



Guadalajara Raids Yield Thousands of Counterfeit Products

Criminal authorities conducted a large-scale raid of more than 30 vendors selling pirated video games at Guadalajara's *San Juan de Dios* market. They seized approximately 7,000 counterfeit video game products, including *Wii* and *Nintendo DS* software along with hundreds of game copying devices, as well as multiple computers and CD burners used for pre-loading and burning video game software. The January action marked Mexico's first significant criminal raid in many months, due to a lack of police resources and competing enforcement priorities.



1,000 Game Copiers Seized by Guadalajara Customs

Nintendo Participates in Significant Mexico City Training

Nintendo participated in a large anti-piracy training event in Mexico City for over 100 attendees including key members of the Mexican Association for the Protection of the Industrial Property (AMPPI), General Manager of Mexico Customs Administration (AGA), Attorney General of the Unit Specialized in the Investigation of Crimes against Copyright and Intellectual Property of the Attorney General's Office (UEIDAPPI/PGR), and the Mexican Institute of Industrial Property (IMPI). Authorities were trained on *Nintendo* video game products and the identification and operation of circumvention devices. Mexican authorities shared information related to border seizure cases including the ability to seize goods intended for other countries, which is important to Nintendo since counterfeit goods tend to flow through Latin American countries with lax enforcement and border controls. Authorities from the Global Intellectual Property Strategy Center and the Economic and Trade Section of the European Union and Mexican judges also shared enforcement expertise.



Game Copiers Seized in Mercado San Juan de Dios, Guadalajara

Guadalajara Customs Seizes Game Copiers Arriving from Hong Kong

In February, a significant Guadalajara Customs seizure yielded over 1,000 game copier components arriving from Hong Kong. The products were shipped in components to avoid detection by inspectors and with the intention of assembling the finished devices in Mexico. The importer, a known seller of game copier devices in Mexico, is under investigation. The importer has been identified as a top seller of the devices on the online marketplace *Mercado Libre* and has a shop in Sonora.

Nintendo Holds IP-Related Discussions with Embassy Officials for Brazil and Mexico

As follow-up to Nintendo's Special 301 submission to the United States Trade Representative (USTR), Nintendo representatives held very productive meetings with IPR attachés and embassy officials for Brazil and Mexico to initiate dialogue and share information on piracy and anti-circumvention matters now and in the future. Nintendo developed key contacts, highlighted areas of importance and offered recommendations for improvements in the scope of Internet piracy intellectual property rights enforcement, and specific anti-circumvention provisions in copyright law amendments.

U.S. Government Officials Invite Nintendo to Costa Rica Training Event

Nintendo received a formal invitation from the U.S. Government to participate in a global Customs training event in Costa Rica. Customs, local law enforcement and government agencies from multiple countries – including the U.S., Panama and Mexico – along with custom IPR experts from the World Customs Organization attended the event. Organized by the United States Patent & Trademark Office (USPTO) and the Department of Justice (DOJ), the seminar's main goal was to build regional cooperation, share expertise and identify ways to improve the seizure of counterfeit goods that are temporarily detained "in-transit" in one country before they reach the final country destination. Nintendo and other rights holders shared tips for identifying counterfeit products and raised awareness of game copying devices among customs agents and law enforcement personnel.

New Year Brings Major Legal, Procedural Changes in Taiwan

January marked a significant shift in Taiwan's IPR enforcement landscape. A structural reorganization of the IPR Police merged local divisions into three "Criminal Investigation" units and greatly reduced the number of officers. Congress also cut all bonuses for IPR officers and dissolved the "point system," which earned officers bonuses based on points obtained relative to estimated value of product seized during actions/raids. These changes led to a sharp decline for Nintendo in new IPR Police actions, though it remains unclear whether it resulted from police force reduction, bonus system removal, or both. We continue to monitor the situation closely.

Nintendo Leverages Alternative Enforcement Approach for Smartphone Game Titles in Korea

Nintendo took advantage of an efficient "abuse" process offered to brand owners and removed files on popular Korean portal sites (such as Naver and Daum) that allow individuals to download applications and files that facilitate *Animal Crossing* play on smartphones. With counsel's assistance, Nintendo proved copyright ownership and provided acceptable evidence to remove the infringing links.

Improved Monitoring Reveals Internet Piracy Trends in China

In Q4, Nintendo implemented a new Internet piracy monitoring service, strategically based in China and delivered by two Chinese-owned corporations. The new system already has uncovered intriguing piracy data tracked during Q1. Over 75% of pirated *Nintendo* games Originate on Chinese-hosted servers;

and Direct Download (DDL) Cyberlockers were the most popular method for accessing games. *Nintendo's* legacy game titles are in high demand, with more than 300 websites and 170,000 files found, and over 140,000 files removed. The original NES was the most pirated legacy platform, with nearly as many files available as other legacy platforms combined (SNES, N64, GB, GBC, GBA). Over 200 websites, primarily classified ad sites previously undetectable by vendors outside of China, offered game copiers directly (often bundled with a *Nintendo DS* or *Nintendo 3DS* console), Gateway 3DS (32%) and R4 (20%) accounted for over half of the market share.

