REPORT

Reducing software piracy: Good for business, good for growth

Over sixty delegates drawn from the IT industry, legal profession and government attended the two-hour convention, hosted by the Free Market Foundation (FMF) and Information Technology Association (ITA) on Thursday, 24 March 2011 at the Microsoft Auditorium. The convention gave delegates insight into:

–   the size of the revenue opportunity associated with a reduction in software piracy,
–   industry best practice to reduce piracy, and
–   what the South African government is doing to support the industry in reducing piracy.

In his opening remarks, MC **Adrian Schofield**, President of the Computer Society South Africa (CSSA), said: "Anyone who is involved in the creation of a line of code has a vested interest in intellectual property."

Leon Louw, Executive Director of the Free Market Foundation, spoke on the topic: **Software piracy inhibiting industry growth**. He noted that in rich countries people are happier, that economic growth is essential for the creation of wealth, and that economic freedom is a prerequisite for growth. "Secure and freely tradable property rights make for freer economies," he said. Property rights include human and non-human resources, and intellectual property. Software piracy curtails prosperity, he explained, because it represents fewer property rights, less freedom, less growth, less wealth, and therefore less happiness. He pointed out that there is a high correlation between piracy and poverty, and that investors and innovators prefer economic freedom conditions in which their property rights are protected. Leon cited a recent study by the International Data Corporation (IDC), which found in 107 countries studied, 60% of software is pirated. Armenia with 93% piracy takes first place, South Africa at 34% is at number 89, and the USA with the least piracy at 20% at number 107. According to the Business Software Alliance (BSA), said Leon, if South Africa could achieve 10% less piracy in four years, it would create 1650 new high-tech jobs, inject R9 billion into the economy, and increase tax revenue by R1 billion. "Cutting piracy," he said, "is part of the package of a freer, richer economy".

Mark Reynolds, SMS&P Lead at Microsoft South Africa, presented: **A perspective on how piracy affects vendors**. "From an industry perspective, piracy makes it very difficult to attract investors to the country and to do business," he said. He noted that one third of all software in South Africa is pirated, and said that intellectual property is the "life blood" of Microsoft's business. "From a local perspective, Microsoft's anti-piracy division gets the largest portion of the marketing budget," he said. Mark mentioned that Microsoft is currently investigating 70 companies that are involved in counterfeiting Microsoft products and pointed out that if these 70 dealers sell two PCs a day, Microsoft loses R4 million a month. Legitimate sellers cannot compete with those selling pirated software. "We spend time educating customers, partners and consumers on how licensing works, and the negative impact of piracy," he said. Most of the piracy occurs because some computer sellers will purchase one legitimate programme and install it on multiple computers. It is not possible for Microsoft to combat piracy alone, said Mark, lauding legislation such as King III and the new companies act. Microsoft looks to government therefore to assist with legislation, education and enforcement.

Raymond Wright, Managing Director of Network Alliance, presented: **A perspective on how piracy affects partners**. With 24% of South Africans unemployed, the goal is clear, he said: "…more jobs, decent employment, modern infrastructure, and a higher quality of life". Customers use pirated software for a variety of reasons, he said: To save money and improve cash flow, because pirated software is already installed when they purchase new hardware, because of confusion between procurement and implementers, and because volume licensing components are too complex. Raymond said his company comes face to face with software piracy when deploying new solutions or services. "Vendors must comply with the rules," he said, "which means they cannot compete with those using pirated or unlicensed software." This means loss of licence and service revenue, and longer sales cycles. Opportunities exist for partners to gain customers by helping them to get and remain compliant, said Raymond, and by assisting them "to buy the

right software at the right quantities with a SAM strategy that helps reduce the total cost of software ownership".

Charl Everton, Chairperson of the Business Software Alliance (BSA) and Anti-Piracy Lead at Microsoft, dealt with: **Best practice to reduce piracy**. She outlined the International Data Corporation's (IDC) five step roadmap to reduce software piracy, implemented very successfully by Russia: (1) Legislate: Legislation must be aligned to the objective of reducing piracy, she said. Civil damages, for example, are not currently serving as a deterrent. In addition, proving copyright infringement is challenging and costly. (2) Educate: Businesses should be educated about good governance and pirated software related risks, while education campaigns for the general public should be aimed especially at the youth. (3) Enforce: Existing enforcement should be expanded and capacity building improved via training of law enforcement officials including police, customs, prosecutors and judges. (4) Collaborate: Industry should promote public-private partnerships and support cross-border cooperation. (5) Lead: Government should lead by example by supporting industry in reducing piracy and implementing a Software Asset Management (SAM) plan in the public sector. Charl ended by saying: "The opportunity for piracy is very real; the opportunity to reduce piracy is also very real because of the IDC roadmap and the IT industry's relationship with the South African government."

