Microsoft responds to e-waste recycler’s jail sentence: ‘he was counterfeiting Windows software’

In response to stories about the 15-month jail sentence given to Eric Lundgren, Microsoft has written a strident blog post detailing its perspective on the case. The post, titled “The facts about a recent counterfeiting case brought by the U.S. government,” consists of several assertions drawn from the case itself, the email evidence that was submitted for it, and Microsoft’s own take.

Microsoft’s corporate vice president of communication, Frank Shaw, begins by once again asserting Microsoft’s support for refurbishing and recycling. But the main thrust of the post is to re-assert the findings of the court. After noting that it was the US government – not Microsoft – that brought the case, Shaw notes that Lundgren pleaded guilty. He also argues that Lundgren’s emails contain strong evidence that he did, in fact, intend to profit from counterfeiting Windows.

Included in the post are multiple emails detailing how Lundgren wasn’t just providing software disks, but going to “great lengths” to make those disks look like they were made by Microsoft or Dell.

Earlier today, we published an interview with Lundgren, detailing his side of the story. Although he pleaded guilty, he puts blame directly at Microsoft for his jail time. He feels that this is more about protecting profits made from selling Windows to refurbishers than concerns about

counterfeiting or piracy.

Microsoft obviously disagrees. Shaw concludes this post thusly:

> *Mr. Lundgren's scheme was simple. He was counterfeiting Windows software in China and importing it to the United States. Mr. Lundgren intended the software to be sold to the refurbisher community as if it was a legitimate, licensed copy of Windows. It was not. The evidence in the case shows Mr. Lundgren used his knowledge of the PC recycling community to scam the very community he claimed to champion and to evade the law. Had he simply wanted to help this community, why did he set up an entire counterfeit production operation in China to make the CDs appear legitimate? And why did he charge for his counterfeit product and try to make a profit at the expense of the community he was ostensibly trying to help?*

One of the core issues of the case was the value of the software Lundgren was attempting to distribute. Lundgren and an expert witness contend that the value was essentially zero. That's because, they argue, the *actual* value of the software should have been in the *license* to use the software, not in the restore software itself – which can be downloaded for free from Microsoft's own website.

Here's how Lundgren characterized the issue:

> *They were comparing it to a new license. You don't get a license with the restore CD. The government treated the infringed item as if it was a licensed product, the license itself, what Microsoft sells, and it's not. … I got in the way of Microsoft's multi- multi- multi-million dollar business model of recharging people for computers that already have an operating system.*

Although Microsoft's response doesn't directly address the distinction between the restore software and the license to use it, it does seem as though the company is contending that distinction is misleading. Shaw writes:

> *When a refurbisher installs a fresh version of Windows on a refurbished PC, we charge a discounted rate of $25 for the software and a new license – it is not free. Thousands of refurbishers participate in this program legally without confusion, and the program works.*

Whether or not it's necessary for refurbishers to pay that $25 fee to Microsoft for a fresh license is still very much still in dispute in the larger community, but that's the number upon which Lundgren's sentence was based. Lundgren is resigned to serving his 15 month sentence. As he told *The Verge:* "I want to write a book in prison about trying to find joy."

https://www.theverge.com/2018/4/27/17293650/microsoft-recycler-jail-sentence-windows-software-counterfeiting-response