

## ► MEASURES ◀

### TIPO and MOE to Strengthen IP Protection on Campuses

Recognizing the importance of IP protection, the Ministry of Education (MOE), TIPO, law enforcement agencies, and school administrations have stepped up to strengthen IP protection on campuses. In addition to heightening inspections of photocopying shops at the beginning of each semester to ensure the legal usage of textbooks, IP related courses as well as IP related seminars are added to the curriculum and provided to teachers.

Programs to be jointly implemented in 2004 by TIPO and MOE include:

1. Campus IP management monitoring mechanism: Assisting schools in monitoring illegal photocopying on and off campuses and legal use of computer software, and in preventing peer-to-peer downloads.
2. IP-related seminars: Seminars on copyrights and IP management to be given to students, computer center and library staves.
3. Secondhand bookstores: Assisting campuses in setting up secondhand bookstores for the exchange/sale of used textbooks.
4. Defining the scope of fair use of copyrighted works at school libraries: Assisting right holders and libraries in reaching consensus so as to provide students a clear and legal basis for use of copyrighted work. In addition, TIPO will be providing schools with sample form for "authorized use of copyrighted work".
5. "Campus Outreach Project": Integrating law schools and law services programs on campus to help engender IP protection believes in neighboring elementary, junior high and high schools.

In recent years, IP protection on campuses has reached substantial results. The above implements will undoubtedly further engender IP protection believes in students and help eradicate IP infringements on campuses.

### Communicating with the U.S. on Special 301

The United States Trade Representative (USTR) released on April 1 the 2004 National Trade Estimate Report on Foreign Trade Barriers, listing 58 trade partners whose trade measures have affected fair trade in the United States. Intellectual property rights protections such as amending the Copyright Act, protection of pharmaceutical information, and optical disk piracy remain the United States' top concerns for Taiwan.

The Ministry of Economic Affairs (MOEA) indicates that since IP protection is crucial to Taiwan's industrial upgrading and international competitiveness, it has remained as the nation's top agenda in recent years. The Taiwan government is determined to strengthen its IP regime as part of its international obligations and to foster industrial growth.

2003 was a successful IP protection year with respect to updating legal framework and strengthening enforcement. Amendments to the Trademark Act, Patent Act, and the Copyright Act were passed and promulgated to provide a more comprehensive legal basis for enforcement. Inspections and crackdowns of night markets and shopping centers also saw great results since the establishment of the Integrated Enforcement Task Force (IETF). Based on the United States' Department of Homeland Security's 2003 Seizure Report, the total value of import infringements from Taiwan seized by the U.S.'s Customs plunged from US\$26.5 million in 2002 to US\$610,000 in 2003. Also, piracy rate for music CDs dropped by 5 percentage points in 2003, as reported by the International Federation of Phonographic Industry (IFPI).

Measures taken by MOEA to demonstrate the government's determination to protect IPR includes:

1. A delegation was sent to the United States in February to meet with relevant right holder associations and anti-piracy organizations to discuss matters on legalizing the Integrated Enforcement Task Force, Power of Attorney issues, Internet piracy, and amending the Copyright Act. A

copy on the latest enforcement framework in Taiwan titled, "Toward Developing Adequate and Effective IP Protection Environment in Taiwan" was provided to each relevant group to highlight Taiwan's enforcement efforts and achievements. The United States acknowledges the fact that Taiwan's IP protection is heading towards an encouraging direction.

2. Another delegation led by TIPO's Deputy Director General Jack Lu was sent to the United States in early April to meet with representatives from USTR and USPTO, Mr. Fritz Attaway, Executive Vice President of the MPAA, Mr. Joe Papovich, Senior Vice President of the RIAA, Mr. Timothy Trainer, President of the IACC, and Mr. Eric Smith, President of the IIPA to communicate the prospect of being removed from the Special 301 Priority Watch List or be moved to the regular Watch List. Relevant IP authorities and right holder groups were given the latest enforcement updates. Taiwan's determination in combating piracy and sustaining enforcement efforts were thoroughly expressed. The United States complimented Taiwan's efforts and achievements, however, expressed concerns towards its Copyright Act amendments and continuing IP protection efforts.

MOEA stated that communication regarding the National Trade Estimate Report on Foreign Trade Barriers has been made with the United States. The final decision has yet to be made on whether Taiwan will be removed from the Priority Watch List. MOEA reiterated that IP protection is important in enhancing Taiwan's global competitiveness and sustaining national growth, and Taiwan's IP protection effort will be maintained regardless of the outcome to ensure a healthy IP environment.

