

First Ever Jailing of Illegal Software End User a Milestone in Anti-Piracy Battle

2011-12-20 18:12:41 - **Indian Court jails end-user in first of a kind action**

In what is seen as a major breakthrough in the battle against software piracy, the Indian criminal court has, for the first time, jailed an end user of cracked commercial software, without bail, pending investigation. If convicted, the defendant, Managing Director of VM Informatics (VMI) in New Delhi, faces up to three years in prison. The case marks a unique milestone in the fight against software counterfeiting and illegal use.

Following a raid by anti-piracy investigators and police on the offices of VMI in July 2011, IT Compliance Association (ITCA) client Tekla Corporation made a criminal complaint against the company alleging wide-scale software licensing fraud through leading IP law firm Amarjit & Associates.

Tekla specialises in highly sophisticated modelling software for the construction, infrastructure and energy industries. VMI was found to be unlawfully using Tekla software with a licensed value of over \$176,000.

The High Court of Delhi issued an injunction against VMI preventing further unauthorised use of Tekla software. VMI chose to ignore the injunction and a second police raid on their offices revealed new computers each containing multiple illegal copies of Tekla software. The total licensed value of the infringed software discovered in both raids now stands at over \$500,000.

VMI's Managing Director was arrested on 12th December, 2011 will remain in jail at least until 19th December as his application for bail was postponed for hearing by the Indian court which has also brought contempt proceedings against him for breaching its earlier injunction. Under Indian law the maximum penalty for contempt of court is a year in prison, while serious breaches of Indian copyright law are punishable by up to three years imprisonment. Separately, VMI and its Managing Director face a civil claim for \$500,000 for illegal use of unlicensed software.

In emerging markets, such as India, software piracy is a serious and growing problem. Infringers will typically purchase a single license and then proceed to illegally use multiple copies of cracked software. The decision to bring both criminal and civil charges against VMI and its Managing Director was taken following repeated attempts to resolve VMI's illegal use of Tekla's software.

Commenting on this latest development, Chris Luijten, CEO of the IT Compliance Association said:

"The problem of software piracy remains widespread and serious, particularly in emerging markets like India. Those who chose to knowingly use or sell illegal software should heed our warning – we shall continue to relentlessly bring the full force of the civil and criminal law to bear upon any transgressors."

Mr. Amarjit Singh, Managing Partner Amarjit & Associates and Global Vice chair of Global Anti-counterfeiting group (GACG) who is representing ITCA in India added:

"This is the first case anywhere in the world where a criminal action is initiated against the End User of pirated software and he is arrested and sent to jail. In most countries, the use of pirated software by the end user is considered only as a civil wrong and criminal actions are either not available in law or are not enforced by the courts. However in India, it is a civil as well as criminal wrong. In the past many actions have been taken against infringers of software by way of civil actions against end users, but no action had earlier been taken under the criminal procedures for sending the end user pirate to jail."

"The choice to go through criminal court instead of civil court has been carefully considered. The impact of being detained in an Indian prison is not to be taken lightly. In the software industry criminal enforcement is associated with the sellers of counterfeit software but USING illegal software is a crime too. India's legal system does not provide for high damage rewards for software infringement and the pirate users are aware of this. The incentive to go "legitimate" if the only risk of using illegal software is that you are ordered to buy a license is not big enough. By filing criminal complaints against hardcore infringers Amarjit & Associates attempts to add a stronger incentive to the other unlicensed users out there to reconsider their infringing activities".

Andre Corniere, director of steel segment at Tekla added: "Piracy weakens the competitiveness of our licensed customers as pirates seek unfair advantage of competition. Tekla is committed to ensuring the protection of its software users' rights, Tekla's rights, and the rights of other software suppliers. That's why we are active in tracking down pirates and other parties involved in making or distributing illegal copies of Tekla software.

About ITCA:

ITCA seeks to create an economically sound and competitively fair playing field for the entire software community by

educating clients in software use, licensing and compliance. ITCA locates companies engaged in the improper use of its clients' software, negotiates agreements for immediate compliance on their behalf, and aids companies in maintaining software compliance to avoid possible action brought upon them by software vendors. For more information please visit www.itca.com.

About Tekla:

With its software, Tekla drives the evolution of digital information models and thus provides a competitive advantage to the construction, infrastructure and energy industries. Tekla's net sales for 2010 were nearly 58 million euros. The company was established in 1966, and today it has customers in 100 countries, offices in 15 countries, and a global partner network. Tekla Corporation became part of Trimble in 2011. www.tekla.com

For further information contact:

Chris Luijten, CEO of the IT Compliance Association on +599-9-4612645

André Corniere, Steel Segment Director Tekla Corporation on + 33 1 46 87 51 75

Press related issues:

Richard Elsen, Byfield Consultancy on +44 207 092 3999