



ACTIONS



Seizure of game copiers by Guadalajara Customs

Proactive Customs Inspectors Identify Game Copier Components in Mexico. In Guadalajara, Customs inspectors detained two shipments of electronic components from Asia, resulting in the seizure of over 1,200 game copying devices in August and September. Nintendo has trained inspectors to detect and intercept game copier components that enter Mexico for in-country assembly and distribution, a complicated process that can involve assembling the components and testing devices with a *Nintendo DS* handheld system to determine if a product is a circumvention device. One importer is a repeat offender facing criminal prosecution.

Nintendo Files U.S. Lawsuit Against HackYourConsole.com. In the ongoing fight against video game piracy, Nintendo filed a lawsuit in the Southern District of Florida against the owner of HackYourConsole.com. This site operator developed an online business selling unauthorized copies of *Nintendo* games and illegal game copying devices, as well as services to hack and modify *Wii* consoles. The site also promoted the Gateway 3DS game copier, claiming to be an “authorized U.S. distributor.” The lawsuit led to the site’s closure and secured the defendant’s cooperation against distributors of the Gateway 3DS device, the first game copier to enable the play of illegal *Nintendo 3DS* games downloaded via the Internet. The HackYourConsole.com web page, now out of service, features a formal apology to Nintendo.

A U.S. Texas Court Sentences Pirate to Educate Others. In September, the Western District Court of Texas ordered an El Paso, Texas man to create and post a video based on the consequences of piracy. The Texan also will be responsible for visiting local area high schools to educate students on the negative repercussions of violating IP rights. The business owner, who was found guilty of advertising modified *Wii* systems, and selling copies of *Wii* games and classic *Nintendo* titles via Craigslist, also has been sentenced to community service, protective observation, a future search of defendant’s property to check for compliance and will pay a fine.

For a California Man, One Arrest Isn’t Enough. Local police arrested a California man following a raid on his home that revealed he had developed a profitable business selling game copiers and counterfeit *Nintendo* games. The California businessman was selling his products at the Westfield Main Place Mall, offering R4i game copier cards with 200+ *Nintendo* games for \$145 USD. Following the raid, the man was charged with IP crimes. Unfortunately, the criminal charges weren’t enough to stop him from dealing in piracy. Within days of the initial raid and subsequent arrest, the individual decided to post six more offers to sell illegal products via Craigslist. Once again, the police arrested the man and seized his computers, additional game copiers and memory drives.

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Brazil Struggles to Pass Effective Internet Legislation. After two years of crawling through Congress, the push to pass the Marco Civil Internet Bill (which addresses fundamental rights to the Internet such as freedom of access, expression, privacy, data protection and net neutrality) is on. President Rousseff has resurrected the Bill in response to revelations that the U.S. National Security Agency had monitored Brazilian Government communications. Unfortunately, the Bill does not effectively address Internet piracy nor does it establish an enforcement regime to combat copyright infringement. Until now, opponents have blocked its passage but the President has insisted the Bill will move ahead of all other legislation.



USPTO Training in Lima

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Nintendo Teams Up with U.S. Patent and Trademark Office (USPTO) to Train Judges. In September, Nintendo collaborated with the U.S. Government IP representatives for Latin America to provide anti-piracy training and awareness on circumvention devices and Internet piracy. The training was well attended by judges throughout the region. The USPTO, the U.S. Embassy in Lima and the Peruvian Trademark Office all supported the seminar. U.S. and Peruvian Government representatives attended the training to discuss WIPO Internet treaties and the development of copyright laws in the Digital Economy.

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A Criminal Decision in China Issued Against Counterfeit Wii Disc Seller. In August 2013, the Shenzhen People's Court delivered a criminal judgment against a distributor of counterfeit *Wii* discs in Shenzhen. The criminal decision stems from a May 2013 raid carried out by Shenzhen Market Supervision Administration (MSA) at a warehouse seizing over 900 counterfeit *Wii* discs. The case was transferred to the Federal Police (Public Security Bureau or "PSB") for prosecution. The counterfeiter was found guilty of copyright crimes and sentenced to a four-month prison term and a fine.

Chinese Administrative Agencies Seize Game Copiers. Based on investigations conducted on behalf of Nintendo, three Shenzhen facilities were found to be involved in the assembly of illegal products. Acting on complaints filed by Nintendo, the administrative police raided three factories and seized over 4,300 game copiers and illegal *Nintendo* game cartridges.

Seoul Customs' Stops Online Sellers of Game Copiers in Korea. In separate matters, local courts sentenced two individuals for selling game copiers and illegal *Nintendo* software. The first defendant sold illegal product with an estimated market value of nearly \$8.5 million USD. He was fined \$28,000 USD and is currently appealing the decision. The second defendant was sentenced to one year of imprisonment for his illegal activities (the volume of product sold isn't readily available). Nintendo has seen a regional trend of local courts handing down higher fines and increased prison terms for IP violations.

Nintendo Works with Industry to Battle Internet Piracy in Korea. Nintendo has partnered with the Entertainment Software Association (ESA) to curtail the distribution of illegal *Nintendo* games on key Internet protocols (such as direct download websites, membership sites, P2P and BitTorrent). On behalf of its industry members, the ESA works with a Korean Government agency, the Copyright Protection Center (CPC), to monitor infringing content and to notify Online Service Providers (OSPs) to remove illegal game files. Of the 147 industry game titles monitored currently by the CPC, 50 are *Nintendo* titles. There is a high compliance rate for game file removal by the CPC at approximately 98%. In Q3 alone, CPC detected and issued notices for over 1,500 illegal *Nintendo* game files. During July and August, the top *Nintendo* title identified by the CPC for Nintendo was *Pokémon Black Version*. In September, *Pokémon Black Version* dropped to second, as *Elite Beat Agents* took the top spot.

