanent injunction prohibiting us from marketing or selling our devices or services. As a result of patent infringement claims, or to avoid potential claims, we have in the past and may in the future choose or be required to seek licenses from third parties. These licenses may not be available on acceptable terms, or at all. Even if we are able to obtain a license, the license would likely obligate us to pay license fees or

royalties or both, which may be substantial, and the rights granted to us might be nonexclusive, which could result in our competitors gaining access to the same intellectual property rights.

Litigation against us, even if without merit, can be time consuming, could divert management attention and resources, require us or our manufacturers to incur significant legal expense, prevent us from using or selling the challenged technology, damage our reputation and brand, require us or our manufacturers to design around the challenged technology and cause the price of our stock to decline. In addition, these third-party claimants, some of which are potential competitors, may initiate litigation against the manufacturers of our devices or key components, including LCD and OLED panels, or our retailers, alleging infringement, misappropriation or other violation of their proprietary rights with respect to existing or future devices. Also, third parties may make infringement claims against us that relate to technology developed and owned by one of our manufacturers for which our manufacturers may or may not indemnify us. Even if we are indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations and determining the scope of these obligations could require additional litigation. Moreover, our agreements with our retailers generally contain intellectual property indemnification obligations, and we may be responsible for indemnifying our retailers against certain intellectual property claims or liability they may face relating to our devices or offerings. Additionally, our retailers may not purchase our offerings if they are concerned that they may infringe, misappropriate or otherwise violate third-party intellectual property rights.

The complexity of the technology involved and inherent uncertainty and cost of intellectual property litigation increases our risks. In the event of a meritorious or successful claim of infringement, and our failure or inability to license or independently develop or acquire access to alternative technology on a timely basis and on commercially reasonable terms, or substitute similar intellectual property from another source, we may be required to:

- discontinue making, using, selling or importing substantially all or some of our devices as currently engineered;
- offer less competitive devices with reduced or limited functionality;
- pay substantial monetary damages for the prior use of third-party intellectual property;
- change how our devices are manufactured or the design of our devices;
- shift significant liabilities to our manufacturers who may not be financially able to absorb them;
- enter into licensing arrangements with third parties on economically unfavorable or impractical terms and conditions; and/or
- pay higher prices for the devices we sell.

As a result of the occurrence of any of the foregoing, we may be unable to offer competitive devices, suffer a material decrease or interruption in sales and our business, financial condition and results of operations may be harmed.

If we become subject to liability for content that we distribute through our devices, our business, financial condition and results of operations may be harmed.

As a distributor of content, we face potential liability for negligence, copyright, patent or trademark infringement, public performance royalties or other claims based on the nature and content of materials that we distribute. The Digital Millennium Copyright Act (DMCA) is intended, in part, to limit the liability of eligible service providers for caching, hosting, or linking to, user content that include materials that infringe copyrights or other rights of others. We rely on the protections provided by the DMCA in conducting our business, and may be adversely impacted by future legislation and future judicial decisions altering these safe harbors or if international jurisdictions refuse to apply similar protections. If we become liable for these types of claims as a

result of the content that is streamed through our technology, then our business may suffer. Litigation to defend these claims could be costly and the expenses and damages arising from any liability could harm our business, financial condition and results of operations. We cannot assure that we are insured or indemnified to cover claims of these types or liability that may be imposed on us.

Some of our consumer devices contain "open source" software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.

Some of our devices are, or may be distributed with, software licensed by its authors or other third parties under so-called "open source" licenses, including, for example, the GNU General Public License, GNU Lesser General Public License, the Mozilla Public License, the BSD License and the Apache License.

Some of those licenses may require, as a condition of the license, that:

- we release the source code for our proprietary software, or modifications or derivative works we create based upon, incorporating, or using the open source software,
- we provide notices with our devices, and/or
- we license the modifications or derivative works we create based upon, incorporating, or using the open source software under the terms of a particular open source license or other license granting third parties certain rights of further use, including that the licensee publicly release all or part of the source code to such software and/or make available any derivative works of the open source code on unfavorable terms or at no cost.

From time to time, companies that incorporate open source software into their devices have faced claims challenging the ownership of open source software and/or compliance with open source license terms. Additionally, the terms of certain open source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that open source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide the open source software subject to those licenses. Accordingly, we could be subject to suits and liability for copyright infringement claims and breach of contract by parties claiming ownership of, or demanding release of, what we believe to be open source software or noncompliance with open source licensing terms. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose the source code or that would otherwise breach the terms of an open source agreement, such use could nevertheless occur, or could be claimed to have occurred, and we may be required to release our proprietary source code, pay damages for breach of contract, purchase a costly license, re-engineer our applications, discontinue sales in the event re-engineering cannot be accomplished on a timely basis or take other remedial action that may divert resources away from our development efforts, any of which may harm our business, financial condition and results of operations. This reengineering process could require us to expend significant additional research and development resources, and we may not be able to complete the re-engineering process successfully. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of software. If an author or other third-party that distributes such open source software were to allege that we had not complied with the conditions of one or more of those open source licenses, we could be required to incur legal expenses in defending against such allegations, and if our defenses were not successful we could be enjoined from distribution of the devices that contained the open source software and required to either make the source code for the open source software available, to grant third parties certain rights of further use of our software, or to remove the open source software from our devices, which could disrupt our distribution and sale of some of our devices, or help third parties, including our competitors, develop products and services that are similar to or better than ours, any of which may harm our business, financial condition and results of operations.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized in the city of Irvine, state of California, on this 1st day of March, 2021.

VIZIO HOLDING CORP.

By: /s/ William Wang
Name: William Wang
Title: Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William Wang, Adam Townsend and Jerry Huang, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

SIGNATURE	TITLE	DATE
/s/ William Wang William Wang	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	March 1, 2021
/s/ Ben Wong Ben Wong	President and Chief Operating Officer	March 1, 2021
/s/ Adam Townsend Adam Townsend	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 1, 2021
/s/ John R. Burbank John R. Burbank	Director	March 1, 2021
/s/ Julia S. Gouw Julia S. Gouw	Director	March 1, 2021
/s/ S.C. Huang S.C. Huang	Director	March 1, 2021
/s/ David E. Russell David E. Russell	Director	March 1, 2021

Exhibit: “12”

Frequently Asked Questions about the GNU Licenses

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Basic questions about the GNU Project, the Free Software Foundation, and its licenses

General understanding of the GNU licenses

- Does the GPL allow me to add terms that would require citation or acknowledgment in research papers which use the GPL-covered software or its output?
- Can I omit the preamble of the GPL, or the instructions for how to use it on your own programs, to save space?
- What does it mean to say that two licenses are "compatible"?
- What does it mean to say a license is "compatible with the GPL"?
- Why is the original BSD license incompatible with the GPL?
- What is the difference between an "aggregate" and other kinds of "modified versions"?
- When it comes to determining whether two pieces of software form a single work, does the fact that the code is in one or more containers have any effect?
- Why does the FSF require that contributors to FSF-copyrighted programs assign copyright to the FSF? If I hold copyright on a GPLed program, should I do this, too? If so, how?
- If I use a piece of software that has been obtained under the GNU GPL, am I allowed to modify the original code into a new program, then distribute and sell that new program commercially?
- Can I use the GPL for something other than software?
- I'd like to license my code under the GPL, but I'd also like to make it clear that it can't be used for military and/or commercial uses. Can I do this?
- Can I use the GPL to license hardware?
- Does prelinking a GPLed binary to various libraries on the system, to optimize its performance, count as modification?
- How does the LGPL work with Java?
- Why did you invent the new terms "propagate" and "convey" in GPLv3?
- Is "convey" in GPLv3 the same thing as what GPLv2 means by "distribute"?
- If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?
- GPLv3 gives "making available to the public" as an example of propagation. What does this mean? Is making available a form of conveying?
- Since distribution and making available to the public are forms of propagation that are also conveying in GPLv3, what are some examples of propagation that do not constitute conveying?
- How does GPLv3 make BitTorrent distribution easier?
- What is tivoization? How does GPLv3 prevent it?
- Does GPLv3 prohibit DRM?
- Does GPLv3 require that voters be able to modify the software running in a voting machine?
- Does GPLv3 have a "patent retaliation clause"?
- In GPLv3 and AGPLv3, what does it mean when it says "notwithstanding any other provision of this License"?
- In AGPLv3, what counts as " interacting with [the software] remotely through a computer network?"
- How does GPLv3's concept of "you" compare to the definition of "Legal Entity" in the Apache License 2.0?
- In GPLv3, what does "the Program" refer to? Is it every program ever released under GPLv3?
- If some network client software is released under AGPLv3, does it have to be able to provide source to the servers it interacts with?
- For software that runs a proxy server licensed under the AGPL, how can I provide an offer of source to users interacting with that code?

Using GNU licenses for your programs

- How do I upgrade from (L)GPLv2 to (L)GPLv3?
- Could you give me step by step instructions on how to apply the GPL to my program?
- Why should I use the GNU GPL rather than other free software licenses?
- Why does the GPL require including a copy of the GPL with every copy of the program?
- Is putting a copy of the GNU GPL in my repository enough to apply the GPL?
- Why should I put a license notice in each source file?
- What if the work is not very long?
- Can I omit the preamble of the GPL, or the instructions for how to use it on your own programs, to save space?
- How do I get a copyright on my program in order to release it under the GPL?
- What if my school might want to make my program into its own proprietary software product?
- I would like to release a program I wrote under the GNU GPL, but I would like to use the same code in nonfree programs.
- Can the developer of a program who distributed it under the GPL later license it to another party for exclusive use?

- Can the US Government release a program under the GNU GPL?
- Can the US Government release improvements to a GPL-covered program?
- Why should programs say "Version 3 of the GPL or any later version"?
- Is it a good idea to use a license saying that a certain program can be used only under the latest version of the GNU GPL?
- Is there some way that I can GPL the output people get from use of my program? For example, if my program is used to develop hardware designs, can I require that these designs must be free?
- Why don't you use the GPL for manuals?
- How does the GPL apply to fonts?
- What license should I use for website maintenance system templates?
- Can I release a program under the GPL which I developed using nonfree tools?
- I use public key cryptography to sign my code to assure its authenticity. Is it true that GPLv3 forces me to release my private signing keys?
- Does GPLv3 require that voters be able to modify the software running in a voting machine?
- The warranty and liability disclaimers in GPLv3 seem specific to U.S. law. Can I add my own disclaimers to my own code?
- My program has interactive user interfaces that are non-visual in nature. How can I comply with the Appropriate Legal Notices requirement in GPLv3?

Distribution of programs released under the GNU licenses

- Can I release a modified version of a GPL-covered program in binary form only?
- I downloaded just the binary from the net. If I distribute copies, do I have to get the source and distribute that too?
- I want to distribute binaries via physical media without accompanying sources. Can I provide source code by FTP instead of by mail order?
- My friend got a GPL-covered binary with an offer to supply source, and made a copy for me. Can I use the offer to obtain the source?
- Can I put the binaries on my Internet server and put the source on a different Internet site?
- I want to distribute an extended version of a GPL-covered program in binary form. Is it enough to distribute the source for the original version?
- I want to distribute binaries, but distributing complete source is inconvenient. Is it ok if I give users the diffs from the "standard" version along with the binaries?
- Can I make binaries available on a network server, but send sources only to people who order them?
- How can I make sure each user who downloads the binaries also gets the source?
- Does the GPL require me to provide source code that can be built to match the exact hash of the binary I am distributing?
- Can I release a program with a license which says that you can distribute modified versions of it under the GPL but you can't distribute the original itself under the GPL?
- I just found out that a company has a copy of a GPLed program, and it costs money to get it. Aren't they violating the GPL by not making it available on the Internet?
- A company is running a modified version of a GPLed program on a web site. Does the GPL say they must release their modified sources?
- A company is running a modified version of a program licensed under the GNU Affero GPL (AGPL) on a web site. Does the AGPL say they must release their modified sources?
- Is use within one organization or company "distribution"?
- If someone steals a CD containing a version of a GPL-covered program, does the GPL give him the right to redistribute that version?
- What if a company distributes a copy of some other developers' GPL-covered work to me as a trade secret?
- What if a company distributes a copy of its own GPL-covered work to me as a trade secret?
- Do I have "fair use" rights in using the source code of a GPL-covered program?
- Does moving a copy to a majority-owned, and controlled, subsidiary constitute distribution?
- Can software installers ask people to click to agree to the GPL? If I get some software under the GPL, do I have to agree to anything?
- I would like to bundle GPLed software with some sort of installation software. Does that installer need to have a GPL-compatible license?
- Does a distributor violate the GPL if they require me to "represent and warrant" that I am located in the US, or that I intend to distribute the software in compliance with relevant export control laws?

- The beginning of GPLv3 section 6 says that I can convey a covered work in object code form "under the terms of sections 4 and 5" provided I also meet the conditions of section 6. What does that mean?
- My company owns a lot of patents. Over the years we've contributed code to projects under "GPL version 2 or any later version", and the project itself has been distributed under the same terms. If a user decides to take the project's code (incorporating my contributions) under GPLv3, does that mean I've automatically granted GPLv3's explicit patent license to that user?
- If I distribute a GPLv3-covered program, can I provide a warranty that is voided if the user modifies the program?
- If I give a copy of a GPLv3-covered program to a coworker at my company, have I "conveyed" the copy to that coworker?
- Am I complying with GPLv3 if I offer binaries on an FTP server and sources by way of a link to a source code repository in a version control system, like CVS or Subversion?
- Can someone who conveys GPLv3-covered software in a User Product use remote attestation to prevent a user from modifying that software?
- What does "rules and protocols for communication across the network" mean in GPLv3?
- Distributors that provide Installation Information under GPLv3 are not required to provide "support service" for the product. What kind of "support service" do you mean?

