



### Positive Changes to Canada’s Laws Will Bolster Anti-Piracy Efforts

In May, the Government ratified two Internet copyright treaties administered by the World Intellectual Property Organization (WIPO), known as the WIPO INTERNET treaties. The treaties come into force in Canada in August 2014 and bring into effect long-delayed copyright protection provisions. The treaties also establish international copyright standards and extend protection to literary, dramatic, musical and artistic works.

Additionally, Canada’s Notice and Notice Regime will come into force in January 2015. The new program legally requires Internet intermediaries, such as ISPs and website hosts, to notify subscribers when a copyright owner sends a notice of alleged infringement. The reform has positive implications for Nintendo. Canada has been considered a “safe haven” for piracy with little risk of legal ramifications. The new provisions provide companies like Nintendo with better tools and an improved environment to pursue online infringers in Canada.

### Piracy Awareness Exhibit Debuts in Washington D.C.

The National Museum of Crime & Punishment launched a new exhibit in June called *Counterfeit Crimes: Are You Part of the Black Market?* The museum partnered with the International Anti-Counterfeiting Coalition, National Intellectual Property Rights Coordination Center, and associations including the Entertainment Software Association, to raise awareness of counterfeiting and the harms associated with piracy. ESA hosts a display addressing video game piracy featuring the mobile game app *Save the Game*, designed to teach players about piracy’s impacts

on the video game industry and how law-enforcement officers investigate and prosecute counterfeit crimes. Counterfeit *Nintendo* products are prominently displayed, educating consumers on how to detect fake Nintendo products and how to avoid purchasing infringing games and circumvention devices. The exhibit educates its approximately 500,000 visitors per year about the global scale of infringement and gives examples of US and international enforcement actions. The piracy exhibit is scheduled to run for five years.

### Nintendo Sweeps Infringing Online Pokémon Games and Recovers Domain Name

Timed in connection with the May 8<sup>th</sup> global launch announcement for *Pokémon Ruby Omega* and *Pokémon Alpha Sapphire*, Nintendo shut down infringing Pokémon games and recovered the [www.pokemonomega.com](http://www.pokemonomega.com) domain name. Nintendo was successful in removing infringing games, filled with Pokémon characters, from five different sites.

### U.S. Government Publishes Special 301 Report

The U.S. Government (USG) released its Special 301 report on April 30<sup>th</sup>, identifying countries that have not adequately protected intellectual property rights. USG agreed with Nintendo about the need for enhanced engagement in Mexico and Brazil due to high levels of counterfeiting and Internet piracy, and also agreed that China continues to have serious obstacles to the effective protection of copyrights, trademarks and patents. Nintendo also supports the USG’s plan for additional engagement

in Spain due to its continued struggle to combat Internet piracy.

### Nintendo Supports Law Enforcement Trainings in LA

Nintendo provided training at two law enforcement events in June. The Entertainment Software Association (ESA) sponsored an event during the E3 Show in L.A., attended by approximately 50 law enforcement personnel including representatives from the Federal Bureau of Investigation (FBI), local police departments and the Assistant U.S. Attorney’s Office. During the industry-led training on software piracy, agents asked great questions about Nintendo products and enforcement priorities. Nintendo encouraged agents to take circumvention device cases in the U.S. Nintendo also provided training at a brand protection conference geared toward U.S. law enforcement, attended by members of the Los Angeles County Sheriff’s Department, the Director of Intellectual Property Rights at the IPR Center, U.S. Customs and Border Protection, U.S. Department of Justice and the Federal Bureau of Investigation. International law enforcement, including representatives from Interpol, Panama Customs, Europol and the Instituto Mexicano de la Propiedad Industrial (IMPI) of Mexico, also attended.

### **Chinese Internet Anti-Piracy Program Yields Promising Results**

Six months into Nintendo's Chinese Internet monitoring and enforcement program, with Chinese vendor "Meiya Pico", the per-month volume of infringing webpages distributing illegal copies of *Pokémon X&Y* has decreased by 50%. Additionally the per-month volume of overall websites distributing pirated copies of *Pokémon X&Y* has decreased by 75%. Compliance for takedown requests on this game title was approximately 96%. For legacy game title ("ROM") websites, compliance has increased from 70% to 80% in 6 months. These compliance rates and overall effectiveness far out-pace results for U.S. and foreign issued notices. While there is room for progress in addressing ROM sites, the overall statistics show that the Chinese Internet Anti-Piracy Program has had a positive impact lessening the distribution of pirated Nintendo game files in China.

### **Monitoring Reveals Increase in Local Ads for Circumvention Devices**

Data gathered through the Chinese Internet monitoring and enforcement program has shown that more classified ad sites offering game copier devices hosted in China and targeting Chinese consumers, were created in the past 6 months than in the past several years combined. The estimated number of known ads has tripled since 2013. Among game copiers advertised for sale in these ads, the R4 and Gateway 3DS devices led the way in popularity. Both brands offer 3DS-compatible game copier devices that facilitate the play of pirated 3DS game files.

### **Nintendo Collaborates with the IACC MarketSafe Program – China**

Nintendo partners with the International Anti-Counterfeiting Coalition's (IACC) to remove unlawful products from the popular Taobao shopping site. The IACC's MarketSafe Program launched in June 2014 to help IP owners remove listings of counterfeit and pirated goods offered for sale on Taobao, a Chinese shopping site similar to eBay. Through IACC's MarketSafe online system, Nintendo is able to submit up to 3,000 listings of illegal goods for removal per month. Nintendo has been successful in removing unlawful products, suggesting that this program will have a positive impact on Nintendo's anti-piracy efforts in China.

