



# QUARTERLY ANTI-PIRACY SNAPSHOT

## Global

Q3: July – September 2010

### SIGNIFICANT GLOBAL CASES/ACTIONS

**Global:** There have been criminal convictions and / or favorable civil court rulings issued in: Belgium, France, Germany, Hong Kong, Italy, Japan, Korea, Netherlands, Singapore, Spain, Taiwan, the U.K. and the U.S. against the distribution of circumvention devices.

**China:** Nintendo continues its pursuit against the manufacturing of game copiers in China. In August, Nintendo obtained a Judicial Appraisal Report from the Beijing Intellectual Property Judicial Appraisal Center confirming game copiers violate Nintendo's intellectual property rights. The Appraisal Report is key to successful actions against those producing game copiers in China.

**Paraguay:** Authorities conducted a raid against an operation in Ciudad del Este responsible for modifying Wii hardware. The seizure yielded hundreds of mod chips, pirated game discs and modified consoles. Multiple locations were raided including a lab, affiliated warehouses and storage facilities. Based on local investigations, 99% of the infringing products involved in the operation were destined for Brazil.

**Spain:** On September 10, Nintendo received its first favorable criminal decision against game copiers in Spain. The decision is based on a 2009 customs seizure conducted in Majorca and a subsequent police investigation against a company involved in importing hundreds of game copiers from China. This is a significant decision in Spain as a criminal court has deemed those involved in importing and distributing game copier devices can be criminally penalized.

**U.K.:** On July 28, Nintendo won a landmark decision at London's High Court against one of the largest companies involved in importing and distributing game copiers in the U.K. The Court confirmed that importing, advertising, and selling game copiers in the U.K. is illegal because the devices circumvent the security embedded within the *Nintendo* DS system. This is the first-ever civil judgment in the U.K. against game copying devices. The Court rejected arguments that the devices are lawful because they allow for the play of "homebrew" applications.

**U.S.:** The FBI obtained a search warrant and raided a California business engaged in distributing infringing video game software and for modifying hardware. The business owner utilized "Craigslis," a popular online classified advertising service, and other online message boards, to offer modified hardware systems combined with up to 500 copied Wii games (stored on an external hard drive) for \$50 USD.



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## Asia-Pacific

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### ACTIONS

**China:** During the initial nine months of 2010, there have been 139 seizure actions conducted and over 320,000 illegal *Nintendo* products seized. This is an increase of approximately 46% of the number of products seized in China compared to the same time period last year. During the first nine months of 2009, there were 97 actions and 172,000 products seized.

**China:** During Q3, there were three penalty decisions imposed on individuals involved in the distribution of game copiers, counterfeit Wii discs and copied *Nintendo DS* software by

Shenzhen MSA, Futian Branch. The cases involved confiscation of over 1,400 game copiers and 1,000 counterfeit *Nintendo* products.

**Korea:** In July, the Ministry of Culture, Sports & Tourism (MCTS) pursued a dozen online retailers distributing significant quantities of game copying devices and illegal *Nintendo* games. The MCST conducted raids and over 13,000 circumvention devices, illegal software and products were confiscated. There were 17 individuals charged with violations under Korea's Copyright Act and the cases have been transferred to the prosecutors' office for further action. MCTS reports the value of the products seized is 33 billion Korean Won (\$29,686,937 USD).

**Singapore:** A Singapore court convicted the owner of a prominent trading company and sentenced him to nine months in prison for selling game copiers, modified consoles and pirated *Nintendo* games. The court convicted the individual on fifteen charges, including copyright, trademark and circumvention offenses.

**Taiwan:** Nintendo participated in 22 actions in Taiwan during Q3. Over 71,000 illegal Nintendo products were seized by either the police or customs during the past three months. The largest action was conducted by the police, who confiscated approximately 63,000 counterfeit Wii discs. Also during the quarter, Nintendo received ten favorable written decisions from various Taiwanese district courts and 14 defendants were found guilty of violating Nintendo's IP rights.

### IP POLICY ACTIVITIES

**China:** On July 2, representatives of the U.S. International Trade Commission (ITC) visited NOA seeking information on copyright violations underway in China in support of two studies requested by a U.S. Congressional Committee. The ITC will spend several months investigating how China's policies favoring home-grown or "indigenous" innovation can have a negative effect on companies attempting to do business in China.