Using programs released under the GNU licenses when writing other programs

- Can I have a GPL-covered program and an unrelated nonfree program on the same computer?
- Can I use GPL-covered editors such as GNU Emacs to develop nonfree programs? Can I use GPL-covered tools such as GCC to compile them?
- Is there some way that I can GPL the output people get from use of my program? For example, if my program is used to develop hardware designs, can I require that these designs must be free?
- In what cases is the output of a GPL program covered by the GPL too?
- If I port my program to GNU/Linux, does that mean I have to release it as free software under the GPL or some other free software license?
- I'd like to incorporate GPL-covered software in my proprietary system. I have no permission to use that software except what the GPL gives me. Can I do this?
- If I distribute a proprietary program that links against an LGPLv3-covered library that I've modified, what is the "contributor version" for purposes of determining the scope of the explicit patent license grant I'm making—is it just the library, or is it the whole combination?
- Under AGPLv3, when I modify the Program under section 13, what Corresponding Source does it have to offer?
- Where can I learn more about the GCC Runtime Library Exception?

Combining work with code released under the GNU licenses

- Is GPLv3 compatible with GPLv2?
- Does GPLv2 have a requirement about delivering installation information?
- How are the various GNU licenses compatible with each other?
- What is the difference between an "aggregate" and other kinds of "modified versions"?
- Do I have "fair use" rights in using the source code of a GPL-covered program?
- Can the US Government release improvements to a GPL-covered program?
- Does the GPL have different requirements for statically vs dynamically linked modules with a covered work?
- Does the LGPL have different requirements for statically vs dynamically linked modules with a covered work?
- If a library is released under the GPL (not the LGPL), does that mean that any software which uses it has to be under the GPL or a GPL-compatible license?
- You have a GPLed program that I'd like to link with my code to build a proprietary program. Does the fact that I link with your program mean I have to GPL my program?
- If so, is there any chance I could get a license of your program under the Lesser GPL?
- If a programming language interpreter is released under the GPL, does that mean programs written to be interpreted by it must be under GPL-compatible licenses?
- If a programming language interpreter has a license that is incompatible with the GPL, can I run GPL-covered programs on it?
- If I add a module to a GPL-covered program, do I have to use the GPL as the license for my module?
- When is a program and its plug-ins considered a single combined program?

- If I write a plug-in to use with a GPL-covered program, what requirements does that impose on the licenses I can use for distributing my plug-in?
- Can I apply the GPL when writing a plug-in for a nonfree program?
- Can I release a nonfree program that's designed to load a GPL-covered plug-in?
- I'd like to incorporate GPL-covered software in my proprietary system. I have no permission to use that software except what the GPL gives me. Can I do this?
- Using a certain GNU program under the GPL does not fit our project to make proprietary software. Will you make an exception for us? It would mean more users of that program.
- I'd like to incorporate GPL-covered software in my proprietary system. Can I do this by putting a "wrapper" module, under a GPL-compatible lax permissive license (such as the X11 license) in between the GPL-covered part and the proprietary part?
- Can I write free software that uses nonfree libraries?
- Can I link a GPL program with a proprietary system library?
- In what ways can I link or combine AGPLv3-covered and GPLv3-covered code?
- What legal issues come up if I use GPL-incompatible libraries with GPL software?
- I'm writing a Windows application with Microsoft Visual C++ and I will be releasing it under the GPL. Is dynamically linking my program with the Visual C++ runtime library permitted under the GPL?
- I'd like to modify GPL-covered programs and link them with the portability libraries from Money Guzzler Inc. I cannot distribute the source code for these libraries, so any user who wanted to change these versions would have to obtain those libraries separately. Why doesn't the GPL permit this?
- If license for a module Q has a requirement that's incompatible with the GPL, but the requirement applies only when Q is distributed by itself, not when Q is included in a larger program, does that make the license GPL-compatible? Can I combine or link Q with a GPL-covered program?
- In an object-oriented language such as Java, if I use a class that is GPLed without modifying, and subclass it, in what way does the GPL affect the larger program?
- Does distributing a nonfree driver meant to link with the kernel Linux violate the GPL?
- How can I allow linking of proprietary modules with my GPL-covered library under a controlled interface only?
- Consider this situation: 1) X releases V1 of a project under the GPL. 2) Y contributes to the development of V2 with changes and new code based on V1. 3) X wants to convert V2 to a non-GPL license. Does X need Y's permission?
- I have written an application that links with many different components, that have different licenses. I am very confused as to what licensing requirements are placed on my program. Can you please tell me what licenses I may use?
- Can I use snippets of GPL-covered source code within documentation that is licensed under some license that is incompatible with the GPL?

Questions about violations of the GNU licenses

- What should I do if I discover a possible violation of the GPL?
- Who has the power to enforce the GPL?
- I heard that someone got a copy of a GPLed program under another license. Is this possible?
- Is the developer of a GPL-covered program bound by the GPL? Could the developer's actions ever be a violation of the GPL?
- I just found out that a company has a copy of a GPLed program, and it costs money to get it. Aren't they violating the GPL by not making it available on the Internet?
- Can I use GPLed software on a device that will stop operating if customers do not continue paying a subscription fee?
- What does it mean to "cure" a violation of GPLv3?
- If someone installs GPLed software on a laptop, and then lends that laptop to a friend without providing source code for the software, have they violated the GPL?
- Suppose that two companies try to circumvent the requirement to provide Installation Information by having one company release signed software, and the other release a User Product that only runs signed software from the first company. Is this a violation of GPLv3?

You can use our publications to understand how GNU licenses work or help you advocate for free software, but they are not legal advice. The FSF cannot give legal advice. Legal advice is personalized advice from a lawyer who has agreed to work for you. Our answers address general questions and may not apply in your specific legal situation.

Have a question not answered here? Check out some of our other licensing resources or contact the Compliance Lab at licensing@fsf.org.

What does “GPL” stand for?

> “GPL” stands for “General Public License”. The most widespread such license is the GNU General Public License, or GNU GPL for short. This can be further shortened to “GPL”, when it is understood that the GNU GPL is the one intended.

Does free software mean using the GPL?

> Not at all—there are many other free software licenses. We have an incomplete list. Any license that provides the user certain specific freedoms is a free software license.

Why should I use the GNU GPL rather than other free software licenses?

> Using the GNU GPL will require that all the released improved versions be free software. This means you can avoid the risk of having to compete with a proprietary modified version of your own work. However, in some special situations it can be better to use a more permissive license.

Does all GNU software use the GNU GPL as its license?

> Most GNU software packages use the GNU GPL, but there are a few GNU programs (and parts of programs) that use looser licenses, such as the Lesser GPL. When we do this, it is a matter of strategy.

Does using the GPL for a program make it GNU software?

> Anyone can release a program under the GNU GPL, but that does not make it a GNU package.
>
> Making the program a GNU software package means explicitly contributing to the GNU Project. This happens when the program's developers and the GNU Project agree to do it. If you are interested in contributing a program to the GNU Project, please write to <maintainers@gnu.org>.

What should I do if I discover a possible violation of the GPL?

> You should report it. First, check the facts as best you can. Then tell the publisher or copyright holder of the specific GPL-covered program. If that is the Free Software Foundation, write to <license-violation@gnu.org>. Otherwise, the program's maintainer may be the copyright holder, or else could tell you how to contact the copyright holder, so report it to the maintainer.

Why does the GPL permit users to publish their modified versions?

> A crucial aspect of free software is that users are free to cooperate. It is absolutely essential to permit users who wish to help each other to share their bug fixes and improvements with other users.
>
> Some have proposed alternatives to the GPL that require modified versions to go through the original author. As long as the original author keeps up with the need for maintenance, this may work well in practice, but if the author stops (more or less) to do something else or does not attend to all the users' needs, this scheme falls down. Aside from the practical problems, this scheme does not allow users to help each other.
>
> Sometimes control over modified versions is proposed as a means of preventing confusion between various versions made by users. In our experience, this confusion is not a major problem. Many versions of Emacs have been made outside the GNU Project, but users can tell them apart. The GPL requires the maker of a version to place his or her name on it, to distinguish it from other versions and to protect the reputations of other maintainers.

Does the GPL require that source code of modified versions be posted to the public?

The GPL does not require you to release your modified version, or any part of it. You are free to make modifications and use them privately, without ever releasing them. This applies to organizations (including companies), too; an organization can make a modified version and use it internally without ever releasing it outside the organization.

But *if* you release the modified version to the public in some way, the GPL requires you to make the modified source code available to the program's users, under the GPL.

Thus, the GPL gives permission to release the modified program in certain ways, and not in other ways; but the decision of whether to release it is up to you.

Can I have a GPL-covered program and an unrelated nonfree program on the same computer?

Yes.

If I know someone has a copy of a GPL-covered program, can I demand they give me a copy?

No. The GPL gives a person permission to make and redistribute copies of the program *if and when that person chooses to do so*. That person also has the right not to choose to redistribute the program.

What does "written offer valid for any third party" mean in GPLv2? Does that mean everyone in the world can get the source to any GPLed program no matter what?

If you choose to provide source through a written offer, then anybody who requests the source from you is entitled to receive it.

If you commercially distribute binaries not accompanied with source code, the GPL says you must provide a written offer to distribute the source code later. When users non-commercially redistribute the binaries they received from you, they must pass along a copy of this written offer. This means that people who did not get the binaries directly from you can still receive copies of the source code, along with the written offer.

The reason we require the offer to be valid for any third party is so that people who receive the binaries indirectly in that way can order the source code from you.

GPLv2 says that modified versions, if released, must be "licensed … to all third parties." Who are these third parties?

Section 2 says that modified versions you distribute must be licensed to all third parties under the GPL. "All third parties" means absolutely everyone—but this does not require you to *do* anything physically for them. It only means they have a license from you, under the GPL, for your version.

Am I required to claim a copyright on my modifications to a GPL-covered program?

You are not required to claim a copyright on your changes. In most countries, however, that happens automatically by default, so you need to place your changes explicitly in the public domain if you do not want them to be copyrighted.

Whether you claim a copyright on your changes or not, either way you must release the modified version, as a whole, under the GPL (if you release your modified version at all).

What does the GPL say about translating some code to a different programming language?

Under copyright law, translation of a work is considered a kind of modification. Therefore, what the GPL says about modified versions applies also to translated versions. The translation is covered by the copyright on the original program.

If the original program carries a free license, that license gives permission to translate it. How you can use and license the translated program is determined by that license. If the original program is licensed under certain versions of the GNU GPL, the translated program must be covered by the same versions of the GNU GPL.

If a program combines public-domain code with GPL-covered code, can I take the public-domain part and use it as public domain code?

> You can do that, if you can figure out which part is the public domain part and separate it from the rest. If code was put in the public domain by its developer, it is in the public domain no matter where it has been.

Does the GPL allow me to sell copies of the program for money?

> Yes, the GPL allows everyone to do this. The right to sell copies is part of the definition of free software. Except in one special situation, there is no limit on what price you can charge. (The one exception is the required written offer to provide source code that must accompany binary-only release.)

Does the GPL allow me to charge a fee for downloading the program from my distribution site?

> Yes. You can charge any fee you wish for distributing a copy of the program. Under GPLv2, if you distribute binaries by download, you must provide "equivalent access" to download the source—therefore, the fee to download source may not be greater than the fee to download the binary. If the binaries being distributed are licensed under the GPLv3, then you must offer equivalent access to the source code in the same way through the same place at no further charge.

Does the GPL allow me to require that anyone who receives the software must pay me a fee and/or notify me?

> No. In fact, a requirement like that would make the program nonfree. If people have to pay when they get a copy of a program, or if they have to notify anyone in particular, then the program is not free. See the definition of free software.
>
> The GPL is a free software license, and therefore it permits people to use and even redistribute the software without being required to pay anyone a fee for doing so.
>
> You *can* charge people a fee to get a copy *from you*. You can't require people to pay you when they get a copy *from someone else*.

If I distribute GPLed software for a fee, am I required to also make it available to the public without a charge?

> No. However, if someone pays your fee and gets a copy, the GPL gives them the freedom to release it to the public, with or without a fee. For example, someone could pay your fee, and then put her copy on a web site for the general public.

Does the GPL allow me to distribute copies under a nondisclosure agreement?

> No. The GPL says that anyone who receives a copy from you has the right to redistribute copies, modified or not. You are not allowed to distribute the work on any more restrictive basis.
>
> If someone asks you to sign an NDA for receiving GPL-covered software copyrighted by the FSF, please inform us immediately by writing to license-violation@fsf.org.
>
> If the violation involves GPL-covered code that has some other copyright holder, please inform that copyright holder, just as you would for any other kind of violation of the GPL.

Does the GPL allow me to distribute a modified or beta version under a nondisclosure agreement?

> No. The GPL says that your modified versions must carry all the freedoms stated in the GPL. Thus, anyone who receives a copy of your version from you has the right to redistribute copies (modified or not) of that version. You may not distribute any version of the work on a more restrictive basis.

Does the GPL allow me to develop a modified version under a nondisclosure agreement?

> Yes. For instance, you can accept a contract to develop changes and agree not to release *your changes* until the client says ok. This is permitted because in this case no GPL-covered code is being distributed under an NDA.

You can also release your changes to the client under the GPL, but agree not to release them to anyone else unless the client says ok. In this case, too, no GPL-covered code is being distributed under an NDA, or under any additional restrictions.

The GPL would give the client the right to redistribute your version. In this scenario, the client will probably choose not to exercise that right, but does *have* the right.

I want to get credit for my work. I want people to know what I wrote. Can I still get credit if I use the GPL?

You can certainly get credit for the work. Part of releasing a program under the GPL is writing a copyright notice in your own name (assuming you are the copyright holder). The GPL requires all copies to carry an appropriate copyright notice.

Does the GPL allow me to add terms that would require citation or acknowledgment in research papers which use the GPL-covered software or its output?

No, this is not permitted under the terms of the GPL. While we recognize that proper citation is an important part of academic publications, citation cannot be added as an additional requirement to the GPL. Requiring citation in research papers which made use of GPLed software goes beyond what would be an acceptable additional requirement under section 7(b) of GPLv3, and therefore would be considered an additional restriction under Section 7 of the GPL. And copyright law does not allow you to place such a requirement on the output of software, regardless of whether it is licensed under the terms of the GPL or some other license.

Why does the GPL require including a copy of the GPL with every copy of the program?

Including a copy of the license with the work is vital so that everyone who gets a copy of the program can know what their rights are.

It might be tempting to include a URL that refers to the license, instead of the license itself. But you cannot be sure that the URL will still be valid, five years or ten years from now. Twenty years from now, URLs as we know them today may no longer exist.

