

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

TAIWAN

Special 301 Recommendation: Taiwan should remain on the Watch List. Passage of ISP legislation, more effective enforcement against Internet piracy, and curbing illegal photocopying of academic materials, especially on university campuses, are necessary.

EXECUTIVE SUMMARY

Internet piracy continues to be the most urgent problem in Taiwan. While physical piracy is generally under control (with the exception of commercial photocopying of textbooks), additional resources and improved training in Internet enforcement techniques are necessary particularly at the police level. Taiwan must quickly adopt its ISP bill establishing clear secondary liability for ISPs. This would foster better cooperation among right holders and the ISP community. Internet piracy must be made a public crime. The government's educational network, TANet, must be more effectively regulated and students prevented from using its facilities for illegal filesharing.

PRIORITY ACTIONS REQUESTED IN 2008

- **Internet Piracy is a Constantly Growing Problem that is the Highest Enforcement Priority for the Motion Picture and the Music and Recording Industries, but also does Significant Damage to all Other Copyright Sectors:** Internet piracy continues as one of Taiwan's most critical piracy problems. While the authorities have made significant efforts to run raids and bring criminal actions against such piracy, including the use of the new, and long-awaited P2P law passed in June 2007, enforcement should be further strengthened.
- **Adopt, as Soon as Possible, ISP Liability Legislation with an Effective Notice and Takedown System:** Taiwan should be commended for passing strong legislation to deal with growing P2P piracy, which establishes criminal and civil liability for inducing infringements by file sharing services. An ISP liability bill that would: clarify and extend liability to ISPs for infringements in certain cases, create safe harbors from liability including upon expeditious takedown of infringing sites, and set out an expeditious notice and takedown mechanism, should be passed this spring.
- **Implement Effective and Deterrent Policies and Penalties for Online Infringements Occurring Over the Government-Owned TANet:** In the spring of 2007, the Ministry of Education (MOE), in response to urgent rights holder requests, adopted an action plan to deal with the use of its TANet network for illegal P2P file sharing of virtually all copyright products. This plan has yet to be effectively implemented and a government-rights holder special task force created under the plan has not met since last August and must meet on a more frequent basis. This implementation must include clear guidance to universities to block access to students engaged in significant illegal file sharing, to inform rights holders of its actions and to cooperate with enforcement authorities. TIPO/MOEA should work with MOE to ensure that this plan is fully implemented.
- **Provide Improved Training and Manpower to the IPR Police (IPRP) and to the Joint Internet Infringement Inspection Special Taskforce (JIST):** IIPA again calls for increased manpower and equipment at the IPRP and its specialized unit, JIST, particularly increased training to combat Internet piracy.

- **Improve Enforcement Against Illegal Photocopying On and Around University Campuses:** MOE's action plan also covers illegal photocopying of academic books and journals. The plan must be fully and effectively implemented to prohibit illegal photocopying and use of unauthorized materials on campus, backed with sanctions for violations. Universities should also be required to 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:** 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.
- **Extend Coverage of the New IP Courts to Criminal Copyright Cases in Taiwan's Courts of First Instance and Create Special IP Prosecutors:** The IP Court has first instance civil and full appellate jurisdiction. Its mandate should be extended to cover criminal copyright cases in trial courts and a division of specialized IP prosecutors should be created.
- **Lengthy Copyright Royalty Rate Reviews Should Cease and Proposed Legislation Halting Such Reviews Should be Adopted:** Legislation has been proposed by TIPO, which would end its review and approval of proposed royalty rates that until 2001 resided in the Copyright Examination and Mediation Committee (CEMC). Delays in these reviews, and unfair outcomes have caused serious harm to the recording industry. This legislation should be passed as soon as possible.
- **Pass Copyright Term Extension Legislation:** The Government of Taiwan should follow the international trend in place in over 80 countries to extend the term of copyright protection. The term should be extended to life plus 70 years, and to 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/2008SPEC301HISTORICALSUMMARY.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: 2003-2007¹

INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level								
Motion Pictures ²	NA	NA	NA	NA	98.0	51%	40.0	40%	42.0	44%
Records & Music	4.9	21%	16.2	28%	21.5	26%	49.4	36%	58.0	42%
Business Software ³	104.0	40%	91.0	41%	56.0	43%	88.0	43%	83.0	43%
Entertainment Software ⁴	202.9	94%	NA	NA	161.9	42%	123.0	63%	261.8	42%
Books	16.0	NA	18.0	NA	18.0	NA	20.0	NA	20.0	NA
TOTALS	327.8		125.2		355.4		320.4		464.8	

PIRACY AND ENFORCEMENT UPDATES IN TAIWAN

Over the last year, piracy of physical product (except for illegal photocopying of books and journals on or near university campuses in some areas) and end user piracy of software in businesses has continued to decrease. Taiwan is to be commended for reducing industrial (factory) OD piracy and retail OD piracy to very low levels, and for continued reductions in end user piracy of business software. Enforcement in these areas has continued to be good. However, Internet piracy continues to threaten all these gains.

Internet Piracy: Internet piracy continues and is replacing physical piracy in the marketplace, requiring a significant increased response from Taiwan's government. Over 67% of Taiwan's population used the Internet in 2007 (15.23 million users), with broadband connections growing from 12.25 million in July 2006 to 12.4 million in 2007, (63.4% of all users).⁵ It is the predominant form of piracy for most industries in Taiwan.

