

## ► ENFORCEMENT ◀

### Results on the investigation and enforcement of counterfeit and piracy go well

The Ministry of Economic Affairs ("MOEA") expressed that striking at counterfeit and piracy activities is Taiwan's key task to promote the protection of intellectual property rights. In order to fully execute this task, the MOEA has established a joint investigative team on compact discs to inspect compact discs manufacturing plants, the Ministry of Interior ("MOI") has established the intellectual property rights protection police squad dedicated to the investigation and enforcement of counterfeit and piracy activities, and the Ministry of Finance has also established a special team to strengthen the investigation and enforcement measures at the borders. Under the coherent cooperation of all relevant agencies, the investigation and enforcement of counterfeit and piracy activities in Taiwan at present has continuously brought good results as described in the below areas.

#### 1. Inspection of compact discs manufacturing factories:

The joint investigative team on compact discs has strengthened inspections on compact discs factories. The team carried out 1,088 inspections last year (2003), and 544 inspections for the first half of this year (2004). Among them, more than one third of the inspections were carried out during night time. The inspections coupled with the distribution control of compact discs production equipment have already effectively controlled piracy activities in factories.

#### 2. Factory, warehouse, mall and night market raids:

The intellectual property rights protection police squad discovered 670 cases of intellectual property rights violations during the first half of this year (2004). This amounts to a 38% reduction as compared to 1084 cases during the same period in the previous year. The total amount of compact discs seized, 362,329 pieces, during the first half of this year (2004) amounts to more than 70% reduction as compared with 1,220,903 pieces in the previous year. Such measures have rendered night markets, the largest distribution channels, a difficult place to acquire pirated compact discs. Especially, a series of recent crack downs on organized piracy groups has greatly deterred the piracy business and significantly reduced various piracy rates in this country. According to the latest global computer software piracy rates published by BSA, the average piracy rates of software in the Asia-Pacific region is 53% whereas such rate is 43% in Taiwan, second only to Japan in the Asia-Pacific region. The report especially mentioned that Taiwan, once considered as a high piracy rate area, now has a piracy rate lower than lower median.

#### 3. Enforcement at border control:

The US Customs' annual statistics on seized counterfeit imports in the 2003 fiscal year indicate that the products from Taiwan seized by the US Customs for that year amounts to only US\$610,000 as compared to US\$26.5 million in 2002, which is a dramatic reduction. The reduction can be further proved by the further drop of the latest announced amount of a mere US\$60,000 for the first half of the 2004 fiscal year.

#### 4. Regularizing the intellectual property rights protection police squad:

In order to pass on the professional experiences of investigation and enforcement, the Executive Yuan has recently passed the proposal to set up a fifth squad in the Second Peace Preservation Police Corps of the MOI, expected to be established on November 1.

The MOEA reaffirmed that it will coordinate the relevant agencies, further cooperate with obligee groups, strengthen the protection measures, and enhance enforcement and education at the marketing channels and market place to eventually reduce the software piracy rate in this country to below 40%. The MOEA also appealed to the public to actively report suspected wrongdoings, striking piracy together to set up this country's high quality protective environment of intellectual property rights.

## ► LAWS & REGULATIONS ◀

### The new Copyright Law helps the signing of a Free Trade Agreement between Taiwan and the US

In order to reinforce the protection of copyrights, on August 24, 2004, the Legislative Yuan passed the third reading of a draft bill partially amending the Copyright Law, and promulgated by the President on September 1, 2004. The emphases of this amendment includes adding technological protection measures, deleting the distinction between intentional and non-intentional profiting, minimum penalty, and adding measures for the Customs to detain the release of goods, which all accord to the expectations of the US. The amendment is expected to promote discussions over signing of a Free Trade Agreement between Taiwan and the US. Overall, the amendment will help to build a "E-Taiwan" that uses the best of the Internet, develops digital industries and e-commerce. Moreover, it may improve copyright protections in practice, and establish a legal environment for copyrights in this country.

