



Q3: July - September 2016

Major Illegal file-Sharing Site Removed by U.S. Authorities – Site Operator Arrested. In July, U.S. federal authorities charged the owner of a notorious illegal file-sharing website with criminal copyright infringement and seized related domains and a bank account. The website, Kickass Torrents (or KAT), was one of the most visited sites of its kind in the world, running in approximately 28 languages and operating on a network of global servers including one based in the U.S. The operator unlawfully distributed *Nintendo* copyrighted content including over 800 titles for platforms such as *NES*, *SNES*, *Nintendo DS*, *Wii* and *Nintendo 3DS* games, which allowed users to download an estimated 138,000 files since 2008. Nintendo supported criminal actions through the industry association, the Entertainment Software Association (ESA), working on behalf of multiple video game companies.

Read more:

<https://www.justice.gov/opa/pr/us-authorities-charge-owner-most-visited-illegal-file-sharing-website-copyright-infringement>.

German Higher Court Issues Landmark Decision. The Munich Court of Appeals affirmed that the importation and distribution of game copying devices is illegal in Germany and found both the offending company and executives liable for the offenses. The ruling established that the security measures deployed by Nintendo to protect against piracy are proportionate and trafficking of circumvention devices is illegal under German law. The court awarded a significant damage award to Nintendo as a result of the ruling.

UK Counterfeiting Ring Taken Down. Nintendo assisted UK police and prosecutors in a trial involving multiple defendants accused of theft, counterfeiting and money laundering. Following a four-year investigation, police uncovered a sophisticated and organized enterprise that sold stolen electronic items, including counterfeit *Nintendo DS* consoles and game controllers. Approximately £1.25 million in illegal proceeds was laundered through PayPal accounts used by the defendants. The judge sentenced the two ring leaders of the gang to nine years in prison. This case shows first-hand the links between counterfeiting and organized crime. **Read more:**

<http://www.halifaxcourier.co.uk/news/duo-jailed-after-laundering-1-25m-and-stored-an-aladdin-s-cave-of-stolen-and-fake-goods-1-8078888>.

Europe's Highest Court Rules that Linking to Pirated Content is Unlawful. Europe's highest court (Court of Justice of the European Union or "CJEU") provided guidance on the legal question of whether the posting of links to third party platforms of unauthorized copies of copyrighted works (without the consent of the copyright owner) is unlawful. The underlying case involved the posting of links of photographs stored on a third-party online platform without the authorization of the copyright owner. The copyright owner submitted numerous request to remove the photos to the online platform, all of which were ignored. The CJEU ruled that where it is established that a person knew or ought to have known that it was providing access to a work that had been unlawfully published, such an activity would constitute an act of communication to the public and thus deemed an infringement of the underlying copyright. This case will have a positive impact for rights holders such as Nintendo who face considerable challenges in combatting the online distribution of pirated content via various third party platforms (including websites that provide links to such content - so-called "cyberlinkers"). It should also reinforce the grounds for administrative authorities like the AGCOM (Italian Telecommunications Regulator), IGAC (the inspection body attached to the Portuguese Ministry of Culture) and the Spanish Intellectual Property Commission to obtain injunctions against local Internet Service Providers that block local users' access to such cyberlinkers.

China. In July, the Beijing Administration for Industry and Commerce (AIC) successfully carried out a raid against a shop offering counterfeit *amiibo* cards and figures. Over 200 products were seized and the seller received a fine of RMB 15,000 yuan (approximately USD \$2,200).