



QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q4: October - December 2010

SIGNIFICANT GLOBAL CASES/ACTIONS

Global: Nintendo made progress in 2010 in its battle against circumvention devices by obtaining favorable court decisions and establishing case law in key global markets. Positive criminal and/or civil decisions were issued in: Belgium, France, Germany, Hong Kong, Italy, Korea, Netherlands, Spain, Taiwan, the U.K. and the U.S. Some of the decisions secured stemmed from legal cases initiated as early as 2007.

China: Four Chinese business owners were prosecuted and three served jail time for dealing in counterfeit Nintendo products. On three separate occasions, business owners were taken into custody and placed in prison on the same day of the raids. The defendants were in prison between 7 – 9 months until the Chinese district courts found them guilty of infringing Nintendo's IP rights. The business owners were later released and sentenced to up to three years probation and fined between \$3,000 - \$120,500 USD respectively.

Canada: A 35-year old man was arrested and faces criminal and copyright charges for selling modified Wii consoles loaded with illegal software. The Royal Canadian Mounted Police, in conjunction with the Regina Technological Crime Unit, arrested the man and seized over 7,000 products after becoming aware of his illegal activities through his own Internet advertisements.

Spain: In a disappointing blow to combating Internet piracy in Spain, the Spanish Parliament failed to pass the anti-piracy provisions of a larger economy bill, the Sustainable Economy Bill, that would have provided judges with authority to order Internet Service Providers (ISPs) to block access to online services offering infringing material. The Senate will reconsider the bill in the early months of 2011.

Taiwan: Nintendo is pleased with the decisions issued by Taiwanese courts in 2010. Nintendo obtained over 55 favorable court decisions, as well as ten decisions on appeal, against those distributing game copiers, modified Wii consoles and illegal Nintendo software.



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Asia-Pacific

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ACTIONS

China: In 2010, the authorities raided more factories producing illegal *Nintendo* products compared to those pursued in 2009. Acting on complaints by Nintendo, the authorities raided 45 factories in 2010 versus the 21 factories pursued in 2009. The authorities also attempted to curtail retailers and distributors. Overall, there were over 350,000 illegal *Nintendo* products seized in China during the year.

Korea: Enforcement officials in Korea continue to crack down on those involved in importing and selling game copying devices. Three individuals were arrested by Seoul Customs Office (SCO) for selling game copiers and counterfeit *Nintendo* games through online shopping sites. In October, a seller of game copiers was sentenced to a year in jail after being indicted for importing 500 devices. In November, a distributor of game copiers was ordered to pay over \$9,000 USD by the Incheon District Court. The authorities raised the awareness of these actions through widespread media distribution.

Singapore: In October, a business owner, who was active in distributing game copiers, modded *Wii* consoles and other counterfeit *Nintendo* products, was sentenced to nine months in prison after being convicted of 15 different IP violations. In December, the authorities arrested 12 individuals after raiding nine retailers located within major electronic districts for selling counterfeit *Nintendo DS* software and modded *Wii* consoles.

Taiwan: During Q4, Nintendo worked with the Taiwanese authorities to pursue 23, resulting in thousands of products seized. Prosecutors were active in securing guilty verdicts against seven distributors of circumvention devices; unfortunately, the prison sentences were converted to fines.

IP POLICY ACTIVITIES

China: The U.S. Department of Commerce (DOC), International Trade Commission sought support from Nintendo to gain information on Chinese policies that favor national domestic business interests. On November 29th, Nintendo submitted information to the DOC on its IP enforcement challenges in China.

China: On November 23rd, the Chinese government announced that the Ministry of Industry/Information Technical Committee and the Ministry of Culture will establish a working group to develop national standards relevant to the gaming industry. There is still a ban against producing or selling game consoles for consumption in the Chinese domestic market.

Korea: The Ministry of Culture, Sports and Tourism (MCST) issued its first orders for the suspension of online user accounts in November. Eleven individuals, targeted in three previous warning notices issued by MCST, now face a suspension period of up to six months by their respective Online Service Providers (OSPs). The OSPs must comply with government-issued orders to suspend accounts or face fines and other penalties.

New Zealand: A government committee has proposed changes to a file-sharing bill that enact a three-notice regime to deter illegal file sharing. ISPs would be responsible for sending warning notices to their customers concerning the IP violation. The bill also grants authority to the court to suspend an internet account for up to six months in appropriate circumstances.