Nintendo Scores Brand-Protection Victory in China

Nintendo strengthened its brand by successfully enforcing its intellectual property rights over a high-end video game club in China. The club illegally used *Nintendo* logos and characters across its three locations in the cities of Guilin (a highly trafficked tourist destination), Liuzhou, and Nanning, in prizes, signage, and entity name. After communications, the owner agreed to amend the signage, logos, and English company name. Counsel confirmed the implemented revisions at each location, including removing Mario from the signboard below:

Before



After



Nintendo Participates in Rare Customs Trainings in Key Markets in Australia

In March, Nintendo participated in three Customs training sessions in Sydney, Brisbane, and Melbourne. As invitations are rare, Nintendo of Australia (NAL) and local counsel seized the opportunity to share samples of genuine and counterfeit *Nintendo* products with Customs officers to help them recognize the differences. Nintendo communicated its anti-piracy priorities and trained the authorities on the IP infringement aspects of pursuing game copiers, including the use of *Nintendo's* trademarks.

Europe's Highest Court Provides Guidance on Copyright Protection of Security Measures

In January, the Court of Justice of the European Union (CJEU) published its preliminary ruling on how national Courts in Member States should interpret the anti-circumvention provisions in EU law. The Tribunal of First Instance in Milan, Italy – currently hearing a civil case brought by Nintendo against a local seller of mod chips and game copiers (PC Box) had referred two questions to the CJEU. The CJEU ruling stated that security measures applied to both the device containing the video game and the console could qualify for protection under EU law if such security measures are proportionate (i.e. they prevent or eliminate acts not authorized by the rights holder and do not exceed what is necessary for this purpose). The CJEU also provided a set of non-exhaustive factors a national Court should take into account in making its assessment of whether a particular security measure respects this principle of proportionality, including relative cost and technical and practical aspects of deploying security measures, and a comparison of their effectiveness. The case will go back before the Milan Tribunal who will likely schedule a hearing between the parties to consider the CJEU's ruling.

First National Court Applies CJEU PC Box Ruling

Germany's High Court of Munich issued a February ruling against a local game copier seller and ordered that it pay €1 million in damages (approx. \$1,369,000 USD). Its ruling stated that, as the defendant advertised playing pirated games as the primary purpose of the game copiers it sold, the High Court did

not need to assess whether Nintendo's security measures were proportionate. The judgment fell entirely in line with the CJEU's PC Box case ruling.

Spain Upholds Illegality of Streaming Pirated Content

In January, the High Court of Valencia dismissed an appeal of a lower court decision and sentenced the operator of three linking websites to 1.7 years in prison and a fine of over €7.5 thousand (approx. \$10,239 USD). Though the sites primarily streamed unauthorized TV and film content, the decision will likely have a much wider impact as it arrived just three days before the CJEU's ruling in the Svensson case. That ruling provides guidance to EU national Courts as to what constitutes a communication to the public and, in particular, whether the provision of links should be deemed a communication to the public. Fortunately, the consistency of both rulings can boost the confidence of the Spanish Intellectual Property Commission in setting its sights on pirate linking websites.

New EU Customs' Rules Finally Arrive

The new EU Customs Regulation 608/2013 came into force on January 1st in all 28 EU Member States. It focuses on three key areas of change. Firstly, a new procedure now governs the seizure of consignments of smaller quantities of products and allows rights holders to 'opt in' to a new protocol whereby Customs authorities will seize and destroy smaller consignments without the usual contestation procedure. While the new protocol reduces the administrative time related to a seizure, rights holders will not

receive as much detail about the seizure. Now, rights holders also can request that Customs authorities detain consignments containing a minimum number of products as noted by rights holders in their national Customs applications. Lastly, rights holders must now provide far more detailed information in their applications to local Customs authorities, including information relating to official channels for authentic products. Based on these new regulations, Nintendo is currently reviewing its global Customs enforcement strategy.

Italy's New Online Anti-piracy Laws Come Into Force

Regulations seeking to address the high levels of online piracy in Italy came into force on March 31st and empower the Italian Communications Authority (AGCOM) to order foreign and domestic website owners to promptly remove infringing content in response to complaints filed by rights holders. If sites fail to comply, AGCOM can order local ISPs to block subscribers' access to the sites, with penalties of substantial fines. Local video game industry association AESVI is working with the local recording industry trade association, FPM, in coordinating complaints relating to websites that offer pirated video games content. Blocking copyright-infringing websites has proved effective in containing online piracy and reducing illegal website usage in EU countries. In five Member States where blocks were imposed on the Pirate Bay site (Netherlands, Belgium, Finland, Italy and the U.K.) usage levels fell by 69% during 2012, according to Nielsen.