



# QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q2: April – June 2010

## SIGNIFICANT GLOBAL CASES/ACTIONS

**Global:** There have been close to 1,600 seizures initiated against counterfeit *Nintendo* products during the first half of 2010. This is an increase of over 270% in the number of seizures compared to the same time period in 2009, when almost 590 actions were taken. The number of products confiscated is slightly below last year. During the first six months of 2009, close to 550,000 counterfeit products were seized, compared to 535,000 in 2010.

**Global:** Since March 2010, Nintendo has removed 250,000+ unlawful copies of *Nintendo* games from a major online file hosting service. Through a combination of technical measures implemented by the file hosting service, this has resulted in a significant reduction in the number of multi-language versions of *Nintendo* pirated files being made available globally.

**China:** In Q2, China once again led as being the top country where illegal *Nintendo* products originated and where the highest number of counterfeits and game copiers were seized. During the first half of 2010, Nintendo pursued close to a hundred seizure actions and almost 230,000 items were removed from circulation. The most significant seizure took place in June, where multiple warehouses in Guangzhou were raided and over 26,000 counterfeit *Wii* game discs were confiscated. Two other significant raid actions were conducted in April, whereby over 9,000 illegal game copiers and thousands of components were seized from three warehouses which were holding inventory for five different distributors.

**Korea:** Two significant punishments were announced against persons selling illegal *Nintendo* products and game copiers. On April 22nd, an individual who was indicted for selling over 2,000 game copiers and other illegal *Nintendo* products, via his website, was sentenced to prison for 10 months (with a two year probation) and ordered to perform 240 hours of community service work. In May, Incheon District Court sentenced an importer of game copiers to a fine of 2,000,000 Korean Won (approx. USD \$1,600).

**Spain:** In April, over 7,000 game copiers were seized in Madrid and 11 people were arrested following a number of raids. Over 35 different types of game copiers were included as part of the seizure. The individuals arrested were members of an organized Chinese group. This operation will likely positively impact other European markets where the Chinese communities are linked.

**U.S.:** On May 11th, Nintendo filed a lawsuit in Federal Court against an online company and its website operator for its distribution of game copiers. Despite Nintendo's repeated attempts to get the owner of multiple websites to cease selling the devices, the advertising, marketing and selling of the game copiers continued. Since filing the lawsuit, the owner has ceased all illegal activities.



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Asia-Pacific

Q2: April – June 2010

## ACTIONS

**China:** Raids pursued by Nintendo during the first-half of 2010 more than doubled during the same time period last year. Since January, there have been close to a hundred raids in China, confiscating close to 230,000 illegal *Nintendo* products. In comparison, during the initial six months of 2009, there were 40 actions and over 61,000 counterfeit products obtained. Nintendo has seen an increase in Customs activities and interest by the Chinese prosecutors to pursue criminal proceedings.

**Korea:** On May 12<sup>th</sup>, an individual was ordered to eight months in prison (with two years probation) and ordered to perform 80 hours of community service. This punishment stems from a seizure conducted by Seoul Customs whereby the individual attempted to import over 3,400 R4 game copiers.

**Taiwan:** Two separate District Courts ruled for the first time that circumvention devices such as the game copiers for the *Nintendo DS* system and the modification chips for the *Wii* console violate the Copyright Act in Taiwan. The first-ever decision against the game copiers for the *Nintendo DS* was ruled by the Taipei District Court in April, along with the Banchiao District Court's first appeal court decision issued in March against *Wii* mod chips. In Q2 alone, there have been 22 police and customs seizures whereby almost 5,000 products were seized. This includes raids in two very active game shops involved in distributing modded *Wii* consoles and game copiers. Six defendants were found guilty.

## IP POLICY ACTIVITIES

**China:** China took center stage in the Special 301 Report released by the United States Trade Representative (USTR) at the end of April. In the report, USTR criticized China's discriminatory market access policies and failure to sufficiently enforce intellectual property rights. The U.S. Government is raising the video game console ban as an example of a market barrier issue.

**Korea:** In mid-June, the Ministry of Culture, Sports & Tourism (MCST) sent out its second round of warning letters under the three-strikes program. The warning letters were sent to site operators informing them of 160 individuals who have posted infringing content, including 50 who were identified in the first round of letters sent in March. Also identified were 10 site operators who were not properly fulfilling their obligations under the three-strikes law. It remains too early to determine the effectiveness of this graduated response program.

**Malaysia:** The new hologram regulations are now in force in Malaysia. The new regulations state that all manufacturers, distributors and retailers offering games for sale are required to affix a hologram sticker on the product. The holograms are issued by the Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) and will issue sanctions for those who fail to comply with the regulations. The MDTCC also announced its new anti-piracy initiative for 2010. The MDTCC will place special focus on four areas: 1) cleaning up retail centers, 2) preventing illegal downloading, 3) ensuring business compliance with the use of legitimate software, and 4) attacking syndicates responsible for the manufacture and distribution of pirated product.