PIRACY AWARENESS/TRAINING

Hong Kong: More than 500 law enforcement officials, including investigators, prosecutors, customs and regulatory agencies from over 48 countries participated in the Law Enforcement IP Crime Conference held in October. Nintendo collaborated with industry members, via the ESA, whereby the IP specialists worked together to develop best practices to combat counterfeiting and piracy crimes.

Korea: In October, SCO issued a press release highlighting its successful actions against game copiers, confirming they are illegal. The news was reported in the "Yonhap News", "MBN" and on the cable news channel "YTN".

Singapore: In November, the *Singapore Straits Times* news announced the enforcement actions conducted by the police against distributors in Sim Lim Square. The news coverage, aimed at deterring others from illegal activity, advised of the 12 individuals arrested for distributing modded *Wii* and Sony consoles, as well as game copying devices.

Taiwan: During Q4, there were seven public apologies published in the *United Daily News* and on websites by those found guilty of distributing counterfeit *Nintendo* games, game copiers and modified *Wii* consoles.



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Europe

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Belgium: On December 17th, a supplier of *Wii* mod chips and "chipping services" was found guilty by the Criminal Court of Turnhout. The individual was penalized with a three-year suspended prison sentence for advertising, selling and installing *Wii* mod chips. The criminal complaint was filed by the Belgium Anti-Piracy Federation, on behalf of Nintendo. This is the first criminal decision in Belgium against mod chips and chipping services.

France: An excellent decision was issued by the criminal court of Beauvais against a French seller of game copiers. This is the first favorable decision issued by a criminal court against game copying devices in France. The seller was found guilty of violating Nintendo's trademarks and bypassing its technical protection measures embedded within the *Nintendo DS* system. The distributor was also ordered to compensate Nintendo for damages associated with selling the devices.

Germany: On November 8th, Nintendo issued a press release announcing that over 20 favorable court decisions have been issued against the distribution of game copiers in Germany, solidifying Nintendo's legal position against those distributing the illegal devices whether on the Internet or at retail.

Italy: In October, both the Court of Rome and the Court of Palermo confirmed that game copiers are illegal devices used to play illegal *Nintendo* games. The two recent decisions are in line with an earlier ruling issued by a Milan court. Based on the recent court decisions, the distributors of the game copying devices, R4s, were ordered to cease from manufacturing, importing, selling and distributing the devices. These decisions are important in Nintendo's pursuit against circumvention devices in Italy, where the Internet piracy rate continues to climb.

Spain: A six-month jail sentence and a heavy fine were imposed by the Criminal Court of Palma de Mallorca against a Spanish company for importing and selling game copying devices. Nintendo welcomed this decision on October 26th, as the first criminal court ruling in Spain against game copiers.

UK: Shortly before his trial, a UK business owner changed his plea from "innocent" and pled guilty to 17 different charges involving circumvention and trademark claims. The business owner was active in importing and distributing game copiers, mod chips for *Wii*, and Xbox and PS2 consoles. The criminal proceeding was coordinated on behalf of the industry by UKIE, collaborating with Leicester Trading Standards. A hearing date has been set for early 2011 for the business owner to be sentenced for his crimes.

IP POLICY ACTIVITIES

- Industry anti-piracy and IP policy professionals gathered in Malta on November 3rd to focus on pan-industry collaboration. Nintendo representatives participated with counterparts from EA, Microsoft, Take 2, Ubisoft, Sony, and trade association leaders from ADESE, AESVI, BIU, ESA, ISFE, MDTS and UKIE.
- Working through the Interactive Software Federation of Europe (ISFE), Nintendo collaborated with industry members in support of: (1) EU Commission's Consultation on the implementation of the Electronic Commerce Directive; and (2) Internet Stakeholder dialogue meetings underway between IP owners and Internet platforms (Amazon, eBay, PriceMinister, etc.) to ensure circumvention devices are included as "counterfeit goods" in any Memorandum of Understanding executed by the parties.
- On November 24th, the European Parliament adopted a resolution (by 331 votes to 294, with 11 abstentions) welcoming ACTA as "a step in the right direction", but calling on the Commission to confirm that it will have no impact on basic freedoms or existing EU legislation. The European Commission has not yet accepted the ACTA text. If it does, it will then be considered by other EU governing bodies including the Council of Ministers and the European Parliament.

