

► **ENFORCEMENT** ◀

Taiwan Not Listed in US Customs Top Ten IPR Violators for FY2003

The latest IPR seizures report released by the Customs and Border Protection (CBP) & Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security shows that for Fiscal Year 2003, the value of goods seized from Taiwan was US\$610,000, a substantial drop from the US\$26,500,000 in FY2002. This improvement places Taiwan outside of the top ten IPR violators to the US, a considerable progress from being the second top violator in 2002. Taiwan had been ranked as either the top or second top IPR violator over the last five years, with the exception of ranking fifth in 2001.

The top ten ranking IPR violation suppliers in FY2003 are: China, Hong Kong, Korea, Pakistan, Mexico, Malaysia, the Philippines, Canada, Switzerland, and Thailand (top ten ranking suppliers in FY2002 were: China, Taiwan, Hong Kong, Pakistan, Korea, Indonesia, Switzerland, France, Malaysia, and Kazakhstan). Media seizures in FY2003 also dropped dramatically from US\$23,000,000 (88% of overall seizures) in FY2002 to US\$23,870 (4%), indicating that border control mechanisms are being effectively executed in Taiwan.

This report from CBP and ICE is an encouragement and confirmation to Taiwan's IPR protection enforcement effort. It is also a positive indicator that IPR enforcement efforts by relevant agencies in Taiwan have achieved meaningful results and deterrent effects. TIPO emphasizes that it will continue to coordinate with enforcement, administrative, and legislative authorities to combat piracy, especially when criminal act of this kind has become transnational in recent years. However, it is worthy to note that recent crackdowns revealed that most confiscated counterfeit products are the result of illegal imports. TIPO will work closely with Customs to ensure that stringent border control is carried out to stop illegal imports and to build a healthier IPR protection environment.

Outstanding Inspection Results in 2003 a Great Plus in Bid for Removal from Special 301 Watchlist

The year 2003 marks the first of MOEA's IPR Protection Three-Year Action Plan with plenty of outstanding results. First, the Integrated Enforcement Task Force (IETF) was established last January to deal specifically with IP infringements at markets and shops. Second, rewards for informants have been increased to encourage the public to report on underground plants and the amount of fine for IP infringements has been increased to a maximum of NT\$8 million. Third, government owned warehouses are set up in northern, central and southern Taiwan for storage of confiscated IP infringement products and manufacturing machines. Fourth, the Prosecutor's Office of the High Court has coordinated a committee to plan cooperative inspections conducted by the three main enforcement agencies, namely, prosecutors, police, and investigation officers. Fifth, the Copyright Act was amended to include the manufacture of pirated ODs a public crime offense. All these measures and actions taken by the government resulted in a sharp decline in pirated ODs at night markets and retail shops and in illegal copying of textbooks at photocopy shops around university campuses.

The followings are a few accounts of outstanding results in 2003:

1. IP infringements found by the National Police Administration:

Statistics released by the NPA for January to December 2003 indicates a total of 4660 infringement cases found, with infringement value totaling over NT\$12.6 billion, or a 26% increase from last year's NT\$10 billion. 2014 of the 4660 infringement cases involved trademark violations, a 111% increase from 2002 due to illegal imports. The number of copyright violations, however, dropped by 35%, or a decrease from 4032 in 2002 to 2617 in 2003. The decrease in copyright infringements indicates that deterrent effect has been achieved since the Copyright Act took effect last July. Furthermore, the number of infringement cases found by IETF between January and December totaled 2017 cases. It is

also worth noting that the total infringement value seized by IETF, which is NT\$6.6 billion, accounted for more than 50% of the overall value seized by NPA.

2. OD plants inspections by the Joint Optical Disk Enforcement Taskforce (JODE):

As a step up in their OD plants inspection effort, JODE has increased the number of nighttime inspections substantially. A total of 1088 inspections were conducted between January and December 2003 (703 inspections during the day and 385 at night), a marked 266% increase from the 297 inspections in 2002. A total of 10 infringement cases were found, resulting in the confiscation of 10 manufacturing machines, the ceased operation of 7 OD plants, and the arrest of 17 suspects.

Since the entry into force of the new Copyright Act in July and the increased stringent inspections, underground OD plants have nearly become nonexistent. The number of infringements and the amount of infringing value remained unchanged since July, indicating that inspections at the source have achieved meaning results. Under JODE's stringent random inspections, legal OD plants no longer risk reproducing pirated ODs, proving that a deterrent effect has been achieved.

