

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

TAIWAN

Special 301 Recommendation: Taiwan should remain on the Watch List with an Out-Of Cycle (OCR) review to monitor (and ensure) prompt passage of P2P and ISP legislation and continued aggressive enforcement actions against Internet piracy and photocopying of academic materials.

EXECUTIVE SUMMARY

PRIORITY ACTIONS REQUESTED IN 2007

- **Internet Piracy Has Become a Pervasive and Corrosive Piracy Problem and Stronger and More Focused Enforcement Action Must be Taken:** Internet piracy is now one of Taiwan's most urgent piracy problems. Despite significant efforts to control it and some good enforcement results, P2P piracy of music, movies, business software, books, journals and entertainment software continues to grow. Enforcement by the Joint Internet Infringement Inspection Special Taskforce (JIST) and by the IPR Police (IPRP) must be stepped up. Because Internet piracy is not a "public crime" in Taiwan, enforcement authorities must work even more closely with industry to create a workable and deterrent enforcement system. The business software industry reports that the highest rate of Internet infringements of business software in Asia is in Taiwan. This will threaten what is otherwise a good record on reducing software piracy in the territory.
- **Adopt as Soon as Possible Pending P2P File-Sharing Legislation, Followed by ISP Liability Legislation with an Effective Notice and Takedown System:** The local and U.S. industry groups strongly support the pending P2P Bill which would prohibit inducing infringement through such file sharing services and improve the legal framework to shut down Taiwan-based and foreign (primarily PRC) pirate services and sites. ISP liability legislation must also be adopted to fully clarify liability of ISPs who know or should know about infringements and who fail to timely take down/block access to infringing sites and services. Statutory notice and takedown mechanisms must be quick and effective, including providing notice to right holders.
- **Adopt Effective and Deterrent Policies and Penalties for Online Infringements Occurring Over the Government-Owned TANet:** The TANet network is being used widely throughout Taiwan for Internet piracy, including unauthorized P2P file sharing of virtually all copyright products. The Ministry of Education (MOE), while it has taken some policy actions to inhibit piracy over its services, must acknowledge its obligation and take far stronger deterrent actions to stem P2P file sharing. TIPO/MOEA and MOE should take the lead to ensure that these actions are taken, including encouraging direct enforcement actions as necessary.
- **Provide Improved Training and Manpower to JIST and IPRP:** The growth in Internet piracy must be matched by trained and effective enforcement officers within JIST and IPRP. There

are also insufficient numbers of computers and related equipment, both in quality and quantity, for use in combating Internet piracy.

- **Improve Enforcement Against Illegal Photocopying On and Around University Campuses:** While some progress has been made, the Taiwan Government must do more to significantly reduce illegal photocopying of academic textbooks and journals, English language teaching (ELT) materials and professional reference books. In addition to continued enforcement by the Justice and Interior Ministries, IIPA continues to urge that the Ministry of Education adopt strong policies prohibiting illegal photocopying and use of unauthorized materials on campus, backed with sanctions for violations. University officials should also build provisions into outsourcing agreements with on-campus photocopy facilities imposing penalties for those caught engaging in infringing conduct, including lease termination.
- **More Effectively Monitor Exports of Blank ODs to Regions like Latin America and of Counterfeit Cartridge-Based Videogames and Components to China and throughout Asia:** Customs and other enforcement authorities in Taiwan must work more closely with, particularly, the international recording industry, to take action in Taiwan to prevent smuggled and misdeclared shipments of blank media exported from Taiwan factories to affiliated pirate operations in Paraguay and throughout Latin America. Key components of infringing Nintendo products continue to be manufactured in Taiwan and exported to China for assembly. Taiwan Customs and the Aerial Police Bureau must take effective measures to stem all such exports.
- **Extend Coverage of the New IP Court Legislation to Criminal Copyright Cases in Taiwan's Courts of First Instance:** This legislation should be revised to permit prosecutions of criminal copyright cases in courts of first instance (trial courts).
- **Prohibition on "Tiering" of Cable Channels and Other Onerous Restrictions on Pay TV Right Holders Should be Lifted.**
- **Lengthy Copyright Royalty Rate Reviews Should Cease:** The Copyright Examination and Mediation Committee (CEMC) is no longer responsible for review of royalty rates proposed by collecting societies. However, the Taiwan Intellectual Property Office (TIPO) still insists that all collecting societies submit their proposed royalty rates for review and approval by CEMC in advance. Delays in these reviews, and the unfair outcomes, are causing serious harm to right holders; TIPO should no longer require them. We are hopeful that Taiwan will abolish this requirement in the near future.
- **Pass Copyright Term Extension Legislation:** The Government of Taiwan should follow the international trend and extend term of copyright protection to life plus 70 years, and 95 years from publication for sound recordings and other works of juridical entities.

