



QUARTERLY ANTI-PIRACY SNAPSHOT

Global

Q1: January - March 2011

SIGNIFICANT GLOBAL CASES, ACTIONS & DEVELOPMENTS

Global: Internet monitoring in Q1 showed *Wii Party* was the top downloaded *Nintendo* title, with almost three million illegal downloads globally. During that same period, *Donkey Kong Country Returns* came in second place with close to two million illegal downloads.

China: A Chinese business owner recently was sentenced to three years' imprisonment, with a five-year probation and a fine, for unauthorized use of the *Nintendo* trademarks on multiple counterfeit/infringing products. The conviction stems from an August 2008 raid, whereby Guangzhou administrative authorities confiscated almost 30,000 counterfeit items from a factory mass producing illegal goods.

Italy: The Italian Supreme Court rendered a favorable decision confirming that circumvention devices (such as game copiers) fall within the scope of Italian criminal law. This March 4th ruling confirmed that distributing game copiers in Italy is unlawful. This decision by the Supreme Court overturned an earlier ruling to the contrary issued by the Court of Florence. Meanwhile, numerous criminal actions are pending against multiple defendants for the distribution of circumvention devices.

Korea: On March 9th, the Euijungbu District Court sentenced a distributor of illegal *Nintendo* video games to 18 months in prison (with a three-year suspended sentence pending any further illegal activity). The business owner was prosecuted for distributing illegal devices online, and convicted of copyright violations.

Spain: On February 15th, a Spanish criminal court ruled against R4 game copiers confirming the devices are unlawful under Spanish law. In Mallorca, the criminal court convicted a business owner of copyright violations, as well as circumvention of Technological Protection Measures. This is the second positive decision issued by a criminal court in Spain. In September 2010, the Criminal Court of Palma de Mallorca convicted an owner of a Spanish company for importing and selling illegal game copiers. The business owners in both cases were sentenced to six months in jail, fined, and required to pay financial damages.

U.S.: In an effort to stop circumvention devices from entering the U.S., Nintendo is working closely with Customs and Border Protection (CBP) in an effort to deem the devices worthy of seizure based on violations under the Digital Millennium Copyright Act (DMCA). To date, Nintendo has submitted over 20 different game copiers for evaluation by CBP, seeking their cooperation in issuing a Trade Enforcement Alert authorizing the seizure of such devices by all U.S. Customs authorities. Attacking the problem on all fronts, Nintendo's work with Senator Patty Murray's office prompted her to write to the Chairman of the IP legislation committee confirming support for a legislative amendment requiring CBP to disclose relevant information to IP owners about the seizure of circumvention devices.



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Asia-Pacific

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ACTIONS

China: Acting on complaints initiated by Nintendo, the Administration for Industry and Commerce officials (AIC) conducted seven raid actions in Q1, seizing well over 5,000 illegal products. Six of the seven raids targeted the export of game copying devices.

China: In response to Nintendo's demand letter, China-based www.bigboxstore.com removed all game copier listings from its website for the sale of these illegal circumvention devices. The large online retailer, whose website is hosted by a U.S. Internet service provider, was the #1 ranked e-commerce site in the Asia/Pac region with an estimated 65,000 daily visitors.

Hong Kong: Customs has been aggressive in pursuing distributors of software-modified *Wii* consoles. To date, Hong Kong Customs has initiated 25 different cases aimed at curbing *Wii* piracy. In 16 of the cases, the distributors pled guilty to circumvention violations, resulted in a variety of criminal penalties imposed.

Korea: Over the past six months, Nintendo has removed over 52,800 infringing game files from the Internet. Webhard services (offering direct downloads of video game software) remain the protocol of choice for users attempting to download illegal *Nintendo* games in Korea. The top *Nintendo DS* file downloaded is *New Super Mario Bros.*, while the top *Wii* title is *Super Mario Galaxy 2*.

Korea: There has been an increase in government-led actions to combat Internet piracy. Two significant government actions against OSPs distributing infringing copyrighted works, included raids executed by the prosecutor's office and a second round of suspension orders by the Ministry of Culture, Sports and Tourism (MCST). In March, the Prosecutor's Office raided 19 sites.

The MCST ordered 17 user account suspensions on four OSPs in March (Bigfile, Zfile, Santa 25, and Wowdisk). Additional user accounts are expected to be suspended by their OSPs over the coming months.

