



SIGNIFICANT GLOBAL CASES/ACTIONS

Brazil: Fifteen people were arrested and more than 6,000 pirated video games, including Nintendo games, were seized by a specialized police unit called the Bureau of Suppression of Crimes. The illegal games were confiscated from a retail storage facility in Recife Pernambuco (Northeast region of Brazil). The Bureau chief announced that the distributors could face one to four years imprisonment.

Germany: In January, Nintendo won its first Court of Appeals case in Germany. The Munich Court of Appeals ruled in favor of Nintendo, dismissing an appeal filed by a company called Pinapple, who disagreed with an injunction previously issued against them ordering them to stop their sales of game copying devices. The Court confirmed that game copiers distributed in Germany are illegal as they violate technical protection laws.

Hong Kong: In late March, Hong Kong Customs raided 10 shops offering modified Wii consoles as part of a one day sweep. Seven people were arrested for selling the modified Wii consoles.

Spain: On March 1, In Las Palmas, an appeal court issued a negative decision relating to Sony mod chips. The appeal was coordinated by the local industry association, ADESE, and was dismissed, citing that mod chips are used for other non-infringing purposes. The requirement under Spanish law that mod chips must be used for exclusive or specific purposes was not met.

U.S.: On February 18th, Nintendo submitted comments to the United States Trade Representative (USTR) on countries that fail to adequately protect intellectual property rights, in accordance with the trade action known as “Special 301”. Nintendo provided detailed comments on the following countries: Brazil, China, Mexico, Paraguay and Spain. Nintendo’s Special 301 submission can be reviewed at: <http://ap.nintendo.com>.



QUARTERLY ANTI-PIRACY SNAPSHOT

Asia-Pacific

Q1: January – March 2010

ACTIONS

Australia: Over 30 cease and desist letters were sent to sellers of game copiers immediately after Nintendo issued press releases announcing Nintendo's actions against game copiers and Internet piracy. Notably, the compliance rate of the cease and desist letters increased to 60%, compared to the 2% compliance rate prior to the press releases.

China: In Q1, there were almost 50 administrative and/or customs seizures involving illegal Nintendo products in China. On January 28th, the Futian Administrative Agency (AIC) seized over 7,000 game copiers (R4, R4 Gold) from a distributor located in Shenzhen, Guangdong. In addition, on March 12th, the Copyright Bureau of Guangzhou Municipality officers seized almost 16,000 counterfeit Wii discs from a warehouse located in Liwan District of Guangzhou.

Korea: An Internet seller of game copiers has appealed his case to the Supreme Court in Korea. In December, the seller was found guilty and was ordered to pay a criminal fine of 10,000,000 Korean Won (approximately \$9,000 USD) by the Seoul Central District Court. The seller's appeal to the High Court was dismissed, confirming that game copiers are illegal in Korea. On March 23rd, the seller appealed his case to the Supreme Court and the matter remains pending.

Taiwan: Two significant court cases were finalized. The Banchiao District Court rejected an appeal filed by an individual who was found guilty of distributing mod chips, modified Wii consoles and illegal copies of Wii games. The individual received a punishment of six months imprisonment. This is the first court decision confirmed on appeal that it is a violation of the Copyright Act to modify Wii consoles. In the second decision of the quarter, a criminal court ruled against a distributor of counterfeit Wii discs. Over 300 counterfeit Wii games were seized, and the distributor was sentenced to six months imprisonment.

IP POLICY ACTIVITIES

Korea: Nintendo is participating with industry members to take advantage of the graduated response/3 strikes law. Once illegal game software is identified by the online monitoring service, it notifies the Korean Copyright Commission (KCC), the government agency responsible for verifying the infringement and notifying the Internet service provider. The KCC refers information on individuals receiving multiple notices to the Ministry of Culture, Sports and Tourism (MCST), the agency responsible for seeking the suspension of the users' Internet access following the 3 strikes.

Taiwan: Although the copyright law was amended in April 2009 to include provisions adopting a type of Internet graduated response program, regulations have not been implemented on how the program will operate. Nintendo, and all other IP owners, are awaiting the implementing regulations before anyone is able to take advantage of the new Internet law.

PIRACY AWARENESS/TRAINING

Australia: In Q1, Nintendo issued three press releases announcing its actions against an online distributor of game copying devices, the first uploader of the *NSMB Wii* game and applauding Australian Customs for seizing game copying devices (press releases are available at <http://ap.nintendo.com>).



QUARTERLY ANTI-PIRACY SNAPSHOT

Europe

Q1: January – March 2010

ACTIONS

France: In February, a Paris criminal court dismissed a criminal action brought by the state Prosecutor against a (small-time) seller of game copying devices (Farinas). The case was pending before the same court and decided by the same judge that in December ruled against the Prosecution in the Divineo criminal proceedings. The French Prosecutor's office will not appeal the decision as they will focus on the appeal filed in the Divineo case.

Germany: In March, the District Court of Hamburg granted Nintendo's request for a preliminary injunction against the operators of the website elektro-uni.de. The Hamburg Court issued the preliminary injunction for violating Nintendo's copyrights, trademarks and for breaching unfair competition laws. Nintendo has obtained over 20 favorable court rulings in Germany against sellers of game copying devices.

Italy: Nintendo filed a civil action in the Court of Rome against an Italian website distributing game copiers. The first hearing date is expected to take place in May.

