



# QUARTERLY ANTI-PIRACY SNAPSHOT

## Global

Q2: April - June 2011

### SIGNIFICANT GLOBAL CASES, ACTIONS & DEVELOPMENTS

**China:** Nintendo collaborated with Shenzhen Market Supervision Administration (“MSA”) in a criminal case where three business owners were arrested. A recidivist infringer (previously raided in March 2011) was arrested for selling counterfeit *Nintendo* products via the popular online marketplace, Taobao.com. The business operator was raided again in June and officials confiscated thousands of illegal *Nintendo* products, including counterfeit *Wii* game discs. Additional criminal investigations stemming from this operation are underway.

**Germany:** In June, the Court of Appeals in Munich ruled in favor of Nintendo by confirming game copiers violate copyright laws. The court also determined that Nintendo is entitled to claim damages against one of the largest importers and distributors of game copiers in Germany.

**Korea:** Three criminal actions initiated by the authorities against those involved in modifying *Wii* hardware, via soft-modding, were resolved over the past quarter. Three of the defendants charged with IP crimes for modifying the *Wii* game consoles pled guilty and did not contest their illegal activities. Two individuals were fined 5,000,000 KRW (\$4,700 USD) and the third was sentenced to ten months imprisonment (with a two-year suspended sentence).

**UK:** The High Court granted Nintendo a summary judgment against one of the largest importers and sellers of game copiers in the U.K. The case stems from a raid, conducted by Surrey Trading Standards, of the importer’s home in 2009 and a subsequent seizure by Customs of approximately 10,000 R4 game copiers. The importer actively sold to consumers and supplied retail stores. The owner of the operation failed to attend the hearing and has fled the country – there is a pre-existing warrant for arrest issued for failing to attend parallel criminal hearings.

**US:** In May, Nintendo filed a domain name dispute with the World Intellectual Property Organization (WIPO) against a web-based, membership-only site, offering unlimited access to *Nintendo* games. The web site, claiming to provide more than “300,000 DSi and 3DS games”, links to illegal *Nintendo* game content and charges consumers \$29 for a six-month subscription or \$39 for a lifetime service. After receiving numerous consumer complaints, Nintendo filed its complaint against the [NintendoDSiCenter.com](http://NintendoDSiCenter.com) site. Domain name disputes can be filed under the WIPO proceedings when website operators are not identifiable. The administrative organization has the authority to transfer the domain name to the prevailing party.

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## Asia-Pacific

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### ACTIONS

**China:** Acting on complaints filed on behalf of Nintendo, the Administration for Industry and Commerce officials (AIC) conducted 18 raids in Q2, seizing well over 40,000 illegal products. Their actions mark a 157% increase in raids conducted, as well as a 700% increase in the number of goods seized. Despite repeated actions, China remains the leading country producing illegal *Nintendo* products.

**Korea:** The Korean criminal courts issued decisions against online distributors of illegal *Nintendo* software. In the first case, the trial court sentenced the defendant to a one-year imprisonment (with a suspended sentence of two years). The second decision, against an online seller of game copiers and illegal software, resulted in a fine of 10,000,000 Korean Won (\$9,500 USD).

**Korea:** The Ministry of Culture, Sports and Tourism (MCST) continued to order the suspension of user accounts identified as repeat infringers. Four online service providers (OSPs), including Bigfile, Zfile, Santa 25 and Wowdisk were ordered to suspend offering user accounts for 29 days.

**Singapore:** Seven people were arrested during police-conducted raids at three retail locations involved in video game piracy. The action was an industry-coordinated effort that yielded seized computer hard drives loaded with countless copies of illegal video game software, including almost 500 illegal *Wii* files and hundreds of *DS* games.

**Taiwan:** The IPR Police in Taipei charged a Chinese national with importing illegal *Nintendo* products directly from China. Large volumes of infringing *Nintendo Wii* and *DS* products were seized (47 cartons), as well as over 400 game copiers. Since April, the IPR Police have initiated a total of 25 criminal raids involving infringing *Nintendo* goods. Nintendo worked collaboratively with the IPR police to stop five online sellers' ongoing distribution of circumvention devices, modding services and counterfeit *Nintendo* products through Internet shopping sites, such as Yahoo and Ruten.

**Taiwan:** During the second quarter, the criminal courts issued 13 favorable decisions that found 17 individuals guilty of IP crimes involving illegal *Nintendo* products. One defendant was sentenced to six months' imprisonment, with no probation, and a fine of NTD 200,000 (\$6,900 USD) for the sale of counterfeit *Wii* video games.

### IP POLICY ACTIVITIES

**Hong Kong:** Copyright law amendments were released in June. These amendments seek to improve online piracy enforcement by increasing criminal sanctions against those engaging in piracy and possibly instituting a voluntary code of conduct on ISPs. Although there is no formal comment period, the video game industry did provide proposals requesting the ISPs take a greater role in protecting content online. This bill is not expected to pass until 2012.

