



QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q3: July – September 2011

SIGNIFICANT GLOBAL CASES, ACTIONS & DEVELOPMENTS

Global: Statistical data obtained through Internet monitoring for Q3 shows a 37% decrease in overall global downloading of illegal *Nintendo* software, via peer-to-peer networks, compared to Q2. The decrease could be attributed to users sourcing illegal software from other Internet protocols and/or lack of demand.

Global: Since January, there have been 1,745 seizures involving counterfeit *Nintendo* products, confiscating over 360,000 items globally. The number of products seized in Q3 is down by over 50%, compared to the same time period last year.

Global: Taking advantage of *Nintendo's* membership in the International Anti-Counterfeiting Coalition (IACC), Nintendo joined the IACC's Payment Processor Initiative enabling rights owners to have credit card processing services terminated on websites selling infringing goods. Expected to launch later this year, the Payment Processor Initiative includes cooperation from Visa, MasterCard, American Express and PayPal, and will utilize an automated notice and take-down system to remove credit card processing services from the targeted websites.

Brazil: During Brazil's largest IP enforcement seizure in recent years, two people were arrested and 1.57 million pirated optical discs were seized. Acting upon complaints by the movie, music and game industry, the Brazilian government authorized the military police to raid a major storage and distribution facility in São Paulo. The facility was used by counterfeiters to supply pirated products to retail outlets and street vendors. Over half a million video game software products were involved, including *Nintendo* games.

France: In a pivotal victory for Nintendo, the Paris Criminal Court of Appeals overturned a decision issued in 2009 by the Court of First Instance, confirming that selling game copiers in France is illegal. The Court of Appeals convicted five importers and sellers of game copying devices, after finding them guilty of IP violations. The Court awarded in excess of 4.8 million Euros to Nintendo, imposed fines exceeding 460,000 Euros, and issued suspended prison terms. Although the judgment has been appealed to the French Supreme Court, it is fully enforceable now and it sends a strong message to other French companies that dealing in these devices can result in prison terms and substantial monetary fines. In the wake of the Court's decision, there has been an increase in the number of French companies complying with *Nintendo's* cease and desist notices to stop selling the devices.



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The Americas

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ACTIONS

Canada: In September, the Durham Regional Police initiated raids at Pickering Market & Trade Centre in Ontario. The police arrested a booth operator and seized, among other industry products, almost a thousand counterfeit *Wii* games, along with R4 game copiers and computer equipment hosting a number of *Nintendo DS* games. The action received local media attention.

Canada: Toronto Police arrested a business owner for online advertisements and offering infringing products through his web site. In September, Toronto police issued a search warrant that led to the seizure of more than 1,200 counterfeit *Wii* games, R4 game copiers and other industry products.

Mexico: A criminal raid took place in August in the *Bazar de la Computación y el Videojuego* market, a popular shopping area in central Mexico City. The raid was coordinated on behalf of the video game industry and targeted 22 retail locations. An estimated 1.5 tons of counterfeit products were seized, including over 4,000 pirated *Wii* games. Local media highlighted the action. A recent survey of this market showed some improvement, with decreased visibility of infringing products than in previous months.

Mexico: Guadalajara Customs has ramped up its efforts to stop game copying devices from entering the country. A Mexican importer, attempting to import 500 game copiers originating from Hong Kong, was stopped and the devices were seized in August. Due to the importer's illegal activities in June (when his first shipment, containing hundreds of game copiers, was seized), he was flagged as a repeat offender. Additional investigations are underway.

Paraguay: In September, law enforcement agents executed a raid in Ciudad del Este against a warehouse storing counterfeit video games destined for Brazil. The raid resulted in the seizure of 6,000 counterfeit *Wii* games and a high volume of counterfeit packaging for in-country assembly. The owner of the warehouse is a known trafficker of counterfeit goods and was caught in 2008 for smuggling thousands of counterfeit games into Paraguay from the UAE.

US: Nintendo continues to support US law enforcement in the raids conducted in 16 states against multiple targets, referred to as Operation Tangled Web. The law enforcement authorities confiscated 61,000 mod chips for use with *Wii*, *Xbox 360* and *PS2* as part of their crackdown on circumvention devices. In August, representatives from *Nintendo's* Anti-Piracy team and the Software Development Support Group were called upon to provide expert technical assistance and examined evidence seized in the large-scale federal investigation.

IP POLICY ACTIVITIES

Brazil: In late August, the Marco Civil Internet legislation was submitted to the Brazilian Congress, the result of an initiative from the Brazilian Ministry of Justice, in partnership with the Center for Technology and Society, to develop a legal framework governing the rights and responsibilities for Internet use in Brazil. Unfortunately, the proposed legislation does not adequately address IP protection and enforcement remedies. Nintendo previously collaborated with multi-industry groups to submit comments to the Ministry of Justice reflecting the concerns posed by the pending legislation.

