Windows and Office "tax" refund

Various cases about the refund of pre-installed software, and the right to install any software on any device

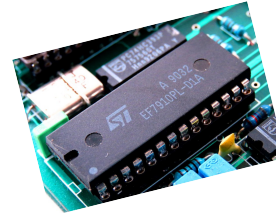February 4th 2023 · FOSDEM 2023

Luca Bonissi   lucabon@fsfe.org

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Introducing myself

Name: Luca
**Surname**: Bonissi
Origin: Italy

Main job activities:
- Firmware programmer of embedded electronic devices.
- System administrator of one Italian school (FreeNASchool) and small offices.

Hobbies & Co.:
- **Audio & Video** technician (using Ardour, Audacity, Jamin, Cinelerra, Kdenlive, ...).
- Playing **guitar** and **piano**.
- Celestial objects observer (helped by Stellarium and KStars)
- **3D printing** (mainly for repairing/upcycling/fun)
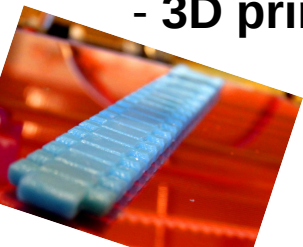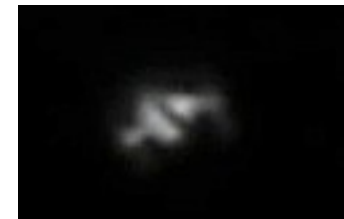
FREE SOFTWARE RELATED ACTIVITIES/PROJECTS

- **Play your chord**: meta-language and JavaScript libraries to place chords over song's text with transposition capability

- **BonSlack** GNU/Linux distribution: an **unofficial** porting of *Slackware GNU/Linux* to ARM, DEC Alpha, HPPA, LoongArch, MIPS, OpenRISC, PowerPC, RISC-V, S/390x, SH4, and SPARC platforms - https://bonslack.org/

- **Free your Android TV Box**: a just started project to upcycle cheap TV Boxes (~20 €) as a general purpose GNU/Linux computer (BonSlack lives on them :-)

- Volunteer as Italian **translator for FSFE**

FREE SOFTWARE RELATED ACTIVITIES/PROJECTS (continue)

- **Webpreview:** a WYSIWYG editor to help translators and proofreaders of FSFE's website pages and related information material   -   https://webpreview.fsfe.org/

FREE SOFTWARE RELATED ACTIVITIES/PROJECTS (continue)

- Maintainer of the repository of the awesome book "**Ada&Zangemann –
  A tale of Software, Skateboards, and Raspberry Ice Cream**"...
  https://ada.fsfe.org/   - Git repository: https://git.fsfe.org/FSFE/ada-zangemann
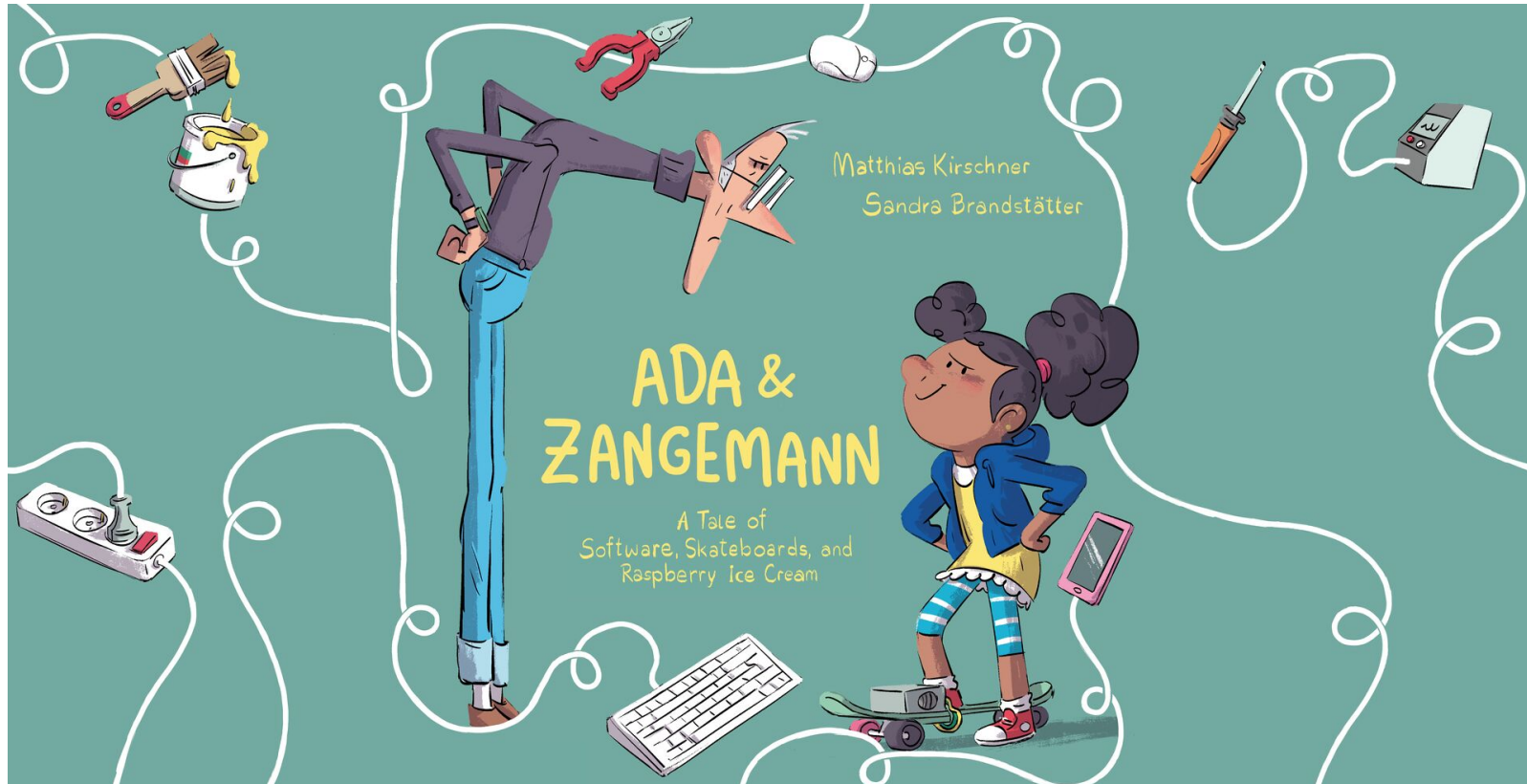
FREE SOFTWARE RELATED ACTIVITIES/PROJECTS (continue)

