



QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q4: October – December 2009

SIGNIFICANT GLOBAL CASES/ACTIONS

Australia: On November 23rd, Nintendo filed an action in an Australian Federal Court and was granted a search warrant against an individual who uploaded the *New Super Mario Bros. Wii* game a week ahead of the global release of the highly anticipated title. A search was conducted at the uploader's home and authorities seized all related evidence of his activities.

China: The number of counterfeit *Nintendo* products confiscated in China almost doubled in Q4 compared to products seized in Q3. There were over 200,000 products impounded by the Chinese authorities, compared to the 110,000 infringing items seized during Q3.

France: The Paris' Criminal Court ruled in favor of Divineo and the other retailers in the pending criminal case against the distribution of game copiers. Nintendo filed its appeal, along with the Prosecutor who is responsible for the criminal case. Game copiers have NOT been declared legal as a result of the judgment. The legal status of game copiers in France will not be determined until a final decision is issued based on the appeal proceedings.

Korea: On November 12, 2009, the Korean Supreme Court dismissed an appeal filed by an importer of game copiers and confirmed the illegality of game copiers. In addition to this Supreme Court decision, there have been more than 50 court decisions confirming the illegality of game copiers in Korea.

Mexico: The Mexican Army participated in an industry coordinated raid that took place in the notorious Guadalajara San Juan de Dios market on November 26th. The action resulted in the seizure of over 25 tons of counterfeit video game products. Thousands of counterfeit *Wii* games were seized.

Spain: In early December, eight people were arrested by the National Police following raids carried out at two stores, a warehouse and a private residence. Tens of thousands of illegal products were confiscated, including approximately 13,300 game copiers.

U.K.: Nintendo filed an action in the UK High Court against a significant importer of game copiers. There is evidence to show that the company, Playables, attempted to import tens of thousands of game copiers into the UK. As Playables refused to forfeit the devices, Nintendo filed its action. Nintendo is also cooperating with Trading Standards officials and Customs to curtail Playables' illegal activities.



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Asia-Pacific

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ACTIONS

China: From October 1st through December 31st, there were 88 actions conducted in China confiscating over 200,000 counterfeit *Nintendo* products. In addition, three of the actions met the enormously high criminal threshold value imposed by the Chinese Government, allowing for the matters to be accepted by the public prosecutors to pursue the cases criminally. Nintendo also took steps to curtail the exportation of game copiers purchased via the popular Chinese online auction site, Alibaba.com. Acting upon Nintendo's request, Shenzhen authorities conducted a raid against Shenzhen Gamezway Technology Co. Ltd. (aka Digital World Technology) in December, seizing 1,620 game copiers. The company is listed as one of the top 15 game copier sellers on Alibaba.com, a popular auction site. Evidence revealed that the company had actively exported game copiers to the U.S. and Europe.

Hong Kong: On November 18th, 26 people were arrested by Hong Kong Customs after raiding 21 shops located in the Sham Shuio, Wan Chai and Mong Kok who were involved in selling *Wii* mod chip installation services.

Korea: In an effort to curtail Internet piracy in Korea, Nintendo works closely with the Copyright Protection Committee (CPC), an agency supported by the Korean Government. In Q4, Nintendo asked the CPC to push website operators to terminate almost 24,000 illegal *Nintendo* files. In 2009, the CPC had over 85,000 illegal *Nintendo* files removed from Korean websites.

Singapore: In late October, the largest raid of 2009 against game copiers in Singapore took place. The action was conducted against KC Tan Trading. Close to 900 game copiers and packaging materials were confiscated, along with hundreds of other counterfeit *Nintendo* products.

Taiwan: In late December, the IPR police officers raided a warehouse in Zhongli City and uncovered over 10,000 counterfeit *Wii* discs, along with other counterfeit *Nintendo* products. The police held a press conference on January 1, 2010 identifying the raid in Zhongli City as its most significant case for in 2009. During Q4, Taiwan Customs seized 11 shipments of counterfeit *Wii* discs. All shipments originated from Hong Kong.

IP POLICY ACTIVITIES

China: In late December, the WTO ruled that China's restrictions on the importation and distribution of certain copyright-intensive products (e.g., DVDs, music, books, journals and theatrical films) are inconsistent with China's international obligations. China restricts U.S. companies access to the Chinese market through several methods, including requiring U.S. companies to partner with Chinese companies to import and distribute certain goods in China, and prohibiting reading materials and distribution of electronic music. China argues WTO rules allow for this under a public morals exception clause. While the case does not address the unfortunate console ban, this may have a positive impact on Nintendo if China's market becomes more open to foreign copyrighted goods, without the barriers that exist today.