Canada: The Canadian government reintroduced copyright reform legislation (renumbered C-11), previously abandoned in late spring due to the federal election. Nintendo favors the new legislation, as it provides legal remedies against the circumvention of technological measures. Currently, no Canadian laws address the circumvention of technical protection measures used by Nintendo in its hardware systems, or the individuals trafficking in circumvention devices. The Canadian government is expected to pass the bill before the end of 2011.

PIRACY AWARENESS ACTIVITIES

Brazil: Nintendo, collaborating with industry representatives, participated in the largest ever IP-focused law enforcement training event in the capital city of Brasilia. The event was coordinated by the Brazilian industry association, ABES, and saw 1,400 military police agents trained. They have been recognized for their effective enforcement and pursuit of IP crimes.

Brazil / Paraguay: A training session was conducted in Foz de Iguazu and it focused on video game piracy and product identification. The city sits on the Brazilian border with Paraguay, linked by the Friendship Bridge, and on the Argentinean border, linked by the Fraternity Bridge. It is an important trade location, as the area is known for smuggling counterfeit goods. Over 50 police, tax, and Municipal Guard authorities were in attendance to learn about detecting infringing *Nintendo* products.

Peru: In August, Nintendo participated in a two-day anti-piracy training that targeted the northern cities of Peru, including Trujillo and Chiclayo. Over 100 public authorities attended, including police, Customs officers, prosecutors, and representatives of the Peruvian Trademark Office.

US: In July, Nintendo participated in the IPR Center Commercial Fraud Conference that included agents from Immigration and Customs Enforcement (ICE). Roughly 75 attending ICE agents from across the US focused on a broad range of domestic and Internet fraud issues.

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Asia-Pacific

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ACTIONS

Australia: The Australian Customs authorities have increased their seizures of illegal *Nintendo* products. In Q3 alone, almost 4,000 infringing products were confiscated in nine separate actions by the authorities. The seizures mark a year-over-year increase of 50% in the number of actions initiated by Australian Customs compared to the same time period last year.

China: China remains the main source for game copying devices. In Q3, there were over 30 seizures of game copiers, preventing almost 40,000 devices from reaching global markets. Complex investigations continue against those manufacturing and exporting the devices.

Korea: Nintendo has terminated over 64,000 infringing game files from the Internet since January 2011. *New Super Mario Bros.* titles for *Nintendo DS* and *Wii* were ranked as the top two files downloaded during Q3. Webhard services (websites that host downloadable video game software) remain the protocol of choice for users attempting to download illegal *Nintendo* games in Korea.

Korea: In July, the Supreme Court dismissed an appeal filed by a Korean importer and, confirmed the lower court's decision, to sentence him to eight months in prison (with a two-year suspended sentence) for importing over 10,000 game copying devices. In a separate case decided in August, the Seoul District Court denied an appeal filed by an importer of game copiers and sentenced the businessman to a prison term of one year (suspended for two years) and a criminal fine of \$17,000 USD.

Taiwan: The Taipei District Court sentenced five people to 18 months in prison for operating one of the largest counterfeit game and movie disc businesses in Taiwan. This matter stemmed from a 2008 seizure of over 50,000 optical discs, including counterfeit *Wii* games.

Taiwan: The Taipei District Court sentenced a business owner to six months in prison (which was converted to a fine of NTD 180,000 - \$6,000 USD). In addition, the company was fined NTD 500,000 (approx. \$16,600 USD). The Court's decision stemmed from a police investigation leading to a raid of her business. *Nintendo* representatives supported the police as they recovered modified *Wii* consoles, game copying devices, computer equipment and hard drives hosting numerous illegal *Wii* games (used for producing counterfeit *Wii* discs). In addition, the police discovered evidence that the business was actively involved in modifying *Wii* consoles for its customers.

Taiwan: The police have increased their enforcement actions against online piracy. Of the 29 police actions initiated in Q3, more than one-half targeted online retailers. Because it has become more difficult to locate illegal products at the retail level, they have shifted their efforts to include pursuing Internet-based piracy.

IP POLICY ACTIVITIES

Korea: As of July 1, the Korean Copyright Act has been amended, based upon the terms outlined in the signed Free Trade Agreement between Korea and EU. As a result, provisions of the Copyright Act were revised to require an IP owner to file a criminal complaint pursuing those commercially selling products and/or services violating technical protection measures. The Korean authorities no longer have the authority to commence investigations and/or take actions involving circumvention devices, absent a complaint by the respective IP owner. Since the July 1 amendment, Nintendo has been required to file a number of criminal complaints with the Customs office to investigate sellers/importers of circumvention devices and to secure seizures of the devices.

New Zealand: The Copyright (Infringing File Sharing) Amendment Act of 2011 was implemented on September 1. Under its regulations, Internet Service Providers are permitted to charge IP owners up to \$20 for processing a single notice and take-down request. It is too early to determine whether the content industries will take advantage of the regulations due to the expense.