... and one the translators of the Italian edition (hopefully to be published soon :-)

German

Italian

Arabic

Ukrainian

English

ada.fsfe.org

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IF YOU LIKE IT OR YOU ARE SIMPLY CURIOUS.... BOOK READING OF

"Ada & Zangemann – A tale of Software, Skateboards, and Raspberry Ice Cream"

by the author Matthias Kirschner,
President of the Free Software Foundation Europe

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...BONUS "HOBBY"...

...making any flavor of **ice cream**, like in the Ada's story :-P

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Legal basis: Hardware and Software contracts

- They are **totally independent contracts**:
  1) Hardware: <u>sale and purchase agreement</u>, where you
     become the ownership of the physical object, you
     can do what you want with the object, and nobody
     can force you to make any action, such as sending
     back your PC to the manufacturer.
  2) Software: <u>license agreement</u>, where you gain the right to use the software under
     some conditions (limitations for proprietary software, freedoms for Free Software).

- The two contracts are usually stipulated from **two different actors**, the vendor for
  the hardware, the manufacturer for the software, so they cannot be legally "merged".

- The agreement comes **in two different moment**: the purchase for the hardware, the
  (possible but not mandatory) "click" on the "Accept" button for the software.

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DEVICE NEUTRALITY
Right to install any software on any device
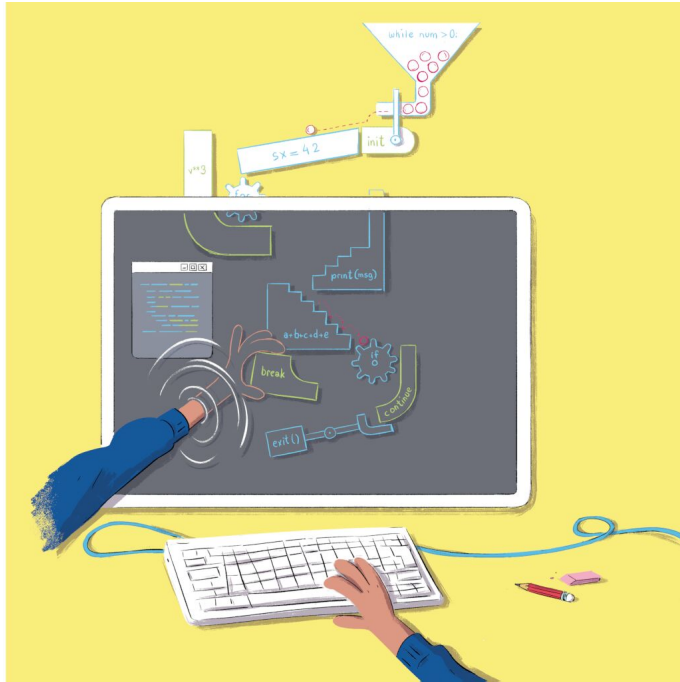
- Since you own the hardware, you can choose to **install on it any software**, and not only the pre-installed software (such as Microsoft Windows and Office).