**Korea:** In April, the Special Online Service Providers (SOSP) Bill began a swift move towards passage and was officially promulgated by the President on May 19th. It comes into November 19th. This legislation amended the Telecommunications Business Act, and its benefits to Nintendo will be better understood after the regulations are drafted and passed. It is thought to be an effort to sweep the area of copyright under the Act which had previously only regulated privacy and obscene materials. ESA and members will benefit from this legislation if its regulations authorize the SOSPs to collect certain limited personal information from users, making Korea's three strikes regime much more effective.

**Korea:** The Game Industry Promotion Act passed the National Assembly on June 29th. The National Assembly will pass the bill to the President, who will sign it within 15 days of receipt. It will then come into force six months from that date. This legislation has no affect on console games, rather it is intended to address the problem of excessive gaming by juveniles related to online games. Juveniles will be required to obtain consent from legal guardians and their play time will be limited. A subsequent decree will be drafted that provides greater details regarding preventative measures.

### PIRACY AWARENESS ACTIVITIES

**China:** During the second quarter of 2011, Nintendo representatives trained 375 Chinese officials. The training sessions focused on teaching customs authorities located in Changsha, Chengdu City, Jiangmen, Kunming, Nanjing, Shenzhen and Yiwu how to identify illegal *Nintendo* products and circumvention devices.

**Taiwan:** Between April and June, the *United Daily News* published three public apologies by individuals found guilty of selling game copiers and distributing counterfeit *Nintendo* products. Nintendo pushes for public announcements aimed at raising awareness and to serve as a deterrent for others involved in *Nintendo* piracy.

**Middle East:** In April, *Nintendo* representatives conducted training for 48 Customs Inspectors and enforcement officials from all seven Emirates in the UAE as well as Qatar and Saudi Arabia. The purpose of the training was to educate the officials about *Nintendo's* registered trademarks in the UAE and how to distinguish counterfeit from genuine *Nintendo* products.



# QUARTERLY ANTI-PIRACY SNAPSHOT

## Europe

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### ACTIONS:

**France:** In a French criminal proceeding, the Court of Bobigny convicted a seller of counterfeit *Game Boy* software with a 12-month (suspended) prison sentence and ordered the seller to pay substantial fines.

**France:** The Court in Avignon ruled against Nintendo in a push to enforce its 2008 Hong Kong judgment, whereby Nintendo was awarded approximately \$57 million (USD) against a notorious French seller of game copying devices. While the Hong Kong judgment remains in effect, the Avignon Court ruled that it will not enforce the judgment and order the French company to pay the outstanding damages to Nintendo.

**France:** Nintendo filed two separate actions against French distributors of game copiers. In May, a claim was filed in Paris against the owner of [www.gameland-shop.fr](http://www.gameland-shop.fr). If the court agrees with Nintendo's application for a summary judgement, it will order the company to stop selling game copiers. A ruling is expected in mid-August. The second case involves the owner of [www.buzzygame.fr](http://www.buzzygame.fr). The Marseilles Court granted Nintendo a search and seizure order and, with the assistance of the local bailiff, a raid was carried out. Circumvention devices and accounting records, reflecting the source of the products were seized. Nintendo is awaiting the date for the next hearing.

**Germany:** A criminal court imposed a fine against an individual who uploaded a copy of the *Wii Sports* game to the Internet. The criminal proceeding stems from Nintendo's 2009 complaint and the subsequent raid conducted at the individual's apartment, which yielded evidence of the illegal activities.

**Italy:** On May 24th, as a result of an enforcement action initiated by multi-industry groups (FPM & AESVI), servers hosting content for a popular site (Gameternity.com) were seized by Italian authorities (Guardia di Finanza) and the site administrator was criminally charged with IP infringement. Concurrently, a site run by the same site operator also was shut down. Both sites now post a message advising users that the sites have been seized by judicial authority.

**Spain:** On June 7th, the Criminal Court of Aviles dismissed the IP claims asserted by the prosecutor against a distributor of game copying devices. Nintendo expressed disappointment with the criminal court's decision, claiming it failed to consider evidence presented, and filed an appeal with a higher court (Regional High Court of Asturias). The distributor's representatives issued statements to the press and received widespread media coverage. In addition, the defendant, together with game copier sellers who are defendants in other criminal proceedings, filed an opposition before the European agency responsible for granting design rights (OHIM) against Nintendo's Community Design Registrations, claiming lack of creativity in the design of DS game cards.

### IP POLICY ACTIVITIES

**EU:** On May 24th, the European Commission published its long awaited Communication on Intellectual Property Rights. The Commission states that it wants to intensify IPR enforcement and has accepted the industry's request to have circumvention devices explicitly covered in the revised Customs Regulation. Although the Commission seems keen to engage on a range of key issues, its chances for success will, as before, depend on the cooperation of vested interests such as ISPs, collecting societies and their sponsors in national governments.

**EU:** A Memorandum of Understanding (MoU) was signed on May 4th setting out a series of joint principles, including effective measures to prevent listing counterfeit goods on Internet platforms. Participating Internet platforms include eBay and Amazon. The MoU will be assessed in one year, at which time progress will be reviewed and measured under the auspices of the Commission services.