Summary of key measures of this amendment as follows:

1. Adding technological protection measures and protective

mechanism:

The technological protection measures that copyright owners adopt to prohibit or limit others to access their works shall not be cracked, damaged, or circumvented by other means. A person violating the foregoing shall be punishable by imprisonment for not more than one year, detention, with, or in lieu thereof, a fine of not less than twenty thousand and not more than two hundred and fifty thousand New Taiwan Dollars.

2. Removal of “knowledge” requirement for civil liability for copyright infringement, and removal of “with intent to profit,” “without intent to profit,” and “exceeding five infringing copies” as elements for criminal liability for copyright infringement:

Expressly provide that copyright infringement, whether with intent to profit or not, shall be punished with no exception by imprisonment for not more than five years imprisonment, detention, or in addition thereto a fine of not less than two hundred thousand and not more than two million New Taiwan Dollars. Original clauses providing that a person who infringes on the economic rights of another person by means of reproducing the work without the intent to profit, where the number of copies reproduced not exceeds five, or where the total amount of infringement calculated by the market value of lawful copies of the work at the time of seizure not exceeds thirty thousand New Taiwan Dollars shall not be punished are deleted.

3. Increase of criminal penalty for compact discs piracy:

Penalty is increased for both pirating compact discs for sale or rent, or selling pirated compact discs. Minimum confinement penalty is increased from detention to 6 months imprisonment in order to effectively deter the manufacturing and distribution of pirated compact discs.

4. Express provision on “fair use” principle:

Modeling the US counterparts and expressly provide that “a work only for personal reference or fair use of a work does not constitute infringement of copyright.” In addition, a prosecutor or a judge is empowered with the discretion of not charging or not punishing the trivial violations. Moreover, the Intellectual Property Office of the MOEA (“IPO”) should complete the definition of the reasonable scope of application of making copies in libraries, making copies for teaching purposes, use by educational institutions in long-distance teaching etc., before December 31, 2004 in accordance with the resolution of the Legislative Yuan. A person’s use within such reasonable scope would not raise the question of infringement.

5. Adding measures for the Customs to actively detain the release of goods suspected for infringement:

In order to strengthen precautions against the transnational trade of the pirated products, the provision that the Customs shall detain goods that are suspected to be infringing copyrights only upon the copyright owners application is deleted. Now it is expressly provided that when the customs authorities, in the course of executing their duties, discover import/export goods that in appearance are obviously suspected of copyright infringement, they may within one business day notify the rights holder and notify the importer/exporter to produce authorization materials and after receiving notice, the rights holder shall proceed to customs within four hours for air export goods and within one business day for air import goods and sea import/export goods to assist with verification.

For the Chinese and English versions of the amendments to the Copyright Law, please link to:  
[www.tipo.gov.tw/copyright/copyright\\_news/copyright\\_changelaw.asp](http://www.tipo.gov.tw/copyright/copyright_news/copyright_changelaw.asp)

## ► ACHIEVEMENT ON LAW ENFORCEMENT ◀

### **Patent Priority Rights Documentation Submission Period should be a Statutory Fixed Period**

Paragraph 2, Article 28 of the Patent Law provides that “The applicant shall, within four (4) months from the filing date, submit the documents issued by the government of the foreign country declared in the preceding Paragraph evidencing the acceptance of said foreign application.” The IPO commented on August 2, 2004, that the submission period in this provision should be a statutory fixed period referring to case NO.1793 of 2003 the Taipei High Administrative Court. As a result, there would be no such question as to the “extension of application” and all the patent applications filed after July 1, 2004 will be determined pursuant to this explanation.

