



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE
MINISTRY OF ECONOMIC AFFAIRS

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Quarterly Report on Taiwan's Intellectual Property Rights Protection

In order to effectively balance the rights of copyright holders, Internet users and Internet service providers (ISPs), the Legislative Yuan has recently passed an amendment to the Copyright Act concerning the liabilities of ISPs (commonly named the 'ISP Bill'). The bill will also help curb illegal online infringement activities and create a stronger environment for IPR protection.

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Special Report

Taiwan-EU IPR Working Group holds year's first DVC

The year's first digital video conference (DVC) of the Taiwan-European Union IPR Working Group was held on March 24, 2009. The DVC talks focused on eight areas of recent IPR developments in Taiwan; namely, progress of the new IP Court and IP Prosecutors Office, IPR legislative amendments, trademark protection, geographical indications (GI), IPR protection and enforcement, Taiwan-EU bilateral partnerships, information sharing, and cross-strait IPR exchange. Consensus among the two sides was reached on the following points:

1. Considerable progress has been made by the Working Group in recent months, most notably mutual acceptance of plant variety distinctness, uniformity and stability (DUS) test reports.
2. TIPO will provide the EU with additional statistics from the IP Court on domestic and foreign IP cases received.
3. The EU thanked Taiwan for their progress reports on current legislative amendments, and agreed to reply with a detailed response to this progress within the time period proposed by Taiwan. The EU also stated that European Commission Trade Barriers Regulation (TBR) investigators would send a reply to Taiwan's February responses regarding proposed Patent Act amendments on compulsory licensing.
4. The EU and Taiwan agreed to hold a two-day seminar on GI and design patents sometime in fall 2009. The final seminar agenda will be determined after consultation between the European Economic and Trade Office in Taipei (EETO) and TIPO.
5. In view of the importance of cross-strait IPR exchange, the EU pledged to continue to explore suitable platforms for IPR cooperation between Taiwan, the EU and China.
6. Taiwan would publish an English summary of the recently-published "Well-Known Trademark Directory and Case Studies" on the TIPO website to serve as reference for foreign governments and rights holders.
7. To help further spread IPR awareness, Taiwan agreed to provide law enforcement officials with educational material taken from past Ministry of Justice IPR enforcement seminars on preventive measures against circulation of counterfeit goods.
8. The Taiwan side also informed the EU that a future amendment to Article 20 of the Fair Trade Act will be further evaluated once amendments to the Trademark Act are completed.
9. The two sides agreed to further cooperation among judicial agencies through planning of a potential prosecutors' training DVC at a later date.

TIPO attends 28th APEC/IPEG meeting in Singapore

The 28th APEC Intellectual Property Experts Group meeting was held on February 23-26 in Singapore. The TIPO delegation, led by Deputy Director General Margaret Chen, presented four reports at the Singapore meeting: "Challenges and Solutions for Copyright Collective Management in Chinese Taipei", "Accelerated Examination Program in Chinese Taipei", "Chinese Taipei E-filing System", and "IPR Protection and Awareness in Chinese Taipei". TIPO delegates also attended a two-day seminar entitled "From Mind to Market: The Highs and Lows of Technology Transfer" and met with fellow APEC delegations to discuss issues of mutual interest.

Legislative Amendments

Copyright Act draft amendment (ISP Liabilities Bill) passes Third Reading in Legislative Yuan

The steadily growing popularity of online infringement constitutes a severe blow to copyright protection around the globe. Since these infringement activities occur largely over service platforms made available by Internet service providers (ISPs), stronger safeguarding measures are thus sorely needed. After a thorough study of "safe-harbor" laws from foreign IP departments, TIPO in 2008 completed drafting of the ISP Bill, an amendment to the Copyright Act delineating the liabilities of ISPs for infringement activities committed over the Internet. On April 21, 2009, the ISP Bill passed the Third Reading of the Legislative Yuan and will be promulgated by the Presidential Office in the near future. TIPO is satisfied the positive effects of this bill will be shared equally among rights holders, ISPs and Internet users, and will serve as a powerful new tool to battle

online copyright infringement in Taiwan.

The passing of this bill will provide a faster, more convenient mechanism – in addition to traditional methods of litigation – with which copyright holders can take legal action against online infringers. Key components of the bill include: (1) clarifying applicability of the provisions of the Civil Code concerning liability for joint infringement when a third party uses ISP facilities or services to commit infringement; (2) creating a “notice/takedown” mechanism to halt the illegal online circulation of copyrighted material; (3) adding a counter-notification mechanism to protect users’ rights; and (4) ISPs will not be held liable to rights holders or users after removal of suspected infringing material.

