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HP must reimburse Italian PC buyer the amount paid for Microsoft software

An Italian PC buyer has the right to claim from the manufacturer of his or her device the amount paid for the Microsoft software that was shipped together with the PC he or she bought but that he or she does not intend to use, a court in Florence **has found**[1] (PDF file). According to a statement by the plaintiff in the case, which was **published**[2] on the website of the Italian consumer protection organization Associazione Diritti Utenti e Consumatori (ADUC), it transpires from Microsoft's end user license agreement (**EULA**[3]) that anyone who rejects it should, to be reimbursed, turn to the PC manufacturer. In the above case the manufacturer happened to be Hewlett-Packard. The court decided that for the Windows XP the plaintiff did not intend to use HP had to reimburse him the amount of 90 euros and for the equally unused Windows Works 8 a further 50 euros.

In September 2005 the buyer had acquired a Compaq Notebook by HP on which the Microsoft software had been preinstalled. Because he did not intend to use the said software he had written to HP claiming reimbursement. The company rejected his request, pointing out that the hardware and software were being sold as one package. Thereupon the buyer filed a civil suit. The court rejected HP's argument that the licensing conditions had been set unilaterally by Microsoft. It was of the opinion that HP had to know about the conditions, because they in all likelihood constituted part of the agreement between the company and Microsoft. The court found the fact that computers without an operating system are available on the market to be irrelevant.

The judgment, which was published towards the end of September and is now **circulating in the Italian media**[4], comes on the heels of a ruling in France that **became known**[5] recently. The French court had ruled that Acer was obliged to refund the plaintiff not only the 30 euros it had volunteered to pay but the full price of the software that had been delivered together with the notebook the plaintiff had purchased but which he did not intend to use. At the end of last year Hewlett-Packard had been one of the **targets**[6] of the French organization UFC-Que Choisir, which is campaigning for computers without preinstalled software to be shipped in sizable amounts. No rulings of this kind are yet known from Germany. However, a month ago the southern German daily *Süddeutsche Zeitung* **mentioned**[7] a customer who in March had ordered a notebook from Dell Deutschland and replaced the preinstalled Windows with Linux. For the operating system and a (further unspecified) Microsoft program the customer had been credited the amount of 78 euros, the newspaper wrote.

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[3] <http://www.microsoft.com/windowsxp/home/eula.mspx>

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