MacDonald Netshitenze, Acting Chief Director of Commercial Law in the DTI's Consumer and Corporate Regulation Division (CCRD), provided a **Legislative update** of the reforms and reviews underway for 2011 through 2013. "Policies and laws should be predictable and provide certainty," he said, adding that whether the laws were considered good law by all affected is "another issue". The CCRD mandate focuses on consumer protection, estate agency reform, credit issues, the new companies act and intellectual property policy and legislation. MacDonald said that the amendment to existing IP legislation had been suspended because the companies act had been prioritised and because the Portfolio Committee had requested improvements to the amendments post input from the public. He added that a *sui generis* alternative (proposed at the FMF's IPR Roundtable 2010) was not an option. IP policy that includes software issues has been drafted, he said, and would be relayed to cabinet for permission to get input from the public in due course. At that point the IT industry would be able to comment on software issues. "Please engage the DTI," he said. "Software issues will be catered for, but who will win, I don't know," he added.

Mkhuseli Vimba, Director of Education and Capacity Building at the DTI, dealt with: **Education and capacity building**. He detailed a 2009 meeting between President Jacob Zuma and the creative industry regarding the concerns of the latter over piracy, the need to review copyright legislation, and the lack of awareness of intellectual property law. Mkhuseli pointed out that the SA Police Service, the SA Revenue Service and the National Prosecuting Authority have a vested interest in combating piracy under the Counterfeit Goods Act, and that government and the IT industry are partners in the fight against piracy. A campaign called Operation ThengaEyakho (buy original, be original) has been launched in the Eastern Cape, KwaZulu-Natal and Limpopo, aimed at universities, schools, consumers, SMEs and local law enforcers. "Piracy affects job creation and the South African economy," he said. "Copyright contributes 5% of GDP, therefore we must fight piracy." "Prosecutors don't understand the scourge of piracy," Mkhuseli said, adding that the DTI was therefore not only training law enforcement agencies but also holding information sessions with the judiciary. "The benefits of fighting piracy are known," he said, "and therefore consumers must be mobilised to say no to stolen goods".

Mandla Mnyatheli, Chief Director of the DTI's Office of Company and IP enforcement (OCIPE), talked on: **Enforcement and capacity building**, thanking Microsoft for recognising the central role of the DTI in piracy reduction. "The DTI's job is to accelerate economic growth, create employment opportunities, reduce economic inequalities, and ensure equity," said Mandla. Initially there was no political buy-in regarding the importance of piracy reduction, but government now knows that South Africa is losing R2 billion each year through pirated goods and that, for example, illegal downloads are expected to expand at 15% a year over the next five years and are already costing the local music industry R200 million a year. Initially the DTI did not focus on software piracy, he said, as it had no capacity to identify counterfeit programmes. This has changed through "very good cooperative arrangements between the DTI and Microsoft" and since the inception of

training via the US. "To possess or produce counterfeit goods is a criminal offence," he said. "We must stop the trend of piracy and counterfeiting; once stemmed, we must make sure it doesn't happen again."

In his closing remarks, **Sunil Geness**, President of the Information Technology Association (ITA), said, "The ITA, which represents 212 IT companies, has been in existence for 77 years, studying upcoming policy and legislation and acting as a lobbying association on behalf of the IT industry". He said that the software piracy convention had revealed that software piracy is real, that it impacts IT and software developers, and that the DTI is doing a lot of work to wipe out the "scourge of piracy". Sunil called on those present to lead by example by refusing to buy pirated goods and educating their children, community and organisations about the negative impact of piracy on the economy. "If South Africa is suffering," he said, "we are suffering". He suggested that vendors and partners review the IDC five-step framework to reduce piracy, and participate in presenting information to government.

Registration table

Delegates

Programme, Topics & Speakers

08h30-09h00	Registration & finger breakfast	
09h00-09h15	Software piracy inhibiting industry growth	**Leon Louw** | Executive Director, Free Market Foundation
09h15-09h30	A perspective on how piracy affects vendors	**Mark Reynolds** | SMS&P Lead, Microsoft South Africa
09h30-09h45	A perspective on how piracy affects partners	**Raymond Wright** | Managing Director, Network Alliance
09h45-10h00	Best practice to reduce piracy	**Charl Everton** | Chairperson, Business Software Alliance
10h00-10h15	Legislation update	**MacDonald Netshitenze** | Director: Commercial Law, DTI
10h15-10h30	Awareness and education campaigns	**Mkhuseli Vimba** | Director Education and Capacity Building, DTI
10h30-10h45	Enforcement and capacity building	**Mandla Mnyatheli** | Chief Director: Company and IP Enforcement, DTI
10h45-11h00	Wrap up	**Sunil Geness** | President, Information Technology Association
11h00-11h30	Coffee, tea, pastries	
	MC	**Adrian Schofield** | President, Computer Society South Africa

