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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 through 50, Inclusive,
 	
          Defendant.
	CASE NO. 30-2021-01226723-CU-BC-CJC
	
	SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFENDANT VIZIO'S MOTION FOR SUMMARY ADJUDICATION
	
	Assigned for All Purposes to Judicial Officer: The Honorable Sandy Leal
	
	Dept. C33
	
	Action Filed: October 19, 2021
	
	Hearing Date: July 24, 2025
	
	Hearing Reservation ID: 74506294
	
	Trial Date: September 15, 2025

Pursuant to California Code of Civil Procedure § 437c and Rule 3.1350 of the California Rules of Court, Defendant VIZIO, Inc. ("VIZIO") submits this separate statement of undisputed material facts, together with references to supporting evidence, in support of its Motion for Summary Adjudication against Plaintiff Software Freedom Conservancy, Inc. ("SFC").

ISSUE 1: The General Public License version 2 ("GPLv2") does not contain the reinstallation requirement SFC seeks to impose.

VIZIO'S UNDISPUTED MATERIAL FACTS	SFC'S RESPONSE AND SUPPORTING EVIDENCE
1. FSF published GPLv2 in 1991. Comp. Ex. 3 at 25.	
2. SFC contends that, "[u]nder the GPLv2, [VIZIO] is obligated to provide . . . the scripts used to control compilation and installation of the executable on the same device on which the computer program was originally distributed. At a minimum, [VIZIO] should deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original program are retained, without undue difficulty." (Referred to herein as the "reinstallation requirement"). Comp. Ex. 12 at 193.	

ISSUE 1(a): The plain text of GPLv2 demonstrates that it does not contain a reinstallation requirement.

VIZIO'S UNDISPUTED MATERIAL FACTS	SFC'S RESPONSE AND SUPPORTING EVIDENCE
3. GPLv2 states that it is "designed to make sure 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." Comp. Ex. 3 at 25.	
4. GPLv2 provides "TERMS AND CONDITIONS FOR COPYING, DISTRIBUTION, AND MODIFICATION" of GPLv2-licensed software. Comp. Ex. 3 at 26.	
5. Section 3 of GPLv2 permits users of GPLv2-licensed software to distribute software if they provide "the complete corresponding machine readable source code" for the software or a "written offer" to provide the source code. Comp. Ex. 3 at 27.	
6. GPLv2 defines source code as "the preferred form of a work for making modifications to it. For an executable work, complete source code means all the	

VIZIO'S UNDISPUTED MATERIAL FACTS	SFC'S RESPONSE AND SUPPORTING EVIDENCE
source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the executable." Comp. Ex. 3 at 27.	
7. An executable file is a program that can be installed and run on a computer operating system to perform certain functions. Comp. Ex. 13 at 217-18.	
8. The plain text of GPLv2 does not contain language stating the user is "obligated to provide . . . the scripts used to control compilation and installation of the executable *on the same device in which the computer program was originally distributed*." *Compare* Comp. Ex. 3 at 24 with Comp. Ex. 12 at 193 (emphasis added).	
9. The plain text of GPLv2 does not contain language stating the user "should deliver files such that a person of ordinary skill can compile the source code into a	

VIZIO'S UNDISPUTED MATERIAL FACTS	SFC'S RESPONSE AND SUPPORTING EVIDENCE
functional executable and install it **onto the same device, such that all features of the original program are retained, without undue difficulty**." *Compare* Comp. Ex. 3 at 24 with Comp. Ex. 12 at 193 (emphasis added).	

ISSUE 1(b): Even if the Court considers extrinsic evidence in interpreting GPLv2, this evidence confirms the lack of a reinstallation requirement.