- By installing Free Software on your computer you can:
  1) have the **sovereignty** of your device
  2) overcome **software obsolescence**
  3) extend **hardware lifetime**

FSFE Open Letter about the right to install any software on any device**:**
https://fsfe.org/news/2022/news-20221121-01.html

https://fsfe.org/activities/upcyclingandroid/openletter.html

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Pre-installed software refund: TECHNICAL HURDLES

- Manufacturers say that your device "**would not work properly with other operating systems** and they are not supported" (reply from Microsoft Italy).

- This claim is (partially) true: manufacturers usually **do not give support** if you install an operating system different than Microsoft Windows.

- Manufacturers use in some cases **proprietary interfaces** (such as for keyboard, touchpad, touch screen, webcam) without releasing technical specifications, so your hardware could not fully work properly.

- Manufacturer could **lock Secure boot**: you cannot install an alternative operating system.

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Pre-installed software refund: LEGAL HURDLES

- Manufacturers say that you must **ask the refund to the vendor** or to **Microsoft**.

- Manufacturers say that **you must return also the PC**.

- Manufacturers **set a (very little) timespan** to ask for refund (usually max 30 days).

- Manufacturers say that **you must prove the license refusal**.

- Manufacturers say that you must follow their policy (*"You must comply with [the manufacturer] policy, which might require you to return the software with the entire device"*), so they say you **must return the PC to remove the Product Key** from BIOS.

- Manufacturers set a **self-determinate price** for the licences, or (for Office) say that the license is "gratis".

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First run: initial troubles...

- When starting the first time your PC, **before viewing the license agreement**, you must connect your PC to the Internet, and wait for updates download/install.

- You are technically using Windows, and Windows is **consuming your Internet connection** and possibly **sending informations** to the manufacturer and to Microsoft without any explicit consent (so possibly violating the GDPR).

- There is **no "Refuse"** button, and there is no possibility to safely shutdown the PC.

- You **cannot install a different license** (e.g. the "gratis" Windows 10/11 license) even if you format the mass storage device (here why manufacturer say that you must return the PC to remove the Product Key)

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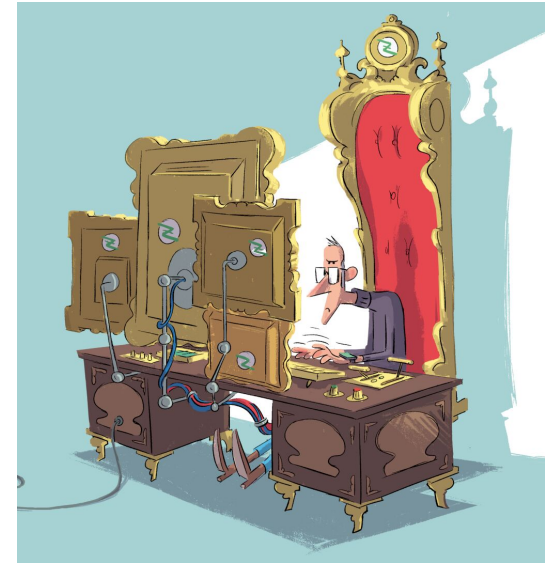
Refund cases in Italy

HP vs Marco Pieraccioli (2005-2014) – Windows XP + Works 8 refund

- **Requested refund** in 2005.

- HP refused, Pieraccioli **started first grade lawsuit** in November 2005 in Justice of the Peace of Firenze, and favourable verdict was emitted on April 2007 with 140 € refund.

- HP **appealed** the verdict, and the 2nd grade verdict was emitted on July 2010, confirming the 1st grade verdict.

- HP **appealed** again to the **Supreme Court** (3rd grade), and the final verdict was emitted on March 2014, confirming the right of reimbursement of pre-installed software.

Refund cases in Italy (continue)

HP vs Davide Preziosi (2007-2016) – Windows Vista Home + Works 8 refund

- **Requested refund** in 2007.

- HP refused, Preziosi **started first grade lawsuit** in November 2005 in Justice of the Peace of Catania, and favourable verdict was emitted on April 2007 with 158.18 € refund and 500 € as damages because Preziosi was not able to use the PC while waiting for HP refund policy.

