

Press Release

In the Hellwig v. VMware legal case, the Hamburg Higher Regional Court dismissed the appeal against the first-instance decision. The verdict of 28 February 2019 can be found [here](#). The appeal has not been admitted to the court and I have decided with my legal counsel, Till Jaeger, and after conferring with Software Freedom Conservancy, that no further appeal will be lodged.

The subject of the complaint I filed was the question whether the distribution of the software Hypervisor vSphere VMware ESXi 5.5.0 is a copyright infringement because VMware does not license a derivative work from Linux under the GNU General Public License (GPL). VMware has so far only disclosed the vmklinux component under the GPL, but not the associated hypervisor components. A description of the technical details can be found here ([link to the details](#)).

The OLG Hamburg did not deal with the substantive matter of the complaint, but dismissed the appeal just like the first instance because of insufficient proof of the right ownership or the copyright protection capability of the components taken over from Linux. The requirements imposed by the court were extraordinarily high and make it very difficult for individual Free Software developers to assert their rights alone. It probably played a role that the court considered the [GPL enforcement of Patrick McHardy](#) (which was considered unjustified by the majority of the Linux community) incorrectly in the context with this proceeding. This is also regrettable because the enforcement of the GPL by individual developers in the interest of the community was established by the project [gpl-violations.org](#) and has general acceptance.

I appreciate the support throughout from Software Freedom Conservancy, who provided ongoing technical analysis of the violation and a grant of financial support for legal costs. I also appreciate the many statements of support from Linux developers and organizations such as the Free Software Foundation (FSF), the Free Software Foundation Europe (FSFE). I thank all of these individuals and organizations very much.

I have decided not to lodge a further appeal against the judgment of the Hamburg Higher Regional Court for a variety of reasons. VMware has announced to [discontinue the use of Linux code in their hypervisor in the future](#). Removal of the Linux code from VMware's proprietary kernel was what both I and Conservancy asked for many times; when VMware takes this action, they will finally comply with the GPL. Reaching this goal has cost me a lot of time and energy in recent years.

For the future, at least in Germany, GPL violations that cannot be resolved out of court will probably require greater involvement of rights holders. If - as is typical with the Linux kernel - numerous rights holders exist, individual developers will find it difficult to go to court alone. With the Software Freedom Conservancy's "[GPL Compliance Project For Linux Developers](#)" and "[gpl-violations.org](#)" corresponding structures already exist, and Linux developers who are interested in the enforcement of the GPL can participate in these projects and get support.