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
10. FSF published GPLv3 in 2007. Comp. Ex. 6 at 47.	
11. GPLv3 states that "[s]ome devices are designed to deny users access to install or run modified versions of the software inside them . . . Therefore, we have designed this version of the GPL to prohibit the practice for those products." Comp. Ex. 6 at 48.	
12. GPLv3 defines a "User Product" to include "any tangible personal property which is normally used for personal, family, or household purposes" or "anything designed	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
or sold for incorporation into a dwelling." Comp. Ex. 6 at 50.	
13. GPLv3 defines "Installation Information" for a "User Product" to mean "any methods, procedures, authorization keys, or other information required to install and execute modified versions of a covered work in that User Product from a modified version of its Corresponding Source. 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." Comp. Ex. 6 at 51.	
14. GPLv3 states that the manufacturer of a User Product is not required "to continue to provide support service, warranty, or updates for a work that has been modified or installed by the recipient, or for the User Product in which it has been modified or installed." Comp. Ex. 6 at 51.	
15. GPLv3 states that "[a]ccess to a network may be denied when the modification itself	

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VIZIO'S SEPARATE STATEMENT OF UNDISPUTED FACTS

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
materially and adversely affects the operation of the network or violates the rules and protocols for communication across the network." Comp. Ex. 6 at 51.	
16. FSF published on its website that "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." Comp. Ex. 7 at 91.	
17. FSF also published that "[w]hen people distribute User Products that include software under GPLv3, section 6 requires that they provide you with information necessary to modify that software." Comp. Ex. 7 at 91.	
18. Bradley Kuhn is SFC's former President and Executive Director, and its current Policy Fellow and "Hacker-in-Residence." Comp. Ex. 8 at 105.	
19. Kuhn co-authored "A Practical Guide to GPL Compliance," and published it in 2008. Comp. Ex. 9 at 109.	

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20. A Practical Guide to GPL Compliance states that under GPLv2 "[y]ou must provide all information necessary such that someone generally skilled with computer systems could produce a binary similar to the one provided." Comp. Ex. 9 at 117.	
21. A Practical Guide to GPL Compliance states that "[d]uring the drafting of v3, the debate over this [Installation Information] requirement was contentious. However, the provision as it appears in the final license is reasonable and easy to understand." Comp. Ex. 9 at 121.	
22. FSF published "A Quick Guide to GPLv3" in 2007. Comp. Ex. 14 at 224.	
23. A Quick Guide to GPLv3 explains that GPLv3 requires "the distributor to provide you with whatever information or data is necessary to install modified software on the device. This may be as simple as a set of instructions, or it may include special data such as cryptographic keys or information about how to bypass an	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
integrity check in the hardware." Comp. Ex. 14 at 226.	
24. Chestek Legal, Bradley Kuhn, Anthony K. Sebro, Jr., Denver Gingerich, FSF, and the Software Freedom Law Center published "Copyleft and the GNU General Public License: A Comprehensive Tutorial and Guide." Comp. Ex. 15 at 231.	
25. The copyright notices in the Comprehensive Tutorial and Guide indicate that it was revised on multiple occasions between 2008 and 2018. Comp. Ex. 15 at 231.	
26. The Comprehensive Tutorial and Guide states that "although the definition of [complete corresponding source code] is expansive, it is not sufficient to protect users' freedoms in many circumstances. For example, a GPL'd program, or a modified version of such a program, might be locked-down and restricted. The requirement in GPLv3 § 6 (discussed in	

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Section 9.9 of this tutorial) handle that issue." Comp. Ex. 15 at 280.	
27. The Comprehensive Tutorial and Guide states that GPLv3 "requires that parties distributing object code . . . are also required to pass on any information or data necessary to install modified software on the particular device that included it." Comp. Ex. 15 at 286.	
28. The Linux kernel is an operating system and one of the most widely used software programs licensed under GPLv2. Comp. Ex. 10 at 131-32, 139.	
29. The Linux Foundation is a non-profit dedicated to promoting Linux and holds copyrights in the Linux Kernel. Comp. Ex. 10 at 127, 136.	
30. The creator of Linux, Linus Torvalds, chose to license Linux under GPLv2, not GPLv3, because he disagrees with the reinstallation requirement. Comp. Ex. 10 at 139, 145; Comp. Ex. 16 at 389.	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
31. Michael Dolan, the representative of the Linux Foundation, testified that the "reasonable expectation in the open source community is that GPL version 2 does not include a requirement to provide installation information that would allow someone to modify and reinstall the GPL software on the same device." Comp. Ex. 10 at 143.	
32. Mr. Dolan testified that it is not the position of the Linux Foundation that "with respect to GPL version 2, the scripts used to control compilation and installation must allow a user to reinstall the GPL-covered software on the same device." Comp. Ex. 10 at 142.	
33. Software developer Robert Landley, who holds copyrights in Linux and BusyBox, testified that GPLv2 does not "require installation back onto the user product." Comp. Ex. 11 at 163.	
34. Mr. Landley testified that he believes it is "widely perceived" that GPLv2 does not	