## PIRACY AWARENESS/TRAINING

**Asia-Pac:** A technical training for Nintendo's Asia-Pac attorneys was held in Kyoto, Japan on June 9<sup>th</sup> and 10<sup>th</sup>. Nintendo's technical experts from NCL, NOE and NOA spent two days educating over 20 of its local attorneys / investigators on the technical aspects of circumvention devices. Representatives from the following countries participated in the event: Australia, China, Hong Kong, Korea, Singapore and Taiwan.

**China:** In Q2, Nintendo participated in multiple training sessions for Chinese enforcement authorities. In April, nearly 50 officials from Kunming Customs of Yunnan Province were trained. In June, another 45 officials from Guangzhou Customs learned about how to detect counterfeit Nintendo products and circumvention devices.

**Singapore:** In May, a public apology was issued by a distributor of modified *Wii* consoles and counterfeit *Wii* games. The formal apology was posted at his retail location and on his website.

**Taiwan:** In late June and early July, four separate defendants published public apologies in the *United Daily News*. Each defendant posted an article announcing their public apology to Nintendo and an acknowledgement of Nintendo's IP rights. The article further seeks the public to respect Nintendo's IP rights.

**Taiwan:** On June 30<sup>th</sup>, Nintendo announced the recent favorable court rulings issued by the Taipei District Court and the Banchiao District Court's against game copiers and *Wii* mod chips. Both Courts have repeatedly confirmed that game copiers and mod chips are unlawful in Taiwan. The press release can be found at: <http://ap.nintendo.com>.



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## Europe

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### ACTIONS

**Germany:** There have been over 20 favorable decisions granted to Nintendo against game copying devices. The most recent decision was issued on June 29<sup>th</sup> by the District Court of Hamburg. The District court issued a preliminary injunction against the operator of a website selling game copiers - mimutronic.de. The injunction was issued based on copyright and unfair competition claims.

**Italy:** In the civil action Nintendo initiated against Take Off (seller of game copiers), the court-appointed an outside expert due to the complexity of the technical issues involved in the case. The expert submitted his expertise report to the court, confirming the existence of Nintendo's technical protection measures. The case was initially filed in March 2009 and a date for the decision has not yet been announced.

**Spain:** On April 27<sup>th</sup>, there was a positive development in the Movilquick case. The Instruction Court of Salamanca reversed the previous preliminary dismissal of the criminal action involving game copiers. The case was initially dismissed, due to a procedural error. The dismissal of the case received wide-spread media attention. Fortunately, the criminal action will proceed and Nintendo has submitted evidence in support of the prosecution.

**Spain:** On May 31<sup>st</sup>, the Tech Crimes unit of Civil Guardia conducted simultaneous raids at three residences located in the cities of Rota, Almansa and Segovia. Computers and technical documentation associated with operating infringing websites were confiscated. Five people were arrested. As a result, Nintendo's top three targeted websites have been shut down in Spain. The sites previously offered approximately 5,000 video game titles for download through peer to peer and direct download sites. This action is the first of its kind in Spain.

### IP POLICY ACTIVITIES

**France:** The French games industry association, SELL, has agreed to support the "HADOPI" procedure and to forward notices to French ISPs about their subscribers infringing copyright by downloading supplying circumvention pirated content. Discussions continue about the choice of SELL's scanning vendor who will be tasked to scan P2P networks to find French users downloading pirated content.

**Spain:** The "Economic Sustainability Bill" that could grant the Spanish Government the authority to block websites containing infringing content has been delayed. The Bill will not be considered until September. Passage of this bill is one of the objectives of The Spanish National Association of Software Distributors and Developers' (ADESE). Nintendo is a member of ADESE.

**U.K.:** After months of lobbying by various IP owners, legislation came into force on April 16<sup>th</sup> which enabled UK customs to adopt an easier way of handling seizures, bringing it in line with other European Union countries. The improved regulations decreased the number of seizures contested by importers.

**U.K.:** Britain's controversial Digital Economy Bill, which will introduce a graduated response system to combat illegal file sharing, was passed into law on April 8th when it received the Queen's Royal Assent. The legislation has been widely welcomed by the creative industries in the UK, and its passage. The United Kingdom generally ranks among or near the top ten countries registering high volumes of downloads.