**Korea:** On August 18, a draft amendment to the "Electronic Telecommunications Commerce Act" was submitted for review to the National Assembly. The purpose of the draft amendment appears to require Online Service Providers (OSP) to register as a business with the Broadcasting and Telecommunications Commission ("BTC"). At present, OSPs simply need to record their business with the BTC, a simple procedure that requires little verification. Because the procedures are so simple, an OSP can close down its business and record a new business easily. If the new "registration" requirement is adopted, it will give the BTC more control over OSPs, including powers to sanction and cancel licenses to operate an on-line service.

### PIRACY AWARENESS/TRAINING

**China:** On August 6, Nintendo representatives conducted training for 35 officials from Guiyang Customs teaching them how to identify illegal *Nintendo* products and circumvention devices.

**Korea:** On July 15, the Ministry of Culture, Sports & Tourism (MCTS) issued a press release announcing its multi-agency investigation and actions against illegal *Nintendo* games and circumvention devices. The investigation was the first of its kind as it involved officials from the Copyright Policy, Prosecutors' Office and obtained the cooperation of the Korea Communications Standards Commission (KCSC) to block the websites selling the illegal products. The MCTS announced its plan to expand its investigations and to continue working with KCSC to remove access to websites distributing unlawful goods.

**Taiwan:** On July 2, Jintai TV Game Wholesaler issued a public apology in the *United Daily News* for violating Nintendo's IP rights by distributing counterfeit *Nintendo* games, game copiers and modified Wii consoles.



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## Europe

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### ACTIONS

**Belgium:** On September 14, the 10<sup>th</sup> chamber of Correctional Court of Charleroi convicted a seller of game copying devices to a one year prison sentence and a fine of €1,000. This action, coordinated by the Belgium anti-piracy association (BAF), stems from a seizure of R4 devices in 2009. This is the first criminal conviction in Belgium involving game copiers. The defendant was arrested immediately and spent several days in prison until he filed an appeal.

**Jersey:** Acting upon Nintendo's demands, one of the largest known online supplier of game copiers was forced to stop selling game copiers and forfeit hundreds of website domain names to Nintendo. While the websites had a global reach, they mainly targeted consumers located in Belgium, France, Germany, Italy, the Netherlands, Spain and the U.K.

**Netherlands:** On July 21, The Hague District Court awarded victory to Nintendo and agreed with its claims that ten online retailers ("Webshops") had acted unlawfully by importing and selling game copiers for the *Nintendo* DS and mod chips for the Wii. The Dutch court confirmed that the devices circumvent Nintendo's technical measures designed to prevent software piracy. The court further rejected the Webshops defense that Nintendo engaged in acts of unfair competition.

**U.K.:** On August 23, a defendant was sentenced at Cardiff Crown Court to twelve weeks imprisonment for a series of charges, including the sale of game copiers. The defendant entered a guilty plea as a direct result of the recent High Court ruling against game copiers. The defendant had previously pleaded not guilty.

### IP POLICY ACTIVITIES

**EU and ACTA:** On September 1, ISFE (the European industry association), met with European negotiators regarding the Anti-Counterfeiting Trade Agreement (ACTA) after learning that the EU officials would not agree to levels of protection for technological protection measures (TPMs) already provided for in the EU Copyright Directive. The EU officials agreed to raise the industry's issues during the final round of ACTA negotiations held in Tokyo. On September 8, on behalf of the industry, ISFE followed up with correspondence to the senior officials who were opposed to more specific TPMs provisions in ACTA. ACTA participants include Australia, Canada, the EU, Japan, Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the U.S.

**EU:** In September, members of the European Parliament voted in favor of the European Commission to draft new legislation that will impose criminal sanctions across the EU against Internet users violating copyrights. The European Parliament agrees that there needs to be more coordination and tighter legislation for the protection of copyrighted material online.

**Spain:** After amendments to cancel the whole bill were defeated, the "Economic Sustainability Bill (SEB)" was finally introduced to the Spanish Parliament on September 23. The SEB, which could grant the Spanish Government the authority to block websites containing infringing content, is now expected to be passed by the end of the year. Nintendo is a member of the Spanish National Association of Software Distributors and Developers (ADESE) who is considering proposals from several lobbyists to assist with the future implementation of the bill.

### PIRACY AWARENESS/TRAINING

**France:** On September 28, the Hadopi Rights Protection Committee issued a press release announcing the contents of the warning e-mails it intends on issuing to those who are making available, reproducing or providing access to works protected by copyright. The press release also announced the launching of the Hadopi website to gain more information about the graduated response program: [www.hadopi.fr](http://www.hadopi.fr). The press release received broad coverage.