PIRACY AWARENESS ACTIVITIES

China: In Q3, Nintendo continued its focus on training Chinese Customs authorities. Hundreds of Customs officials from offices located in Shenyang, Dalian, Hangzhou, Xiamen, Nanjing, Hubei Wuhan, and Nanchang were trained to identify counterfeit *Nintendo* products and circumvention devices.

Taiwan: In late September, Nintendo met with the IPR police and presented them with a plaque of appreciation for their continued actions to combat piracy. Nintendo and the IPR police also discussed future collaboration and key issues related to local enforcement. In addition, Nintendo met with the president of the IPR Court to discuss pivotal aspects of enforcing IP rights in Taiwan.

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Europe

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ACTIONS

France: Based on Internet monitoring data, it appears French users are avoiding the Internet piracy legislation scheme (HADOPI) and are migrating from using peer-to-peer (P2P) protocols to other Internet sources. As an update to the graduated-response Internet piracy legislation, the HADOPI Commission issued its annual report on its activities, announcing the number of infringement notices forwarded to French P2P users. Since the law was implemented 12 months ago, rights holders reported 18 million instances of alleged illegal downloading (out of a total of 22 million Internet connections in France). In response, HADOPI sent a total of 470,000 initial warning letters and more than 20,000 second warnings. The authorities state they will be questioning ten Internet subscribers who have crossed the “three warnings” threshold, for possible prosecution. If convicted, they could face fines up to 1,500 Euros and have their Internet access suspended.

Italy: During Q3, Italian Customs were the most active in seizing game copiers, compared to the other key EU countries. Italian Customs stopped 15 shipments of game copiers, preventing nearly 2,700 devices from entering the market. In total, 169 seizures conducted by EU authorities during Q3 stopped over 16,000 devices from further distribution.

Spain: Links to countless illegal *Nintendo Wii* and *DS* games were terminated after four websites were shut down, under threat of litigation by the Spanish Anti-Piracy Federation (FAP). Nintendo collaborates closely with FAP to curtail Internet piracy in Spain. Nintendo is pleased that the popular sites (Purotorrent.com, Nuncamas.org, Aestrada.net, and consolasatope.com) have ceased providing access to illegal *Nintendo* software.

UK: In late September, approximately 700 game copiers were detained at Heathrow Airport, en route to a Jersey company called R4Mania. The importer complied with *Nintendo's* demand to destroy the goods and shut down a number of websites used to distribute the illegal devices (r4karte-mania.de, r4tarjeta-mania.es, r4scheda-mania.it, r4kaart-mania.nl, and r4card-mania.co.uk). Nintendo attributes the importer's compliance to the favorable case law obtained in the UK, including the Playables case and the recent Divineo decision issued in France.

IP POLICY ACTIVITIES

Italy: In July, AGCOM, the Italian Telecommunications Regulator, abandoned provisions in draft Internet legislation that would allow for website blocking. This has considerably weakened the proposed legislation which aims to combat online piracy. The AGCOM decision was published in the *Official Gazette* and a 60-day consultation period then followed. On behalf of the video game industry, the Italian association, AESVI, submitted comments to the draft regulators that included input from Nintendo. AGCOM is expected to hold public hearings to discuss the proposed regulations.

Spain: The Spanish government remains confident that the regulations accompanying the Sustainable Economy Law will be enacted before the national elections, expected in November 2011. After receiving the green light from the EU Commission (under the Technical Standards Directive), the regulations are awaiting approval from various national institutions.

UK: In August, the Department for Culture, Media, and Sport (DCMS) stated that the UK government does not plan to introduce secondary site-blocking legislation as contemplated in the Digital Economy Act. DCMS considers that site-blocking legislation is unlikely to have any practical impact. Despite this, the notice sending provisions of the Digital Economy Act remain and the UK government announced that the infrastructure should be in place for the first notices to be by the end of 2012. Meanwhile, in a landmark judgment, the UK High Court issued a decision in favor of the Motion Picture Association, ordering British Telecom to block access of its subscribers to the *Newzbin 2* site.

PIRACY AWARENESS ACTIVITIES

France: Nintendo obtained widespread global media attention upon issuing its press release announcing the favorable decision made by the Paris Criminal Court of Appeal in late September. The Court confirmed that distributing game copying devices (known as “linkers” in France) is illegal in France and subject to prison terms and fines. The press release can be found at: <http://ap.nintendo.com>.

Spain: With the support of the Spanish Video Game Academy, Nintendo initiated a public relations campaign focused on raising the awareness of the illegality of game copier devices in Spain. The campaign targeted the Asturias region which was specifically chosen to support criminal proceedings pending before the Regional Court of Appeals of Asturias. The electronic press kit (EPK) was released to the media during the week of September 19. The EPK included interviews of local industry spokespeople and police authorities. Four out of the five most popular national TV stations covered the story during popular media time slots. Online press also picked up the story, including *El Mundo*, Spain's most popular newspaper.