In the weeks and months ahead, TIPO will take the following steps to ensure the provisions of the bill are carried out in the smoothest manner possible: (1) draft a set of implementation regulations pertaining to the bill and consult with ISPs and rights holder groups on developing effective notice/takedown mechanisms which satisfy the interests of all parties, and (2), convene a series of public meetings and post an FAQ page to the TIPO website to help clarify the content of the bill for all Internet users and interested sectors.

Latest Developments

1. On March 5, 2009, TIPO hosted a public hearing to present drafts of an amendment to the Copyright Act and a revision to the Copyright Intermediary Organization Regulations. In attendance were representatives from rights holder groups, intermediary organizations, and user groups such as hospitals, television and radio stations, and the hotel, beauty, and tour bus industries. Participants discussed key issues in the drafts, such as limiting the exercise of rebroadcast rights to the jurisdiction of intermediary organizations, and allowing unified rates of remuneration in cases where multiple intermediary organizations are collecting licensing fees for the same form of copyright usage. TIPO hopes the simplifying of licensing procedures will help solve disputes currently created by large discrepancies in fee collecting procedures among the numerous intermediary organizations, ultimately encouraging lawful public use of copyrighted work.
2. To promote respect for intellectual property rights and help instill a stronger sense of creativity among students and the public, the Taiwan Foundation Against Copyright Theft (TFACT) and the Hong Kong Intellectual Property Society have once again teamed up to host the “2009 Hong Kong and Taiwan ‘My Video’ Competition”. The event, which will also receive assistance from the Hong Kong Intellectual Property Department and TIPO, will invite participants in one of three categories – senior or vocational high school, college or university, and an open category for non-students. Each category will award a gold, silver, and bronze medal along with an honorable mention award to the top four entrants. A total of NT\$500,000 in prize money will also be awarded to the winners. To raise awareness for the event and solicit participation from all sectors, a press conference was held on March 6 at the Eslite Bookstore, Xinyi Branch, Taipei.
3. To help educate all sectors about current trademark-related laws and regulations, TIPO held a series of five seminars across Taiwan in March 2009. The seminars, organized at the request of trademark-associated industries, focused on examination guidelines for determining trademark distinctiveness and proper usage of registered trademarks. The seminars were held on March 18, 19, 24, 25 and 27 in Taipei, Taichung, Hsinchu, Tainan and Kaohsiung and attracted a total of 377 participants.

Enforcement and Latest Statistics

National Police Agency (NPA)

In coordination with government efforts to combat IPR infringement, the National Police Agency (NPA) in 2008 completed amendments to the “NPA-assisted IPR Anti-infringement Implementation Plan,” asking police agencies to continue the battle against piracy and counterfeiting and strengthen investigative efforts. Local police authorities have established special task forces for periodic sweeps of major night markets and other market venues, and strengthened the investigation of Internet infringement and the sales of counterfeit and pirated products using newspaper inserts.

In the period from January to March 2009, the NPA uncovered a total of 1,325 IPR infringement cases involving 1,394 suspects. Of the infringement cases, there were 543 trademark infringement cases involving 629 suspects and 782 copyright infringement cases involving 765 suspects. A total of 282,269 pirated ODs

were uncovered during this period (see Table 1).

During the same period, the NPA also uncovered 3 cases of newspaper inserts with advertisements for counterfeit and pirated products. This compares to 1 similar case during the first quarter of 2008. Discovered cases of infringement at night markets and other popularly-known locations from January to March 2009 totaled 204, a 58.1% increase from the 129 such cases handled during last year’s first quarter, while the number of Internet infringement cases increased by 7.5% from the same January-March period in 2008, from 586 to 630. The NPA did not handle any cases involving infringement-related phone disconnections during this quarter, a vast drop from the 104 disconnections performed over the same three months in 2008.

In relation to sales of pirated or counterfeit goods via newspaper inserts, transactions at night markets and over the Internet remain the more common types of infringement. The NPA will work to continue improving investigation of newspaper insert cases while recognizing the need for stronger enforcement of online infringement and illegal night market sale investigations.

From March 23 to March -25, the NPA also launched “2009 Anti-Piracy Project 1”. In total, the crackdown produced 507 cases involving 559 suspects.