3. Pirated ODs at night markets:

- a) A total of 2004 island-wide raids were conducted by IETF during the first half of 2003, while 2106 raids were conducted during the latter half of the year. However, while the number of pirated audio and video CDs and game disks for the first half of 2003 was 1.06 million pieces, this number dropped to 360,000 for the second half of 2003.
- b) In a survey conducted by the Foundation for the Protection of Film and Video Works (FVWP) in July and August 2003, the number of vendors selling pirated video CDs at night markets has reduced by more than 50%.
- c) In a survey conducted by the International Federation of the Phonographic Industry (IFPI) in August, the number of illegal shops or night market vendors selling pirated music CDs has dropped from 300 to 50.
- d) In October 2003, the Criminal Investigation Bureau (CIB) uncovered some 400 million recycled pirated ODs at an OD recycling plant. According to the owner of the plant, these disks were sent in for recycling by pirated OD operators in fear of violating the public crime clause of the new Copyright Act.

4. Trans-national piracy groups:

On December 17, The Criminal Investigation Bureau's Cyber Crime Taskforce (CCT) and JODE uncovered a trans-national piracy group, in which major Microsoft infringements were found. Taipei District Court Prosecutor's Office and Taipei Division of the Investigation Bureau uncovered yet another trans-national piracy group on December 24. According to the enforcement authorities involved in the crackdowns, the two suspected companies manufacture their pirated computer products in the Shenzhen and Dongguan areas, take shipping orders in Taiwan, launder the profits via certain banks in Taipei, and export the products via trading companies in Hong Kong. The scope of their exports covers five continents. CIB also noted that since most piracy websites are hosted under foreign servers, international cooperation among enforcement authorities and right holder associations is necessary to combat cyber crime effectively.

The outstanding inspection results in 2003 have received positive feedbacks from different US government agencies and anti-piracy groups. Taiwan is hopeful that her effort in combating infringements will be a beneficial factor in her seek to be expunged from the Special 301 Watchlist. MOEA will continue to coordinate with enforcement agencies to strengthen inspections and combat piracy.

►► MEASURES ◀◀

Stringent Border Control Measures to Curb Import/Export of Pirated Merchandise

Three new border control measures were implemented in the latter half of 2003 to further strengthen our fight against piracy:

1. The Directions for Customs Authorities in Implementing Measures for Protection of Trademark and Copyright was announced in an administrative order by the Directorate General of Customs of the Ministry of Finance on July 1, 2003. Pursuant to the Copyright Act and Trademark Act, right holders may apply to Customs authorities to suspend the release of import or export goods by depositing a bond in an amount equivalent to the import customs value or the export FOB value of the goods, or equivalent guarantee. (The provision on equivalent guarantee stipulated in the Directions took effect on November 28, 2003, the same time when the new Trademark Act took effect. The rest of the Directions entered into force on July 1).
2. The amendments to the Inspection for Exports of Audio-visual Copyrighted Works and OEM Audio CDs was

announced in an administrative order by MOEA on September 18, 2003. According to the Directives, exporters are required to submit a copyright licensing certification and to request for copyright inspection approval from TIPO for Customs clearance.

3. In order to effectively deter the export of counterfeit products and maintain the interests of computer program right holder, the Export Monitoring System (EMS) was amended and announced in an administrative order effective as of October 1, 2003, to include outbound inspection of 4 additional items on software optical disks.

TIPO Streamlining Patent Application Process

Research and developments in recent years have seen a considerable boom due to fierce economic competition, resulting in the substantial increase in patent applications. Therefore, streamlining patent application process has been one of the main development objectives for TIPO. According to TIPO, the number of pending patent applications for 2003 was 97,128, down from 2002's 110,406.

In addition to adjusting the volume of applications for each patent examiner, the following measures are also taken to ensure efficient processing:

1. The New Design Patent Image File Search is now available online for examiners;
2. Beginning from July 2004, examination for new utility model patent will be in the form of formality examination. Applications that meet all formality requirements and do not violate any ordre public and boni mores will be granted patent right;
3. The maximum number of days (from the date of publication) to process patent certifications, patent licensing changes, annual fees registrations, and patent agent registrations has been reduced from two months to twenty-five days, thirty-five days, thirty-five days, and thirty days, respectively.

► LAWS & REGULATIONS ◀

Regulations Governing Awards for Inventions and Creations

To foster innovative research and development, the MOEA announced the official *Regulations Governing Awards for Inventions and Creations* on December 17, 2003. Major points in the *Regulations* are:

1. Streamlining the categories and review committees for

invention and creation awards: establish the National Invention and Creation Award, categories under the award includes invention awards, creation awards and contribution awards. All existing review committees for each category are eliminated and replaced by a National Invention and Creation Award Review Committee.

2. Invention and Creation Awards are given to inventors and creators.
3. Recipients of international invention convention awards will be given an award in an amount based on the location of the convention. Competent patent authority reserves the right to publicize the name of the event that the award recipient participated in.
4. Separating the award review process from exhibition: participants are no longer required to participate in exhibitions to be qualified for award reviews. Competent patent authority will be responsible for organizing invention and creation exhibitions. Also, relating regulations governing such exhibitions will be drafted by competent patent authority.