Spain: A Barcelona court issued an unfavorable ruling for IP owners attempting to pursue sites (i.e. linking sites) that link to unauthorized content being shared using P2P software. The case was initiated by SGAE (Sociedad General de Autores y Editores), which is the main Spanish collecting society. The proceedings were brought against the site operator for making copies of copyrighted works available to the public. The site operator argued that he was not liable for copyright violations as the website did not host the unauthorized content, made no commercial profits and provided links to content. The judge agreed with the website operator and dismissed the claim.

UK: In March, a seller who was involved in distributing illegal Nintendo software was ordered by the Crown Court in Leeds to pay £123,380 (\$188,108) following a Proceeds of Crime Investigation led by the West Yorkshire Trading Standards Service in partnership with West Yorkshire Police. Nintendo's interests were represented by ELSPA. The defendant had previously been sentenced in February 2009 to a 12 week prison sentence, suspended for 12 months and 200 hours community service.

IP POLICY ACTIVITIES

France: The French games industry association, SELL, is continuing to work on implementation of the "Hadopi" graduated response law, which likely will be operational by October. Outstanding issues include which online monitoring vendor to work with, privacy concerns and evidentiary requirements, as well as funding.

Italy: The Italian industry association, AESVI, has been working with the Italian Communications Regulatory Authority (AGCOM). AGCOM is interested in learning about the industry and has expressed its interest in how legislation can improve IP protection on the Internet.

Spain: Nintendo is strongly supporting the Economic Sustainability Bill, that if passed (possibly after the Summer), would grant the Government the authority to block infringing websites.

PIRACY AWARENESS/TRAINING

EU General: In January, Nintendo organized a game copier training day for key European outside counsel held in London. The day was split into two sections covering technical and legal analysis. Members of Nintendo's anti-piracy team and one of its technical experts (presenting technical information) worked closely with counsel from Belgium, France, Germany, Italy, Netherlands, Spain and the U.K.

Spain: The Spanish industry association, FAP, worked with police to train them on detecting illegal video game products, including Nintendo products. In January, the local police of Altafulla, Catalonia were trained. The Urban Guards of Tarragona, Catalonia were trained in February. In March, FAP worked with the National Police of Sabadell, Catalonia.



QUARTERLY ANTI-PIRACY SNAPSHOT

The Americas

Q1: January – March 2010

ACTIONS

Brazil: A technology expert for the Institute of Forensic Science in São Paulo tested an R4 device seized by local police and provided an expert report stating that the game copying device violates Brazilian law. This expert report will assist Nintendo in its enforcement efforts against game copiers in Brazil.

Latin America: Mercado Libre, the popular online auction service in Latin America, has reportedly received resistance and legal threats from multiple game copier sellers after their listings were terminated by Nintendo's monitoring vendor.

Mexico: In Q1, Mexican Customs conducted their first seizures of game copiers. Two shipments containing hundreds of R4 and DSTT game copying devices were seized by authorities in Guadalajara.

U.S.: During Q1, there were over 30 seizures of illegal Nintendo products by U.S. Customs authorities. The majority of the seizures were conducted by the Port of San Francisco authorities, stopping products originating from China.

U.S.: Nintendo's internet monitoring has been effective in identifying the top targets offering game copiers via online auctions and trade-boards. In Q1 alone, over 4,000 notices were sent to those offering the illegal devices. Based on the notices sent, there was an average of 96% compliance.

IP POLICY ACTIVITIES

Canada: The Canadian Government is seeking input on its digital strategy. As part of the government's review, Nintendo is participating, via the local industry association, in an effort to educate government officials on key areas of importance to the industry, including how to effectively combat Internet piracy.

Mexico: In March, a proposed law was introduced to grant "ex officio" authority to prosecutors under Mexico's Criminal Code. This will give Mexican prosecutors the authority to conduct anti-piracy actions on their own, without the involvement of IP owners. The bill is unlikely to face opposition and should successfully become a law.

U.S.: Under the current U.S. Customs regulations, Nintendo is not notified when a seizure of circumvention devices is conducted. Nintendo is continuing its efforts with Congress and U.S. Customs and Border Patrol to have Customs granted clear authority to disclose to rights holders information related to the seizure of circumvention devices (to include: importer/exporter and contact information).

PIRACY AWARENESS/TRAINING

Brazil: On March 24, the Brazilian association, ABES, conducted a training session for several dozen law enforcement officials in Fortaleza, in the northern region of the country. The training was focused on detecting counterfeit entertainment software (including Wii and DS software), as well as on circumvention devices (mod chips and game copiers).

Canada/US: During Q1, 12 trainings were conducted for various local law enforcement and federal agencies providing guidance on identifying counterfeit Nintendo products and how circumvention devices are illegal under the Digital Millennium Copyright Law.

Mexico: Two different industry training sessions were held in Southern Mexico in March. Guatemalan border agents were trained for the first time on detecting counterfeit video game products. As a result of the training, Mexican/Guatemalan border authorities have agreed to collaborate and share more information at the border.

Mexico: Industry meetings took place with the Mexican Copyright Office and Ministry of Education to focus on the industry's IP education project. The Ministry of Education offered their support for the campaign and is prepared to facilitate the distribution of the campaign's materials in Mexico City elementary schools with the possibility of expansion to other cities. The program is anticipated to start in the Fall of 2010.

U.S.: The ESA is working with the Copyright Alliance Foundation on its "Think First Copy Later" program. The program is focused on educating students from K-12 on understanding copyrights. The program has been very well received by teachers/educators during its first year of distribution. The Copyright Alliance Foundation plans to expand and reach out schools in 2010.