### PIRACY AWARENESS/TRAINING

**EU:** ISFE supported an educational awareness competition, sponsored by the European Commission. The campaign took place between March and June and was called The "REAL fake." The competition was aimed at students between 10 and 15 years of age. Young people across Europe were given the chance to design a logo, produce posters, short videos, games, cartoons or other educational material highlighting the implications of counterfeiting and piracy. Over 70 pupils from schools in Greece, Spain, Poland, Hungary and the Czech Republic received prizes. The competition was seen as a first step in a larger public awareness campaign that is going to be launched by the EU to make Europeans more aware of the dangers of counterfeit and pirated goods and their harmful effects on consumers and the economy. Nintendo supported the campaign by providing prizes to the winning students. [http://ec.europa.eu/commission\\_2010-2014/barnier/headlines/news/2010/06/20100623\\_en.htm](http://ec.europa.eu/commission_2010-2014/barnier/headlines/news/2010/06/20100623_en.htm)



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## The Americas

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### ACTIONS

**Brazil:** A criminal action against an importer of R4 game copiers was filed in May after a shipping container was stopped and hundreds of devices were uncovered. Counterfeit *Wii Fit* products were also included in the shipment. A Brazilian forensics expert provided evidence confirming game copying devices violate Brazilian laws.

**Mexico:** In response to a complaint filed by industry members and Nintendo, Federal agents seized significant quantities of counterfeit video games during a raid at Meave market place in Mexico City. In addition, two other major criminal raids were coordinated by the Mexican authorities against game piracy targets in Tepito market. Hundreds of thousands of counterfeit video game products were seized during the raids including counterfeit *Wii* discs. Several major lab operations, housing disc burning towers, were uncovered along with a warehouse used to assemble counterfeit games.

**Uruguay:** Police seized 6,000 counterfeit *Wii* games intended for sale in the Paraguayan market. Investigations reveal that the counterfeit games were locally produced at a factory in Montevideo. Criminal investigations continue.

**U.S.:** In May, the Miami Dade Police arrested a distributor of game copiers for setting up shop on Craigslist and selling illegal products over several years. In a separate action conducted on May 25<sup>th</sup>, the Covina Police Department executed a search warrant and arrested a California resident for also selling counterfeit *Nintendo* games and game copying devices.

### IP POLICY ACTIVITIES

**Brazil:** In May, the Brazilian Ministry of Justice began review of proposed Internet piracy legislation. On behalf of the video game industry, ESA submitted comments to the Brazilian Ministry of Justice concerning the severity of P2P game piracy in Brazil. ESA also raised concerns with the current consultation process. Unfortunately, it is unlikely this legislation will move forward.

**Canada:** On June 2, the Government of Canada introduced the new copyright legislation, Bill C-32 to modernize Canada's out-of-date copyright laws, that includes prohibitions on circumvention of technical protection measures.

**U.S.:** On April 30<sup>th</sup>, the Office of US Trade Representative (USTR) released its 'Special 301 Report' on those countries that fail to provide adequate protection of intellectual property rights. The USTR focused attention on the countries Nintendo identified in its submission, filed Feb. 2010: Brazil, China, Mexico, Paraguay and Spain. These results will be used year-round by the U.S. Government during discussions with its foreign trading partners in an effort to secure adequate IP protection and enforcement.

**U.S.:** Acting on Nintendo's request, Congressman Reichert (WA) presented written questions to the U.S. Customs Commissioner during a Trade Customs Hearing held on May 20<sup>th</sup>. The Congressman's questions were in support of Nintendo's quest to push U.S. Customs to have authority to provide information to IP owners on the seizure of circumvention devices.

### PIRACY AWARENESS/TRAINING

**Brazil:** Industry training events took place for police and law enforcement agencies in Brasilia, Florianopolis (state of Santa Catarina) and Cascavel (state of Parana). Parana is the state bordering Paraguay and opposite Ciudad del Este in an attempt to curb the active flow of pirated imports from Paraguay.

**Mexico:** Training sessions were conducted with Mexican customs authorities in Ciudad Hidalgo, Puebla, Progreso and Manzanillo. Nintendo is assisting U.S. Customs in Louisiana in their aim to boost and strengthen the common flow of products between the two ports.

**Uruguay:** In April, Nintendo conducted training for Uruguayan Customs officials, organized by the National Director of Customs. The training was to raise piracy awareness amongst officials. The training coincided with recent local news that counterfeit products have become the main criminal activity in the area and generates more revenue than the drug trade.

**U.S.:** On May 13<sup>th</sup>, Nintendo issued a press release announcing its action against an online distributor of game copiers. Gaijin Games also supported the action by providing a quote in the release. The announcement received positive wide-spread media coverage.

**Venezuela:** Nintendo conducted a product awareness training with the Venezuelan Customs and Tax Control Office. The training focused on teaching how to identify counterfeit Nintendo video game products and to increase their inspections of infringing products.