The only way to make sure that people who have copies of the program will continue to be able to see the license, despite all the changes that will happen in the network, is to include a copy of the license in the program.

Is it enough just to put a copy of the GNU GPL in my repository?

Just putting a copy of the GNU GPL in a file in your repository does not explicitly state that the code in the same repository may be used under the GNU GPL. Without such a statement, it's not entirely clear that the permissions in the license really apply to any particular source file. An explicit statement saying that eliminates all doubt.

A file containing just a license, without a statement that certain other files are covered by that license, resembles a file containing just a subroutine which is never called from anywhere else. The resemblance is not perfect: lawyers and courts might apply common sense and conclude that you must have put the copy of the GNU GPL there because you wanted to license the code that way. Or they might not. Why leave an uncertainty?

This statement should be in each source file. A clear statement in the program's README file is legally sufficient *as long as that accompanies the code*, but it is easy for them to get separated. Why take a risk of uncertainty about your code's license?

This has nothing to do with the specifics of the GNU GPL. It is true for any free license.

Why should I put a license notice in each source file?

You should put a notice at the start of each source file, stating what license it carries, in order to avoid risk of the code's getting disconnected from its license. If your repository's README says that source file is under the GNU GPL, what happens if someone copies that file to another program? That other context may not show what the file's license is. It may appear to have some other license, or no license at all (which would make the code nonfree).

Adding a copyright notice and a license notice at the start of each source file is easy and makes such confusion unlikely.

This has nothing to do with the specifics of the GNU GPL. It is true for any free license.

What if the work is not very long?

If a whole software package contains very little code—less than 300 lines is the benchmark we use—you may as well use a lax permissive license for it, rather than a copyleft license like the GNU GPL. (Unless, that is, the code is specially important.) We recommend the Apache License 2.0 for such cases.

Can I omit the preamble of the GPL, or the instructions for how to use it on your own programs, to save space?

The preamble and instructions are integral parts of the GNU GPL and may not be omitted. In fact, the GPL is copyrighted, and its license permits only verbatim copying of the entire GPL. (You can use the legal terms to make another license but it won't be the GNU GPL.)

The preamble and instructions add up to some 1000 words, less than 1/5 of the GPL's total size. They will not make a substantial fractional change in the size of a software package unless the package itself is quite small. In that case, you may as well use a simple all-permissive license rather than the GNU GPL.

What does it mean to say that two licenses are “compatible”?

In order to combine two programs (or substantial parts of them) into a larger work, you need to have permission to use both programs in this way. If the two programs' licenses permit this, they are compatible. If there is no way to satisfy both licenses at once, they are incompatible.

For some licenses, the way in which the combination is made may affect whether they are compatible—for instance, they may allow linking two modules together, but not allow merging their code into one module.

If you just want to install two separate programs in the same system, it is not necessary that their licenses be compatible, because this does not combine them into a larger work.

What does it mean to say a license is “compatible with the GPL?”

It means that the other license and the GNU GPL are compatible; you can combine code released under the other license with code released under the GNU GPL in one larger program.

All GNU GPL versions permit such combinations privately; they also permit distribution of such combinations provided the combination is released under the same GNU GPL version. The other license is compatible with the GPL if it permits this too.

GPLv3 is compatible with more licenses than GPLv2: it allows you to make combinations with code that has specific kinds of additional requirements that are not in GPLv3 itself. Section 7 has more information about this, including the list of additional requirements that are permitted.

Can I write free software that uses nonfree libraries?

If you do this, your program won't be fully usable in a free environment. If your program depends on a nonfree library to do a certain job, it cannot do that job in the Free World. If it depends on a nonfree library to run at all, it cannot be part of a free operating system such as GNU; it is entirely off limits to the Free World.

So please consider: can you find a way to get the job done without using this library? Can you write a free replacement for that library?

If the program is already written using the nonfree library, perhaps it is too late to change the decision. You may as well release the program as it stands, rather than not release it. But please mention in the README that the need for the nonfree library is a drawback, and suggest the task of changing the program so that it does the same job without the nonfree library. Please suggest that anyone who thinks of doing substantial further work on the program first free it from dependence on the nonfree library.

Note that there may also be legal issues with combining certain nonfree libraries with GPL-covered free software. Please see the question on GPL software with GPL-incompatible libraries for more information.

Can I link a GPL program with a proprietary system library?

Both versions of the GPL have an exception to their copyleft, commonly called the system library exception. If the GPL-incompatible libraries you want to use meet the criteria for a system library, then you don't have to do anything special to use them; the requirement to distribute source code for the whole program does not include those libraries, even if you distribute a linked executable containing them.

The criteria for what counts as a "system library" vary between different versions of the GPL. GPLv3 explicitly defines "System Libraries" in section 1, to exclude it from the definition of "Corresponding Source." GPLv2 deals with this issue slightly differently, near the end of section 3.

In what ways can I link or combine AGPLv3-covered and GPLv3-covered code?

Each of these licenses explicitly permits linking with code under the other license. You can always link GPLv3-covered modules with AGPLv3-covered modules, and vice versa. That is true regardless of whether some of the modules are libraries.

What legal issues come up if I use GPL-incompatible libraries with GPL software?

If you want your program to link against a library not covered by the system library exception, you need to provide permission to do that. Below are two example license notices that you can use to do that; one for GPLv3, and the other for GPLv2. In either case, you should put this text in each file to which you are granting this permission.

Only the copyright holders for the program can legally release their software under these terms. If you wrote the whole program yourself, then assuming your employer or school does not claim the copyright, you are the copyright holder—so you can authorize the exception. But if you want to use parts of other GPL-covered programs by other authors in your code, you cannot authorize the exception for them. You have to get the approval of the copyright holders of those programs.

When other people modify the program, they do not have to make the same exception for their code—it is their choice whether to do so.

If the libraries you intend to link with are nonfree, please also see the section on writing Free Software which uses nonfree libraries.

If you're using GPLv3, you can accomplish this goal by granting an additional permission under section 7. The following license notice will do that. You must replace all the text in brackets with text that is appropriate for your program. If not everybody can distribute source for the libraries you intend to link with, you should remove the text in braces; otherwise, just remove the braces themselves.

> Copyright (C) *[years] [name of copyright holder]*
>
> This program is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License as published by the Free Software Foundation; either version 3 of the License, or (at your option) any later version.
>
> This program is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the GNU General Public License for more details.
>
> You should have received a copy of the GNU General Public License along with this program; if not, see <https://www.gnu.org/licenses>.
>
> Additional permission under GNU GPL version 3 section 7
>
> If you modify this Program, or any covered work, by linking or combining it with *[name of library]* (or a modified version of that library), containing parts covered by the terms of *[name of library's license]*, the

> licensors of this Program grant you additional permission to convey the resulting work. {Corresponding Source for a non-source form of such a combination shall include the source code for the parts of *[name of library]* used as well as that of the covered work.}

If you're using GPLv2, you can provide your own exception to the license's terms. The following license notice will do that. Again, you must replace all the text in brackets with text that is appropriate for your program. If not everybody can distribute source for the libraries you intend to link with, you should remove the text in braces; otherwise, just remove the braces themselves.

> Copyright (C) *[years] [name of copyright holder]*
>
> This program is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License as published by the Free Software Foundation; either version 2 of the License, or (at your option) any later version.
>
> This program is distributed in the hope that it will be useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the GNU General Public License for more details.
>
> You should have received a copy of the GNU General Public License along with this program; if not, see <https://www.gnu.org/licenses>.
>
> Linking *[name of your program]* statically or dynamically with other modules is making a combined work based on *[name of your program]*. Thus, the terms and conditions of the GNU General Public License cover the whole combination.
>
> In addition, as a special exception, the copyright holders of *[name of your program]* give you permission to combine *[name of your program]* with free software programs or libraries that are released under the GNU LGPL and with code included in the standard release of *[name of library]* under the *[name of library's license]* (or modified versions of such code, with unchanged license). You may copy and distribute such a system following the terms of the GNU GPL for *[name of your program]* and the licenses of the other code concerned{, provided that you include the source code of that other code when and as the GNU GPL requires distribution of source code}.
>
> Note that people who make modified versions of *[name of your program]* are not obligated to grant this special exception for their modified versions; it is their choice whether to do so. The GNU General Public License gives permission to release a modified version without this exception; this exception also makes it possible to release a modified version which carries forward this exception.

How do I get a copyright on my program in order to release it under the GPL?

Under the Berne Convention, everything written is automatically copyrighted from whenever it is put in fixed form. So you don't have to do anything to "get" the copyright on what you write—as long as nobody else can claim to own your work.

However, registering the copyright in the US is a very good idea. It will give you more clout in dealing with an infringer in the US.

The case when someone else might possibly claim the copyright is if you are an employee or student; then the employer or the school might claim you did the job for them and that the copyright belongs to them. Whether they would have a valid claim would depend on circumstances such as the laws of the place where you live, and on your employment contract and what sort of work you do. It is best to consult a lawyer if there is any possible doubt.

If you think that the employer or school might have a claim, you can resolve the problem clearly by getting a copyright disclaimer signed by a suitably authorized officer of the company or school. (Your immediate boss or a professor is usually NOT authorized to sign such a disclaimer.)

What if my school might want to make my program into its own proprietary software product?

Many universities nowadays try to raise funds by restricting the use of the knowledge and information they develop, in effect behaving little different from commercial businesses. (See "The Kept University", Atlantic Monthly, March 2000, for a general discussion of this problem and its effects.)

If you see any chance that your school might refuse to allow your program to be released as free software, it is best to raise the issue at the earliest possible stage. The closer the program is to working usefully, the more temptation the administration might feel to take it from you and finish it without you. At an earlier stage, you have more leverage.

So we recommend that you approach them when the program is only half-done, saying, "If you will agree to releasing this as free software, I will finish it." Don't think of this as a bluff. To prevail, you must have the courage to say, "My program will have liberty, or never be born."

Could you give me step by step instructions on how to apply the GPL to my program?

See the page of GPL instructions.

I heard that someone got a copy of a GPLed program under another license. Is this possible?

The GNU GPL does not give users permission to attach other licenses to the program. But the copyright holder for a program can release it under several different licenses in parallel. One of them may be the GNU GPL.

The license that comes in your copy, assuming it was put in by the copyright holder and that you got the copy legitimately, is the license that applies to your copy.

I would like to release a program I wrote under the GNU GPL, but I would like to use the same code in nonfree programs.

To release a nonfree program is always ethically tainted, but legally there is no obstacle to your doing this. If you are the copyright holder for the code, you can release it under various different non-exclusive licenses at various times.

Is the developer of a GPL-covered program bound by the GPL? Could the developer's actions ever be a violation of the GPL?

Strictly speaking, the GPL is a license from the developer for others to use, distribute and change the program. The developer itself is not bound by it, so no matter what the developer does, this is not a "violation" of the GPL.

However, if the developer does something that would violate the GPL if done by someone else, the developer will surely lose moral standing in the community.

Can the developer of a program who distributed it under the GPL later license it to another party for exclusive use?

No, because the public already has the right to use the program under the GPL, and this right cannot be withdrawn.

Can I use GPL-covered editors such as GNU Emacs to develop nonfree programs? Can I use GPL-covered tools such as GCC to compile them?

Yes, because the copyright on the editors and tools does not cover the code you write. Using them does not place any restrictions, legally, on the license you use for your code.

Some programs copy parts of themselves into the output for technical reasons—for example, Bison copies a standard parser program into its output file. In such cases, the copied text in the output is covered by the same license that covers it in the source code. Meanwhile, the part of the output which is derived from the program's input inherits the copyright status of the input.

As it happens, Bison can also be used to develop nonfree programs. This is because we decided to explicitly permit the use of the Bison standard parser program in Bison output files without restriction. We made the decision because there were other tools comparable to Bison which already permitted use for nonfree programs.

Do I have "fair use" rights in using the source code of a GPL-covered program?

> Yes, you do. "Fair use" is use that is allowed without any special permission. Since you don't need the developers' permission for such use, you can do it regardless of what the developers said about it—in the license or elsewhere, whether that license be the GNU GPL or any other free software license.
>
> Note, however, that there is no world-wide principle of fair use; what kinds of use are considered "fair" varies from country to country.

Can the US Government release a program under the GNU GPL?

> If the program is written by US federal government employees in the course of their employment, it is in the public domain, which means it is not copyrighted. Since the GNU GPL is based on copyright, such a program cannot be released under the GNU GPL. (It can still be free software, however; a public domain program is free.)
>
> However, when a US federal government agency uses contractors to develop software, that is a different situation. The contract can require the contractor to release it under the GNU GPL. (GNU Ada was developed in this way.) Or the contract can assign the copyright to the government agency, which can then release the software under the GNU GPL.

Can the US Government release improvements to a GPL-covered program?

> Yes. If the improvements are written by US government employees in the course of their employment, then the improvements are in the public domain. However, the improved version, as a whole, is still covered by the GNU GPL. There is no problem in this situation.
>
> If the US government uses contractors to do the job, then the improvements themselves can be GPL-covered.

Does the GPL have different requirements for statically vs dynamically linked modules with a covered work?

> No. Linking a GPL covered work statically or dynamically with other modules is making a combined work based on the GPL covered work. Thus, the terms and conditions of the GNU General Public License cover the whole combination. See also What legal issues come up if I use GPL-incompatible libraries with GPL software?

Does the LGPL have different requirements for statically vs dynamically linked modules with a covered work?

> For the purpose of complying with the LGPL (any extant version: v2, v2.1 or v3):
>
> > (1) If you statically link against an LGPLed library, you must also provide your application in an object (not necessarily source) format, so that a user has the opportunity to modify the library and relink the application.
> >
> > (2) If you dynamically link against an LGPLed library *already present on the user's computer*, you need not convey the library's source. On the other hand, if you yourself convey the executable LGPLed library along with your application, whether linked with statically or dynamically, you must also convey the library's sources, in one of the ways for which the LGPL provides.

Is there some way that I can GPL the output people get from use of my program? For example, if my program is used to develop hardware designs, can I require that these designs must be free?