For more details on Taiwan's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

TAIWAN
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2002-2006¹

INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Motion Pictures ²	NA	NA	98.0	51%	40.0	40%	42.0	44%	42.0	44%
Records & Music	16.2	28%	21.5	26%	49.4	36%	58.0	42%	98.6	47%
Business Software ³	90.0	41%	56.0	43%	88.0	43%	83.0	43%	91.2	43%
Entertainment Software ⁴	NA	NA	161.9	42%	123.0	63%	261.8	42%	596.1	56%
Books	18.0	NA	18.0	NA	20.0	NA	20.0	NA	20.0	NA
TOTALS	124.2		355.4		320.4		464.8		847.9	

PIRACY AND ENFORCEMENT UPDATES IN TAIWAN

Internet Piracy: With over 60% of Taiwan's population using the Internet (13.8 million users), and with broadband connections growing from 4.2 million users to 4.6 million (10.3% growth) between the 3Q 2005 and 3Q 2006,⁵ it is not surprising that Internet piracy has become the predominant form of piracy for most industries in Taiwan.

As an example of the scope of the problem and how it has grown, in 2004, the number of online infringements involving business software (mainly P2P) found on Taiwanese ISPs was 49,539. This number had risen to 89,993 by the end of 2005 representing an increase of nearly 82%. In 2006, the number of infringements were close to 80,000, with Taiwan again topping the list for the most infringements in Asia Pacific.

For the music industry,⁶ the conviction of Kuro and the settlement with Ezpeer has had a salutary effect, but new major illegal sites such as MXIE (www.mxie.com) and Foxy (www.gofoxy.net) are now in operation. Foxy has over 350,000 users and action against it is being

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Taiwan under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

³ BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Taiwan, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁴ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report. The piracy level in 2005 does not reflect handheld piracy rates, which were not available for 2005. In 2004, handheld piracy rates were upward of 95%.

⁵ Point Topic Ltd., *World Broadband Statistics Q3 2006*, December 2006 on file at IIPA.

⁶ Infringing music files in various formats such as MP3, midi, WAV and RAM are available from a variety of channels in Taiwan including FTP sites, websites, streaming sites and file-sharing services.

prepared. The recording industry took action in 165 cases involving 439,686 infringing files and a total of 3.95 million users in 2006. Many of these, like AVPeer and Music King were very large websites. As a result of this continuing effort, the industry reports that at least 150 illegal Taiwan sites have relocated to the Mainland and continue to serve Taiwan. Despite the difficult state of Internet piracy, however, the legal Internet music market has started to boom with the new clarity on liability. There are four major legitimate online services, KKBox, Yahoo music, the “new” Ezpeer, and the soon to commence new and legitimate Kuro, resulting from these aforementioned cases. While this gives reason for some optimism, piracy, both of physical product and on the Internet, has continued to result in a decrease in overall music sales in Taiwan (in 2006 36% by unit and 34% by value compared to 2005).

Academic journal publishers report some unauthorized access, and P2P file sharing of scanned academic texts is on the rise in Taiwan. The Taiwanese Government-owned TANet (a network designed for “educational” uses at college campuses throughout Taiwan) is being used widely for Internet piracy including unauthorized P2P file sharing, not only of published material, but of other copyrighted products as well. The Ministry of Education (MOE) oversees TANet and MOE and TIPO have communicated that they wish to put into place a policy for complaining about infringements to TANet and disciplining students for violations. This is far too weak a response and controls on downloading, improved firewalls and real enforcement must be instituted. TANet must fully acknowledge its responsibility for how its network is used and adopt policies and enforcement mechanisms in conjunction with enforcement agencies that bring real discipline to the network.⁷

Other forms of Internet piracy also are growing. Entertainment software publishers face the problem of piracy at Internet cafés, especially involving unlicensed use of entertainment software. There are approximately 1,500 Internet cafés in the country, most of which remain unlicensed by entertainment software publishers.