The determination issued by the Taipei High Administrative Court affects Article 28, and Paragraphs 1 and 2 of Article 17 of the Patent Law. In such determination, it states that “if the application period for document verification expires, the priority right is automatically deprived on the day after the expiry takes place. The effect of this automatic deprivation will not be changed whether the applicant has applied for extension or whether the Patent Authority has informed the applicant of this expiration. If the applicant wishes to prevent this legal effect, the applicant may apply to restore to original state pursuant to the Paragraph 2, Article 18 of the Patent Law rather than applying for extension of the legal period.”

### **Italy recognizes Taiwan Patent and Trademark Priority**

The IPO stated on July 19, 2004 that, after long negotiations and communications, Taiwan nationals may now claim priority of their Taiwan patent and trademark applications for applications made with the Italian Patent and Trademark Office. The Italian Patent and Trademark Office promises to review cases filed by Taiwan national that were previously rejected by such office.

### **Preliminary Draft of “Experts’ Participation in Judicial Procedures Act” published**

The Judicial Yuan published in July 29, 2004 “Experts’ Participation in Certain Judicial Procedures Act (First Draft)” which is open to public comments. Based on this new system, the Judicial Yuan expects to combine experts’ professionalism into certain civil, criminal and administrative proceedings in order to resolve disputes in a more speedy and appropriate manner and protect the rights of the parties.

Certain proceedings referred to in the previous paragraph include civil proceedings involving patents, trademarks, copyrights, circuit layout rights and trade secrets as well as criminal proceedings

involving copyrights and trademarks, and administrative proceedings involving trademarks, patents and circuit layout rights.

Please refer to <http://www.judicial.gov.tw> for further details.

### Overview of IPR infringement cases, including cases under investigation, final determination and enforcement in the first half of 2004

According to the statistical data provided by the Prosecutors' Office of the Taiwan High Court, the handling of IPR infringement cases is as follows:

1. IPR infringement cases under investigation during the first half of 2004:
  - i. New investigations: 2516 cases, reduced by 1235 cases as compared to the same period in 2003. Violations of the Copyright Law: 1156 cases (45.95%); violations of the Trademark Law: 1,344 cases (53.42%); violations of the Patent Law: 16 cases (0.63%).
  - ii. Investigation concluded: 2,370 cases (3,219 defendants), which is 1,191 cases (1,574 defendants) fewer than in the same period in 2003. Of the total of 3,219 defendants,

1,329 (41.28%) were either prosecuted, applied for summary determination or granted suspended prosecution, and of the cases prosecuted, the prosecutor made specific request for penalty in 12 cases (4.63%) of cases prosecuted. (Please refer to Chart 1 for more details.)

2. Intellectual property cases determinations and executions during the first half of 2004:
  - i. Final determinations cover 1,531 defendants, 188 fewer defendants than the same period in 2003. Of all the defendants, 169 of them were sentenced to prison terms of more than 1 year, 50 were sentenced to prison terms of between 6 months to 1 year, 530 were sentenced to prison term of less than 6 months and 395 were sentenced to detention and 46 were imposed fines. (Please refer to Chart 2 for more details.)
  - ii. Total cases with penalties executed amount to 789 (819 defendants), which is an increase of 186 cases (187 defendants) as compared to the same period in 2003. 669 of all the cases (699 defendants) were given prison terms or fine in lieu of prison terms. Execution result: 99.53% (630 defendants) granted fine in lieu of prison term and paid off; 3 were denied fine in lieu of prison term. (Please refer to Chart 3 for more details)