### **Online Monitoring, Enforcement Programs in Korea Posting Positive Results**

Monthly online monitoring of illegal products indicates an increase in the volume of Korean websites offering pirated video games and circumvention devices. During the past quarter, Nintendo removed listings of at least 30 sellers attempting to distribute circumvention device on local websites, including one managed by Naver Café, a popular Korean search portal. In June, the Korean marketplace "ecplaza" ranked fifth in the top ten monitored marketplaces offering circumvention devices online. Due to Nintendo's diligent monitoring and enforcement activities over the past two months, "ecplaza" now has a 100% compliance rate in removing device listings from its site.

### **Small Parcel Customs Training – China**

In April, Nintendo participated in a training seminar focused on small parcels for Customs officials in Xiamen City, which experiences high volumes of seizures each year. Previously the main focus had been on larger shipments, however counterfeiters are finding ways to import illegal goods in smaller shipments to remain undetected. Customs' current shift in focus to include small parcel trainings is a key win for Nintendo because one of its biggest challenges is the global distribution of game copier devices, manufactured in China, and shipped in small parcels. At least 20 attendees, including Intellectual Property Rights Officers and frontline Customs officials from Xiamen's local Post Office, were given a tour of Xiamen's Parcel Inspection Workshop and shown where small parcels are examined under X-ray machines. When officials suspect that goods may be infringing, they conduct further inspection of the parcels.

### **Nintendo's First Civil Judgment against a Seller of Game Copiers in Spain**

The well-known game copier seller, Chipspain, operated a number of retail outlets throughout Spain as well as an e-commerce website ([www.chipspain.com](http://www.chipspain.com)) that sold *Nintendo DS* game copiers to consumers based inside and outside Spain. In April, the Barcelona Mercantile Court's ruling confirmed that Chipspain accepted all of Nintendo's claims against them for copyright violations. Nintendo issued a joint press release with Chipspain stating that the sale of game copiers is unlawful under the Spanish Intellectual Property Law.

### **Milan Tribunal Re-opens PC Box Proceedings**

After the Court of Justice of the EU ("ECJ") issued a preliminary ruling in response to the Milan Tribunal's request for interpretation of European law, the Milan Tribunal re-started proceedings in the PC Box case on June 6. The Tribunal ordered Nintendo and PC Box to submit evidence explaining whether Nintendo's security measures deployed on the Wii and DS are proportionate.

### **German Federal Supreme Court Withdraws Reference for Preliminary Ruling to the EU Court of Justice**

Germany's Federal Supreme Court (FSC) is currently considering two cases involving Nintendo and two German sellers of game copiers: SR Tronic and Pinapple. In 2013 the FSC asked the Court of Justice of the EU (ECJ) to clarify which European law applies to technological protection measures (TPMs) deployed by Nintendo and other rights holders to protect against the unauthorized use

of video games. To answer this question, the ECJ would need to classify video games as either computer programs or as a collection of elements including graphics and music in addition to computer programs. In order for the court to determine the appropriate law, it first had to make a determination of whether a video game is a collection of elements including graphics, music and computer programs or a computer program. In April, the ECJ responded that it had already answered this question in the PC Box preliminary ruling: that the music, graphics, computer programs and other elements of video games, if original, can be protected individually and/or together with the entire work. Based on this ECJ response, the FSC formally withdrew its reference to the ECJ in May. Proceedings in the SR Tronic and Pinapple case continue before the FSC.

### **UK Entertainment Bodies and UK ISPs Forge Deal to Combat Piracy**

In May, a leaked announcement revealed that the UK's four major ISPs have agreed to enter into a voluntary arrangement with the British Phonographic Industry (BPI), representing the British record industry, and the Motion Picture Association (MPA), representing international film producers, to send educational letters to UK internet subscribers identified as downloading pirate copies of music and films. This arrangement, known as the Voluntary Copyright Alert Program or "VCAP," seems to have full support from the UK government, with the first letters to subscribers scheduled to be sent in early 2015. The BPI/MPA will scan peer-to-peer networks looking for UK subscribers downloading pirate

music. Once identified, they will confirm each user's ISP broadband provider and will send the information to those ISPs that have signed up to the VCAP program. The ISPs will then forward letters informing subscribers that they have been identified downloading pirate content, which is an infringement of copyright. Subsequent identifications of subscribers will prompt ISPs to send further letters. VCAP has not considered sanctions for repeat infringers. Nintendo and local video game association, UKIE, are monitoring the VCAP program to determine its effectiveness, and based on the results, may seek to join the program.

### **Italy Enforces New Online Anti-Piracy Regulations**

In a speech delivered at [the International IP Summit](#) in London on June 11 Angelo Cardani, President of Italy's telecommunications regulator (AGCOM), confirmed that AGCOM had initiated over 28 proceedings against websites that offered pirated media content to Italian internet users since the new Regulations had come into force on March 31. In 13 cases, the pirated content (or links to the content) was removed, and in 8 proceedings AGCOM ordered Italian ISPs to block access to these sites by Italian internet users. Read more in the AGCOM [press release](#). Currently Nintendo is working with local games industry association to initiate a complaint to AGCOM concerning a popular website offering pirated Nintendo video games to Italian internet users.