**Netherlands:** In April, the Dutch government announced plans to legislate a ban on downloading movies, limiting the private copy exemption already in place regarding video game software. The government also included the possibility of implementing legislation for website blocking, upon obtaining a court order. The Parliamentary Committee for Justice will enter into a "written debate" regarding the proposals.

**Spain:** The Spanish Ministry of Culture announced the introduction of an official stamp to be featured on legal websites, as authorized by the Ministry, that offer legal cultural content (including video game content). This initiative will be supported by an official website ([www.culturaenpositivo.es](http://www.culturaenpositivo.es)) and by an online PR campaign from June 10th to July 31st, under the slogan "All of us are behind Culture."

### PIRACY AWARENESS/TRAINING

**UK:** A television program called "Fake Britain" aired on the BBC network in May. The UK industry association (UKIE) worked with the BBC to put together this documentary to raise awareness regarding the impact piracy has on the industry, including the distribution and use of circumvention devices. The full program can be watched here: <http://ukie.org.uk/content/ukie-highlights-battle-against-video-games-theft-bbc%E2%80%99s-fake-britain>.



# QUARTERLY ANTI-PIRACY SNAPSHOT

## The Americas

Q2: April - June 2011

### ACTIONS

**Canada:** A Montreal man convicted of three counts of copyright infringement received a six-month prison sentence for the sale and distribution of large quantities of pirated movies and video games, including *Wii* discs. The case was initiated in 2008 when Montreal police and the Royal Canadian Mounted police executed a search warrant and discovered large quantities of counterfeit discs. The defendant also was convicted of violating the Tobacco Tax Act and ordered by the court to pay significant fines. After he failed to pay the fine, he was ordered to spend additional time in jail.

**Mexico:** Nintendo worked with a US Internet service provider to remove game copiers from the Mexican eCommerce site [www.elocalx.com](http://www.elocalx.com). Identified as one of the top sites in Latin American for the sale of game copiers, it was impacting sales in the region. An in-depth investigation is pending against a second eCommerce site offering modified *Wii* systems and copied games. The eCommerce site also offers hand-delivery services to its customers.

**Peru:** In April, the IP police raided a warehouse reported by Peruvian Customs for storing infringing video game products, resulting in the first seizure in Peru of approximately 700 game copying devices. The game copiers were packaged in materials depicting the *Mario* character.

**US:** In June, a Hawaii resident was arrested as part of a nationwide crackdown on video game piracy (Operation Tangled Web) and sentenced in federal court to three years of probation and ordered to pay fines for importing and selling mod chips and swap discs that bypass security measures in multiple game consoles including *Wii*. The infringer imported the chips from Hong Kong and sold them online.

### IP POLICY ACTIVITIES

**Brazil:** In April, the Ministry of Culture sought comments on a draft of proposed copyright amendments to update its law in a number of areas including protection for technical measures employed by IP owners. The video game industry, acting through ESA, submitted comments to the Ministry emphasizing the importance of laws to curtail the spread of circumvention devices and the importance of strong copyright laws.

**Colombia/US:** The US announced it reached an agreement with Colombia over outstanding labor and judicial reforms that prevented the Colombia Free Trade Agreement from being introduced in Congress.

**US:** In May, a Senate committee introduced the "Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act" (PROTECT IP Act). It has not yet been introduced in the House. This legislation would increase law enforcement authority to combat foreign websites that distribute or provide access to infringing products. It is a much-needed response to the acute problem of foreign websites operating beyond US jurisdiction with no substantial purpose other than to offer illegal copies of pirated content, counterfeit goods or illegal circumvention devices.

### PIRACY AWARENESS/TRAINING

**Mexico:** In June, Nintendo took part in an anti-piracy training session organized by the Mexican Association for the Protection of Intellectual Property (AMPPI) at the port of Veracruz. The session included a visit by the General Administration of Customs, who raised the importance of combating piracy throughout the 49 customs branches across the country.

**US:** The video game industry, via the ESA, participated in two IP education conferences in June. The Tots and Technology Conference, held in Texas, was attended by over 700 K-5 teachers to discuss technology use in elementary classrooms. It was announced that many of the educators would be incorporating the "ESA's Join the © Team" materials as part of their classroom curriculum on IP education. A similar conference was held in Pennsylvania with an audience of 18,000 middle and high school education technology professionals from across the US and overseas. Many educators, including international attendees from countries such as Australia, Brazil, Canada and Mexico, were very engaged on the topic of IP education and ESA's "Join the © Team" materials.

**US:** Nintendo's senior manager of anti-piracy was a panel participant in a law enforcement educational workshop held at the E3 Expo in Los Angeles. With the theme, "Understanding and Combating Video Game Software Piracy," the theme provided law enforcement with information about how piracy and counterfeiting affect the entertainment software industry.

**US:** Members of Nintendo's anti-piracy team conducted training for over 50 Customs officers in Seattle during an IACC (International Anti-Counterfeiting Coalition) seminar. In addition to training the officials on circumvention devices, the teams discussed Nintendo's piracy challenges.