### **Government to Aid Businesses in Overseas Patent Infringement Lawsuits**

MOEA promulgated on March 22, 2004 the *Regulations for Loans Provided to Domestic Businesses Involved in International Patent Infringement Lawsuits* to provide financial support and competitive edge to domestic private businesses that are involved in international patent infringement lawsuits. The Regulations will be effective from April 1, 2004 to March 31, 2005. The complete text of the Regulations is as follows:

1. These regulations are enacted by the Ministry of Economics Affairs (hereinafter referred to as this Ministry) to provide domestic private businesses involved in international patent infringement lawsuits with financial support to promote overseas competition.
2. The capital of these loans shall be from the reserves of the bank supplying the loans.
3. These loans are eligible to domestic private businesses who

fulfill the following requirements:

- a. Having obtained patent right or applied for patent right at the country where the lawsuit takes place.
  - b. Having stable financial affairs with business net value at least half that of its actual capital. May not have any previous business rejections from the banks and have normal interest payment record.
4. This Ministry shall invite relevant agencies, representatives, and experts to form the examination committee to examine the loan application and to provide loan assessments. The structure and responsibilities of the committee are as follows:
    - a. Structure: One convener, whom shall be appointed by this Ministry; eleven permanent committee members, with the convener being the natural committee member, the remaining members shall each be appointed by the Council for Economic Planning and Development, BOFT, Industrial Development Bureau, TIPO, International Trade Commission, Small and Medium Enterprise Administration, Small and Medium Business Credit Guarantee Fund, National Lawyers Association, Bankers Association of the R.O.C., and relevant business loaning banks. A regular committee may also be established when deemed necessary. The regular committee shall comprise relevant authorities, industrial organizations, and law or patent experts. Its members shall be appointed by TIPO as the case requires and shall be dismissed when the case is closed.
    - b. Responsibilities: The committee shall be responsible for providing suggestions for the amount of the loan, the term of the loan, repayment method, and credit guarantee.
  5. The purpose of these loans is to provide businesses engaged in patent right lawsuits with foreign businesses with funding to cover costs for commissioning professional agencies to conduct patent infringement analysis reports, lawyer fees, court fees, and bonds.
  6. The maximum amount of these loans shall be NT\$50 million, and shall be 80 percent of the overall cost for the case. However, the examination committee may adjust this amount when deemed necessary.
  7. The term of these loans begins from the day of lis pendens in court to a maximum of five years thereafter. However, the examination committee may adjust this term when deemed necessary.

### **» LAWS & REGULATIONS «**

#### **TIPO Explains Patent and Trademark Priority Rights Claims after Accession to WTO**

TIPO indicated on April 7, 2004, that as a member of the WTO, citizens of other WTO member economies may apply for priority rights with Taiwan if their patent or trademark applications are approved under the regulations of their respective home countries and are in compliance with the multilateral or regional IPR treaties, conventions, or agreements signed. The date for the priority right claims begins from January 1, 2002.

### **MOEA Promulgated the Revisions to the Implementation Regulations of the Patent Act**

MOEA promulgated on April 7 the revisions to the *Implementation Regulations of the Patent Act*. The said revisions will be enacted on July 1, 2004 along with the new Patent Act. For more details of the Chinese version of the amendments, please visit TIPO's website at:

<http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=4396&from=board>

### **MOEA Promulgated the Revisions to the Regulations of Copyright Dispute Mediation**

MOEA promulgated on April 14 the revisions to the *Regulations of Copyright Dispute Mediation*. The said Regulations were first promulgated on April 17, 1987 and underwent two revisions since. Major revisions to the new Regulations are as follows:

1. Amending "specialized agency in charge of copyright matters" to "competent copyright authority":

This amendment is provided pursuant to Article 2 of the Copyright Act (hereinafter referred to as the Act), which stipulates that, "the competent authority under this Act is the Ministry of Economic Affairs. The Ministry of Economic Affairs shall appoint a specialized agency in charge of copyright matters." (Articles 2, 5, 9 and 13 amended)

2. Inserting provision that requires competent copyright authority to return to the parties involved within 15 days upon receipt of the mediation settlement statement ratified by the court, or to notify the parties involved of the reasons for the court's decision not to ratify such settlement statement:

