



QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q4: October – December 2011

SIGNIFICANT GLOBAL CASES, ACTIONS & DEVELOPMENTS

GLOBAL: The long-awaited signing ceremony of the Anti-Counterfeiting Trade Agreement (ACTA) was hosted by the Government of Japan on October 1 in Tokyo. Countries who participated in signing the Agreement included the United States, Australia, Canada, Japan, Morocco, New Zealand, Singapore and South Korea. The European Union, Mexico, and Switzerland did not sign the treaty, but attended the ceremony and voiced their support for and preparations to sign the Agreement as soon as practicable. ACTA creates an international regime for imposing civil and criminal penalties on Internet piracy and counterfeiting. Notably, it includes improvements on the protection of Technical Protection Measures and Internet Service Providers' responsibilities in an online environment.

SPAIN: On December 30, the newly appointed Spanish Government approved the implementing Internet regulations (Sustainable Economy Bill). While the underlying Internet law in Spain was passed in February 2011, it remained dormant until the passing of these implementing regulations. The notice and takedown and site-blocking provisions will go into force on March 1, 2012. This law is expected to provide a more robust enforcement regime against Internet sites offering illegal content and circumvention devices including those that are located outside Spain.

TAIWAN: The Taiwanese Courts continue to be the most aggressive and effective in the region in pursuing criminal actions involving IP crimes. In Q4 alone, Nintendo received 26 favorable decisions issued by the District Court, finding 35 defendants guilty of violating Nintendo's IP rights. In two of the most significant cases, jail time was imposed. One of the defendants, considered the largest game supplier in Taoyuan, was sentenced to a one-year prison term. The second defendant, who was found guilty of dealing in modified *Wii* consoles, was also sentenced to a one-year prison term by the Taichung District Court.

US: On November 15, Nintendo received a favorable decision from the WIPO (World Intellectual Property Organization) arbitration panelists. The panel granted Nintendo ownership of ten domain names that had been posing as Nintendo websites and offering access to illegal *Nintendo* software. The websites charged consumers \$39 for a "lifetime membership" and unlimited access to (illegal) *Nintendo* games. After being tipped off by our consumers, Nintendo pursued the fraudulent membership sites, including *nintendodsicenter.com*; *Nintendo3dscenter.com*, *nintendowiicenter.com*. As the websites (and the individuals responsible for them) were not based in the US, cease and desist notices were ignored. Absent stronger IP laws in the US to deal with "foreign websites" and the inability to pursue the individuals responsible for them, Nintendo pursued the websites through the WIPO administrative process.



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The Americas

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ACTIONS

BRAZIL: The specialized IP police raided five outlets in the *Camelodromo da Pavuna* market in Rio de Janeiro, uncovering a significant amount of counterfeit video game products and components, and revealing local assembly and distribution of the illegal goods in Brazil. The raids took place in November, on behalf of the video game industry, and led to the confiscation of over 180,000 illegal products, including 15,000 counterfeit *Wii* discs, and tens of thousands of pieces of packaging.

CANADA: In November, the Toronto Police arrested two people for mass distributing illegal *Wii* software, game copying devices and drugs. The Toronto Police executed a search warrant at the individuals' home, doing business as "GTABACKUPS," and uncovered the counterfeit *Nintendo* products, along with a large supply of illegal drugs and paraphernalia. The targeted seller, and his girlfriend, were arrested on multiple counts of IP crimes, fraud, possession of property obtained by crimes as well as numerous drug charges.

US: In November, the Federal Bureau of Investigations (FBI) arrested three California businessmen for operating a company that provided *Wii* console modification services. Before being criminally charged with conspiracy and copyright infringement, the three men advertised their console modification services, along with hundreds of pirated *Wii* games, on Craigslist and message boards.

US: A California man will spend a year in jail after pleading guilty to felony piracy violations for dealing in illegal *Wii* games and movies. This is not his first visit to jail for IP crimes. In June 2011, the man was found guilty of violating counterfeiting laws and was sentenced to 90 days in jail for producing illegal movies, games, and other media. Based on investigations for real estate fraud conducted by the San Bernardino police in July, the police discovered the convicted pirate had ramped up his illegal activities and was subsequently arrested. In December, the California man pled guilty and the court sentenced him to the 365 days in jail.

IP POLICY ACTIVITIES

MEXICO: In December, the Senate approved modifications to the Mexican IP law that further empowers the Mexican Institute of Industrial Property (IMPI) in its enforcement efforts against counterfeiting in Mexico. It also proposes to amend the Mexican federal law of copyright in order to increase the maximum amount of penalties for violations.

US: The United States Trade Representatives (USTR) conducted a review of the most "Notorious Markets," responsible for the most troubling online environment and physical marketplaces facilitating piracy. In December, USTR announced the results of the Notorious Market review, identifying areas important to Nintendo, such as Tepito (Mexico) and Ciudad del Este (Paraguay). It was the first time that USTR identified Internet targets for being involved in circumvention technologies (i.e. game copiers and mod chips).