Korea: In February, Incheon District Court imposed a fine on an online distributor for selling over 3,000 games copiers through Korean online auction sites and consumer-based trade-boards.

IP POLICY ACTIVITIES

China: In late 2010, the Chinese government received much media attention for its announcement of a special campaign to fight counterfeiting, with a special emphasis on pirated computer software, books, video games, audio and video publications, etc. The government claimed it would pay particular attention to IP violations via the Internet. The special campaign, due to end in March, has been extended to the end of 2011. While, in theory, brand owners were to see an increase in enforcement actions, Nintendo has not witnessed any additional cooperation in pursuing actions under this campaign.

Hong Kong: In March, Nintendo participated in an industry-led initiative and provided comments to the Commerce and Economic Development Bureau (CEDB) on its proposed policy on "Strengthening Copyright Protection in the Digital Environment." The CEDB sought comments from the relevant stakeholders on its proposal to improve legislation in Hong Kong to enable more effective enforcement activities against Internet piracy.

PIRACY AWARENESS/TRAINING

China: In Q1, Nintendo representatives conducted training for 90 officials from Guangzhou and Hangzhou Customs teaching them how to identify illegal *Nintendo* products and circumvention devices.

China: During the month of March, Guangzhou administrative agencies established a consumer complaint center located within market places staffed with two officials. This "complaint system" is part of a six-month IPR program. Consumers have been provided an opportunity to consult with officials about IPR problems. Reportedly, this process has been effective in educating consumers and deterring the sale of infringing products.

Hong Kong: In March, Nintendo participated in a meeting, via an industry-led initiative, held with the Intellectual Property Rights Protection Alliance, a group established to promote greater awareness for the importance of protecting IP rights in Hong Kong. Various IP topics were discussed, including a push for harsher sentences and the need for greater collaboration with IP owners to build stronger criminal cases.

Taiwan: During Q1, there were seven public apologies published in the *United Daily News* and on websites by those found guilty of distributing counterfeit *Nintendo* games, game copiers and modified *Wii* consoles.



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Europe

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ACTIONS

Belgium: Two Belgium Courts deemed the sale and/or import of game copiers illegal. On February 24th, the Correctional Court of Hasselt convicted a game copier seller of criminal activities under the Belgian Copyright Act. The seller, who was found guilty and ordered to pay a fine, has appealed the decision. On March 15th the Correctional Court of Charleroi upheld its decision against a previously convicted seller of game copying devices (R4 game copiers) under the Belgian Software Act. The Charleroi Court reserved sentencing for a later date. Nintendo applauds the actions of the Belgian Anti-Piracy Federation for their collaboration with the enforcement authorities on the criminal prosecutions

France: Nintendo continues the battle to enforce its Hong Kong judgment in France against a notorious distributor of game copiers, Max Louarn (Divineo). The 2009 HK judgment ordered Louarn/Divineo to pay Nintendo over \$56 million in damages. The “Exequatur” hearing took place in the Avignon Court on March 8th. Both parties presented their oral arguments before the judge. The written decision will be handed down in May 2011.

Germany: Nintendo joined the German Anti-Piracy organization (GVU). As a direct member, Nintendo will be taking advantage of GVU’s 25 years of experience in fighting piracy. GVU specializes in criminal enforcement against German site operators. GVU has excellent contacts with law enforcement agencies’ police and prosecutors, which is important for ensuring successful criminal proceedings. GVU also provides training for law enforcement authorities which Nintendo hopes will raise the authorities’ awareness of IP offences.

IP POLICY ACTIVITIES

Belgium: Three proposals are currently under discussion in the Parliament that relate to intellectual property and the Internet. Because of government turmoil, it is unclear whether any of the proposals will move forward but the joint industry coalition is working to get the debates going.

Italy: The Italian Telecommunications Regulatory Authority (AGCOM), responsible for proposing regulations for copyright protection on the Internet, held a public consultation hearing on March 22nd. AGCOM will prepare proposed regulations, including a notice-and-take-down procedure and possibly a provision that will facilitate the blocking of websites hosting pirated content on sites hosted outside of Italy.