- HP **appealed** the verdict, and the 2nd grade verdict was emitted on June 2012, partially confirming the 1st grade verdict (was confirmed the Windows refund, but not the Works 8 refund and the damages).

- HP **recurred** to the **Supreme Court**, and the final verdict was emitted on March 2016, rejecting all reasons raised by HP.

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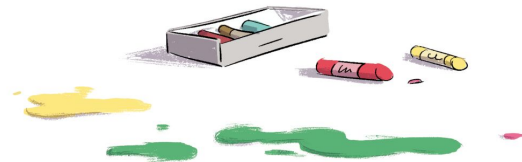
Refund cases in Italy (continue)

Acer vs Luca Bonissi (3 refunds in 2015, 2016 and 2018)

- **Requested refund** for Windows 8/10 Home.

- Acer say that the PC should be sent to their laboratories to remove Windows from the PC (the shipping costs are in charge of the manufacturers).

- I personally bring the PCs to Acer laboratories in order to speed up the procedure.

- Even if I received the refund, I **had to wait 3-4 days** before being able to use my own PCs.

- This is a **big deterrent** for people who want install *Free Software* on their PC, because they usually want to use their PC since the beginning.

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Refund cases in Italy (continue)

Lenovo vs Luca Bonissi - Ideapad MIIX 320 (10" Tablet/PC 2in1)

- **Requested refund** for Windows 10 Home at the beginning of 2018.

- Lenovo refused, **filed lawsuit** (without a lawyer...) with first hearing in September.

- Due to **artificial complexity** introduced by Lenovo, I had to address professional help.

- Despite we **won the lawsuit in June 2019**, I loose about 200 €.

- Lenovo immediately **appealed the verdict**, with "heavy legal artillery".

- In December 2020, the judge **rejected all Lenovo's arguments** and **confirm the right of reimbursement** of pre-installed software.

- The judge also imposed upon Lenovo **punitive damages** amounting to **20,000 euros** for abuse of the appeal procedures.

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Refund cases in Italy (continue)

Mediacom vs Luca Bonissi – Windows 10 Home

- **Requested refund** for Windows 10 Home on March 2019.

- Mediacom (Italian manufacturer) did not reply. **Filed lawsuit**.

- Before the first hearing, an agreement was reached, where Mediacom paid 44 € as Windows refund and lawsuit filing expenses.

Microsoft vs Luca Bonissi – Windows 10 Home (Microsoft Surface Laptop)

- **Requested refund** for Windows 10 Home on October 2019.

- Microsoft customer service **denied the refund** and addressed to the Online Dispute resolution of the European Commission; no resolution was found.

- After 3 months, **Microsoft refund** the cost of the Windows license amounting to 43 €.

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Refund cases in Italy (continue)

HP vs Luca Bonissi (2019-2020) – Windows Home + Office 365

- **Requested refund** on October 2019.

- HP refused, I **started first grade lawsuit**, the verdict was emitted on December 2020 confirming the right to the reimbursement of both pre-installed software, but denying damages. The cost of the lawsuit was the same as the refund (61 €), so – from an economical point of view – no refund was received...

Refund cases in Italy (continue)

Dell vs Francesca Tregnaghi – Windows 10 Home
- **Requested refund** for Windows 10 Home in 2021.
- Dell initially refused to refund the software, saying that in their sale and purchase contract – that the consumer has accepted – **if you refuse the Windows license you should return the whole PC**.
- I helped Francesca and finally she obtained 51 €.

Lenovo vs Vincenzo Castiglia – Windows 10 Home
- **Requested refund** for Windows 10 Home in 2018, but Lenovo's customer service refuse to refund the software.
- I helped Vincenzo, but Lenovo did not reply directly: instead they **asked an external law office to reply**.
- After many certified email, the refund was obtained (42 €).

Lenovo vs Mauro – Windows 10 Home
- **Requested refund** for Windows 10 Home in 2021.
- Only after 24 (!!) emails, Lenovo eventually refunds for 47 €.

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Refund cases in Italy (continue)

Acer vs Luca Bonissi – Windows 10 Home + Office 365 Personal

- **Requested refund** for Windows 10 Home in July 2021.

- Acer **requested again to send the PC** to their laboratories, but this time I could not wait because I needed to use the PC immediately.


- Acer said that **the request to remove the Product Key in their laboratory came from Microsoft**. They asked Microsoft if it was possible to refund the Windows License without removing the Product Key, **but Microsoft said "no"**.

- Acer also **set a very low price** for Windows 10 (only 20 €) and said the **Office 365 Personal** (1 year license) **is "gratis"**.