New Standards for Fees Related to Copyright Affairs Effective December 19, 2003

In conjunction with the implementation of the new Copyright Act, the Standards for Fees Related to Copyright Affairs was amended and announced in an administrative order on December 17, 2003. Article 79.5 of the Copyright Act was amended to regulate the recordation of plate rights, recordation of assignment, recordation of trust, and other requisite matters. Also Article 82ter was amended to stipulate that a civil mediation settlement ratified by a court will have the same force as a final and unappealable court judgment in a civil case to encourage the public to seek non-litigation procedures in settling copyright disputes.

Pursuant to the aforementioned Articles, Article 2 of the Standards for Fees Related Copyright Affairs was amended to include recordation of assignment fees (NT\$1200/case) and recordation of trust fees (NT\$1200/case). Also, copyright mediation fees have been adjusted to NT\$5000/case. The new fees took effect on December 19, 2003.

MOEA Announces Draft Amendments to the Regulations for Copyright Dispute Mediation

Pursuant to Article 154.1 of the Administrative Procedure Law, MOEA announces the draft amendments to the Regulations for Copyright Dispute Mediation (the Regulations) on December 19, 2003. In accordance with the amendments of Article 2, Article 82.2, Article 82bis to Article 82quinquies in the new Copyright Act, 8 articles will be amended, 2 will be added, and 2 will be deleted in the Regulations. Major points in the amendments are:

1. The competent authority for handling disputes will be relevant copyright authority;
2. The other party shall express within 7 days upon receive of mediation notification whether they would proceed with the mediation; failure to express such would be deemed as refusal of mediation.
3. The competent authority may, when deemed necessary, invite relevant professionals to be present at the mediation to provide necessary advice;
4. Since Article 23 of the Administrative Procedure Law has clear stipulations to the participation of mediation, Article 11 of the Regulations, which states that "Upon approval by the competent authority, an interested third party may participate in the mediation proceedings; the competent authority may also directly notify the interested party to participate. The interested third party of the preceding Paragraph may be joined as one of the parties with his/her own consent and the consent of both parties", will be deleted.
5. Mediation decision/reason for mediation refusal rendered by the court shall be delivered to the party involved within 7 days upon receipt by the competent copyright authority.
6. Since Article 82ter of the Copyright Act stipulates that, "after a mediation settlement has been ratified by a court, the parties shall not initiate any further public or private prosecution or action with respect to the mediated matter. A civil mediation settlement ratified by a court as referred to in the preceding paragraph shall have the same force as a

final and unappealable court judgment in a civil case", provision on "when the mediation is concluded, the mediation agreement shall be deemed as a contract between the parties" will be deleted from the Regulations.

7. When a mediation agreement is not reached, the competent copyright authority shall issue a proof stating the result of the mediation.

TIPO Announces Use of New Trademark Application Forms

TIPO announces on December 12, 2003, the implementation of all 41 new trademark application forms. All forms can be downloaded from TIPO's website.

(http://www.tipo.gov.tw/trademark/trademark_table.asp)

Any old forms that are in conformity with the new Trademark Act may be used until January 31, 2004. All other application matters related to division, multiple designated goods or services, amending multiple service marks, service marks, color, sound, or 3-D marks are to use the new application forms beginning from the date when the new Trademark Act took effect, which being November 28, 2003.

Regulations for Changing Agent When Patent and Trademark Applicants are Juridical Person

TIPO indicated on December 29, 2003, that when a patent and trademark applicant is a juridical person, Rule 6 of the Implementing Regulations of the Patent Act and Article 15 of the Enforcement Rules of the Trademark Act on applying for change of applicant do not apply, thus the problem of a changing fee does not exist. However, in the case when a new agent is applying on behalf of an applicant, changes in agent must be stated at the time of the application

TAIWAN IPR NEWS

PUBLISHER/JEN-SHYONG HO
EDITOR-IN-CHIEF/YEA-KANG WANG
DEPUTY EDITOR-IN-CHIEF/JOSEPH C. CHEN
EDITORS/FRANCK LIN • ANFERY HSU
TRANSLATOR/K. KAILI LONG

PUBLISHING AGENCY/
INTELLECTUAL PROPERTY PROTECTION COMMITTEE,
CHINESE NATIONAL FEDERATION OF INDUSTRIES
ADDRESS/12TH FL., 390, FU HSING S. RD., SEC. 1,
TAIPEI, TAIWAN, R.O.C.
TEL/886-2-27033500 FAX/886-2-27042477
E-MAIL/intell@cnfi.org.tw

THIS PUBLICATION IS FUNDED BY
THE GOVERNMENT INFORMATION OFFICE AND THE INTELLECTUAL PROPERTY OFFICE, MOEA