US: On October 26, a legislative bill, the Stop Online Piracy Act (SOPA), was introduced in the House of Representatives. SOPA was much broader than the corresponding bill introduced in the Senate earlier this year, the Protect IP Act. The debate over SOPA has created great controversy between IP owners, consumers and tech companies.

PIRACY AWARENESS ACTIVITIES

BRAZIL: As part of the "National Day of the Fight Against Piracy" in Sao Paulo, the Brazilian video game industry association (ABES) initiated a press event in Sao Paulo on November 30. The event involved the public destruction of over 1.1 million illegal copies of pirate video games and software, and generated substantial media coverage. The software discs were destroyed at a specialized recycling facility and the proceeds are being donated to local charities.

MEXICO: Anti-piracy training for 70 Cancun Customs officers took place at the SAT headquarters (Tax system administration) in November. In response to an uptick in overall piracy in Cancun, the training focused on how to identify counterfeit products and taught the basic concepts of intellectual property.

PERU: With the support of the Chief Prosecuting Police, a training seminar for Peruvian authorities took place in October. The active discussion covered how to detect key aspects of authentic and counterfeit *Nintendo* products and the 54 participating enforcement officers shared their day-to-day experiences and raised great questions.

US: The New York Police Department (NYPD) spent November learning about counterfeit *Nintendo* products. More than 150 NYPD officers attended the training and received instruction on product identification for video game products and circumvention devices.

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Asia-Pacific & Middle East

Q4: October – December 2011

ACTIONS

CHINA: As part of Nintendo's efforts to stop illegal products from entering the global marketplace, Nintendo pursued 24 administrative raid actions in China during Q4 alone. Raids were conducted against factories and at retail locations, seizing over 25,000 infringing products, including approximately 22,000 circumvention devices. During the same time period, Chinese Customs stopped seven shipments of counterfeit *Nintendo* products, and seized 1,500 products.

CHINA: Nintendo is working with Taobao, one of the largest Chinese online shopping sites, to stop the distribution of illegal *Nintendo* products. Global consumers are taking advantage of this Chinese site and purchasing illegal products for local delivery. Nintendo pursued eight of the most notorious online Taobao distributors, who adopted business names similar to Nintendo and creating consumer confusion, while selling illegal goods. Half of the online companies have been shut down, while work is still underway to pursue the remaining sellers.

KOREA: Criminal complaints were filed against two large franchises, operating multi-room businesses, that rent rooms equipped with video game systems, movies and Internet access. The two franchises have 15 and 25 locations in Seoul, respectively, and offer its users the ability to play illegal *Wii* software, played on modified *Wii* consoles. Despite Nintendo's repeated requests to stop commercializing in illegal *Wii* products, the conduct did not cease and complaints were filed with the Ministry of Culture, Sports and Tourism ("MCST").

KOREA: As a result of Nintendo's cooperation with four large Korean websites (11th Street, Gmarket, Auction and Interpark), the sales of game copying devices through these forums have been dramatically reduced. Based on recent monitoring, the sales of game copier and memory cards containing illegally copied *Nintendo DS* games have almost disappeared from the 11th Street and Interpark sites. While there is more work to do with Gmarket and Auction, there has been a noticeable improvement in the availability of infringing products.

KOREA: Three distributors of game copying devices and illegal software were prosecuted and found guilty by District Courts in Incheon and Daejeon. While all three defendants were fined, the largest seller, responsible for distributing over 5,000 game copiers, was ordered to pay a fine of 10,000,000 Korean Won (approximately USD \$8,700). It is Nintendo's belief that the fines and penalties must be more significant to have a true impact on those involved in the illegal products, and to serve as a deterrent against others.

MIDDLE EAST (DUBAI): Nintendo is ramping up its activities in the Middle East, starting with Dubai. Dubai serves as a major transshipment hub for products entering the United Arab Emirates, and circulating to the rest of the region. In November, the Dubai Department of Economic Development (DDED) carried out raids involving 13 retailers and hundreds of counterfeit *Nintendo* products were seized. The DDED cracked down on the traders by imposing fines. The actions have had an impact. In market surveys conducted in December, retailers stated they were no longer dealing in counterfeit *Nintendo* products because it is illegal. In December, Dubai Customs stepped up and conducted its first seizure of counterfeit *Nintendo* products.

TAIWAN: Nintendo nabbed repeat offenders. Despite being raided by authorities in 2010 and 2011 respectively, two major suppliers of game copiers and *Wii* mod chips were caught again. In one of the actions, police found the defendant operating three stores and an Internet site utilizing 10 employees to sell game copiers, mod chips and modified *Wii* consoles. In the second action, the IPR Police in Kaohsiung found a notorious pirate heavily involved in dealing in illegal *Wii* software and modded consoles. Both business owners have been charged with criminal IP violations.