> In general this is legally impossible; copyright law does not give you any say in the use of the output people make from their data using your program. If the user uses your program to enter or convert her own data, the copyright on the output belongs to her, not you. More generally, when a program translates its input into some other form, the copyright status of the output inherits that of the input it was generated from.
>
> So the only way you have a say in the use of the output is if substantial parts of the output are copied (more or less) from text in your program. For instance, part of the output of Bison (see above) would be covered by the GNU GPL, if we had not made an exception in this specific case.

You could artificially make a program copy certain text into its output even if there is no technical reason to do so. But if that copied text serves no practical purpose, the user could simply delete that text from the output and use only the rest. Then he would not have to obey the conditions on redistribution of the copied text.

In what cases is the output of a GPL program covered by the GPL too?

The output of a program is not, in general, covered by the copyright on the code of the program. So the license of the code of the program does not apply to the output, whether you pipe it into a file, make a screenshot, screencast, or video.

The exception would be when the program displays a full screen of text and/or art that comes from the program. Then the copyright on that text and/or art covers the output. Programs that output audio, such as video games, would also fit into this exception.

If the art/music is under the GPL, then the GPL applies when you copy it no matter how you copy it. However, fair use may still apply.

Keep in mind that some programs, particularly video games, can have artwork/audio that is licensed separately from the underlying GPLed game. In such cases, the license on the artwork/audio would dictate the terms under which video/streaming may occur. See also: Can I use the GPL for something other than software?

If I add a module to a GPL-covered program, do I have to use the GPL as the license for my module?

The GPL says that the whole combined program has to be released under the GPL. So your module has to be available for use under the GPL.

But you can give additional permission for the use of your code. You can, if you wish, release your module under a license which is more lax than the GPL but compatible with the GPL. The license list page gives a partial list of GPL-compatible licenses.

If a library is released under the GPL (not the LGPL), does that mean that any software which uses it has to be under the GPL or a GPL-compatible license?

Yes, because the program actually links to the library. As such, the terms of the GPL apply to the entire combination. The software modules that link with the library may be under various GPL compatible licenses, but the work as a whole must be licensed under the GPL. See also: What does it mean to say a license is “compatible with the GPL”?

If a programming language interpreter is released under the GPL, does that mean programs written to be interpreted by it must be under GPL-compatible licenses?

When the interpreter just interprets a language, the answer is no. The interpreted program, to the interpreter, is just data; a free software license like the GPL, based on copyright law, cannot limit what data you use the interpreter on. You can run it on any data (interpreted program), any way you like, and there are no requirements about licensing that data to anyone.

However, when the interpreter is extended to provide “bindings” to other facilities (often, but not necessarily, libraries), the interpreted program is effectively linked to the facilities it uses through these bindings. So if these facilities are released under the GPL, the interpreted program that uses them must be released in a GPL-compatible way. The JNI or Java Native Interface is an example of such a binding mechanism; libraries that are accessed in this way are linked dynamically with the Java programs that call them. These libraries are also linked with the interpreter. If the interpreter is linked statically with these libraries, or if it is designed to link dynamically with these specific libraries, then it too needs to be released in a GPL-compatible way.

Another similar and very common case is to provide libraries with the interpreter which are themselves interpreted. For instance, Perl comes with many Perl modules, and a Java implementation comes with many Java classes. These libraries and the programs that call them are always dynamically linked together.

A consequence is that if you choose to use GPLed Perl modules or Java classes in your program, you must release the program in a GPL-compatible way, regardless of the license used in the Perl or Java interpreter that the

combined Perl or Java program will run on.

I'm writing a Windows application with Microsoft Visual C++ (or Visual Basic) and I will be releasing it under the GPL. Is dynamically linking my program with the Visual C++ (or Visual Basic) runtime library permitted under the GPL?

You may link your program to these libraries, and distribute the compiled program to others. When you do this, the runtime libraries are "System Libraries" as GPLv3 defines them. That means that you don't need to worry about including their source code with the program's Corresponding Source. GPLv2 provides a similar exception in section 3.

You may not distribute these libraries in compiled DLL form with the program. To prevent unscrupulous distributors from trying to use the System Library exception as a loophole, the GPL says that libraries can only qualify as System Libraries as long as they're not distributed with the program itself. If you distribute the DLLs with the program, they won't be eligible for this exception anymore; then the only way to comply with the GPL would be to provide their source code, which you are unable to do.

It is possible to write free programs that only run on Windows, but it is not a good idea. These programs would be "trapped" by Windows, and therefore contribute zero to the Free World.

Why is the original BSD license incompatible with the GPL?

Because it imposes a specific requirement that is not in the GPL; namely, the requirement on advertisements of the program. Section 6 of GPLv2 states:

> You may not impose any further restrictions on the recipients' exercise of the rights granted herein.

GPLv3 says something similar in section 10. The advertising clause provides just such a further restriction, and thus is GPL-incompatible.

The revised BSD license does not have the advertising clause, which eliminates the problem.

When is a program and its plug-ins considered a single combined program?

It depends on how the main program invokes its plug-ins. If the main program uses fork and exec to invoke plug-ins, and they establish intimate communication by sharing complex data structures, or shipping complex data structures back and forth, that can make them one single combined program. A main program that uses simple fork and exec to invoke plug-ins and does not establish intimate communication between them results in the plug-ins being a separate program.

If the main program dynamically links plug-ins, and they make function calls to each other and share data structures, we believe they form a single combined program, which must be treated as an extension of both the main program and the plug-ins. If the main program dynamically links plug-ins, but the communication between them is limited to invoking the 'main' function of the plug-in with some options and waiting for it to return, that is a borderline case.

Using shared memory to communicate with complex data structures is pretty much equivalent to dynamic linking.

If I write a plug-in to use with a GPL-covered program, what requirements does that impose on the licenses I can use for distributing my plug-in?

Please see this question for determining when plug-ins and a main program are considered a single combined program and when they are considered separate works.

If the main program and the plugins are a single combined program then this means you must license the plug-in under the GPL or a GPL-compatible free software license and distribute it with source code in a GPL-compliant way. A main program that is separate from its plug-ins makes no requirements for the plug-ins.

Can I apply the GPL when writing a plug-in for a nonfree program?

Please see this question for determining when plug-ins and a main program are considered a single combined program and when they are considered separate programs.

If they form a single combined program this means that combination of the GPL-covered plug-in with the nonfree main program would violate the GPL. However, you can resolve that legal problem by adding an exception to your plug-in's license, giving permission to link it with the nonfree main program.

See also the question I am writing free software that uses a nonfree library.

Can I release a nonfree program that's designed to load a GPL-covered plug-in?

Please see this question for determining when plug-ins and a main program are considered a single combined program and when they are considered separate programs.

If they form a single combined program then the main program must be released under the GPL or a GPL-compatible free software license, and the terms of the GPL must be followed when the main program is distributed for use with these plug-ins.

However, if they are separate works then the license of the plug-in makes no requirements about the main program.

See also the question I am writing free software that uses a nonfree library.

You have a GPLed program that I'd like to link with my code to build a proprietary program. Does the fact that I link with your program mean I have to GPL my program?

Not exactly. It means you must release your program under a license compatible with the GPL (more precisely, compatible with one or more GPL versions accepted by all the rest of the code in the combination that you link). The combination itself is then available under those GPL versions.

If so, is there any chance I could get a license of your program under the Lesser GPL?

You can ask, but most authors will stand firm and say no. The idea of the GPL is that if you want to include our code in your program, your program must also be free software. It is supposed to put pressure on you to release your program in a way that makes it part of our community.

You always have the legal alternative of not using our code.

Does distributing a nonfree driver meant to link with the kernel Linux violate the GPL?

Linux (the kernel in the GNU/Linux operating system) is distributed under GNU GPL version 2. Does distributing a nonfree driver meant to link with Linux violate the GPL?

Yes, this is a violation, because effectively this makes a larger combined work. The fact that the user is expected to put the pieces together does not really change anything.

Each contributor to Linux who holds copyright on a substantial part of the code can enforce the GPL and we encourage each of them to take action against those distributing nonfree Linux-drivers.

How can I allow linking of proprietary modules with my GPL-covered library under a controlled interface only?

Add this text to the license notice of each file in the package, at the end of the text that says the file is distributed under the GNU GPL:

> Linking ABC statically or dynamically with other modules is making a combined work based on ABC. Thus, the terms and conditions of the GNU General Public License cover the whole combination.
>
> As a special exception, the copyright holders of ABC give you permission to combine ABC program with free software programs or libraries that are released under the GNU LGPL and with independent modules that communicate with ABC solely through the ABCDEF interface. You may copy and distribute such a system following the terms of the GNU GPL for ABC and the licenses of the other code concerned, provided that you include the source code of that other code when and as the GNU GPL requires distribution of source code and provided that you do not modify the ABCDEF interface.

> Note that people who make modified versions of ABC are not obligated to grant this special exception for their modified versions; it is their choice whether to do so. The GNU General Public License gives permission to release a modified version without this exception; this exception also makes it possible to release a modified version which carries forward this exception. If you modify the ABCDEF interface, this exception does not apply to your modified version of ABC, and you must remove this exception when you distribute your modified version.
>
> This exception is an additional permission under section 7 of the GNU General Public License, version 3 ("GPLv3")

This exception enables linking with differently licensed modules over the specified interface ("ABCDEF"), while ensuring that users would still receive source code as they normally would under the GPL.

Only the copyright holders for the program can legally authorize this exception. If you wrote the whole program yourself, then assuming your employer or school does not claim the copyright, you are the copyright holder—so you can authorize the exception. But if you want to use parts of other GPL-covered programs by other authors in your code, you cannot authorize the exception for them. You have to get the approval of the copyright holders of those programs.

I have written an application that links with many different components, that have different licenses. I am very confused as to what licensing requirements are placed on my program. Can you please tell me what licenses I may use?

To answer this question, we would need to see a list of each component that your program uses, the license of that component, and a brief (a few sentences for each should suffice) describing how your library uses that component. Two examples would be:

- To make my software work, it must be linked to the FOO library, which is available under the Lesser GPL.
- My software makes a system call (with a command line that I built) to run the BAR program, which is licensed under "the GPL, with a special exception allowing for linking with QUUX".

What is the difference between an "aggregate" and other kinds of "modified versions"?

An "aggregate" consists of a number of separate programs, distributed together on the same CD-ROM or other media. The GPL permits you to create and distribute an aggregate, even when the licenses of the other software are nonfree or GPL-incompatible. The only condition is that you cannot release the aggregate under a license that prohibits users from exercising rights that each program's individual license would grant them.

Where's the line between two separate programs, and one program with two parts? This is a legal question, which ultimately judges will decide. We believe that a proper criterion depends both on the mechanism of communication (exec, pipes, rpc, function calls within a shared address space, etc.) and the semantics of the communication (what kinds of information are interchanged).

If the modules are included in the same executable file, they are definitely combined in one program. If modules are designed to run linked together in a shared address space, that almost surely means combining them into one program.

By contrast, pipes, sockets and command-line arguments are communication mechanisms normally used between two separate programs. So when they are used for communication, the modules normally are separate programs. But if the semantics of the communication are intimate enough, exchanging complex internal data structures, that too could be a basis to consider the two parts as combined into a larger program.

When it comes to determining whether two pieces of software form a single work, does the fact that the code is in one or more containers have any effect?

No, the analysis of whether they are a single work or an aggregate is unchanged by the involvement of containers.

Why does the FSF require that contributors to FSF-copyrighted programs assign copyright to the FSF? If I hold copyright on a GPLed program, should I do this, too? If so, how?

Our lawyers have told us that to be in the best position to enforce the GPL in court against violators, we should keep the copyright status of the program as simple as possible. We do this by asking each contributor to either

assign the copyright on contributions to the FSF, or disclaim copyright on contributions.

We also ask individual contributors to get copyright disclaimers from their employers (if any) so that we can be sure those employers won't claim to own the contributions.

Of course, if all the contributors put their code in the public domain, there is no copyright with which to enforce the GPL. So we encourage people to assign copyright on large code contributions, and only put small changes in the public domain.

If you want to make an effort to enforce the GPL on your program, it is probably a good idea for you to follow a similar policy. Please contact <licensing@gnu.org> if you want more information.

Can I modify the GPL and make a modified license?

It is possible to make modified versions of the GPL, but it tends to have practical consequences.

You can legally use the GPL terms (possibly modified) in another license provided that you call your license by another name and do not include the GPL preamble, and provided you modify the instructions-for-use at the end enough to make it clearly different in wording and not mention GNU (though the actual procedure you describe may be similar).

If you want to use our preamble in a modified license, please write to <licensing@gnu.org> for permission. For this purpose we would want to check the actual license requirements to see if we approve of them.

Although we will not raise legal objections to your making a modified license in this way, we hope you will think twice and not do it. Such a modified license is almost certainly incompatible with the GNU GPL, and that incompatibility blocks useful combinations of modules. The mere proliferation of different free software licenses is a burden in and of itself.

Rather than modifying the GPL, please use the exception mechanism offered by GPL version 3.

If I use a piece of software that has been obtained under the GNU GPL, am I allowed to modify the original code into a new program, then distribute and sell that new program commercially?

You are allowed to sell copies of the modified program commercially, but only under the terms of the GNU GPL. Thus, for instance, you must make the source code available to the users of the program as described in the GPL, and they must be allowed to redistribute and modify it as described in the GPL.

These requirements are the condition for including the GPL-covered code you received in a program of your own.

Can I use the GPL for something other than software?

You can apply the GPL to any kind of work, as long as it is clear what constitutes the “source code” for the work. The GPL defines this as the preferred form of the work for making changes in it.

However, for manuals and textbooks, or more generally any sort of work that is meant to teach a subject, we recommend using the GFDL rather than the GPL.

How does the LGPL work with Java?

See this article for details. It works as designed, intended, and expected.

Consider this situation: 1) X releases V1 of a project under the GPL. 2) Y contributes to the development of V2 with changes and new code based on V1. 3) X wants to convert V2 to a non-GPL license. Does X need Y's permission?

Yes. Y was required to release its version under the GNU GPL, as a consequence of basing it on X's version V1. Nothing required Y to agree to any other license for its code. Therefore, X must get Y's permission before releasing that code under another license.