Another form of Internet-based piracy that remains prevalent is the selling of pirated copyright content through Internet auction sites, and other forms of advertising the sale of pirate product. The recording industry has been cooperating with Yahoo and eBay and in 2006, there were 354 cease and desist letters sent by IFPI-Taiwan to ISPs resulting in the shutdown of 315 websites/FTP/auction etc. sites. Unfortunately, many of these websites are registered in foreign countries which makes tracing these sites and enforcement against them a challenge (though access to these sites can be blocked). Anecdotally, it has been noted that the predominant number of illegal products sold on websites, as well as sold at retail, are sent directly from mainland China. Because Taiwan does not maintain diplomatic relations with the majority of the world’s governments, the IPRP’s ability to coordinate cross-border investigations on websites registered outside of Taiwan requires creative solutions outside the sphere of normal inter-government relations. MPA reports excellent cooperation with enforcement authorities in dealing with auction sites.

Kuro and Ezpeer Decisions: In IIPA’s 2006 submission, we reported in detail on these milestone decisions. The upshot as noted above is that Kuro will open a legal service in early 2007 and Ezpeer’s legal service is already up and running after settling with the recording industry. This

⁷ For example, even after Kuro was convicted, TANet continued to facilitate unauthorized music file-sharing and swapping. The MOE has left each school to control students’ usage of TANet on their own and takes no further action to prevent unauthorized copyrighted materials from being transmitted through TANet. MOE has not done its part to ensure proper implementation of the “Implementation Plan for Strengthening Internet Infringement Preventive Measures,” which was formulated by TIPO, in force May 1, 2005 to December 31, 2006. According to the Plan, MOE is to report to JIST on its efforts to rid TANet of online infringements, but MOE barely participates.

trend will be bolstered by passage of the strong P2P legislation now pending, effective and workable ISP legislation and notice and takedown mechanisms. MPA reports great cooperation with the authorities on Internet piracy. Unfortunately, the original Ezpeer pirate service remains running and MPA reports continuing infringement of its movies. As a result, the service was raided again in November and December 2006.

Provide Needed Training, Equipment, and Manpower to JIST and IPRP: In 2005 the severity of the Internet piracy problem was acknowledged and TIPO/MOEA instituted the Implementation Plan for Strengthening Internet Infringement Preventive Measures (effective from May 1, 2005 to December 31, 2006) under which JIST is exclusively responsible for tackling Internet piracy. JIST comprises selected personnel with expert knowledge in computers, IT, and technology from the IPRP (who are chiefly tasked with executing the Plan) and the Joint Optical Disk Enforcement Taskforce (JODE). Raiding, as reported in the enforcement tables, has been effective but more training and manpower is needed to cope with the magnitude of the problem. In particular, the IPRP needs better broadband connections and improved equipment to deal with infringing sites in the PRC.

Optical Disc Production in Taiwan Has Shifted From Factory Production to “Burning”: Illegal burning of copyright content onto recordable discs has taken over as the predominant form of optical disc piracy in Taiwan. However, OD factory production still remains a problem, particularly the export of blank media knowingly destined for piracy operations outside Taiwan. Regarding OD production facilities, JODE reported running 1,027 inspections in 2006, down from the 1,193 run in 2005.⁸ JODE reported issuing no fines but that 10 OD plants were closed. This likely contributed to the reduction in optical disc factories in 2006 from 89 in 2005 to 83 in 2006, owned by 51 companies. These plants have an estimated 2,795 production lines (including for production of blank CD-Rs) and the estimated capacity of all the optical discs plants in Taiwan amounted to approximately 9.8 billion units annually. While pirate factory production has been significantly reduced, it is crucial that Taiwan continue to monitor the plants vigilantly to avoid backsliding. It is particularly worrisome that no fines or prosecutions against plants were instituted in 2006. Also, of the cases brought against plants engaged in pirate production, several of the key cases, including the “DigiGold” case, remain pending after all these years (in part because of a loophole in the Optical Media Management Statute).⁹

OD “burning” remains the biggest problem and challenge to the authorities. IPRP reports seizing 2,067 OD burners in 2006, up 119% from 2005 and 810,508 infringing discs vs. 451,463 in 2005, up 79%.¹⁰ Effective enforcement has reduced the number of infringements in night market stalls to under 50. These are still manned by minors and criminal syndicates continue to be behind this business. Because of more effective enforcement and deterrence (including seizure of product from the stalls even when no one is present), distribution has increasingly moved to home delivery as the predominant form of retail piracy.