IP POLICY ACTIVITIES

AUSTRALIA: Nintendo is collaborating with its industry association, iGEA, as the Attorney General announced it will mandate an amendment to the copyright law if the relevant stakeholders (copyright owners and online service providers) can not reach an agreement on a voluntary plan to tackle infringing sites. The proposed legislation would include legal incentives (such as safe-harbor provisions) for online service providers to cooperate with the copyright owners, similar to laws in place within the US.

PIRACY AWARENESS ACTIVITIES

HONG KONG: Training has been ramped up in an effort to curtail products exported from China, transhipped via Hong Kong, and directed to the global market place. In December, a training event at Hong Kong Customs & Excise focused on the frontline officers. Approximately 60 Hong Kong Customs agents got a refresher course on detecting infringing *Nintendo* products and the functionality of game copying devices.

TAIWAN: Seven public apologies published in the *United Daily News* by individuals found guilty of distributing counterfeit *Nintendo* products and game copying devices.

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Europe

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ACTIONS

BELGIUM: Nintendo collaborated with the Belgian anti-piracy organization, BAF, in an action against a seller of counterfeit *Nintendo* games. On December 20, the court sentenced the seller to four months imprisonment and to pay court fees and damages to Nintendo.

FRANCE: The market in France is being cleared of game copiers. Following the successful decision in the Divineo case, Nintendo's campaign to stop further distribution of game copiers has yielded positive results. Over 40 cease and desist letters have been sent to individuals operating websites selling the illegal devices. The majority of the sites have either closed or stopped selling the game copying devices. For those who refuse to stop, Nintendo worked with payment processors (i.e. Visa, MasterCard or PayPal) to remove the websites' ability to accept payments for game copiers. Most notably, a popular price comparison website used by consumers in Germany, Italy, France, Austria and the UK, called Buy Central, has stopped providing consumers with links to e-commerce sites that are selling game copiers.

ITALY: The Court of Milan condemned a shop owner to six months' imprisonment (suspended sentence) and ordered him to pay fines for selling game copiers and mod chips for *Nintendo Wii*, *Sony PS* and *Microsoft Xbox*. The court confirmed that circumventing technical protection measures violates the Italian Copyright Act and is subject to criminal prosecution and penalties. The latest decision is consistent with cases ruled upon in 2007 and 2010 by the Supreme Court.

ITALY: Congratulations to the Italian industry association, AESVI, for its collaboration with the Italian Fiscal Police that shut down one of the most popular peer to peer file-sharing sites, www.italianshare.net. Nintendo supported this case, via AESVI, as the site provided over 1,500 illegal *Nintendo* files available.

SPAIN: In mid-October, the Regional High Court of Vizcaya rendered an important decision concerning the liability of website operators responsible for linking to illegal content. The Spanish Court found two website operators guilty of copyright infringement for running the sites: fenixp2p.com and mp3-es.com, which provided users access to unlawful files. The fenixp2p.com site provided access to countless pirated *Nintendo* games. The two defendants were each sentenced to a one-year prison term and ordered to pay fines. This decision is a positive step in Spain combatting Internet piracy.

UK: Prolonged enforcement activity has taken two major UK websites offline, R4shopper.com and R4-r4.co.uk, which sold game copiers. The sites were operated by two Australians believed to be ordering mass quantities of game copiers from China and shipping the products to European consumers via a processing facility located in Switzerland. While the individuals responsible for the websites made themselves untraceable, Nintendo collaborated with Visa, MasterCard and PayPal and the sites were subsequently closed.

IP POLICY ACTIVITIES

ITALY: The Italian Communications Authority (AGCOM) decided to postpone the release of its Regulations aimed at curbing Internet piracy. The Regulations, which are expected to include the ability to block websites hosting illegal content, are now planned to be published by April 2012.

UK: On December 14, the UK Intellectual Property Office announced consultations aimed at modernizing UK copyright law. The initial proposals contain suggested amendments to existing copyright law based on a wide range of issues.

UK: In October, the High Court of Justice issued its landmark decision in favor of the Motion Picture Association, ordering British Telecom to block a website over piracy concerns. Following the issuance of this order, the British music industry (BPI) sought British Telecom to block the notorious Pirate Bay site. As a result of the High Court's decision, Internet Service Providers have been more cooperative and some are working more collaboratively with IP owners towards possible voluntary site blocking procedures. Nintendo is participating in these discussions through its membership in the industry association, UKIE.

PIRACY AWARENESS ACTIVITIES

GERMANY: On November 8, Nintendo issued a press release announcing it has secured 20 favorable court decisions since 2008 against game copying devices and mod chips. The announcement was intended to raise consumer awareness that German law prohibits dealing in game copying devices. The press release can be found at: ap.nintendo.com.