I'd like to incorporate GPL-covered software in my proprietary system. I have no permission to use that software except what the GPL gives me. Can I do this?

You cannot incorporate GPL-covered software in a proprietary system. The goal of the GPL is to grant everyone the freedom to copy, redistribute, understand, and modify a program. If you could incorporate GPL-covered software into a nonfree system, it would have the effect of making the GPL-covered software nonfree too.

A system incorporating a GPL-covered program is an extended version of that program. The GPL says that any extended version of the program must be released under the GPL if it is released at all. This is for two reasons: to make sure that users who get the software get the freedom they should have, and to encourage people to give back improvements that they make.

However, in many cases you can distribute the GPL-covered software alongside your proprietary system. To do this validly, you must make sure that the free and nonfree programs communicate at arms length, that they are not combined in a way that would make them effectively a single program.

The difference between this and "incorporating" the GPL-covered software is partly a matter of substance and partly form. The substantive part is this: if the two programs are combined so that they become effectively two parts of one program, then you can't treat them as two separate programs. So the GPL has to cover the whole thing.

If the two programs remain well separated, like the compiler and the kernel, or like an editor and a shell, then you can treat them as two separate programs—but you have to do it properly. The issue is simply one of form: how you describe what you are doing. Why do we care about this? Because we want to make sure the users clearly understand the free status of the GPL-covered software in the collection.

If people were to distribute GPL-covered software calling it "part of" a system that users know is partly proprietary, users might be uncertain of their rights regarding the GPL-covered software. But if they know that what they have received is a free program plus another program, side by side, their rights will be clear.

Using a certain GNU program under the GPL does not fit our project to make proprietary software. Will you make an exception for us? It would mean more users of that program.

Sorry, we don't make such exceptions. It would not be right.

Maximizing the number of users is not our aim. Rather, we are trying to give the crucial freedoms to as many users as possible. In general, proprietary software projects hinder rather than help the cause of freedom.

We do occasionally make license exceptions to assist a project which is producing free software under a license other than the GPL. However, we have to see a good reason why this will advance the cause of free software.

We also do sometimes change the distribution terms of a package, when that seems clearly the right way to serve the cause of free software; but we are very cautious about this, so you will have to show us very convincing reasons.

I'd like to incorporate GPL-covered software in my proprietary system. Can I do this by putting a "wrapper" module, under a GPL-compatible lax permissive license (such as the X11 license) in between the GPL-covered part and the proprietary part?

No. The X11 license is compatible with the GPL, so you can add a module to the GPL-covered program and put it under the X11 license. But if you were to incorporate them both in a larger program, that whole would include the GPL-covered part, so it would have to be licensed *as a whole* under the GNU GPL.

The fact that proprietary module A communicates with GPL-covered module C only through X11-licensed module B is legally irrelevant; what matters is the fact that module C is included in the whole.

Where can I learn more about the GCC Runtime Library Exception?

The GCC Runtime Library Exception covers libgcc, libstdc++, libfortran, libgomp, libdecnumber, and other libraries distributed with GCC. The exception is meant to allow people to distribute programs compiled with GCC under terms of their choice, even when parts of these libraries are included in the executable as part of the compilation process. To learn more, please read our FAQ about the GCC Runtime Library Exception.

I'd like to modify GPL-covered programs and link them with the portability libraries from Money Guzzler Inc. I cannot distribute the source code for these libraries, so any user who wanted to change these versions would have to obtain those libraries separately. Why doesn't the GPL permit this?

> There are two reasons for this. First, a general one. If we permitted company A to make a proprietary file, and company B to distribute GPL-covered software linked with that file, the effect would be to make a hole in the GPL big enough to drive a truck through. This would be carte blanche for withholding the source code for all sorts of modifications and extensions to GPL-covered software.
>
> Giving all users access to the source code is one of our main goals, so this consequence is definitely something we want to avoid.
>
> More concretely, the versions of the programs linked with the Money Guzzler libraries would not really be free software as we understand the term—they would not come with full source code that enables users to change and recompile the program.

If the license for a module Q has a requirement that's incompatible with the GPL, but the requirement applies only when Q is distributed by itself, not when Q is included in a larger program, does that make the license GPL-compatible? Can I combine or link Q with a GPL-covered program?

> If a program P is released under the GPL that means *any and every part of it* can be used under the GPL. If you integrate module Q, and release the combined program P+Q under the GPL, that means any part of P+Q can be used under the GPL. One part of P+Q is Q. So releasing P+Q under the GPL says that Q any part of it can be used under the GPL. Putting it in other words, a user who obtains P+Q under the GPL can delete P, so that just Q remains, still under the GPL.
>
> If the license of module Q permits you to give permission for that, then it is GPL-compatible. Otherwise, it is not GPL-compatible.
>
> If the license for Q says in no uncertain terms that you must do certain things (not compatible with the GPL) when you redistribute Q on its own, then it does not permit you to distribute Q under the GPL. It follows that you can't release P+Q under the GPL either. So you cannot link or combine P with Q.

Can I release a modified version of a GPL-covered program in binary form only?

> No. The whole point of the GPL is that all modified versions must be free software—which means, in particular, that the source code of the modified version is available to the users.

I downloaded just the binary from the net. If I distribute copies, do I have to get the source and distribute that too?

> Yes. The general rule is, if you distribute binaries, you must distribute the complete corresponding source code too. The exception for the case where you received a written offer for source code is quite limited.

I want to distribute binaries via physical media without accompanying sources. Can I provide source code by FTP?

> Version 3 of the GPL allows this; see option 6(b) for the full details. Under version 2, you're certainly free to offer source via FTP, and most users will get it from there. However, if any of them would rather get the source on physical media by mail, you are required to provide that.
>
> If you distribute binaries via FTP, you should distribute source via FTP.

My friend got a GPL-covered binary with an offer to supply source, and made a copy for me. Can I use the offer myself to obtain the source?

> Yes, you can. The offer must be open to everyone who has a copy of the binary that it accompanies. This is why the GPL says your friend must give you a copy of the offer along with a copy of the binary—so you can take advantage of it.

Can I put the binaries on my Internet server and put the source on a different Internet site?

Yes. Section 6(d) allows this. However, you must provide clear instructions people can follow to obtain the source, and you must take care to make sure that the source remains available for as long as you distribute the object code.

I want to distribute an extended version of a GPL-covered program in binary form. Is it enough to distribute the source for the original version?

No, you must supply the source code that corresponds to the binary. Corresponding source means the source from which users can rebuild the same binary.

Part of the idea of free software is that users should have access to the source code for *the programs they use*. Those using your version should have access to the source code for your version.

A major goal of the GPL is to build up the Free World by making sure that improvement to a free program are themselves free. If you release an improved version of a GPL-covered program, you must release the improved source code under the GPL.

I want to distribute binaries, but distributing complete source is inconvenient. Is it ok if I give users the diffs from the "standard" version along with the binaries?

This is a well-meaning request, but this method of providing the source doesn't really do the job.

A user that wants the source a year from now may be unable to get the proper version from another site at that time. The standard distribution site may have a newer version, but the same diffs probably won't work with that version.

So you need to provide complete sources, not just diffs, with the binaries.

Can I make binaries available on a network server, but send sources only to people who order them?

If you make object code available on a network server, you have to provide the Corresponding Source on a network server as well. The easiest way to do this would be to publish them on the same server, but if you'd like, you can alternatively provide instructions for getting the source from another server, or even a version control system. No matter what you do, the source should be just as easy to access as the object code, though. This is all specified in section 6(d) of GPLv3.

The sources you provide must correspond exactly to the binaries. In particular, you must make sure they are for the same version of the program—not an older version and not a newer version.

How can I make sure each user who downloads the binaries also gets the source?

You don't have to make sure of this. As long as you make the source and binaries available so that the users can see what's available and take what they want, you have done what is required of you. It is up to the user whether to download the source.

Our requirements for redistributors are intended to make sure the users can get the source code, not to force users to download the source code even if they don't want it.

Does the GPL require me to provide source code that can be built to match the exact hash of the binary I am distributing?

Complete corresponding source means the source that the binaries were made from, but that does not imply your tools must be able to make a binary that is an exact hash of the binary you are distributing. In some cases it could be (nearly) impossible to build a binary from source with an exact hash of the binary being distributed — consider the following examples: a system might put timestamps in binaries; or the program might have been built against a different (even unreleased) compiler version.

A company is running a modified version of a GPLed program on a web site. Does the GPL say they must release their modified sources?

The GPL permits anyone to make a modified version and use it without ever distributing it to others. What this company is doing is a special case of that. Therefore, the company does not have to release the modified sources.

The situation is different when the modified program is licensed under the terms of the GNU Affero GPL.

Compare this to a situation where the web site contains or links to separate GPLed programs that are distributed to the user when they visit the web site (often written in JavaScript, but other languages are used as well). In this situation the source code for the programs being distributed must be released to the user under the terms of the GPL.

A company is running a modified version of a program licensed under the GNU Affero GPL (AGPL) on a web site. Does the AGPL say they must release their modified sources?

The GNU Affero GPL requires that modified versions of the software offer all users interacting with it over a computer network an opportunity to receive the source. What the company is doing falls under that meaning, so the company must release the modified source code.

Is making and using multiple copies within one organization or company "distribution"?

No, in that case the organization is just making the copies for itself. As a consequence, a company or other organization can develop a modified version and install that version through its own facilities, without giving the staff permission to release that modified version to outsiders.

However, when the organization transfers copies to other organizations or individuals, that is distribution. In particular, providing copies to contractors for use off-site is distribution.

If someone steals a CD containing a version of a GPL-covered program, does the GPL give the thief the right to redistribute that version?

If the version has been released elsewhere, then the thief probably does have the right to make copies and redistribute them under the GPL, but if thieves are imprisoned for stealing the CD, they may have to wait until their release before doing so.

If the version in question is unpublished and considered by a company to be its trade secret, then publishing it may be a violation of trade secret law, depending on other circumstances. The GPL does not change that. If the company tried to release its version and still treat it as a trade secret, that would violate the GPL, but if the company hasn't released this version, no such violation has occurred.

What if a company distributes a copy of some other developers' GPL-covered work to me as a trade secret?

The company has violated the GPL and will have to cease distribution of that program. Note how this differs from the theft case above; the company does not intentionally distribute a copy when a copy is stolen, so in that case the company has not violated the GPL.

What if a company distributes a copy of its own GPL-covered work to me as a trade secret?

If the program distributed does not incorporate anyone else's GPL-covered work, then the company is not violating the GPL (see "Is the developer of a GPL-covered program bound by the GPL?" for more information). But it is making two contradictory statements about what you can do with that program: that you can redistribute it, and that you can't. It would make sense to demand clarification of the terms for use of that program before you accept a copy.

Why are some GNU libraries released under the ordinary GPL rather than the Lesser GPL?

Using the Lesser GPL for any particular library constitutes a retreat for free software. It means we partially abandon the attempt to defend the users' freedom, and some of the requirements to share what is built on top of GPL-covered software. In themselves, those are changes for the worse.

Sometimes a localized retreat is a good strategy. Sometimes, using the LGPL for a library might lead to wider use of that library, and thus to more improvement for it, wider support for free software, and so on. This could be good for free software if it happens to a large extent. But how much will this happen? We can only speculate.

It would be nice to try out the LGPL on each library for a while, see whether it helps, and change back to the GPL if the LGPL didn't help. But this is not feasible. Once we use the LGPL for a particular library, changing back would be difficult.

So we decide which license to use for each library on a case-by-case basis. There is a long explanation of how we judge the question.

Why should programs say "Version 3 of the GPL or any later version"?

From time to time, at intervals of years, we change the GPL—sometimes to clarify it, sometimes to permit certain kinds of use not previously permitted, and sometimes to tighten up a requirement. (The last two changes were in 2007 and 1991.) Using this "indirect pointer" in each program makes it possible for us to change the distribution terms on the entire collection of GNU software, when we update the GPL.

If each program lacked the indirect pointer, we would be forced to discuss the change at length with numerous copyright holders, which would be a virtual impossibility. In practice, the chance of having uniform distribution terms for GNU software would be nil.

Suppose a program says "Version 3 of the GPL or any later version" and a new version of the GPL is released. If the new GPL version gives additional permission, that permission will be available immediately to all the users of the program. But if the new GPL version has a tighter requirement, it will not restrict use of the current version of the program, because it can still be used under GPL version 3. When a program says "Version 3 of the GPL or any later version", users will always be permitted to use it, and even change it, according to the terms of GPL version 3—even after later versions of the GPL are available.

If a tighter requirement in a new version of the GPL need not be obeyed for existing software, how is it useful? Once GPL version 4 is available, the developers of most GPL-covered programs will release subsequent versions of their programs specifying "Version 4 of the GPL or any later version". Then users will have to follow the tighter requirements in GPL version 4, for subsequent versions of the program.

However, developers are not obligated to do this; developers can continue allowing use of the previous version of the GPL, if that is their preference.

Is it a good idea to use a license saying that a certain program can be used only under the latest version of the GNU GPL?

The reason you shouldn't do that is that it could result some day in withdrawing automatically some permissions that the users previously had.

Suppose a program was released in 2000 under "the latest GPL version". At that time, people could have used it under GPLv2. The day we published GPLv3 in 2007, everyone would have been suddenly compelled to use it under GPLv3 instead.

Some users may not even have known about GPL version 3—but they would have been required to use it. They could have violated the program's license unintentionally just because they did not get the news. That's a bad way to treat people.

We think it is wrong to take back permissions already granted, except due to a violation. If your freedom could be revoked, then it isn't really freedom. Thus, if you get a copy of a program version under one version of a license, you should *always* have the rights granted by that version of the license. Releasing under "GPL version N or any later version" upholds that principle.

Why don't you use the GPL for manuals?

It is possible to use the GPL for a manual, but the GNU Free Documentation License (GFDL) is much better for manuals.

The GPL was designed for programs; it contains lots of complex clauses that are crucial for programs, but that would be cumbersome and unnecessary for a book or manual. For instance, anyone publishing the book on paper would have to either include machine-readable "source code" of the book along with each printed copy, or provide a written offer to send the "source code" later.