Spain: On February 15th, the Sustainable Economy Bill (SEB) finally was approved by a vast majority at the Plenary of the Spanish Parliament: 323 to 19 votes, with 1 abstention. As expected, the anti-piracy section received the favorable votes of the PSOE (Government Party), PP (main opposition party) and CiU (Catalonian nationalists). A week before, these parties agreed in the Senate the re-introduction of the anti-piracy provisions removed during the first voting at the Parliament in December last year. The law came into force after publication in the Official Bulletin of March 5th, but cannot be implemented until the law-based Regulations are completed and the new second of the IP Commission, endorsed to the Culture Ministry, settled. Those two issues are expected to resolve by September 2011. This new legislation will establish an administrative procedure to take content/links down and block infringing online services (websites and servers).

PIRACY AWARENESS/TRAINING

UK: Nintendo participated in a training held for the HM Revenue & Customs (HMRC), Trading Standards officers and police officers at the “Anti-Counterfeiting Roadshow” held on February 17th. The training was aimed at providing enforcement officers with up-to-date information on detecting unlawful products. Nintendo gave a presentation to over 100 officers responsible for searching for counterfeit products and game copiers in markets, airports, retail shops and online.



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The Americas

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ACTIONS

Brazil: In January, police conducted a huge action against vendors at Camelodromo Uruguaiânia, a large open market in the center of Rio de Janeiro, resulting in the seizure of over 14,000 counterfeit *Wii* discs. The action resulted in the closure of the market for a number of days.

Brazil: Considering the rising rate of Internet piracy in Brazil, the industry (via the Entertainment Software Association) is increasing efforts against online game piracy in the region. Particular focus has been placed on link-site monitoring and pursuing takedowns of hosted files and illegal products offered via auction sites such as Mercado Livre.

Canada: In January, Vancouver Customs and the Royal Canadian Mounted Police (RCMP) intercepted a shipment of over 600 game copier devices coming from China, intended for the Canadian market. The products will be destroyed. The importer was reportedly a minor.

Mexico: In February, Nintendo and ESA supported a criminal raid in Tepito targeting three locations housing a burning lab operation along with a printing and storage center to create counterfeit games. Workers in the printing facility were taken into police custody. Thousands of raw materials and counterfeit video game products were seized including *Wii* games.

Peru: Since January 2011, approximately 48,000 counterfeit *Nintendo* products have been seized in Peru including significant quantities of *Wii* games seized from 44 vendors at the Jr. Mesa Redonda market in Lima Center. Additionally, two positive court rulings were issued in favor of Nintendo against Peruvian infringers of counterfeit *Nintendo* games. In both cases the defendants were ordered to pay significant fines and the products will be destroyed.

U.S.: U.S. law enforcement has increased its focus against targets who actively are modifying *Wii* hardware to sell with counterfeit software. Since January, three criminal investigations have been initiated by FBI and/or ICE agents. The authorities have conducted undercover purchases and are planning to issue search warrants against the online sellers of “soft-modded” *Wii* units distributed with illegal *Nintendo* games.

IP POLICY ACTIVITIES

Canada: In late March, the Canadian Parliament was dissolved. All active legislative bills that were before the Parliament have been abandoned, including improvements to the copyright laws, the adoption of the WIPO treaties and anti-circumvention laws. Elections are scheduled for early May.

U.S.: In a positive step toward gaining information on U.S. Customs seizures related to game copying products (circumvention devices), the IP Enforcement Coordinator of the Obama Administration (IPEC) made its recommendation to grant authority to the Department of Homeland Security to provide notices to IP owners following a seizure of circumvention devices. DHS would be able to share information about the seizure and provide samples to the IP owner.

U.S.: On February 10th, video game industry representatives met with the U.S. Copyright Office to discuss the so-called “rogue sites” legislation. Although Congress has not introduced formal legislation yet, proposed legislation intends to provide more tools to the Department of Justice to take down illegal websites, including those selling circumvention devices.

PIRACY AWARENESS/TRAINING

Brazil: On behalf of the video game industry, ABES (a local Brazilian association) participated in a multi-city IP educational event held at multiple colleges aimed at educating students on the importance of intellectual property rights. ABES also collaborated with the American Chamber of Commerce on the *Projecto Escola* Legal Project to explore different approaches to promote IP education in Brazilian schools.

Mexico: In March, Nintendo and local industry members participated in a training seminar with the Attorney General’s Office and its specialized in-house expert division. The hands-on session was well received and considered an important education tool for in-house experts who play a key role in the Mexican criminal process.

U.S.: In February there was a revamping of the industry’s educational website, www.jointheteam.com, an online resource for teachers and parents to help educate school-aged children about intellectual property rights. The site is developed and managed by ESA.