interview **with**

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Business Software Alliance Local Council

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Slovakia: On the Road Towards Copyright Protection

Connection magazine talked to JUDr. Adriana Tomanová, Attorney of the Business Software Alliance about her experience in suppressing software piracy in Slovakia.

A couple of notes stolen from a notorious hit song, an advertisement spot that contains a plot once used by the competition, or a newspaper article published before by someone else. These are all obvious cases of copyright infringement. However, computer software presents an exceptional situation. Here the stolen product with no valid license may look inconspicuous – in some cases of perfect counterfeits the package and the medium might appear completely authentic. However, this is only true up to the moment when the user chooses to use technical support services, or download security patches from the internet. As a user of an illegal copy, such services are denied to him or her. We talked to JUDr. Adriana Tomanová, attorney with the Business Software Alliance (BSA), about her experience in suppressing software piracy in Slovakia.

Ms. Tomanová, how long has BSA been active in Slovakia, and in which ways?

A.T.: BSA is an alliance of commercial software producers that fights software crime and is active in more than 70 countries around the world. It was founded in the USA in 1988, and its Slovak subsidiary began active operation in May, 1997. I have been representing the Alliance as an attorney since 2000. Our main activity is increasing awareness and prevention. BSA is the voice of the software industry for communicating with the public. Our task is to promote the interests of the industry to national parliaments in individual countries, in order to help draft favorable legislation that protects copyright. Furthermore, we organize promotional marketing campaigns, seminars for computer resellers, and training for police, customs officials and other law enforcement services. Our work obviously involves the legal prosecution of software copyright violators. We have been legally claimed losses of more than SKK 2.5 million since the beginning of the year.

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You mentioned cooperation with the Slovak police. How effective is your cooperation? Are the police sufficiently equipped to fight software pirates who have a sound technical background?

A.T.: We have had a long-term history of positive cooperation with the Police Corps. We cooperate with the Slovak Republic Police Corps Presidium in educating police personnel in the area of copyright protection. I have to say that there are many young police officers working for the Corps who are interested in such issues. The situation is very different from some seven years ago when I was just starting my work. Computer crime was a big unknown and they were only equipped with pencils and erasers. Nowadays they have decent technical equipment. Obviously, to protect the copyright efficiently we need to have good legislation, and we also participate on the process of its drafting.

Which changes did you manage to push through in order to better protect the rights of software companies on the Slovak market?

A.T.: We actively monitor and get involved in preparing amendments to the Copyright Law and the Penal Code. The Copyright Law Nr. 618/2003 Coll. was amended by the Law Nr. 84/2007 Coll. effective from March 1, 2007. The bill transposes the Directive 2004/48/EC of the European Parliament and of the Council of 29 April, 2004 on the Enforcement of Intellectual Property Rights. These new amendments increase law enforceability in this area. Several other laws were amended in this connection – such as the Civil Code, Civil Justice Procedures, Business Code, Distrainment Procedures, etc.

Law enforceability is extremely important, but we all know that the teenagers of today do not have a problem penetrating secure government agency systems, or overcoming software copying protection. What is the BSA doing to educate the younger generation?

A.T.: Available statistics say that pirate burners, hackers or crackers are mostly young people up to the age of 25. We know that nowadays, young people consider computers to be an inevitable part of their lives and they are very lenient in the issues of copyright protection. I think this stems from the education they are exposed to at home and in schools and I think there is a lot we can do there. We have realized that our awareness efforts need to focus upon the very young 8-9 year olds.

We are preparing an information portal on this issue for IT teachers who complain about the lack of background materials when teaching about copyrights. We hope to contribute with an effective project in this area submitted to the Board for ITs

and IT Promotion in Education – I was nominated to this Board by the Minister of Education.

Can you name a specific case when an underage student caused a copyright infringement?

A.T.: Several underage offenders have been convicted – all of them were so-called pirate burners. For example there was a student from Stará Ľubovňa or Trnava. They were all issued a suspended sentence – but most of them will face years of paying monthly payments to compensate for losses. I even remember a case from 2000 when a student was sentenced and subsequently expelled from his university.

Which is the most problematic sphere of software crime? Is it private companies or rather households?