China / Korea: Nintendo met with the U.S. Government (USG) agencies in Washington, D.C. at the end of October, focused on China, Korea and other countries. Nintendo sought assistance from the USG to push China to curtail the exportation of illegal products and to increase criminal prosecutions. Nintendo expressed its concern over the continued growth of Internet piracy in Korea.

Korea: Nintendo is continuing to monitor the new "three-strikes law" enacted to reduce Internet piracy. Nintendo is working with an Internet monitoring vendor, via the Entertainment Software Association, to terminate illegal *Nintendo* files by sending notices to the Ministry of Sports and Tourism. It is too early to determine whether this new law will curb Internet piracy and how best to work within the new legal framework.

PIRACY AWARENESS/TRAINING

China: In Q4, Nintendo conducted three training sessions for customs and administrative agencies, seeking their support in increasing activities against circumvention devices and counterfeit *Nintendo* goods.

Hong Kong: In October, Nintendo met with and trained Hong Kong Customs enforcement agents. Immediately following the training, there was an increase in the number of actions initiated by the authorities. On November 19th, following the arrests of 26 people involved in modifying *Wii* hardware, Customs held a press conference alerting the public that modified video game consoles are illegal and the maximum penalty for selling modified video game consoles and counterfeit products is a four year jail sentence and a fine of HK\$500,000.

Korea: On October 22nd in accordance with the terms of a settlement agreement, an importer of game copying devices (Mr. Choi) placed a public apology to Nintendo in three daily newspapers (The Chosun Ilbo, Maeil Business Newspaper and The Han-Kyoreh Shinmun). Mr. Choi also placed an advertisement in the November issue of a game-related magazine (Game Wars) publicly apologizing to Nintendo and announcing his criminal punishment.

Taiwan: In November, Nintendo conducted two training sessions for customs and police officials, seeking their support in increasing activities against circumvention devices.



QUARTERLY ANTI-PIRACY SNAPSHOT

Europe

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ACTIONS

Belgium / Netherlands: On November 26th, Mininova closed down the part of its website which structurally refers to illegal content. Mininova's action comes three months after the district court ruled in favor of the anti-piracy organization, BREIN, ruling that Mininova has to prevent the linking to illegal content. This is a significant development as Mininova, who offered illegal content from all industries, had just reached 10 billion downloads, including the downloads of illegal games. Nintendo continues to support BREIN in their effort to combat Internet piracy.

Germany: To date, Nintendo has been granted 20 favorable decisions against websites and retailers distributing game copying devices.

Spain: In November, following the dismissal of a criminal action in Spain called MovilQuick, Nintendo filed an appeal to correct the procedural mistakes made by the Spanish court. Despite having filed proceedings against MovilQuick for selling circumvention devices, Nintendo's application to be a party to the action was never registered by the court clerk. As a result, the case was preliminary dismissed for lack of evidence. Regardless of the widespread media coverage of the MovilQuick decision, successful raids were carried out by the Spanish police throughout December whereby thousands of devices were seized.

U.K.: The Court of Appeals rejected an appeal filed by an individual (Paul Gilham) who had been convicted of distributing mod chips for Nintendo, Sony and Microsoft consoles. Despite the submission of additional expert evidence, the 3 Court of Appeals' judges were not persuaded and stated that mod chips allow for the copying of software into the memory of the consoles and violate IP rights. Gilham will be sentenced at a later court hearing.

IP POLICY ACTIVITIES

France: Nintendo is working with its French games industry trade association, SELL, to understand the multiple regulations put in place to manage the new "3-strikes law" called Hadopi. The law will likely not be operational until July.

Germany: Nintendo sent a letter to the Federal Ministry of Justice of the German Government concerning the enforcement regime for rights holders in Germany. The letter included four recommendations to improve the ability of rights holders to enforce its rights as protected under German copyright, trademark and telecommunications laws.

Spain: On November 21st, a new Commission was formed, comprised of Ministry representatives (Justice, Industry, Interior and Culture) to address IPR violations occurring over the Internet. The legal framework to be put in place to aid the Commission in fighting online piracy is addressed in the Economic Sustainability bill expected to be passed in the Fall.

U.K.: The Queen's speech delivered in November confirmed that the Digital Economy Bill will be part of the legislative programme for the next parliamentary term. One expected issue the Bill will include is the measure to reduce the widespread problem of unlawful sharing of creative works online with obligations placed on Internet Service Providers to work with rightholders.

PIRACY AWARENESS/TRAINING

Overall EU: In October, ISFE (Interactive Software Federation of Europe) held an anti-piracy workshop which was attended by all industry anti-piracy professionals, including members of Nintendo's anti-piracy team. The purpose of the workshop was to harness the views from attendees on the role ISFE should play in enforcement activities, as well as in public relations and piracy awareness campaigns. Panel discussions were also held to focus on (1) industry's response to piracy; (2) the experience of the music industry; (3) consumer awareness, the media and education; (4) practical implications of new regulatory initiatives; and (5) the industry's public policy agenda.