Book Piracy: The most damaging activity to U.S. publishers in Taiwan in 2006 remained the illegal photocopying of academic textbooks and journals, English language teaching (ELT)

⁸ <http://www.tipo.gov.tw/eng/prosecution/jode.asp>

⁹ The judicial interpretation of “criminal intent” has apparently become a loophole that optical disc manufacturing plants have exploited to avoid criminal liability. The defense that a plant was “unaware” of the infringing activity is being employed by registered plants with overseas customers. IFPI Taiwan reports that 4 cases against pirate plants remain pending; raids occurred in 2000, 2002 and 2003.

¹⁰ JODE reported that no infringing discs were seized in their inspections, and, while it is not possible to ascertain from the statistics given whether all the discs seized were “burned” discs, we believe that virtually all were. The recording industry reports that “almost 100% of discs seized are burned.”

materials and professional reference books, primarily on university campuses.¹¹ While the authorities have been helpful in running raids against these commercial photocopy shops (at least off campus) at copyright owners' requests, self-initiated action by the Taiwan Government remains rare and is particularly needed when piracy occurs at copy shops ON campus.¹² Because photocopy shops do not generally keep stockpiles of copies, but copy to order, and since the print runs are often at night or after hours, and delivery is offsite to avoid detection, the government must adopt more sophisticated investigative techniques to stem this form of piracy.¹³ Furthermore, the Ministries of Justice and the Interior should revisit incentive schemes for officers conducting raids on photocopy shops. Putting a scheme into place that adequately rewards officers for successful book piracy raids is imperative for the continued success of Taiwan's book piracy enforcement program.¹⁴

The industry continues to suffer from procedural inconsistencies in raiding and prosecution. First, cooperation varies with geography, with good cooperation in Taipei and relatively poor cooperation in Tainan, for instance.¹⁵ Search warrants have been occasionally denied arbitrarily, or refused on bogus arguments.¹⁶ Undue hurdles relating to Powers of Attorney and proof of copyright ownership continue to plague the attempts at convictions, especially in Tainan.

As with Internet piracy, because most hard goods book and journal piracy is occurring on or near university and school campuses, the MOE must adopt and implement policies prohibiting this kind of illegal conduct, backed with internal sanctions for violations (including, for instance, making IPR protection on campus a criterion for universities' annual assessments by MOE). University officials should also build provisions into outsourcing agreements with on-campus photocopy facilities imposing penalties (such as terminating leases) for those facilities caught engaging in illegal activity. Promised tough policies are still not in place, though TIPO has indicated its willingness to work with right holders to develop these policies.¹⁷

End-User Piracy of Business Software: The use of unlicensed or pirate software in the workplace has always caused the greatest revenue losses for the business software industry. BSA has a good working relationship with the enforcement authorities and is able to get the cooperation

¹¹ Profit-based photocopy shops, located on the perimeters of all major college campuses, actively carry out photocopying and binding services both for students and teachers.

¹² Publishers continue to report reluctance by authorities to take traditional enforcement measures on campuses, further highlighting the need for separate on-campus measures to complement appropriate raiding action.

¹³ Some shops, in areas of dense student population, have display racks and catalogs featuring covers of foreign textbooks, arranged by course number and available for copying. Students can choose the course, the text, and the color for the custom cover, and the book is then copied while the student waits.

¹⁴ Publishing industry representatives reported that the lack of incentives for local police and prosecutors to fight this sort of piracy aggressively is hindering efforts more and more. One example: A publishing representative called to the police station to give an affidavit was surrounded—at the police station—by defendants there to pressure the representative to drop the complaint, while local police stood by and watched.

¹⁵ The copyshop owners in Tainan have banded together to form their own "trade association" specifically aimed at frustrating enforcement efforts. They have been at least somewhat successful to date, and the government must take action to ensure that justice is conducted despite delay and harassment tactics employed by the infringers.

¹⁶ One argument defendants often make in challenging warrants is that the "test buys" required of the rights holder in order to satisfy the very requirements for the warrant are somehow entrapment or somehow indicate "consent" by the copyright owner for the copy, invalidating the enforcement action. It should be clarified that such test buys are not only permitted but required, and they should not be problematic as long as the buyer makes no representation that he/she is the copyright representative. Another argument defendants make is that commercial copyshops are only providing a "service" to students (presuming, incorrectly, that students themselves are perhaps permitted to make entire copies under the fair use provisions of the law), and thus they are not liable for the students' actions. This argument should be dismissed. Copyshops are operating for-profit businesses based on illegal activity.