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China Lifts Longtime Ban on Video Game Consoles. After imposing a video game console ban in 2000 over concerns of child welfare, China announced that foreign companies will be allowed to produce and sell video game consoles in Shanghai's new free trade zone. The September 27 announcement marks a positive step towards the possibility of broadening the domestic sales of video game consoles in China; however, the regulations imposed within the free trade zone remain pending. It appears that the approval of game content by the Ministry of Culture remains a necessary administrative step. While the announcement is a positive development for the video game industry, it is too early to determine its long-term impact.

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Taiwanese Counterfeiters Issue Public Apologies to Nintendo. As part of Nintendo's education campaign to build consumer awareness against piracy in Taiwan, Nintendo obligates counterfeiters to issue public apologies as a condition for resolving piracy-related disputes. Most often, the public apologies are issued in Taiwan's *United Daily News* (UDN), one of the three leading news publications in the country. In Q3 alone, counterfeiters issued six public apologies to Nintendo via the UDN.

Crack-down on Piracy Leads to Positive Charitable Donations in Taiwan. Nintendo was honored with an appreciation plaque from the Cathwel Service in Taiwan, an organization devoted to protecting and assisting women and children in need. Cathwel offers life-changing resources and guidance for expectant women, new mothers and their children, as well as students in need of school tuition. In the midst of settling criminal anti-piracy actions, Nintendo occasionally has the opportunity to ask that the defendant(s) donate money to a charity. Nintendo has requested donations be made to the Cathwel Service in Taiwan, due to the role it plays in supporting local families. Nintendo feels fortunate to play a positive role in helping Cathwel Service while curtailing piracy in Taiwan.

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The Advocate General (AG) of the *European Court of Justice* Issues Favorable Opinion. In 2008, Nintendo filed a legal action before the Tribunal of First Instance in Milan against an importer and distributor (PC Box) of game copier devices. In 2012, the Milan Tribunal deferred its final decision and sought guidance from the European Court of Justice on whether the technological protection measures (TPMs) used by Nintendo in its hardware and software products are compliant with EU copyright law. In a positive opinion issued on September 19th, AG Sharpston recognized the importance of deploying security measures to prevent piracy and confirmed Nintendo's use of TPMs are consistent with EU copyright law. The final decision by the European Court of Justice is expected in 2014.

Nintendo Collaborates with the *Belgian Anti-Piracy Federation (BAF)* Against 3DS Game Copiers. Nintendo applauds the work underway by the Belgian video game industry association, BAF, for its activities to curtail the marketing of 3DS game copiers. Since the release of the Gateway 3DS device (August 2013), BAF has removed over 70 YouTube infringing tutorials posted by consumers and distributors related to the use of the circumvention devices. Prior to removal, the videos were available in a number of different languages, including Dutch, French, German, Italian, Spanish and English.

Italian Police Take Action Against Internet Piracy. The Italian Financial Police (*Guardia di Finanza*) closed four popular websites in August due to piracy. The move followed a complaint initiated by the Italian video game industry association (AESVI) in conjunction with the local recording industry association (FPM). AESVI targeted the sites for offering pirated video games, including copies of *Nintendo* titles, and provided technical support in the subsequent enforcement raids. Those actions led to the arrest of administrators for three of the sites. As the fourth targeted website was hosted on Internet servers located outside of Italy, the authorities ordered all the major Italian ISPs to block Italian users from accessing the site.

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New Internet Regulations Proposed in *Italy*. In July, the Italian Telecoms Authority (AGCOM) proposed new regulations that include an administrative procedure aimed at tackling Internet piracy. The new system outlines a notice and takedown procedure, along with the potential for Italian ISPs to block pirate websites hosted outside of Italy. AGCOM posted the draft regulations online and set a 60-day period for submitting feedback, with the intention of enacting the regulations in early 2014. Nintendo collaborated with its local video game industry association (AESVI) and the cross-industry association, *Confindustria Cultura*, to provide its observations on the proposed regulations.

Progress in *Spain* to Secure a New Criminal Law. In September, the Spanish Council of Ministers approved a key draft bill set to reform the Penal Code. The bill amends current criminal provisions relating to the sale of devices that circumvent technological protection measures (TPMs), and introduces linking to copyright-infringing material as a new offense. If enacted in 2014, as planned, these changes will bring Spain in line with the law governing the protection of TPMs in other EU Member States. Prior to the draft becoming law, the Spanish Parliament will review it before it advances to the Senate. Once enacted, this law could serve as a positive step forward in Nintendo's battle against both hardware and software piracy in Spain.

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Nintendo Conducts Key Anti-Piracy Training in *France*. In September, Nintendo held a training session with one of France's most popular online marketplaces, Priceminister. Nintendo provided an overview of Nintendo's piracy program, along with instructions on how best to detect infringing *Nintendo* products, to staff members responsible for identifying and removing unlawful products from the Princeminister site.

Nintendo Trains *Spanish* Customs Authorities. On September 26, Nintendo provided training to approximately 150 Spanish Customs officers based in Valencia, Spain. Nintendo partnered with its local customs representatives, SNB React, to educate the authorities on game copier devices and their facilitation of Internet piracy in Spain.