A.T.: IDC statistics claim that the 2006 piracy rate in Slovakia was 45% - this means that almost a half of all software used in Slovakia is illegal. This is quite a high number, although the data points out that against 2003, the Slovak piracy rate dropped from 50% to 45%. The corporate sector is still problematic – especially companies or business owners with up to 50 computers who often do not have an adequate number of licenses purchased. I think such an approach is not reputable since they use computers on a daily basis to produce work and generate income.

An entrepreneur might never think about stealing an automobile or a mobile phone, yet burning a software CD is considered normal. Nothing will be missed; no empty space on a parking lot will be left as is the case with car theft. Such entrepreneurs are then surprised when the police arrive to their premises, confiscate their computers and subject them to interrogation.

As for households, the situation seems to be improving. People frequently buy home computers with preinstalled (so-called OEM) versions of operating systems or other products bundled together with a new computer for a discount price. The falling prices of notebooks also improves the situation in households – the rate of such computers increases on the expense of unbranded assembled units. Original notebooks are almost automatically bundled with pre-installed software for a friendly price. With assembled units, pirate software is often installed by the reseller as an added value to the customer for free. This is however considered a criminal offence and such resellers subject their customers to possible prosecution.

Your Alliance runs campaigns to promote voluntary software audits. What kind of a tool is this and what benefits does it bring

to users? Could such audits be performed by the BSA?

A.T.: BSA recommends software audits; they are however only performed by expert companies, certified partners or companies themselves through their IT departments. Software auditing is an expert process where the hard disks of all servers and client stations in the company are scanned – mechanically or using dedicated software. This results in a complete list of all software products used by the company. This is subsequently checked against accounting records of the company. The Accounting Law requires a document of purchase for every piece of software. If these do not correspond, it is necessary to immediately take steps to ensure compliance with the law to avoid legal persecution. Some companies even use software audit certificates and documents of software "purity" in their presentations – especially abroad. Sometimes presenting such a certificate of for legal software might be a condition when entering large-scale business or public procurement contracts.

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So entrepreneurs who have already performed such an audit in their companies can relax?

A.T.: For some time yes – but this is not the point. Performing a software audit makes sense, only if it is repeated regularly, and its results are followed up on in a meaningful way. However, entrepreneurs are fortunately starting to realize that the software they use is one of the assets of the company – this is why we use the term Software Asset Management. Although the issue of legal accountability of companies is being dealt with nowadays, the person responsible for everything is still usually the statutory representative – even for illegal software brought from the home and installed by an employee. In a bigger company a chief executive officer is physically unable to inspect all computers, so repeated audits and subsequent software asset management becomes

an inevitable management process. We have had experience with software audit in the office of a weekly paper – they found out they were over-licensed; they have purchased more valid licenses than they actually use and need. Software management is also an effective managerial tool to control costs.

Let us come back to law enforcement. Are Slovak laws as tough on software pirates as other European or US laws?

In my opinion Slovak laws are in line with European standards. I do not know US laws in detail but I presume they are stricter. The causal law system is based on many precedent cases that are even followed by our media; in these cases the courts took action against software pirates, distributors of illegal content through FTP servers and P2P networks, or smugglers of illegally pressed CDs from China. The American FBI, in cooperation with the Chinese police performed the Summer Solstice operation and recently arrested 25 people who produced high-quality counterfeit software products in a southern factory in China. This criminal syndicate distributed their goods not only within the USA but also to 27 other countries in the world. Expert statements pointed out that some of the software pieces distributed by this gang even found their way to our country – we intercepted them in Nitra and Nové Mesto nad Váhom.

What is your forecast for software piracy developments in Slovakia?

A.T.: I believe in a sustained, although incremental lowering of piracy rates in Slovakia. Harmonizing our law with EU legislation has resulted in implementing seven directives related to the Copyright Law – we additionally ratified several scores of international treaties such as WIPO, TRIPS, etc. Our legislation has already advanced to the European level, now we need to promote seamless enforcement of these rights. We are pleased with the results – this year the Slovak Republic has not been put on the so-called 'Watch List' for the second year in a row. This is a list of countries that tolerate copyright infringements. The Watch List, or Special Report 301, is published annually by the US governmental agency United States Trade Representative (USTR). In the area of protecting copyrights, Slovakia this year exceeded countries such as Italy, Poland and Canada. This is a sign of acknowledgement by the United States that the Slovak Republic achieved significant progress in the area of protecting software, music, films, branded goods and medical patents.

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