Belgium: On November 17th and 18th, training sessions were held at the Belgian Federal Police office, whereby members of the police, Ministry of Economic Affairs, customs and the public prosecutors office attended. The participants were educated on how to detect counterfeit *Nintendo* products and learned more about circumvention devices. Nintendo was represented by ABAC-BAAN.

Spain: Nintendo contributed towards a documentary on game copier piracy which was broadcasted by a Spanish national channel in December. Nintendo collaborated with the journalist in charge of producing the piece by working as a contact of the channel with the police and providing details of a focus case. A Nintendo Iberica representative was recorded and made a statement on the piracy problem that is being faced by Nintendo

U.K.: Nintendo's AP representative attended the UK Anti-Counterfeiting Groups Road Show to educate police officers, customs officials, police officers and Trading Standards professionals on Nintendo's piracy challenges and how to detect infringing products. Dozens of other rights holders were in attendance and it was an opportunity to highlight which Nintendo products these organizations should be on alert for, as well as to receive feedback on how they can be assisted in their work.



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The Americas

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ACTIONS

Canada: In October, five search warrants were executed and three people were arrested in Ontario when thousands of counterfeit *Wii* and Xbox 360 games, along with game copiers and modified hardware systems were confiscated. Computer equipment used to produce the illegal software was also seized as part of the action. On behalf of the video game industry, the Entertainment Software Association is currently supporting 13 criminal prosecutions and 11 civil cases in Canada.

Chile: In December, Nintendo supported a police raid against 40 retailers at the Portal Lyon Mall in Santiago resulting in the seizure of over 500 counterfeit *Wii* games.

Paraguay: Specialized Paraguayan police, Unidad Tecnica Especializada (UTE), executed enforcement actions against two laboratories in Ciudad del Este that were actively installing mod chips into *Wii* consoles and selling the modified systems, along with illegal *Wii* software produced at the laboratory. Computers, disc burners, modified consoles and pirated games were seized as part of the November operation.

U.S.: Nintendo is supporting 10 criminal investigations, along with the industry association, that involve pirate video games, modified *Wii* consoles and/or the sale of game copiers.

U.S. / Latin America: Nintendo and the industry association supported the FBI and ICE (Immigration and Customs Enforcement) agents in their investigation against a Miami company sending e-mails offering game copying devices to consumers in Latin America. The owner agreed to cooperate with the U.S. agents and provide them with information on the supplier of the illegal devices.

IP POLICY ACTIVITIES

Brazil: At the request of the Embassy of Japan, a meeting was held in São Paulo, Brazil with a representative for Nintendo on October 22nd. The meeting was attended by a Nintendo representative, the 1st Secretary of the Embassy of Japan and the Principal Deputy Director, Intellectual Property Affairs Division, Economic Affairs Bureau of Japan. The meeting was held to discuss Nintendo's problems with piracy in Brazil, prompted by Nintendo's Special 301 report filed earlier this year.

Canada: In November, the industry joined together and submitted a letter to the Canadian government in support of a proposal to amend its Criminal Code to allow authorities to confiscate profits derived from video game piracy in Canada.

Paraguay: Paraguay and the U.S. agreed to extend the 2009 version of the Memorandum of Understanding (MOU) through December 31, 2011. The objective is to commit the Paraguayan government to the enforcement of IP rights.

U.S.: In late October, a Nintendo AP representative met with U.S. Government agencies (including the Department of Justice and the Department of Homeland Security) in Washington, D.C. to discuss Nintendo's recommendations to strengthen enforcement and IP policy initiatives to combat circumvention devices in both the U.S. and Canada.

PIRACY AWARENESS/TRAINING

Brazil: On behalf of the industry, law enforcement trainings were conducted. Federal, state and local law enforcement agencies in the cities of Uberlandia and Manaus participated in the educational campaign. In addition to other video game products, the officials were trained on detecting counterfeit *Nintendo* products and learned about circumvention devices.

Canada: In December, the Entertainment Software Association concluded its seven city "Reality Tour" focused on educating Canadian Law Enforcement Agencies on piracy and circumvention.

Mexico: For the fourth year, the Entertainment Software Association hosted an anti-piracy booth at the Electronic Game Show in an effort to publicize the industry's enforcement efforts in Mexico and educate consumers about game piracy.

U.S.: During 2009, 22 trainings were conducted for various local law enforcement and federal agencies throughout the U.S. providing guidance on how to detect counterfeit *Nintendo* products and how circumvention devices are illegal under the Digital Millennium Copyright Law.