¹⁷ Indeed, dialogue between right holder groups and TIPO has been quite good on this initiative in recent months and the industry is hopeful that, with TIPO's gestures of willingness to assist, the project can move forward in the near future.

of the police and prosecutor's office for enforcement action fairly promptly. Nevertheless, many of the procedural problems noted in IIPA's 2006 submission persisted this year, i.e., unclear guidance on the information needed to secure a search warrant for police raids and unduly focusing on the use of informer testimony for all end-user enforcement. BSA urges TIPO to cooperate with it in helping to train prosecutors and judges in the particular intricacies and unique aspect of end-user piracy enforcement.

Piracy of Cartridge-Based Videogames: Key components of infringing Nintendo products continue to be manufactured in Taiwan and exported to China for assembly.¹⁸ The investigative efforts of Nintendo's anti-piracy program have identified several Taiwan semiconductor design houses involved in the design and development of infringing chips, as well as in ordering the manufacture of such chips from semiconductor plants in Taiwan. These companies have been involved in the design, fabrication and distribution of over 40 million semiconductor chips over several years, and cases against some of these companies remain pending. Now that the Export Monitoring System (EMS) has been abolished, Taiwan Customs and/or the Aerial Police Bureau (APB) must step up and take effective measures to monitor the exports of component parts of counterfeit cartridge-based games, such as those manufactured for Nintendo handheld devices. Though concerns remain about the ability of Customs to effectively police and halt the export of infringing Nintendo videogame components and products, the Taiwan government appears to be trying to strengthen and improve its border measures, as well as provide its Customs authorities with the requisite training to adequately perform its functions. Taiwan Customs and APB efforts at apprehending imports of counterfeit products into the country decreased in 2006, with only 8 customs seizure actions occurring.

Specialized IPR Court to be Established in 2007: In a development that has been commended by IIPA, the Judicial Yuan has proposed establishing an Intellectual Property Court to handle all copyright infringement cases, both civil and criminal (as well as patent and trademark cases), but, for criminal copyright cases, only at the appellate level. However, IIPA and IIPA members have urged that the IPR court mechanism be extended to first instance criminal cases. We understand that the Judicial Yuan believes that copyright and trademark cases are relatively simple, thus not warranting a specialized court, at least at the first instance level. IIPA disagrees with this, especially given the fact that an increasing number of copyright cases involve fairly complicated legal issues associated with online technologies. We urge the Judicial Yuan to look to remedying this deficiency and to clarify arguments now being made that, somehow, first instance criminal IPR trial courts would be "unconstitutional." The IPR court is scheduled to commence in March 2007.

¹⁸ Analysis of infringing products sold in the United States under the name Power Player established that the semiconductor chips embedded in the products and containing illegal copies of Nintendo copyrighted games were designed and manufactured in Taiwan, demonstrating once again that the export of infringing products from Taiwan remains a current and damaging problem to Nintendo.

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2006				
TAIWAN				
ACTIONS	MOTION PICTURES	BUSINESS SOFTWARE	SOUND RECORDINGS	TOTALS
NUMBER OF RAIDS CONDUCTED	681	6	393	1080
NUMBER OF DVD-Rs SEIZED	588,608		73	588,681
NUMBER OF DVDS SEIZED	137,386			137,386
NUMBER OF CDs AND CD-Rs SEIZED	288,365 (CD-R)		85,295	373,660
NUMBER OF INVESTIGATIONS	1,708			1,708
NUMBER OF VCD LAB/FACTORY RAIDS	0			0
NUMBER OF CASES COMMENCED	502		378	880
NUMBER OF INDICTMENTS		9 ¹⁹		9
NUMBER OF CONVICTIONS (INCLUDING GUILTY PLEAS)	462	3	146	611
ACQUITTALS AND DISMISSALS	NA		2	2
NUMBER OF CASES PENDING	588		195	783
NUMBER OF FACTORY CASES PENDING	5		5	10
TOTAL NUMBER OF CASES RESULTING IN JAIL TIME		3	117	120
SUSPENDED PRISON TERMS			19	19
MAXIMUM 6 MONTHS	0	2	8	10
OVER 6 MONTHS	0		8	8
OVER 1 YEAR	54		0	54
TOTAL SUSPENDED PRISON TERMS		2	35	37
PRISON TERMS SERVED (NOT SUSPENDED)			15	15
MAXIMUM 6 MONTHS	26		4	30
OVER 6 MONTHS	52		7	59
OVER 1 YEAR	9	1	4	14
TOTAL PRISON TERMS SERVED (NOT SUSPENDED)		1	15	16
NUMBER OF CASES RESULTING IN CRIMINAL FINES		1	17	18
UP TO \$1,000	2		0	2
\$1,000 TO \$5,000	4		10	14
OVER \$5,000	1	1	7	9
TOTAL AMOUNT OF FINES LEVIED (IN US\$)	NA	\$10,486	\$86970	\$97,456.00

CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2006:			
TAIWAN			
ACTIONS	MOTION PICTURES	BUSINESS SOFTWARE	TOTALS
NUMBER OF CIVIL RAIDS CONDUCTED	0	6 ²⁰	6
POST-SEARCH ACTION			
CASES PENDING	0	6	6
CASES DROPPED	NA	0	0
CASES SETTLED OR ADJUDICATED	NA	0	0
VALUE OF LOSS AS DETERMINED BY RIGHT HOLDER (\$USD)	NA	\$1,631,383	\$1,631,383
SETTLEMENT/JUDGMENT AMOUNT (\$USD)		NA	

¹⁹ The number of indictments includes cases from 2004 and 2005.

²⁰ These cases originate when a criminal complaint is filed and run parallel with the criminal complaints, hence the number of criminal and civil complaints are the same.

COPYRIGHT LAW AND RELATED ISSUES

Previous years' reports have gone through in detail the legislative landscape in Taiwan, including the 2004 copyright amendments. The following is intended to provide a summary of latest developments only. Please see previous years' reports for more information about past developments at <http://www.iipa.com/countryreports.html>.

P2P Legislation: This remains the industries' highest priority and is critical to establishing the legal infrastructure to fight growing Internet piracy through P2P file sharing services. A Bill dealing with this issue was introduced into the LY by Mr. Hsieh Kuo-Liang in April 2006 (it passed its first reading on April 24) and is being strongly supported by IIPA and the local and international copyright industries. The bill would amend Articles 87 and 93 and add Article 97-1 and would make illegal, and subject to civil and criminal liability, the provision of file sharing services with the intent to facilitate infringement. The bill would also give TIPO the authority to close an infringing service once convicted. This latter would prevent what occurred with Kuro when they continued to operate illegally after the service was convicted and while on appeal. The one aspect of the amendment to Article 87 that industry has objected to is requiring that the provider of these services must "thereby gain profits." Industry has sought deletion of this condition. The Bill was delayed by its opponents but it is hoped that it can be moved to a second reading at the earliest date possible.

ISP Liability: Given the rapid growth of Internet piracy in Taiwan, especially P2P infringements, it is essential that a workable approach to online enforcement be forged between right holders and service providers, who are aware in general and may be able to foresee that infringing activity is occurring over their services,²¹ but may not be aware of the specifics of each act of Internet piracy. A voluntary Code of Conduct had been in negotiation since 2004 between the copyright community and the Taiwan ISP association, TWIA, but those negotiations broke down. Legislator Hsieh then introduced legislation, again in April 2006, and which is supported, we understand, by TIPO, that would subject ISPs to liability as co-infringers if they "gain economic benefits" and are "capable of monitoring or controlling said infringing act by others" (Article 88). It would exempt from liability ISPs who promptly took down or blocked access to the infringing material under circumstances modeled on the DMCA. While the Bill would benefit from certain technical changes and we would need to see the text of the rules authorized by the Bill that would establish the exact procedures for notice and takedown,²² it contains the basic elements of a much needed system in Taiwan.

Criminal Code: The Legislative Yuan passed several revisions to the Criminal Code which bear on the "vocational" offender provision in the Copyright Law (Article 94). As we understand it, the changes (to Articles 55 and 56, and 12 "vocational" offender Articles of the Criminal Code) will close a loophole whereby a "vocational" offender was able to reduce his sentence as a "successive offender" to that involving only one of the crimes. In addition, the maximum sentence for "combined sentences" was raised from 20 years to 30 years (Article 51(5)). In November 2005, TIPO proposed a conforming amendment of deleting Article 94 (and other minor conforming changes). As we understand it, and according to TIPO, since the former "vocational" offenders may receive heavier penalties after the new amendment of the Criminal Code is put into force in July 2006, the result is a strengthening of the law. Therefore, IIPA supports the amendment. This

²¹ As a result of the *Kuro* decision and past decisions on accomplice liability, awareness and foreseeability of infringing activities occurring over their services could subject service providers to claims for copyright infringement.