Meanwhile, the GFDL has clauses that help publishers of free manuals make a profit from selling copies—cover texts, for instance. The special rules for Endorsements sections make it possible to use the GFDL for an official standard. This would permit modified versions, but they could not be labeled as "the standard".

Using the GFDL, we permit changes in the text of a manual that covers its technical topic. It is important to be able to change the technical parts, because people who change a program ought to change the documentation to correspond. The freedom to do this is an ethical imperative.

Our manuals also include sections that state our political position about free software. We mark these as "invariant", so that they cannot be changed or removed. The GFDL makes provisions for these "invariant sections".

How does the GPL apply to fonts?

Font licensing is a complex issue which needs serious consideration. The following license exception is experimental but approved for general use. We welcome suggestions on this subject—please see this this explanatory essay and write to licensing@gnu.org.

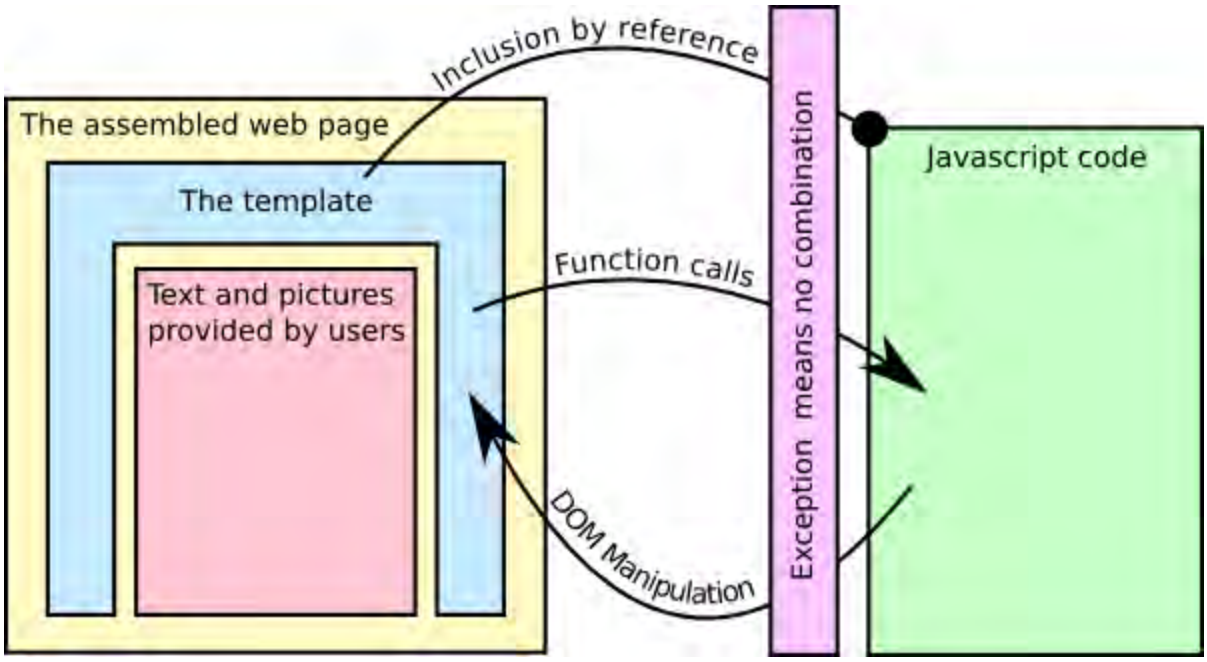
To use this exception, add this text to the license notice of each file in the package (to the extent possible), at the end of the text that says the file is distributed under the GNU GPL:

> As a special exception, if you create a document which uses this font, and embed this font or unaltered portions of this font into the document, this font does not by itself cause the resulting document to be covered by the GNU General Public License. This exception does not however invalidate any other reasons why the document might be covered by the GNU General Public License. If you modify this font, you may extend this exception to your version of the font, but you are not obligated to do so. If you do not wish to do so, delete this exception statement from your version.

I am writing a website maintenance system (called a "content management system" by some), or some other application which generates web pages from templates. What license should I use for those templates?

Templates are minor enough that it is not worth using copyleft to protect them. It is normally harmless to use copyleft on minor works, but templates are a special case, because they are combined with data provided by users of the application and the combination is distributed. So, we recommend that you license your templates under simple permissive terms.

Some templates make calls into JavaScript functions. Since Javascript is often non-trivial, it is worth copylefting. Because the templates will be combined with user data, it's possible that template+user data+JavaScript would be considered one work under copyright law. A line needs to be drawn between the JavaScript (copylefted), and the user code (usually under incompatible terms).



Here's an exception for JavaScript code that does this:

> As a special exception to the GPL, any HTML file which merely makes function calls to this code, and for that purpose includes it by reference shall be deemed a separate work for copyright law purposes. In addition, the copyright holders of this code give you permission to combine this code with free software libraries that are released under the GNU LGPL. You may copy and distribute such a system following the terms of the GNU GPL for this code and the LGPL for the libraries. If you modify this code, you may extend this exception to your version of the code, but you are not obligated to do so. If you do not wish to do so, delete this exception statement from your version.

Can I release a program under the GPL which I developed using nonfree tools?

> Which programs you used to edit the source code, or to compile it, or study it, or record it, usually makes no difference for issues concerning the licensing of that source code.
>
> However, if you link nonfree libraries with the source code, that would be an issue you need to deal with. It does not preclude releasing the source code under the GPL, but if the libraries don't fit under the "system library" exception, you should affix an explicit notice giving permission to link your program with them. The FAQ entry about using GPL-incompatible libraries provides more information about how to do that.

Are there translations of the GPL into other languages?

> It would be useful to have translations of the GPL into languages other than English. People have even written translations and sent them to us. But we have not dared to approve them as officially valid. That carries a risk so great we do not dare accept it.
>
> A legal document is in some ways like a program. Translating it is like translating a program from one language and operating system to another. Only a lawyer skilled in both languages can do it—and even then, there is a risk of introducing a bug.
>
> If we were to approve, officially, a translation of the GPL, we would be giving everyone permission to do whatever the translation says they can do. If it is a completely accurate translation, that is fine. But if there is an error in the translation, the results could be a disaster which we could not fix.
>
> If a program has a bug, we can release a new version, and eventually the old version will more or less disappear. But once we have given everyone permission to act according to a particular translation, we have no way of taking back that permission if we find, later on, that it had a bug.

Helpful people sometimes offer to do the work of translation for us. If the problem were a matter of finding someone to do the work, this would solve it. But the actual problem is the risk of error, and offering to do the work does not avoid the risk. We could not possibly authorize a translation written by a non-lawyer.

Therefore, for the time being, we are not approving translations of the GPL as globally valid and binding. Instead, we are doing two things:

- Referring people to unofficial translations. This means that we permit people to write translations of the GPL, but we don't approve them as legally valid and binding.

  An unapproved translation has no legal force, and it should say so explicitly. It should be marked as follows:

  > This translation of the GPL is informal, and not officially approved by the Free Software Foundation as valid. To be completely sure of what is permitted, refer to the original GPL (in English).

  But the unapproved translation can serve as a hint for how to understand the English GPL. For many users, that is sufficient.

  However, businesses using GNU software in commercial activity, and people doing public ftp distribution, should need to check the real English GPL to make sure of what it permits.

- Publishing translations valid for a single country only.

  We are considering the idea of publishing translations which are officially valid only for one country. This way, if there is a mistake, it will be limited to that country, and the damage will not be too great.

  It will still take considerable expertise and effort from a sympathetic and capable lawyer to make a translation, so we cannot promise any such translations soon.

If a programming language interpreter has a license that is incompatible with the GPL, can I run GPL-covered programs on it?

When the interpreter just interprets a language, the answer is yes. The interpreted program, to the interpreter, is just data; the GPL doesn't restrict what tools you process the program with.

However, when the interpreter is extended to provide “bindings” to other facilities (often, but not necessarily, libraries), the interpreted program is effectively linked to the facilities it uses through these bindings. The JNI or Java Native Interface is an example of such a facility; libraries that are accessed in this way are linked dynamically with the Java programs that call them.

So if these facilities are released under a GPL-incompatible license, the situation is like linking in any other way with a GPL-incompatible library. Which implies that:

1. If you are writing code and releasing it under the GPL, you can state an explicit exception giving permission to link it with those GPL-incompatible facilities.
2. If you wrote and released the program under the GPL, and you designed it specifically to work with those facilities, people can take that as an implicit exception permitting them to link it with those facilities. But if that is what you intend, it is better to say so explicitly.
3. You can't take someone else's GPL-covered code and use it that way, or add such exceptions to it. Only the copyright holders of that code can add the exception.

Who has the power to enforce the GPL?

Since the GPL is a copyright license, it can be enforced by the copyright holders of the software. If you see a violation of the GPL, you should inform the developers of the GPL-covered software involved. They either are the copyright holders, or are connected with the copyright holders.

In addition, we encourage the use of any legal mechanism available to users for obtaining complete and corresponding source code, as is their right, and enforcing full compliance with the GNU GPL. After all, we developed the GNU GPL to make software free for all its users.

In an object-oriented language such as Java, if I use a class that is GPLed without modifying, and subclass it, in what way does the GPL affect the larger program?

> Subclassing is creating a derivative work. Therefore, the terms of the GPL affect the whole program where you create a subclass of a GPLed class.

If I port my program to GNU/Linux, does that mean I have to release it as free software under the GPL or some other Free Software license?

> In general, the answer is no—this is not a legal requirement. In specific, the answer depends on which libraries you want to use and what their licenses are. Most system libraries either use the GNU Lesser GPL, or use the GNU GPL plus an exception permitting linking the library with anything. These libraries can be used in nonfree programs; but in the case of the Lesser GPL, it does have some requirements you must follow.
>
> Some libraries are released under the GNU GPL alone; you must use a GPL-compatible license to use those libraries. But these are normally the more specialized libraries, and you would not have had anything much like them on another platform, so you probably won't find yourself wanting to use these libraries for simple porting.
>
> Of course, your software is not a contribution to our community if it is not free, and people who value their freedom will refuse to use it. Only people willing to give up their freedom will use your software, which means that it will effectively function as an inducement for people to lose their freedom.
>
> If you hope some day to look back on your career and feel that it has contributed to the growth of a good and free society, you need to make your software free.

I just found out that a company has a copy of a GPLed program, and it costs money to get it. Aren't they violating the GPL by not making it available on the Internet?

> No. The GPL does not require anyone to use the Internet for distribution. It also does not require anyone in particular to redistribute the program. And (outside of one special case), even if someone does decide to redistribute the program sometimes, the GPL doesn't say he has to distribute a copy to you in particular, or any other person in particular.
>
> What the GPL requires is that he must have the freedom to distribute a copy to you *if he wishes to*. Once the copyright holder does distribute a copy of the program to someone, that someone can then redistribute the program to you, or to anyone else, as he sees fit.

Can I release a program with a license which says that you can distribute modified versions of it under the GPL but you can't distribute the original itself under the GPL?

> No. Such a license would be self-contradictory. Let's look at its implications for me as a user.
>
> Suppose I start with the original version (call it version A), add some code (let's imagine it is 1000 lines), and release that modified version (call it B) under the GPL. The GPL says anyone can change version B again and release the result under the GPL. So I (or someone else) can delete those 1000 lines, producing version C which has the same code as version A but is under the GPL.
>
> If you try to block that path, by saying explicitly in the license that I'm not allowed to reproduce something identical to version A under the GPL by deleting those lines from version B, in effect the license now says that I can't fully use version B in all the ways that the GPL permits. In other words, the license does not in fact allow a user to release a modified version such as B under the GPL.

Does moving a copy to a majority-owned, and controlled, subsidiary constitute distribution?

> Whether moving a copy to or from this subsidiary constitutes “distribution” is a matter to be decided in each case under the copyright law of the appropriate jurisdiction. The GPL does not and cannot override local laws. US copyright law is not entirely clear on the point, but appears not to consider this distribution.

If, in some country, this is considered distribution, and the subsidiary must receive the right to redistribute the program, that will not make a practical difference. The subsidiary is controlled by the parent company; rights or no rights, it won't redistribute the program unless the parent company decides to do so.

Can software installers ask people to click to agree to the GPL? If I get some software under the GPL, do I have to agree to anything?

Some software packaging systems have a place which requires you to click through or otherwise indicate assent to the terms of the GPL. This is neither required nor forbidden. With or without a click through, the GPL's rules remain the same.

Merely agreeing to the GPL doesn't place any obligations on you. You are not required to agree to anything to merely use software which is licensed under the GPL. You only have obligations if you modify or distribute the software. If it really bothers you to click through the GPL, nothing stops you from hacking the GPLed software to bypass this.

I would like to bundle GPLed software with some sort of installation software. Does that installer need to have a GPL-compatible license?

No. The installer and the files it installs are separate works. As a result, the terms of the GPL do not apply to the installation software.

Some distributors of GPLed software require me in their umbrella EULAs or as part of their downloading process to "represent and warrant" that I am located in the US or that I intend to distribute the software in compliance with relevant export control laws. Why are they doing this and is it a violation of those distributors' obligations under GPL?

This is not a violation of the GPL. Those distributors (almost all of whom are commercial businesses selling free software distributions and related services) are trying to reduce their own legal risks, not to control your behavior. Export control law in the United States *might* make them liable if they knowingly export software into certain countries, or if they give software to parties they know will make such exports. By asking for these statements from their customers and others to whom they distribute software, they protect themselves in the event they are later asked by regulatory authorities what they knew about where software they distributed was going to wind up. They are not restricting what you can do with the software, only preventing themselves from being blamed with respect to anything you do. Because they are not placing additional restrictions on the software, they do not violate section 10 of GPLv3 or section 6 of GPLv2.

The FSF opposes the application of US export control laws to free software. Not only are such laws incompatible with the general objective of software freedom, they achieve no reasonable governmental purpose, because free software is currently and should always be available from parties in almost every country, including countries that have no export control laws and which do not participate in US-led trade embargoes. Therefore, no country's government is actually deprived of free software by US export control laws, while no country's citizens *should* be deprived of free software, regardless of their governments' policies, as far as we are concerned. Copies of all GPL-licensed software published by the FSF can be obtained from us without making any representation about where you live or what you intend to do. At the same time, the FSF understands the desire of commercial distributors located in the US to comply with US laws. They have a right to choose to whom they distribute particular copies of free software; exercise of that right does not violate the GPL unless they add contractual restrictions beyond those permitted by the GPL.