This insertion is provided pursuant to Article 82*bis* of the Act, which stipulates that, "within seven days of the date of

the conclusion of a mediation settlement, the specialized agency in charge of copyright matters shall submit the written mediation settlement statement for review by the court of jurisdiction. The court shall review the written mediation settlement statement referred to in the preceding paragraph with due dispatch. Unless it is contrary to act or regulation, public order, or good morals, or compulsory execution would be impossible, the judge shall sign [copies] thereof and affix the seal of the court thereto, and shall return the mediation settlement statement to the specialized agency in charge of copyright matters for service to the parties, retaining one copy for its own records. Where the court decides not to ratify a mediation settlement statement, it shall notify the specialized agency in charge of copyright matters of the reasons." (Article 14 amended)

3. Deleting the provision that stipulates a mediation settlement is consider an agreement between the parties involved:

Pursuant to Article 82*ter* of the Copyright Act, which 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. With respect to a criminal mediation settlement that has been ratified by a court, where the subject matter is payment of a certain amount of money, or other substitute therefore, or securities, the written mediation settlement statement shall constitute a writ of execution." The current Article 15 of the *Regulations of Copyright Dispute Mediation* on "When a mediation settlement is reached, it shall have the same force as an agreement between the parties involved" is no longer in compliance with the Copyright Act, thus the deletion.

4. When mediation fails, the competent copyright authority shall issue a certification of mediation failure:

In reference to Article 27 of the *County/City Mediation Statute*, the competent copyright authority shall issue a certification of mediation failure within 10 days of the mediation failure decision is reached. (Article 15 amended)

For more details of the Chinese version of the amendments, please visit TIPO's website at:

<http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=4461&from=board>

### **MOEA Promulgated the Amendments to the Organization Regulations for the Copyright Regulatory and Mediation Board**

MOEA promulgated on March 31 the amendments to Articles 3 and 6 of the *Organization Regulations for the Copyright Regulatory and Mediation Board*. Major amendments to the said Regulations were noted in Vol. 12, No. 2 of the Taiwan IPR News.

### **TIPO Amends Relevant Standards for Plate Rights Registration**

Pursuant to Article 23 of the *Regulations Governing Plate Rights Registration*, TIPO announced on April 1 the new versions of instructions for applying for plate rights registration, plate rights registration form, instructions for completing the registration form, instructions for applying for plate rights transfer of ownership registration and entrustment registration, application forms, and instructions for completing the application form. The old registration form will no longer be valid after March 31, and the new registration application form will be valid beginning April 1. Application forms for transfer of ownership registration and entrustment registration will be valid immediately.

For further details of the instructions and copies of the application forms, please visit TIPO's website at: <http://www.tipo.gov.tw/service/news/ShowNewsContent.asp?wantDate=false&otype=1&postnum=4374&from=board>

### **MOEA Promulgated Amendments to the Regulations Governing Certificate of Origin**

MOEA promulgated on March 31 the amendments to Articles 11, 15 and 19 of the *Regulations Governing Certificate of Origin*. Also on January 8, BOFT announced the abolishment of the *Instructions for Issuing Certification of Origin in Taiwan*. The abolishment takes effect immediately.

Major amendments to the Regulations are as follows:

#### Article 11

Exporters requiring certificate of origin prior to Customs' export clearance may apply with the issuing agency with the following documents:

1. Application for certificate of origin.
2. Declaration of manufacturing proof or other relevant proof.
3. Photocopy of the company or business registration certificate or other documents required by BOFT.

Exporters shall submit their proof of export clearance to the issuing agency within 30 days upon receipt of the certification referred to in the preceding paragraph.

Certification shall be rejected if any of the following conditions applies:

1. Exporters whose company registration has been revoked, voided, or annulled by BOFT, or whose exporting rights have been suspended.
2. Exporters who failed to submit documents referred to in the preceding paragraph within 30 days.

#### Article 15

In the event that the content of the certificate of origin is incorrect, exporter may apply for a reissue with the issuing agency by submitting the original certification.

In the event that the certificate of origin is lost, the applicant shall submit a new application along with the exposition document to the issuing agency for a replacement certification.

Application for reissue or replacement of the certificate of origin shall be submitted within two years of the issuing date of the original certification.

#### Article 19

Issuing agency may charge NT\$250 for each issuance of the certificate of origin. Reissue or replacement certifications are free of charge.

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