

Is Someone Who Sells Software That is Infected With A Virus Liable For The Damages It Causes ?

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Question: Reuven bought software from a Jewish vendor. He loaded the software into his computer and discovered it carried viruses that caused damage to his computer. Is the vendor liable for the damages?

Answer: First of all, the buyer can certainly demand a refund for the money he spent on the software because he was given defective merchandise, which constitutes a *mekach ta'os*.

Regarding whether he can demand money for the damages, we would need to determine exactly how halacha views a computer virus.

First, there is a rule in halacha that *hezek she'aino nikur aino hezek*, damage that cannot be seen, is not considered damage that one is obligated to pay for. In this instance, the computer looks fine. There is no visible damage and the only problem is that the coding inside the computer is corrupted. Is that considered *hezek she'aino nikur*?

The Mishnah speaks about a case where someone steals a coin, and that currency is then invalidated by the government. Some Poskim say that this is not *hezek she'aino nikur* since everyone can see that this is not a good coin. Even though that fact is not visible, it is still clearly evident to everyone, as everyone knows that this type of coin is no longer valid.

Accordingly, although there is no damage to the physical computer, the damage would not be considered *hezek she'aino nikur* because everyone can see that it does not function properly when it is turned on, and the one who caused the damage could be held liable for it.

Second, we need to consider what form of damage a virus is. Contemporary Poskim who write about computer viruses put them in the category of the *hezek* of *aish*. If someone lights a fire that spreads and damages someone else's property, the Torah states that he is liable to pay for the damages. The Gemara adds that included in this category are any objects that are left in a place where they are prone to move and cause damage. For example, if someone left a package on a roof in a windy place, and it falls and damages something, that would be a form of *aish*.

A virus is in this category because it is made available to download, and then spreads like fire to damage a computer. Thus, the vendor who sells virus-infected software is liable because of *aish*. [Accordingly, the exemption of *tamun*, hidden objects, may apply, as the damage occurs primarily to the inner workings of the computer.]