Can I use GPLed software on a device that will stop operating if customers do not continue paying a subscription fee?

No. In this scenario, the requirement to keep paying a fee limits the user's ability to run the program. This is an additional requirement on top of the GPL, and the license prohibits it.

How do I upgrade from (L)GPLv2 to (L)GPLv3?

First, include the new version of the license in your package. If you're using LGPLv3 in your project, be sure to include copies of both GPLv3 and LGPLv3, since LGPLv3 is now written as a set of additional permissions on top of GPLv3.

Second, replace all your existing v2 license notices (usually at the top of each file) with the new recommended text available on the GNU licenses howto. It's more future-proof because it no longer includes the FSF's postal mailing address.

Of course, any descriptive text (such as in a README) which talks about the package's license should also be updated appropriately.

How does GPLv3 make BitTorrent distribution easier?

Because GPLv2 was written before peer-to-peer distribution of software was common, it is difficult to meet its requirements when you share code this way. The best way to make sure you are in compliance when distributing GPLv2 object code on BitTorrent would be to include all the corresponding source in the same torrent, which is prohibitively expensive.

GPLv3 addresses this problem in two ways. First, people who download this torrent and send the data to others as part of that process are not required to do anything. That's because section 9 says "Ancillary propagation of a covered work occurring solely as a consequence of using peer-to-peer transmission to receive a copy likewise does not require acceptance [of the license]."

Second, section 6(e) of GPLv3 is designed to give distributors—people who initially seed torrents—a clear and straightforward way to provide the source, by telling recipients where it is available on a public network server. This ensures that everyone who wants to get the source can do so, and it's almost no hassle for the distributor.

What is tivoization? How does GPLv3 prevent it?

Some devices utilize free software that can be upgraded, but are designed so that users are not allowed to modify that software. There are lots of different ways to do this; for example, sometimes the hardware checksums the software that is installed, and shuts down if it doesn't match an expected signature. The manufacturers comply with GPLv2 by giving you the source code, but you still don't have the freedom to modify the software you're using. We call this practice tivoization.

When people distribute User Products that include software under GPLv3, section 6 requires that they provide you with information necessary to modify that software. User Products is a term specially defined in the license; examples of User Products include portable music players, digital video recorders, and home security systems.

Does GPLv3 prohibit DRM?

It does not; you can use code released under GPLv3 to develop any kind of DRM technology you like. However, if you do this, section 3 says that the system will not count as an effective technological "protection" measure, which means that if someone breaks the DRM, she will be free to distribute her software too, unhindered by the DMCA and similar laws.

As usual, the GNU GPL does not restrict what people do in software, it just stops them from restricting others.

Can I use the GPL to license hardware?

Any material that can be copyrighted can be licensed under the GPL. GPLv3 can also be used to license materials covered by other copyright-like laws, such as semiconductor masks. So, as an example, you can release a drawing of a physical object or circuit under the GPL.

In many situations, copyright does not cover making physical hardware from a drawing. In these situations, your license for the drawing simply can't exert any control over making or selling physical hardware, regardless of the license you use. When copyright does cover making hardware, for instance with IC masks, the GPL handles that case in a useful way.

I use public key cryptography to sign my code to assure its authenticity. Is it true that GPLv3 forces me to release my private signing keys?

No. The only time you would be required to release signing keys is if you conveyed GPLed software inside a User Product, and its hardware checked the software for a valid cryptographic signature before it would function. In that

specific case, you would be required to provide anyone who owned the device, on demand, with the key to sign and install modified software on the device so that it will run. If each instance of the device uses a different key, then you need only give each purchaser a key for that instance.

Does GPLv3 require that voters be able to modify the software running in a voting machine?

No. Companies distributing devices that include software under GPLv3 are at most required to provide the source and Installation Information for the software to people who possess a copy of the object code. The voter who uses a voting machine (like any other kiosk) doesn't get possession of it, not even temporarily, so the voter also does not get possession of the binary software in it.

Note, however, that voting is a very special case. Just because the software in a computer is free does not mean you can trust the computer for voting. We believe that computers cannot be trusted for voting. Voting should be done on paper.

Does GPLv3 have a "patent retaliation clause"?

In effect, yes. Section 10 prohibits people who convey the software from filing patent suits against other licensees. If someone did so anyway, section 8 explains how they would lose their license and any patent licenses that accompanied it.

Can I use snippets of GPL-covered source code within documentation that is licensed under some license that is incompatible with the GPL?

If the snippets are small enough that you can incorporate them under fair use or similar laws, then yes. Otherwise, no.

The beginning of GPLv3 section 6 says that I can convey a covered work in object code form "under the terms of sections 4 and 5" provided I also meet the conditions of section 6. What does that mean?

This means that all the permissions and conditions you have to convey source code also apply when you convey object code: you may charge a fee, you must keep copyright notices intact, and so on.

My company owns a lot of patents. Over the years we've contributed code to projects under "GPL version 2 or any later version", and the project itself has been distributed under the same terms. If a user decides to take the project's code (incorporating my contributions) under GPLv3, does that mean I've automatically granted GPLv3's explicit patent license to that user?

No. When you convey GPLed software, you must follow the terms and conditions of one particular version of the license. When you do so, that version defines the obligations you have. If users may also elect to use later versions of the GPL, that's merely an additional permission they have—it does not require you to fulfill the terms of the later version of the GPL as well.

Do not take this to mean that you can threaten the community with your patents. In many countries, distributing software under GPLv2 provides recipients with an implicit patent license to exercise their rights under the GPL. Even if it didn't, anyone considering enforcing their patents aggressively is an enemy of the community, and we will defend ourselves against such an attack.

If I distribute a proprietary program that links against an LGPLv3-covered library that I've modified, what is the "contributor version" for purposes of determining the scope of the explicit patent license grant I'm making—is it just the library, or is it the whole combination?

The "contributor version" is only your version of the library.

Is GPLv3 compatible with GPLv2?

No. Many requirements have changed from GPLv2 to GPLv3, which means that the precise requirement of GPLv2 is not present in GPLv3, and vice versa. For instance, the Termination conditions of GPLv3 are considerably more permissive than those of GPLv2, and thus different from the Termination conditions of GPLv2.

Due to these differences, the two licenses are not compatible: if you tried to combine code released under GPLv2 with code under GPLv3, you would violate section 6 of GPLv2.

However, if code is released under GPL "version 2 or later," that is compatible with GPLv3 because GPLv3 is one of the options it permits.

Does GPLv2 have a requirement about delivering installation information?

GPLv3 explicitly requires redistribution to include the full necessary "Installation Information." GPLv2 doesn't use that term, but it does require redistribution to include "scripts used to control compilation and installation of the executable" with the complete and corresponding source code. This covers part, but not all, of what GPLv3 calls "Installation Information." Thus, GPLv3's requirement about installation information is stronger.

What does it mean to "cure" a violation of GPLv3?

To cure a violation means to adjust your practices to comply with the requirements of the license.

The warranty and liability disclaimers in GPLv3 seem specific to U.S. law. Can I add my own disclaimers to my own code?

Yes. Section 7 gives you permission to add your own disclaimers, specifically 7(a).

My program has interactive user interfaces that are non-visual in nature. How can I comply with the Appropriate Legal Notices requirement in GPLv3?

All you need to do is ensure that the Appropriate Legal Notices are readily available to the user in your interface. For example, if you have written an audio interface, you could include a command that reads the notices aloud.

If I give a copy of a GPLv3-covered program to a coworker at my company, have I "conveyed" the copy to that coworker?

As long as you're both using the software in your work at the company, rather than personally, then the answer is no. The copies belong to the company, not to you or the coworker. This copying is propagation, not conveying, because the company is not making copies available to others.

If I distribute a GPLv3-covered program, can I provide a warranty that is voided if the user modifies the program?

Yes. Just as devices do not need to be warranted if users modify the software inside them, you are not required to provide a warranty that covers all possible activities someone could undertake with GPLv3-covered software.

Why did you decide to write the GNU Affero GPLv3 as a separate license?

Early drafts of GPLv3 allowed licensors to add an Affero-like requirement to publish source in section 7. However, some companies that develop and rely upon free software consider this requirement to be too burdensome. They want to avoid code with this requirement, and expressed concern about the administrative costs of checking code for this additional requirement. By publishing the GNU Affero GPLv3 as a separate license, with provisions in it and GPLv3 to allow code under these licenses to link to each other, we accomplish all of our original goals while making it easier to determine which code has the source publication requirement.

Why did you invent the new terms "propagate" and "convey" in GPLv3?

The term "distribute" used in GPLv2 was borrowed from United States copyright law. Over the years, we learned that some jurisdictions used this same word in their own copyright laws, but gave it different meanings. We invented these new terms to make our intent as clear as possible no matter where the license is interpreted. They are not used in any copyright law in the world, and we provide their definitions directly in the license.

I'd like to license my code under the GPL, but I'd also like to make it clear that it can't be used for military and/or commercial uses. Can I do this?

No, because those two goals contradict each other. The GNU GPL is designed specifically to prevent the addition of further restrictions. GPLv3 allows a very limited set of them, in section 7, but any other added restriction can be removed by the user.

More generally, a license that limits who can use a program, or for what, is not a free software license.

Is "convey" in GPLv3 the same thing as what GPLv2 means by "distribute"?

Yes, more or less. During the course of enforcing GPLv2, we learned that some jurisdictions used the word "distribute" in their own copyright laws, but gave it different meanings. We invented a new term to make our intent clear and avoid any problems that could be caused by these differences.

GPLv3 gives "making available to the public" as an example of propagation. What does this mean? Is making available a form of conveying?

One example of "making available to the public" is putting the software on a public web or FTP server. After you do this, some time may pass before anybody actually obtains the software from you—but because it could happen right away, you need to fulfill the GPL's obligations right away as well. Hence, we defined conveying to include this activity.

Since distribution and making available to the public are forms of propagation that are also conveying in GPLv3, what are some examples of propagation that do not constitute conveying?

Making copies of the software for yourself is the main form of propagation that is not conveying. You might do this to install the software on multiple computers, or to make backups.

Does prelinking a GPLed binary to various libraries on the system, to optimize its performance, count as modification?

No. Prelinking is part of a compilation process; it doesn't introduce any license requirements above and beyond what other aspects of compilation would. If you're allowed to link the program to the libraries at all, then it's fine to prelink with them as well. If you distribute prelinked object code, you need to follow the terms of section 6.

If someone installs GPLed software on a laptop, and then lends that laptop to a friend without providing source code for the software, have they violated the GPL?

No. In the jurisdictions where we have investigated this issue, this sort of loan would not count as conveying. The laptop's owner would not have any obligations under the GPL.

Suppose that two companies try to circumvent the requirement to provide Installation Information by having one company release signed software, and the other release a User Product that only runs signed software from the first company. Is this a violation of GPLv3?

Yes. If two parties try to work together to get around the requirements of the GPL, they can both be pursued for copyright infringement. This is especially true since the definition of convey explicitly includes activities that would make someone responsible for secondary infringement.

Am I complying with GPLv3 if I offer binaries on an FTP server and sources by way of a link to a source code repository in a version control system, like CVS or Subversion?

This is acceptable as long as the source checkout process does not become burdensome or otherwise restrictive. Anybody who can download your object code should also be able to check out source from your version control system, using a publicly available free software client. Users should be provided with clear and convenient instructions for how to get the source for the exact object code they downloaded—they may not necessarily want the latest development code, after all.

Can someone who conveys GPLv3-covered software in a User Product use remote attestation to prevent a user from modifying that software?

No. The definition of Installation Information, which must be provided with source when the software is conveyed inside a User Product, explicitly says: "The information must suffice to ensure that the continued functioning of the modified object code is in no case prevented or interfered with solely because modification has been made." If the device uses remote attestation in some way, the Installation Information must provide you some means for your modified software to report itself as legitimate.

What does “rules and protocols for communication across the network” mean in GPLv3?

> This refers to rules about traffic you can send over the network. For example, if there is a limit on the number of requests you can send to a server per day, or the size of a file you can upload somewhere, your access to those resources may be denied if you do not respect those limits.
>
> These rules do not include anything that does not pertain directly to data traveling across the network. For instance, if a server on the network sent messages for users to your device, your access to the network could not be denied merely because you modified the software so that it did not display the messages.

Distributors that provide Installation Information under GPLv3 are not required to provide “support service” for the product. What kind of “support service”do you mean?

> This includes the kind of service many device manufacturers provide to help you install, use, or troubleshoot the product. If a device relies on access to web services or similar technology to function properly, those should normally still be available to modified versions, subject to the terms in section 6 regarding access to a network.

In GPLv3 and AGPLv3, what does it mean when it says “notwithstanding any other provision of this License”?

> This simply means that the following terms prevail over anything else in the license that may conflict with them. For example, without this text, some people might have claimed that you could not combine code under GPLv3 with code under AGPLv3, because the AGPL's additional requirements would be classified as “further restrictions” under section 7 of GPLv3. This text makes clear that our intended interpretation is the correct one, and you can make the combination.
>
> This text only resolves conflicts between different terms of the license. When there is no conflict between two conditions, then you must meet them both. These paragraphs don't grant you carte blanche to ignore the rest of the license—instead they're carving out very limited exceptions.

Under AGPLv3, when I modify the Program under section 13, what Corresponding Source does it have to offer?

> “Corresponding Source” is defined in section 1 of the license, and you should provide what it lists. So, if your modified version depends on libraries under other licenses, such as the Expat license or GPLv3, the Corresponding Source should include those libraries (unless they are System Libraries). If you have modified those libraries, you must provide your modified source code for them.
>
> The last sentence of the first paragraph of section 13 is only meant to reinforce what most people would have naturally assumed: even though combinations with code under GPLv3 are handled through a special exception in section 13, the Corresponding Source should still include the code that is combined with the Program this way. This sentence does not mean that you *only* have to provide the source that's covered under GPLv3; instead it means that such code is *not* excluded from the definition of Corresponding Source.

