

# Open Source Best Practices and Recent Developments

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## Agenda

- Introduction
- Update on open source enforcement: SFC v. Vizio
- Best practices for open source compliance
  - Containers
  - Program office support
  - Avoiding fire drills
- Open source and AI: Co-Pilot litigation
- Update on open source business developments
  - Ethical licensing and AI
  - New stewardship models for open source

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## Why is Open Source Important?

- It is ubiquitous
- It runs key infrastructure
- It is eclipsing proprietary software

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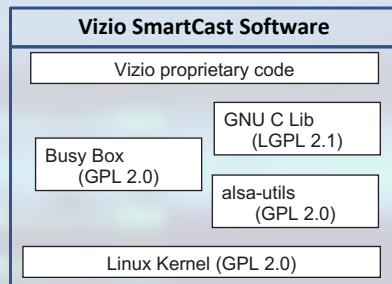
## What is Open Source?

- Software provided under licenses that grant all rights of copyright, without license restrictions
- May impose conditions such as license notices and source code sharing

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## Open Source: Risks – SFC v. Vizio



- SFC sought corresponding source code and technical information for SmartCast Software from Vizio. Vizio allegedly responds to initial requests but stops responding in January 2020.
- SFC alleges that 14 GPL-licensed components and 11 LGPL 2.0-licensed components are included in SmartCast Software

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## Open Source: Risks – SFC v. Vizio

- October 19, 2021 – SFC files claim in California state court for breach of contract and declaratory relief.
- November 29, 2021 – Case is removed to federal court by Vizio on grounds the state-law claims are pre-empted by the Copyright Act because “it is well established that exceeding the scope of a license by violating its conditions gives rise to a claim for copyright infringement.”
- December 6, 2021 – Vizio files motion to dismiss for failure to state a claim: Vizio argues that: (a) state law claims cannot be brought because of federal pre-emption by Copyright Act; (b) only the copyright holder can bring an action for infringement.
- December 27, 2021 – SFC files motion to remand back to state court and argues that source code availability is not afforded by the Copyright Act so SFC’s claim includes an “extra element” outside scope of federal question.
- April 22, 2022 – Vizio files response to SFC’s motion to remand, using SFC’s pre-trial letters to Vizio and SFC’s other GPL enforcement actions, which argue for copyright infringement claims.
- May 13, 2022 – Federal Court remands case to start court for breach of contract and declaratory relief claims to proceed.
- September 2023 – Jury trial.

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