Table 1: Statistics for IP Infringement Cases

Unit: case/person

Year	Total		Trademark		Copyright		
	No. of Cases	No. of Suspects	No. of Cases	No. of Suspects	No. of Cases	No. of Suspects	No. of CDs
2009 (Jan.-Mar.)	1,325	1,394	543	629	782	765	282,269
2008 (Jan. -Mar.)	1,329	1,503	642	748	687	755	683,239
Percentage Change: 2009 (Jan. - Mar.) /2008 (Jan. - Mar.)	-0.30%	-7.25%	-15.42%	-15.91%	13.83%	1.32%	-58.69%

Source: National Police Agency (NPA), Ministry of the Interior

IPR Police

To strengthen the investigation of IPR infringement cases, the IPR Police has remained diligent in making Internet and night market sweeps. From January through March 2009, the IPR Police uncovered: 204 night market cases involving 46 suspects; 26 store cases involving 34 suspects; 244 Internet cases involving 263 suspects; 2 newspaper insert cases involving 2 suspects; and 1 factory case involving 1 suspect. In total, the IPR Police uncovered 339 copyright infringement cases involving 193 suspects, and 177 trademark infringement cases involving 198 suspects.

Major infringement cases during this quarter included the following:

- Investigators from the IPR Police, Hua-Tung Branch performed a raid on an address in Yongkang City, Tainan County. One suspect was accused of using an Internet blog site to provide unspecified users with links to unlicensed, pirated audio files for listening or downloading. The website contained 208 recorded music and song files and had received a total of 541,983 hits before its discovery. The case was subsequently turned over to the Tainan District Prosecutors Office for further investigation.
- On February 6, a special task force of the IPR Police uncovered a business conducting illegal sales of unlicensed goods in four Taipei City storefront locations. A search of the storefronts produced 2,582 pieces of counterfeit belts and fashion accessories sold under the Chrome Hearts brand. The case was subsequently turned over to the Shilin District Prosecutors Office for further investigation.
- IPR Police Taichung Branch investigators uncovered an inventory of unlicensed pirated video games and video game consoles in Luzhou City, Taipei County on March 12. A total of 921 pirated consoles (each containing 168 games) were seized on site. The case was subsequently turned over to the Taichung District Prosecutors Office for further investigation.

Joint Optical Disk Enforcement Taskforce (JODE)

From January to March 2009, JODE conducted 214 inspections (99 daytime and 115 nighttime) of OD factories, printing plate factories and related facilities. This total is a decrease of 24 from the 238 inspections (102 daytime and 136 nighttime; see Table 2) performed over the same period last year. JODE also conducted

66 documented audits of the internal control and audit systems of outstanding OD factories after advising them on the establishment of such systems.

On March 23 JODE began an island-wide inspection of all OD factories in Taiwan in order to maintain accurate knowledge of domestic production and circulation of OD-manufacturing equipment. The tour, which was scheduled to be completed in April 2009, also included talks given to OD manufacturers to ensure proper registration of inventory.

In collaboration with the IPR Police on night market sweeps, JODE participated in uncovering 6 cases involving suspected sale of pirated ODs from January to March 2009. Investigators seized a total of 2,342 ODs and NT\$5,400 in cash in these cases.

To provide more effective implementation of IPR protection policy and OD factory inspections, JODE recruited two rounds of a total 22 military draftees in 2009 to replenish their ranks for inspection work. The first round of 11 recruits began their service on March 2, with the second round of recruits set to begin in October of this year.

Table 2: JODE Inspection Results (January – March 2009)

Number of Inspections		2008		2008		2009	
		Jan.- Dec.		Jan. - Mar.		Jan. - Mar.	
		916		238		214	
		Day	Night	Day	Night	Day	Night
		408	508	102	136	99	115
Number of Cases Found Violating the Optical Disk Act		0		0		0	
Number of Plants Closed	Manufacturing Plants	4		1		2	
	Packaging Plants	0		0		0	
Number of Cases Prosecuted		0		0		0	
Number of Suspects Prosecuted		0		0		0	
Number of Administrative Dispositions		0		0		0	
Number of Machines Seized		0		0		0	
Number of Illegal ODs (Pieces)		0		0		0	

Source: The Joint Optical Disk Enforcement Taskforce (JODE), Ministry of Economic Affairs

Directorate General of Customs (DGOC)

Customs enforcement of the Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent, Trademark, and Copyright and other border measures yielded the following results from January to March 2009 (see Table 3):

Table 3: DGOC Inspection Results (January – March 2009)