**Chart 1 Overview of IPR Infringement Cases Handled by Taiwan Local Prosecutorial Agency**

Categories	Year		New Cases	Final Determination						Indictments with Suggested Sentence	Indictments with Suggested Sentence %	Average Days to Proceed a Case
				Total	Ordinary Proceedings	Summary Determination	Suspended Prosecution	No Conviction	Others			
Total	2003 1st half	Cases	3,751	3,561	689	789	40	1,459	575	34	4.93%	79.59
		Defendants	5,059	4,793	868	838	53	2,219	815	-	-	-
	2004 1st half	Cases	2,516	2,370	260	761	144	866	339	12	4.62%	76.83
		Defendants	3,330	3,219	343	830	156	1,357	533	-	-	-
	Comparison	Cases	-1,235	-1,191	-429	-37	+104	-593	-236	-22	-0.31%	-2.76
		Defendants	-1,729	-1,574	-525	-8	+103	-862	-282	-	-	-
Violation of Copyright Law	2003 1st half	Cases	1,863	1,776	504	332	4	568	368	29	5.75%	86.22
		Defendants	2,521	2,384	646	349	4	876	509	-	-	-
	2004 1st half	Cases	1,156	1,146	163	230	43	524	186	8	4.91%	92.07
		Defendants	1,676	1,664	218	248	47	850	301	2	-	-
	Comparison	Cases	-707	-630	-341	-102	+39	-44	-182	-21	-0.84%	5.85
		Defendants	-845	-720	-428	-101	+43	-26	-208	-	-	-
Violation of Trademark Law	2003 1st half	Cases	1,340	1,126	183	466	36	267	174	5	2.73%	74.66
		Defendants	1,738	1,459	220	489	49	451	250	-	-	-
	2004 1st half	Cases	1,344	1,203	97	531	101	321	153	4	4.12%	62.67
		Defendants	1,634	1,517	125	582	109	470	231	-	-	-
	Comparison	Cases	+4	+77	-86	+65	+65	+54	-21	-1	1.39%	-11.99
		Defendants	-104	+58	-95	+93	+60	+19	-19	-	-	-
Violation of Patent Law	2003 1st half	Cases	548	659	2	-	-	624	33	-	-	70.26
		Defendants	800	950	2	-	-	892	56	-	-	-
	2004 1st half	Cases	16	21	-	-	-	21	-	-	-	71.43
		Defendants	20	38	-	-	-	37	1	-	-	-
	Comparison	Cases	-532	-638	-2	-	-	-603	-33	-	-	1.17
		Defendants	-780	-912	-2	-	-	-855	-55	-	-	-

1. All data include natural person as well as legal person
2. Indictments with Suggested Sentence % = (Indictments with Suggested Sentence / Ordinary Proceedings) × 100%
3. Calculations in Average Days to Proceed a Case do not include Legal person

## Chart 2 Overview of IPR Infringement Cases with Final Determination

Category	Year	Outcome of legal proceedings and the number of defendants convicted														Imprisonment, detention and fine
		Total	Convicted										Acquitted	Convicted rate	Others	
			Subtotal	Less than 6m.	More Than 6m, less than 1y	More Than 1y, less than 2y	More Than 2y, less than 3 y	More Than 3y, less than 5 y	More thn 5y	Detention	Fines					
Total	2003 First Half	1,735	1,106	625	83	188	5	2	-	157	46	189	85.41%	440	11	
	2004 First Half	1,531	1,190	530	50	152	12	4	1	395	46	163	87.95%	178	8	
	Comparison	-204	+84	-95	-33	-36	+7	+2	+1	+238	-	-26	+2.54%	-262	-3	
ViolationOf Copyright Law	2003 First Half	988	670	393	64	184	5	2	-	-	22	106	86.34%	212	7	
	2004 First Half	781	508	247	39	152	12	4	1	34	19	108	82.47%	165	3	
	Comparison	-207	-162	-146	-25	-32	+7	+2	+1	+34	-3	+2	-3.87%	-47	-4	
Violation of Trademark Law	2003 First Half	493	430	226	19	4	-	-	-	157	24	56	88.48%	7	4	
	2004 First Half	745	682	283	11	-	-	-	-	361	27	51	93.04%	12	5	
	Comparison	+252	+252	+57	-8	-4	-	-	-	+204	+3	-5	+4.56%	+5	+1	
Violation of Patent Law	2003 First Half	254	6	6	-	-	-	-	-	-	-	27	31.58%	221	-	
	2004 First Half	5	-	-	-	-	-	-	-	-	-	4	0.00%	1	-	
	Comparison	-233	-6	-6	-	-	-	-	-	-	-	-9	-31.58%	-218	-	