PIRACY AWARENESS/TRAINING

Italy: Customs officers in Milan participated in a training session whereby Nintendo provided information on how to detect counterfeit *Nintendo* products and circumvention devices.

Germany: In an effort to increase awareness on detecting illegal Nintendo products, Nintendo conducted training for the customs officers located in Bremerhaven.

Netherlands: In accordance with settlement obligations, and under the court's order, website operators included in the "Webshops" case posted announcements on their websites about the illegality of game copying devices and the impact on the industry.



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The Americas

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Brazil: In 2010, there was a dramatic increase in the number of counterfeit *Nintendo* products confiscated by the Brazilian authorities compared to 2009. In 2009, there were approximately 9,500 products seized compared to over 52,000 items confiscated during 2010, including over 43,600 products seized by Brazilian Customs. While the trend with Brazilian Customs is encouraging, street vendors and retail shops continue to be the main focus for police. Nintendo is requesting the authorities to pursue actions where the impact on piracy is more significant.

Mexico: In collaboration with industry members, in November, the Mexican criminal authorities executed a series of raids against 11 locations near the Tepito area, a major game piracy market in Mexico City. Authorities uncovered a disc burning operation and confiscated thousands of pirated video games. In a separate operation held in December, the federal and local enforcement authorities executed search warrants against almost 40 retailers in Guadalajara's San Juan de Dios market resulting in the seizure of over 90,000 pirated video game products, including thousands of *Wii* games.

Paraguay: The Intellectual Property Rights Prosecutor Unit, together with the Paraguayan police, conducted raids against a manufacturing lab, two retail outlets and three warehouses in Ciudad del Este, resulting in the seizure of more than 20,000 counterfeit products including *Wii* games and mod chips. The products mostly were sold to Brazilian consumers.

Uruguay: After evading law enforcement officials for years, a criminal judge sent a notorious pirate to jail for fraud, failure to pay taxes, and for distributing counterfeit video game products. In 2007, a Uruguayan Civil Court judge ordered the same individual to pay Nintendo \$2.5 million USD in damages for the distribution of pirated *Nintendo* products.

U.S.: Two courts handed down sentences for violation of the Digital Millennium Circumvention Act (DMCA) relating to console modification, including *Nintendo Wii*. The first defendant operated his console-modding business through his store and popular website based in Chicago. The second defendant ran listings on eBay and Craigslist, and modified consoles for customers around the country.

U.S.: In 2010, industry members, led by ESA, collaborated on pursuing piracy and increasing criminal enforcement activities. Working with law enforcement officials throughout the country, the industry benefited from 28 people being arrested and 18 defendants being convicted. This is nearly a 50% increase over the same period last year. Ninety-five percent of all targets were based on illegal Internet activities, such as Craigslist sellers, social networking links, etc.

IP POLICY ACTIVITIES

Brazil: Nintendo continues to participate in industry-led meetings with Brazilian government officials as part of the tax reduction project. A meeting was held with the Joint Secretary for Economic Policy on December 21st. The next meeting is set with the Minister of Finance for early 2011. No date has been set for a decision on a tax reduction plan.

Canada: In an effort to enact laws that will criminalize the manufacturing, importing and distributing of circumvention devices for commercial purposes, the Copyright Modernization Act (Bill C-32) was proposed and is being considered by the special legislative committee. In support of the new copyright law, the industry collaborated, via the ESAC (Entertainment Software Association Canada), and participated in the December legislative committee hearing and submitted briefing documents.

PIRACY AWARENESS/TRAINING

Canada: Four key trainings took place in Toronto, Saskatoon and Vancouver in November, as part of a Canadian Anti-Counterfeiting Network (CACN) educational initiative aimed at strengthening ties between law enforcement officials and retailers. Participants worked toward improving strategic alignment on curtailing the spread of piracy.

Mexico: The video game industry used its big show, Electronic Game Show, to highlight its anti-piracy message and IP education campaign. It also surveyed attendees at the show to gauge consumer attitudes towards piracy. The results indicated that 95% of participants had seen rampant pirated games in Mexico City; however did not believe online file sharing was as prevalent. Approximately 35,000 Mexican consumers attended the show.

U.S.: Nintendo supported industry-led training sessions for nearly 500 federal, state and local law enforcement officials in LA, SF, Las Vegas, Seattle, Cleveland, Phoenix and NJ. The training included specific sessions with the SF Customs Lab, responsible for testing game copying devices and confirming violations under the DMCA.