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VIZIO'S SEPARATE STATEMENT OF UNDISPUTED FACTS

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
require reinstallation on the same device. Comp. Ex. 11 at 164.	
35. Mr. Landley testified that many copyright holders have chosen not to switch to GPLv3 because of its reinstallation requirement. Comp. Ex. 11 at 169-70.	
36. Mr. Landley testified that he could think of no one other than SFC and its affiliates who (supposedly) believe that GPLv2 requires reinstallation. Comp. Ex. 11 at 178.	
37. During her deposition, Karen Sandler, SFC's Executive Director, was unable to name any publication or public statement from anyone who shared SFC's position that GPLv2 contained a reinstallation requirement. Ex. 17 at 400-414.	

ISSUE 2: The Lesser General Public License version 2.1 ("LGPLv2.1") does not contain the reinstallation requirement SFC seeks to impose.

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
38. FSF published LGPLv2.1 in 1999. Comp. Ex. 5 at 39.	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
39. SFC contends that, "[t]o comply with section 4 of the LGPLv2.1 . . . [a]t a minimum, [VIZIO] should deliver files such that a person of ordinary skill can compile the source code into a functional executable and install it onto the same device, such that all features of the original library are retained, without undue difficulty." Comp. Ex. 12 at 196-97.	

ISSUE 2(a): The plain text of LGPLv2.1 demonstrates that it does not contain a reinstallation requirement.

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SUPPORTING EVIDENCE
40. LGPLv2.1 defines "source code" as "the preferred form of the work for making modifications to it. For a library, complete source code means all the source code for all modules it contains, plus any associated interface definition files, plus the scripts used to control compilation and installation of the library." Comp. Ex. 5 at 41.	
41. LGPLv2.1 defines "library" to mean "a collection of software functions and/or data	

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VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SUPPORTING EVIDENCE
prepared so as to be conveniently linked with application programs (which use some of those functions and data) to form executables." Comp. Ex. 5 at 40.	
42. The plain text of LGPLv2.1 does not contain language stating the user "should deliver files such that a person of ordinary skill can compile the source code into a functional executable *and install it onto the same device, such that all features of the original program or library are retained, without undue difficulty.*" *Compare* Comp. Ex. 5 at 38 with Comp. Ex. 12 at 193 (emphasis added).	

ISSUE 2(b): Even if the Court considers extrinsic evidence in interpreting LGPLv2.1, this evidence confirms the lack of a reinstallation requirement.

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
43. FSF published LGPLv3 in 2007. Comp. Ex. 18 at 419.	
44. LGPLv3 states that "You may convey a Combined Work . . . if you also . . . (e) Provide Installation Information, but only if you would otherwise be required to	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
provide such information under section 6 of the GNU GPL, and only to the extent that such information is necessary to install and execute a modified version of the Combined Work produced by recombining or relinking the Application with a modified version of the Linked Version." Comp. Ex. 18 at 421.	
45. GPLv3 is the only version of the GPL that defines the term "Installation Information" in Section 6. *Compare* Comp. Ex. 3 with Comp. Ex. 6 at 51.	
46. Section 6 of GPLv3 provides: "'Installation Information' for a user product means any methods, procedures, authorization keys, or other information required to install and execute modified versions of a covered work in that User Product from a modified version of its Corresponding Source. The information must suffice to ensure that the continued functioning of the modified object code is	

VIZIO'S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE	SFC'S RESPONSE AND SUPPORTING EVIDENCE
in no case prevented or interfered with solely because modification has been made." Comp. Ex. 6 at 51.	

DATED: May 2, 2025

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