**Germany:** Nintendo was invited to participate in a training held on July 7 by the Customs office in Muenster. Nintendo provided hands-on training to the officials on how to detect circumvention devices and counterfeit *Nintendo* products.

**Portugal:** During September, Nintendo participated in various IP trainings in four locations, including Lisbon and Porto.

**U.K.:** On July 28, Nintendo gained wide-spread media coverage based on its press announcement of the High Court's decision against game copying devices as the media issued numerous stories in favor of the Court's ruling. The press release can be found at: <http://ap.nintendo.com>.



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## The Americas

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### ACTIONS

**Brazil:** Acting on Nintendo's demands, a local shop in Brasilia distributing game copying devices has stopped and has removed all advertisements of the infringing products from the store. Nintendo has identified similar targets and has filed its complaint with the police authorities. Raids have been delayed due to the elections in Brazil. Meanwhile, Nintendo continues to routinely remove offers for the sale of game copiers on the popular Mercado Libre trade board.

**Canada:** In September, the Royal Canadian Mounted Police issued search warrants against a Richmond business for distributing pirated video games at Parker Place Mall. The raid resulted in the arrest of the shop's owner. The investigation was launched in April 2010 after authorities learned the business was involved in distributing burn-to-order copies of *Nintendo DS* and *Wii* games.

**Chile:** Nintendo supported two criminal cases against local piracy operations in Santiago. The first was an action against an online shop that was selling modified *Wii* consoles along with pre-loaded *Wii* games. Three individuals were arrested. The other case targeted two locations used by a local piracy group to burn and produce counterfeit video game products intended for distribution at Santiago Eurocentro Mall. Eight people were arrested. It's estimated that the operators produced more than 2,000 counterfeit video games daily for *Wii* and *Playstation*.

**Mexico:** In August, over 100 federal officers raided vendors located in the popular Bazar Pericoapa market in Mexico City, confiscating hundreds of counterfeit video game products. Previously, owners of the Pericoapa market had negotiated with government officials, claiming their market would be cleaned-up if they did not conduct raids. The industry is pleased that the authorities took the appropriate action and proceeded against the piracy problem in this notorious pirate market.

### IP POLICY ACTIVITIES

**Brazil:** On August 20, a Nintendo representative joined a delegation to meet with the National Council to Combat Piracy and Intellectual Property Crimes (CNCP) and the Secretary Assistant of the Finance Ministry regarding the high taxes and tariffs applied to both video game hardware and software products. The high taxes and tariffs continue to serve as a market barrier for the sale of authentic products, along with facilitating consumer demand for low cost pirated products.

**U.S.:** A bill was introduced by the Senate to address so-called "rogue websites." These are Internet sites dedicated to infringing activities as defined by the "Combating Online Infringement and Counterfeits Act" that was introduced on September 20, 2010. The Act is receiving broad support by both Democrats and Republicans. If enacted, this new enforcement tool would be able to take those Internet sites (qualifying under the definition of the Act) offline or at least disrupt their access to the U.S. market, help to prevent their re-emergence and cut them off from the supportive services and revenue stream they need to survive.

### PIRACY AWARENESS/TRAINING

**Mexico:** ESA and the Mexican Ministry of Education launched an IP education campaign titled "Mexico Wins with the Original." The campaign is geared toward students in grades 3-6. Posters were distributed in over 3,000 schools and a website was launched to promote the campaign. A student essay contest is part of the campaign supported in part by a local TV station.

**Paraguay:** Training was provided to Paraguayan authorities with an emphasis on mod chips for *Nintendo's* hardware and game copying devices for the *Nintendo DS*. This training was in response to Nintendo's 2010 Special 301 filing identifying a lack of effectiveness by Paraguayan Customs and specific enforcement units established under "Plan Umbral" to combat piracy.

**Peru:** In September, Nintendo participated in an IP training seminar for Custom officials, prosecutors, police officers and Peruvian Trademark and Copyright Office specialists. The training coincides with the new Peruvian regulations approved in 2010 that now allow intellectual property rights holders to register trademarks and copyrights with Customs.

**U.S.:** Since the launch of the ESA's intellectual property (IP) education program in 2005, more than 11 million students in grades K-5 are estimated to have had access to the association's free "Join the ©Team!" IP education curriculum. To further expand the reach, 20,000 curriculum mailers were sent to an expanded audience of educators across the country.