1. All data include natural person as well as legal person

2. Conviction Rate =  $\left[ \frac{\text{Convicted defendants}}{\text{Convicted defendants} + \text{Acquitted defendants}} \right] \times 100\%$

## Chart 3 Overview on the Execution Status of the Convicted IPR Infringement Cases

Category	Year		Total	Timed Sentences and Detentions						Fines	More than 6m	Percentage of “fine in lieu of imprisonment or detention” allowed	Percentage of “fine in lieu of imprisonment or detention” not allowed
				Less than 6m, may not in lieu of a fine	Fine in lieu of timed sentence or detention								
					Subtotal	fine in lieu of imprisonment or detention allowed	fine in lieu of imprisonment or detention not allowed	Not applied	Others				
Total	2003 First Half	Cases	603	5	477	403	7	61	6	15	106	98.29	1.71
		Suspects	632	5	505	431	7	61	6	15	107	98.40	1.60
	2004 First Half	Cases	789	2	669	602	3	61	3	21	97	99.50	0.50
		Suspects	819	2	699	630	3	63	3	21	97	99.53	0.47
	Comparison	Cases	+186	-3	192	+199	-4	-	-3	+6	-9	+1.21	-1.21
		Suspects	+187	-3	194	+199	-4	+2	-3	+6	-10	+1.13	-1.13
Violation of Copyright Law	2003 First Half	Cases	362	5	255	194	4	53	6	1	99	97.98	2.02
		Suspects	368	5	260	199	4	53	6	1	100	98.03	1.97
	2004 First Half	Cases	306	1	214	173	2	38	1	1	90	98.86	1.14
		Suspects	316	1	224	181	2	40	1	1	90	98.91	1.09
	Comparison	Cases	-56	-4	-41	-21	-2	-15	-5	-	-11	+0.88	-0.88
		Suspects	-52	-4	-36	-18	-2	-13	-5	-	-12	+0.88	-0.88
Violation of Trademark Law	2003 First Half	Cases	237	-	216	205	3	8	-	14	7	98.56	1.44
		Suspects	259	-	238	227	3	8	-	14	7	98.70	1.30
	2004 First Half	Cases	483	1	455	429	1	23	2	20	7	99.77	0.23
		Suspects	503	1	475	449	1	23	2	20	7	99.78	0.22
	Comparison	Cases	+246	+1	+239	+224	-2	+15	+2	+6	-	+1.21	-1.21
		Suspects	+244	+1	+237	+222	-2	+15	+2	+6	-	+1.08	-1.08
Violation of Patent Law	2003 First Half	Cases	4	-	4	4	-	-	-	-	-	100.00	-
		Suspects	5	-	5	5	-	-	-	-	-	100.00	-
	2004 First Half	Cases	-	-	-	-	-	-	-	-	-	-	-
		Suspects	-	-	-	-	-	-	-	-	-	-	-
	Comparison	Cases	-4	-	-4	-4	-	-	-	-	-	100.00	-
		Suspects	-5	-	-5	-5	-	-	-	-	-	100.00	-

1. Percentage of "fine in lieu of imprisonment or detention" allowed =  $\frac{\text{"fine in lieu of imprisonment or detention" allowed}}{\text{"fine in lieu of imprisonment or detention" allowed} + \text{"fine in lieu of imprisonment or detention" not allowed}} \times 100\%$

2. Percentage of "fine in lieu of imprisonment or detention" not allowed =  $\frac{\text{"fine in lieu of imprisonment or detention" not allowed}}{\text{"fine in lieu of imprisonment or detention" allowed} + \text{"fine in lieu of imprisonment or detention" not allowed}} \times 100\%$

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