- After **filing a court case in May 2022**, Acer – only 1 week before the first hearing – proposed an agreement and accepted to pay a total of **129 €** (78 € Windows 10, 37 € Office 365, 14 € filing costs).

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Refund cases in Italy (continue)

Lenovo vs Luca Bonissi – Windows 11 Home + Microsoft 365 Personal

- **Requested refund** in November 2022.

- Lenovo customer service, despite in the their website was present the refund procedure (https://support.lenovo.com/it/it/solutions/HT512090, but still unlawful), **was not able to answer e provide the procedure**.

- After 2 months without receiving any reply, I wrote a certified email, but Lenovo legal office replied that **I should contact the customer service** (!!!!!!) and, in any case, they should receive my PC to remove the Product Key.

- Lenovo also said that **they are not satisfied with** [their...] **return policy**, where the cost of the licenses paid by the end-user (75 €) is more than their selling price to the big distribution (55 €).

- On February 1st 2023 (3 days ago...) they accepted anyway to refund 75 €, but – as the other cases – without recognise any right to obtain the refund.

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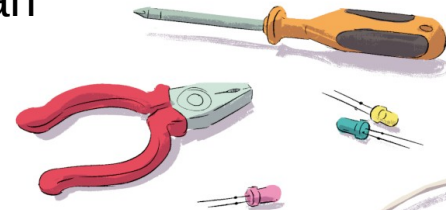
Asking for refund

1) **Power ON** the purchased PC and reach the page where the license agreement is displayed.

2) **Take a photo** of the screen displaying the paragraph *"**By accepting this agreement or using the software** [...] for a refund or credit, if any"*.

3) Check the **current market price** of the licenses. You can take 2 PC with the same hardware but different software (e.g. FreeDOS vs Microsoft Windows). For Office license price, you can take the price of retail versions from Microsoft shop and **make the proportion** with the current market price of Windows "OEM".

4) **Contact the customer service** of the manufacturer and ask for the refund of the pre-installed software (Windows, Office, etc.)

5) If the manufacturer does not have a refund policy or the refund policy is unlawful (e.g. they ask to return also the PC or to send the PC to the manufacturer to remove the Product Key), **send a recorded delivery** (in Italy, PEC [Electronic Certified Mail] could be used) asking formally for the refund.

6) If you got a negative response from the manufacturer, you can **file a lawsuit** (but with caution...)

7) In any case, **report the incident to the antitrust authority** of your country.

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What was taken from Free Software returned to Free Software

Computer manufacturers artificially increase hardware prices for Free Software users with a mandatory payment to Microsoft by bundling computers with a Windows licence.

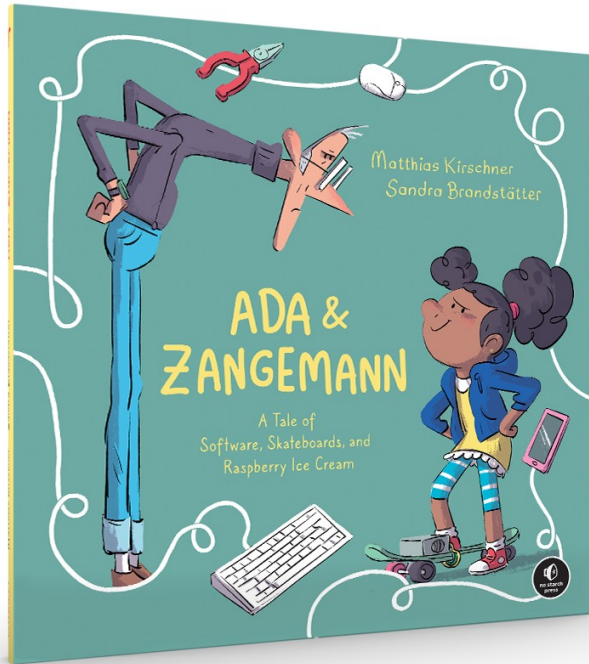It is important that the whole Free Software community can benefit from your refund.

The 20'000 euros I received for damages were totally donate:
- 1'000 € to Wikimedia Foundation
- 1'000 € to Italian Linux Society
- 1'000 € to ADUC (Italian consumer protection association)
- 2'000 € to a charity institution
- 15'000 € to the FSFE

https://fsfe.org/donate

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Support the FSFE's work!

ADA & ZANGEMANN

A Tale of Software, Skateboards, and Raspberry Ice Cream

Matthias Kirschner
Sandra Brandstätter

https://fsfe.org/donate

Donate by 12 February and get a chance to win this book*!

*Limited copies can also be purchased at the FSFE booth (building K)

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