Delegates

Justin Agar	Attachmate
Jacques Allers	SAFACT
Gillian Andrew	Technology Corporate Management
Marc Ashwel	Worldsview Technologies
Fred Baumhardt	Microsoft South Africa
Barbara Berdou	Berdou Attorneys
Desiree Bothma	Serqua Risk Management Services
Jan Bothma	Serqua Risk Management Services
Cheslynne Britz	Rectron Pty Ltd
Juan Brunette	Adcock Ingram
Eustace Davie	Free Market Foundation
Selim Ellialti	Microsoft South Africa

Charl Everton	Business Software Alliance
Monique Ferreira	Microsoft South Africa
Garret Firstbrook	Forest Technologies (Pty) Ltd.
Paul Furber	Brainstorm
Sunil Geness	Information Technology Association
Marius Haman	Bowman Gilfillan
Hollie Hepburn	Fleishman-Hillard
Ruth Hunt	Gijima
Madelein Jacobs	Microsoft South Africa
Annette Jost	Gijima
Khomotso Kganyago	Microsoft South Africa
Themba Khumalo	DTI
Jacob Khunwana	Gijima
Denise Lee	Deloitte & Touche
Elzaan Loubser	Oracle
Leon Louw	Free Market Foundation
Mark Lu	Rectron Pty Ltd
Renée Luus	Business Software Alliance
Teboho Masiteng	Microsoft South Africa
Rosa Mathabathe	DTI
Tiny Maubane	Fujitsu Technology Solutions
Duncan McLeod	Tech Central
Mandla Mnyatheli	DTI
Daniel Moeketsi	CCMA
Khanyi Ndelu	Department of Water Affairs
Emile Nel	SAFACT
MacDonald Netshitenzhe	DTI
Dawn Ngcobo	CTU Training Solutions
Mzu Nhlabati	Creative Nation
Chris Norton	VMWare
Grant O'Connor	Adobe Systems
Johan Pansegrouw	SARS
Tony Parry	Computer Society South Africa
Paul Pavwoski	U.S. Embassy
Wayne Pienaar	Microsoft South Africa
Francois Rey	Microsoft South Africa
Mark Reynolds	Microsoft South Africa
Rose Roering	Troye
Kirsten Ronnie	Mahons Attorneys
Adrian Schofield	Computer Society South Africa
Masoabi Sekgaolela	Gijima
Godfrey Sehlako	Black Source
Richard Shaw	Forest Technologies (Pty) Ltd
Drummond Simpson	Adobe Systems
Rishil Singh	SAFACT
Brenda Tlhabane	Datacentrix (Pty) Ltd
Donovan van Schalkwyk	DTI
Calvin van Wyk	IMMIX Solutions (Pty) Ltd

Jan Vermeulen	mybroadband
Mkhuseli Vimba	DTI
Alan Williams	Pro Solutions
Tony Wright	KPMG
Raymond Wright	Network Alliance

Press Release
The press release below was mailed to 1,000 journalists prior to the convention.

Software piracy inhibiting industry growth
Leon Louw, Free Market Foundation (FMF) Executive Director, speaking at a software piracy convention hosted by the Free Market Foundation (FMF) and the Information Technology Association (ITA) in Bryanston on Thursday, March 24, said that the world's experience shows that high rates of software piracy coincide with economic stagnation, especially in IT-related contexts. It also coincides with higher rates of corruption, unemployment and lost government revenue.

"Countries with high rates of software piracy tend to be economically backward and characterised by corruption and poor governance," he said. "Conversely, prosperity increases as piracy falls and the rule of law is upheld."

Louw cited a recent study by the International Data Corporation (IDC) which found that countries which succeeded in reducing piracy by ten per cent in two years instead of four experienced over 30 per cent faster growth in the IT industry along with higher rates of growth in the economy and in tax revenue.

Such correlations do not, of course, imply a direct causal link in either direction, but the overwhelming coincidence worldwide between such factors as lower piracy, corruption, poverty and unemployment rates, on one hand, and enhanced performance in virtually all areas for which there are published indices, on the other, is strong evidence for what a government should do if it wants its country to be a winning nation.

Louw also cited research by eminent jurist, Robert Cooter, which shows that countries that promote and embrace innovation, including IT, and protect intellectual property rights under the rule of law, outperform those that don't. After rigorous analysis of the evidence, Cooter's conclusion is that "All nations now have the opportunity to escape poverty by developing … a good legal framework [with effective] property and contract laws."

The *International Property Rights Index* (IPRI), comprised of three components, one of which is intellectual property rights (IPR), shows a powerful correlation between respect for and enforcement of IP (ie the absence of piracy) and prosperity for all.

"My research on the *Habits of Highly Effective Countries* shows that virtually every quantified indicator of human and environmental well-being has a better score in richer countries," said Louw.

"The world's experience presents us with four basic truths: (1) the only proven way for countries to prosper is economic liberalisation, (2) the most statistically significant component of liberalisation is improved rule of law, (3) effective protection of property rights is a requirement of the rule of law, and (4) a core aspect of property rights is intellectual property. In other words, if the government is serious about prosperity for all, it has to be serious about curtailing software piracy and other violations of property rights."