²² It is not yet agreed, for example, whether notices can be made by email – a crucial element of any workable system

would leave optical disc-related offenses (Articles. 91.3 and 91*bis*3) as the only public crime proscribed in the copyright law.

Taiwan Should Adopt an Anti-Camcording Criminal Provision: A vast number of movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening). These copies are then distributed to bootleg “dealers” throughout the world and over the Internet. Taiwan should take whatever legislative steps are necessary to criminalize camcording of motion pictures.

Copyright Examination and Mediation Committee Review Process Should be Abandoned: According to Article 82 of Copyright Act, the Copyright Examination and Mediation Committee (CEMC) is no longer responsible for review of royalty rates proposed by collecting societies. However, TIPO still insists that all collecting societies submit their proposed royalty rates for review and approval by CEMC in advance. This review is causing serious harm to right holders and TIPO should no longer require it. For example, ARCO (a collecting society consisting of sound recordings copyright owners, mainly record companies) submitted proposed royalty rates for public performances on September 14 and December 14, 2004, respectively, and while TIPO indicated that CEMC would complete its review process in four months; the process took 15 months, during which ARCO could neither collect remuneration nor bring litigation to collect fees for the use of sound recordings throughout Taiwan.²³ We understand that a draft amendment to the Copyright Intermediary Act will soon be put forward intended to address this problem. We strongly urge that such legislation be introduced and enacted promptly. In the interim, TIPO should stop conducting tariff reviews.

Earlier Proposed Legislation/Regulation/Guidelines on Fair Use, Rental and Parallel Imports: Attempts were made by TIPO to draft guidelines on fair use. Publishers remain concerned that these guidelines may exceed the narrow limits and appropriate context for application of fair use. The attempt to draft such guidelines has been abandoned at this point but could always be resurrected and is worth close monitoring.

Legislation was contemplated in 2006, led by the Taiwan video rental store community, to propose legislation that would decriminalize parallel imports under certain circumstances and the act of unauthorized rental, also under certain circumstances. IIPA opposed these changes and it appears that these will no longer be considered by the LY. However, monitoring is needed given the penchant for the rental community to fashion loopholes in existing legislation in both these areas.

Term of Protection: The Government of Taiwan should follow the international trend and extend term of copyright protection to life plus 70 years, and 95 years from publication for sound recordings and other works of juridical entities.

²³ Another example of how this procedure interferes unreasonably with current business practices: in 2004, ARCO proposed a rate of remuneration for hotel public performances of sound recordings of NT\$250 (US\$7.58) per guest room. CEMC cut the rate to NT\$40 (US\$1.21) per guest room without reason. One other example is that ARCO proposed an annual tariff rate for convenience stores of NT\$1,250 per store, but CEMC cut it to NT\$560 per store without providing any reason. Three major collecting societies (ARCO, AMCO and MUST) have reviewed CEMC’s approved rate for 2005 as being too low.

MARKET ACCESS

“Tiering” of Cable Channels Prohibited and Subscription Rate Capped: Under the Cable Audio and Television Law, the “tiering” of pay television services (providing differential channels and levels of service for differential pricing) is prohibited. Cable operators are required to bundle all 80 channels under a single basic tier and the law caps the subscription rate payable by consumers at NT\$600 (about US\$18.20) per month. Advertising on pay channels is restricted. Foreign investment in pay television services is limited to a maximum 20% equity share and no cable service provider’s potential market share can exceed one-third of the total market. These onerous restrictions on the ability to market content in Taiwan should be lifted.

TRAINING AND PUBLIC AWARENESS

The copyright industries were actively involved in training and raising public awareness about copyright in 2005. The industries participated in a number of government seminars and trainings, including:

- Participation in two anti-piracy investigation-training seminars held by TIPO for the IPR Police (each training involved around 60-80 police officers) on March 31 and April 14, 2006);
- Participation in two seminars held by local police on February 22-23, 2006;
- Participation in a seminar held by the Tainan Prosecutor’s Office for 20 prosecutors in September 2006;
- BSA gave two seminars on software piracy enforcement to the IPRP in March and April 2006;
- MPA participated in a total of 20 training programs between January and October 2006.