

OPEN SOURCE  
UPDATE

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## 2022 OPEN SOURCE UPDATE

- **Enforcement: Vizio, Truth Social, McHardy**
- **Security issues: Classic and “on strike”**
- **Trademarks: Neo4J v. Purethink and Elastic v. AWS**

# ENFORCEMENT UPDATE

**Most enforcement is still by pro bono groups such as SFC (Software Freedom Conservancy)**

- **New lawsuit against Vizio**
- **Settlement with Copyright Troll**
- **Trump's Truth Social Called out for AGPL Violations**

## ENFORCEMENT UPDATE -- *SFC v. Vizio*

- **New lawsuit against Vizio**
- **Software Freedom Conservancy filed a lawsuit in October 2021 against Vizio, claiming violation of the GPL and LGPL for SmartCast TVs.**
- **Breach of contract, and declaratory relief**
- **In November 2021, Vizio moved to remove to federal court**



## ENFORCEMENT UPDATE -- *SFC v. Vizio*

- Previous open source cases have all been **copyright infringement**, this is a **breach of contract** claim
- **No authors** are plaintiffs in the suit
- Pleads for **specific performance** of GPL conditions
- Contrary to all prior enforcement theories
- <https://heathermeeker.com/2021/11/09/sfc-files-gpl-enforcement-suit-against-vizio-advancing-novel-legal-theories/>

## ENFORCEMENT UPDATE -- *SFC v. Vizio*

### Conditions and Covenants

- Open source licenses are **conditional copyright licenses**
- Rights are granted from the author (copyright owner) to each recipient
- If the conditions (notice, source code offer) are violated, the license terminates and the user becomes a copyright infringer
- Source code offer conditions have historically not been considered covenants
- Specific performance is usually not available for covenants

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## Title search: Open Source Update

Also available as part of the eCourse

[2022 Licensing Law and Open Source Update](#)

First appeared as part of the conference materials for the  
35<sup>th</sup> Annual Technology Law Conference session  
"Open Source Update"