In AGPLv3, what counts as “interacting with [the software] remotely through a computer network?”

> If the program is expressly designed to accept user requests and send responses over a network, then it meets these criteria. Common examples of programs that would fall into this category include web and mail servers, interactive web-based applications, and servers for games that are played online.
>
> If a program is not expressly designed to interact with a user through a network, but is being run in an environment where it happens to do so, then it does not fall into this category. For example, an application is not required to provide source merely because the user is running it over SSH, or a remote X session.

How does GPLv3's concept of “you” compare to the definition of “Legal Entity” in the Apache License 2.0?

> They're effectively identical. The definition of “Legal Entity” in the Apache License 2.0 is very standard in various kinds of legal agreements—so much so that it would be very surprising if a court did not interpret the term in the same way in the absence of an explicit definition. We fully expect them to do the same when they look at GPLv3 and consider who qualifies as a licensee.

In GPLv3, what does "the Program" refer to? Is it every program ever released under GPLv3?

> The term "the Program" means one particular work that is licensed under GPLv3 and is received by a particular licensee from an upstream licensor or distributor. The Program is the particular work of software that you received in a given instance of GPLv3 licensing, as you received it.
>
> "The Program" cannot mean "all the works ever licensed under GPLv3"; that interpretation makes no sense for a number of reasons. We've published an analysis of the term "the Program" for those who would like to learn more about this.

If I only make copies of a GPL-covered program and run them, without distributing or conveying them to others, what does the license require of me?

> Nothing. The GPL does not place any conditions on this activity.

If some network client software is released under AGPLv3, does it have to be able to provide source to the servers it interacts with?

> AGPLv3 requires a program to offer source code to "all users interacting with it remotely through a computer network." It doesn't matter if you call the program a "client" or a "server," the question you need to ask is whether or not there is a reasonable expectation that a person will be interacting with the program remotely over a network.

For software that runs a proxy server licensed under the AGPL, how can I provide an offer of source to users interacting with that code?

> For software on a proxy server, you can provide an offer of source through a normal method of delivering messages to users of that kind of proxy. For example, a Web proxy could use a landing page. When users initially start using the proxy, you can direct them to a page with the offer of source along with any other information you choose to provide.
>
> The AGPL says you must make the offer to "all users." If you know that a certain user has already been shown the offer, for the current version of the software, you don't have to repeat it to that user again.

How are the various GNU licenses compatible with each other?

> The various GNU licenses enjoy broad compatibility between each other. The only time you may not be able to combine code under two of these licenses is when you want to use code that's *only* under an older version of a license with code that's under a newer version.
>
> Below is a detailed compatibility matrix for various combinations of the GNU licenses, to provide an easy-to-use reference for specific cases. It assumes that someone else has written some software under one of these licenses, and you want to somehow incorporate code from that into a project that you're releasing (either your own original work, or a modified version of someone else's software). Find the license for your project in a column at the top of the table, and the license for the other code in a row on the left. The cell where they meet will tell you whether or not this combination is permitted.
>
> When we say "copy code," we mean just that: you're taking a section of code from one source, with or without modification, and inserting it into your own program, thus forming a work based on the first section of code. "Use a library" means that you're not copying any source directly, but instead interacting with it through linking, importing, or other typical mechanisms that bind the sources together when you compile or run the code.
>
> Each place that the matrix states GPLv3, the same statement about compatibility is true for AGPLv3 as well.

Skip compatibility matrix

	I want to license my code under:					
	GPLv2 only	**GPLv2 or later**	**GPLv3 or later**	**LGPLv2.1 only**	**LGPLv2.1 or later**	**LGPLv3 or later**

I want to copy code under:	**GPLv2 only**	OK	OK [2]	NO	OK: Combination is under GPLv2 only [7]	OK: Combination is under GPLv2 only [7][2]	NO
	GPLv2 or later	OK [1]	OK	OK	OK: Combination is under GPLv2 or later [7]	OK: Combination is under GPLv2 or later [7]	OK: Combination is under GPLv3 [8]
	GPLv3	NO	OK: Combination is under GPLv3 [3]	OK	OK: Combination is under GPLv3 [7]	OK: Combination is under GPLv3 [7]	OK: Combination is under GPLv3 [8]
	LGPLv2.1 only	OK: Convey copied code under GPLv2 [7]	OK: Convey copied code under GPLv2 or later [7]	OK: Convey copied code under GPLv3 or later [7]	OK	OK [6]	OK: Convey copied code under GPLv3 [7][8]
	LGPLv2.1 or later	OK: Convey copied code under GPLv2 [7] [1]	OK: Convey copied code under GPLv2 or later [7]	OK: Convey code under GPLv3 or later [7]	OK [5]	OK	OK
	LGPLv3	NO	OK: Combination is under GPLv3 [8][3]	OK: Combination is under GPLv3 [8]	OK: Combination is under GPLv3 [7][8]	OK: Combination is under LGPLv3 [4]	OK: Combination is under LGPLv3
I want to use a library under:	**GPLv2 only**	OK	OK [2]	NO	OK: Combination is under GPLv2 only [7]	OK: Combination is under GPLv2 only [7][2]	NO
	GPLv2 or later	OK [1]	OK	OK	OK: Combination is under GPLv2 or later [7]	OK: Combination is under GPLv2 or later [7]	OK: Combination is under GPLv3 [8]
	GPLv3	NO	OK: Combination is under GPLv3 [3]	OK	OK: Combination is under GPLv3 [7]	OK: Combination is under GPLv3 [7]	OK: Combination is under GPLv3 [8]
	LGPLv2.1 only	OK	OK	OK	OK	OK	OK
	LGPLv2.1 or later	OK	OK	OK	OK	OK	OK

	LGPLv3	NO	OK: Combination is under GPLv3 [9]	OK	OK	OK	OK

Skip footnotes

1: You must follow the terms of GPLv2 when incorporating the code in this case. You cannot take advantage of terms in later versions of the GPL.

2: While you may release under GPLv2-or-later both your original work, and/or modified versions of work you received under GPLv2-or-later, the GPLv2-only code that you're using must remain under GPLv2 only. As long as your project depends on that code, you won't be able to upgrade the license of your own code to GPLv3-or-later, and the work as a whole (any combination of both your project and the other code) can only be conveyed under the terms of GPLv2.

3: If you have the ability to release the project under GPLv2 or any later version, you can choose to release it under GPLv3 or any later version—and once you do that, you'll be able to incorporate the code released under GPLv3.

4: If you have the ability to release the project under LGPLv2.1 or any later version, you can choose to release it under LGPLv3 or any later version—and once you do that, you'll be able to incorporate the code released under LGPLv3.

5: You must follow the terms of LGPLv2.1 when incorporating the code in this case. You cannot take advantage of terms in later versions of the LGPL.

6: If you do this, as long as the project contains the code released under LGPLv2.1 only, you will not be able to upgrade the project's license to LGPLv3 or later.

7: LGPLv2.1 gives you permission to relicense the code under any version of the GPL since GPLv2. If you can switch the LGPLed code in this case to using an appropriate version of the GPL instead (as noted in the table), you can make this combination.

8: LGPLv3 is GPLv3 plus extra permissions that you can ignore in this case.

9: Because GPLv2 does not permit combinations with LGPLv3, you must convey the project under GPLv3's terms in this case, since it will allow that combination.

Exhibit: “13”

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE-CENTRAL JUSTICE CENTER

SOFTWARE FREEDOM CONSERVANCY, INC., a New York Non-Profit Corporation,	)	
Plaintiff,	)	Case No. 30-2021-01226723-CU-BC-CJC
vs.	)	
VIZIO, INC., a California Corporation; and DOES 1 through, Inclusive,	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF BRADLEY M. KUHN
LOS ANGELES, CALIFORNIA
TUESDAY, JUNE 6, 2023
10:17 A.M. - 7:47 P.M.

STENOGRAPHICALLY REPORTED BY:
CHERYL ASADA
CA CSR NO. 13496
JOB NO. 979709

VIDEOTAPED DEPOSITION OF BRADLEY M. KUHN, TAKEN AT LOS ANGELES, CALIFORNIA, ON BEHALF OF DEFENDANT, COMMENCING AT 10:17 A.M. AND CONCLUDING AT 7:47 P.M., ON TUESDAY, JUNE 6, 2023, BEFORE CHERYL ASADA, CALIFORNIA CERTIFIED SHORTHAND REPORTER NO. 13496.

* * *

A P P E A R A N C E S:

FOR THE PLAINTIFF:

VAKILI & LEUS, LLP
By: SA'ID VAKILI, Esq.
3701 Wilshire Boulevard, Suite 1135
Los Angeles, California 90010
(213) 380-6010
vakili@vakili.com

-and-

RICHARD G. SANDERS, PLLC
By: RICHARD G. SANDERS, Esq.
605 Berry Road, Suite A
Nashville, Tennessee 37204
(615) 734-1188
rick@ricksanderslaw.com

A P P E A R A N C E S (CONTINUED):

FOR THE DEFENDANT:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
By: MICHAEL E. WILLIAMS, Esq.
JOHN Z. YIN, Esq.
865 South Figueroa Street, Tenth Floor
Los Angeles, California 90017
(213) 443-3000
michaelwilliams@quinnemanuel.com
johnyin@quinnemanuel.com

ALSO PRESENT:

SERGIO ESPARZA, Videographer

I N D E X

INFORMATION REQUESTED:

(NONE)

QUESTIONS INSTRUCTED NOT TO ANSWER:

(NONE)

CONFIDENTIAL PORTIONS, SUBJECT TO THE PROTECTIVE ORDER, AND BOUND UNDER SEPARATE COVER:

	PAGE TO PAGE	
	47	46
	256	279
	281	284

A I agree with you that it doesn't say that exactly, but that's certainly my view and the view of many that there are lots of mechanisms to enforce the GPL, and the copyright rules are one of them.

Q Before this lawsuit, you've never publicly made that statement, did you? 04:29PM

A I don't think that's correct. I think I have made that statement publicly. Unfortunately, I don't recall exactly where, but we have certainly talked throughout the history of GPL that whatever method we could use for the enforcement of GPL to assure rights of users should be used. 04:29PM

Q When is the first time you believe you've ever publicly made that statement?

A I suspect it was in the early to mid 2010s, maybe a little bit later. And believe me, I wish I put it in a blog post that you had right now, because I certainly believed that to be true in the mid 2010s. 04:30PM

Q You believe that to be true, yet you don't have a single writing from that time frame that supports that. 04:30PM

MR. VAKILI: Objection. Misstate the record and misstates testimony.

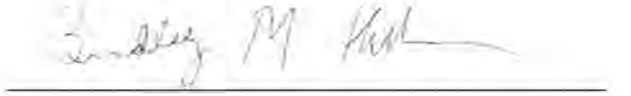
BY MR. WILLIAMS:

Q Do you have a single document or a 04:30PM

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I, BRADLEY M. KUHN, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition, taken on JUNE 6, 2023; that I have made any corrections, additions, or deletions to reflect my accurate testimony; that my transcript is a true and accurate transcription of my testimony.

Signed at Portland, OR.
(City) (State)



20 July 2023
BRADLEY M. KUHN (Date)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

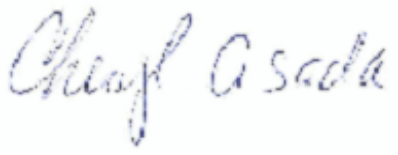
I, CHERYL ASADA, CSR No. 13496, certify: That the foregoing proceedings were taken via remote videoconference at the time and place herein set forth; at which time the witness was duly sworn; and that the transcript is a true record of the testimony so given.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificate null and void.

I further certify that I am not financially interested in the action, and I am not related to any of the parties in this case.

Witness review, correction, and signature was (X) by Code ( ) Requested ( ) Not requested.

Dated this 20TH day of JUNE, 2023.



_____

CHERYL ASADA, CSR 13496

PROOF OF SERVICE

Software Freedom Conservancy, Inc. v. VIZIO, Inc., et al.
OCSC Case No.: 30-2021-01226723-CU-BC-CJC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3701 Wilshire Boulevard, Suite 1135, Los Angeles, California 90010.

On May 23, 2025, I served the foregoing document described as **APPENDIX OF EXHIBITS IN SUPPORT OF PLAINTIFF SOFTWARE FREEDOM CONSERVANCY, INC.'S MOTION FOR SUMMARY ADJUDICATION OF ISSUES** on all interested parties in this action at the addresses listed below, as follows:

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Michael E. Williams, Esq. (*michaelwilliams@quinnemanuel.com*)
Daniel C. Posner, Esq. (*danposner@quinnemanuel.com*)
John Z. Yin, Esq. (*johnyin@quinnemanuel.com*)
Arian J. Koochesfahani, Esq. (*ariankoochesfahani@quinnemanuel.com*)
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017-5003

213/443-3000 | Fax: 213/443-3100

Counsel for Defendant Vizio, Inc.

( ) FOR COLLECTION. By placing true copies thereof enclosed in sealed envelopes, addressed as above, and by placing said sealed envelopes for collection and mailing on that date following ordinary business practices. I am "readily familiar" with the business' practice for collection and processing of correspondence for mailing the U.S. Postal Service. Under that practice, the sealed envelopes would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

( ) OVERNIGHT DELIVERY (DROP-OFF) (CCP §1013(c)). By placing a true copy thereof enclosed in a sealed envelope or package as designated by an overnight mail courier, addressed as above, and depositing said envelope or package, with delivery fees provided for, in a box regularly maintained by the overnight mail courier at 3701 Wilshire Boulevard, Los Angeles, California 90010.

(√) VIA ELECTRONIC TRANSMISSION. I caused to be transmitted a true copy thereof to the designated counsel listed above to his respective e-mail address, pursuant to California *Code of Civil Procedure* § 1010.6. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

( ) PERSONAL DELIVERY. I caused to be served by messenger for personal delivery that same day the foregoing documents in a sealed envelope to the above persons at the address(es) listed in the attached Service List.

I declare under penalty under the laws of the State of California that the above is true and correct. Executed on May 23, 2025, at Los Angeles, California.

Jason C. Ming
(Printed Name)

J Ming
(Signature)