Jan. – Mar. 2009	Trademark Infringement		Copyright Infringement		No SID Codes on Export ODs	False Declaration of Export ODs	Violation of SID Code	False Declaration of Trademark
	Export	Import	Export	Import				
Cases	0	68	0	9	0	3	0	85
Amount	0	19,220	0	2,942	0	133,710	0	-
Jan. - Mar. 2008 Cases	3	51	0	7	12	0	64	3
Change	-100%	-33.3%	0	28.6%	-100%	-	-100%	2733%

In the area of major inspections, on January 6, 2009, the Taichung Customs Office uncovered an imported shipment of counterfeit Levi's and Puma brand sneakers; a total of 4,929 pairs were seized. On March 6, Taichung inspectors also seized a shipment of 6,888 pairs of counterfeit True Religion and No Name brand sneakers. On February 16, the Taipei Customs Office uncovered a shipment of pirated Nintendo Wii, Sony Playstation 3, and Microsoft Xbox video game software, with 730 ODs were seized on site. On February 24, inspectors from the Keelung Customs Office seized and detained a shipment of 873 imported counterfeit Toyota automotive belts. All evidence was seized and turned over to prosecutors according to Taiwan law.

In the area of international cooperation, as part of active efforts to increase the flow of data between foreign customs offices on counterfeiting offenses, the DGOC provided international customs offices with information on 12 counterfeiting and piracy cases from January to March 2009. On March 17, representatives from French fashion company Louis Vuitton Malletier (LV), Asia Pacific Region and LV's Taiwan commercial agent Orient

Commercial Inquiries visited DGOC to discuss investigation of counterfeit products and related issues with DGOC officials. The visitors also took time during the meeting to acknowledge the anti-counterfeiting efforts of DGOC in Taiwan.

In the area of personnel training, four counterfeit-identification training seminars were held for DGOC officials on March 24 and March 31 at the Taipei and Keelung Customs Offices, attracting a total of 717 participants.

In addition, the newly-revised “Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent, Trademark and Copyright”, effective as of September 1, 2008, were printed onto informational pamphlets which were then distributed to associated government agencies.

Status of Court Rulings(Taiwan High Court Prosecutors Office, HCO)

Between January and March 2009, district courts closed a total of 1,465 IPR infringement cases. Of these, 140 suspects in 113 cases were indicted under ordinary procedures; 264 cases involving 281 defendants filed for summary judgment; and 373 indictments involving 384 defendants were deferred. During the same period, 488 defendants were sentenced to prison terms with a conviction rate of 92.2%.

The adjudication of IPR cases by District Courts is outlined below:

Status of Adjudication of District Court Prosecutors Offices (Jan.-Mar. 2009)

Unit: person

Sentence	Year	Status of adjudication and number of convictions										
		Total	Sentence								Not Guilty	Others
			Subtotal	Under 6 Months	6 – 12 Months	1 – 2 Year(s)	2-3 years	Over 3 Years	Detention	Fines		
Total	2009 (Jan.-Mar.)	598	488	258	27	2	1	-	180	20	41	69
	2008 (Jan.-Mar.)	922	766	416	41	11	1	-	267	30	45	111
	Change (%)	-324	-278	-158	-14	-9	-	-	-87	-10	-4	-42

Source: The Prosecutors' Office for the Taiwan High Court

IPR Awareness

1. To assist the Ministry of Education (MOE) with implementation of campus IPR protection policies and help educate business owners about relevant IPR laws, TIPO issued letters dated February 26, 2009 and signed by Director General Wang, Mei-hua to campus photocopying centers across Taiwan.
2. At the request of right holder groups, the MOE in June 2008 began issuing monthly statistics regarding reports of suspected copyright infringement on campuses. The publication of these statistics both help keep rights holder groups abreast of disciplinary action toward infringers and make students and the public aware of the consequences of violating copyright laws.
3. As part of their ongoing promotional campaign for second-hand textbook exchange mechanisms, TIPO in 2009 will once again work together with Taiwan universities to set up 26 stations on or near campuses for buying and selling previously-used textbooks. In addition to these centers, TIPO will continue to operate an inter-campus textbook exchange website (URL: <http://2handbook.nasme.org.tw/>) for online buyers and sellers of used textbooks.
4. In March 2009, the MOE sent written requests to all Taiwan colleges and universities to remind students about proper usage of original textbooks and maintaining respect for copyrighted work.
5. Other recent actions and measures undertaken by the MOE to promote IPR protection include the establishment of a campus IPR website, on which students and the public are informed about IPR facts and laws through online bulletins, and a university-level course on IPR-related laws, taught via digital classroom format.