To illustrate how Internet piracy has supplanted physical piracy, the recording industry reports that IFPI-Taiwan was involved with the authorities in 363 raids in 2005 with 35 of those involving the Internet. In 2007 there were 401 raids with 265 involving the Internet -- a six-fold increase.

The two infamous websites, *Kuro* (criminally convicted) and *Ezpeer* (settled and illegal operation shut down) were the subject of two significant victories prior to 2007. In February 2007, the authorities raided Foxy, (<http://www.gofoxy.net>), one of the most popular pirate P2P sites (400,000 users at any one time) in Taiwan offering music and movies for download. On September 4, 2007, authorities raided two other major P2P services, Kupeer (<http://www.kupeer.com>) and on September 13, 2007, Hip2p (<http://www.hip2p.com>). Kupeer was the first P2P service raided following adoption of Taiwan's new P2P law in June 2007. Both Kupeer and Hip2p closed down immediately after each raid, demonstrating the deterrent

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2008 Special 301 submission at www.iipa.com/pdf/2008spec301methodology.pdf. For information on the history of Taiwan under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2008SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>) of this submission.

²MPAA's trade loss estimates and piracy levels for 2006 and 2007 are not available. MPAA did provide 2005 estimates for a select group of countries, using a new methodology that analyzed both physical/"hard goods" and Internet piracy. Details regarding MPAA's methodology for 2005 and prior years are found in Appendix B of this IIPA submission.

³ BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Taiwan, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.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 2006 piracy statistics were preliminary at the time of IIPA's February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as 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 Source: <http://www.twnic.net.tw/download/200307/96305b.pdf>

impact of the new law. Unfortunately, Foxy is still under investigation by prosecutors but the site is hosted in the U.S. by an American citizen originally from Taiwan, and the site is still operating. Action by the Taiwan prosecutor is still pending.⁶ In October, an infamous pirate website, XYZ, was raided and its operator indicted. It had been operating ten years, selling hard copies of software, movies and music.

As noted above, the recording industry took actions against Internet piracy in 265 cases in 2007.⁷ MPA monitored 492 P2P sites and 37 sites suspected of selling pirate hard copies of movies. MPA was involved with 103 raids of auction sites, about the same number as in 2006. 200 raids were taken with MPA involvement of FTP/P2P/forums/streaming sites, twice as many as in 2006.

In its 2007 submission, IIPA reported that Taiwan had the highest number of Internet infringements of business software titles of any country in Asia. BSA reports that for 2007 that number went down from 80,000 to 40,000 in 2006-2007, respectively.

The Taiwan government's university computer network, TANet, which is operated by the Ministry of Education (MOE), is being widely used for Internet piracy including unauthorized P2P file sharing of all types of copyright material, including scanned academic texts and journals. In April 2007, after continued urging by right holders, MOE proposed an action plan to deal with a number of campus-based infringements, including the wide use of TANet for P2P filesharing and other infringements. Part of the draft Action Plan was the creation of a special task force to include all the local and international rights holder organizations which are part of the Taiwan Intellectual Property Alliance (TIIPA). The task force met three times in April, July and August, but has not met since that time. Meanwhile, we understand the Action Plan was finalized in October 2007 and that no significant changes were made in the plan from the July draft.

IIPA members report that MOE's actual implementation of this plan has been minimal to date.⁸ They also report that, even though MOE was to mandate its universities to deal with P2P piracy, there is no real enforcement or monitoring of their compliance and little has been done. More positively, some universities have limited the bandwidth available on TANet, which has resulted in diminished use of the network for illegal file sharing. The recording industry reports that it has provided to MOE, over a year ago, IP addresses of students that have misused the TANet for illegal filesharing. However, MOE and the universities have yet to report back to the industry of any action being taken. IIPA urges MOE to work directly with TIIPA and its members to implement fully this action plan.

Academic publishers report a significant growth in internet piracy, through the TANet system and otherwise. Unauthorized access to electronic academic and professional journals compromises legitimacy of licenses, and scanned academic texts and reference books are increasingly subject to P2P file sharing.

Other forms of Internet piracy are also growing. Internet cafés have become hotbeds of piracy of motion pictures and music.

The recording industry reported issuing 666 takedown notices to ISPs involving forum and blog sites, auction sites, cyberlockers and streaming sites. ISPs complied with 587 of these notices by taking down the infringing sites. This high compliance rate exists even though the ISP Bill has not yet passed and the liability of ISPs for infringement remains less than clear.⁹

Provide Needed Training, Equipment, and Manpower to the IPRP and JIST: In TIPO/MOEA's "Implementation Plan for Strengthening Internet Infringement Preventive Measures," JIST was given the

⁶ It is reported that of the estimated 250 pirate sites/services operating in Taiwan, 50 are sourced from Taiwan and 200 from elsewhere, including the PRC and the U.S. The dilemma faced in the Foxy situation must be solved in the new ISP Bill by establishing that ISPs are at least subject to injunctive relief through a court ordering that the ISP block access to such foreign site. See 17 USC §512(a)(1) and (j)(1)(B)(ii).

⁷ 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.

⁸ IIPA and its members were encouraged when it met with MOE officials in July 2007 to hear an explanation of the plan. Recent reports, however, continue to complain about lax implementation of the plan by MOE even six months later.

⁹ Taiwan has what is called "joint tortfeasor" liability for aiding, abetting or participating in, infringement and the ISP Bill clarifies ISP liability under this existing legal doctrine.

exclusive responsibility 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). Because Internet piracy has mushroomed in Taiwan, there is an increased need for more manpower, training and equipment at the IPRP to cope with the magnitude of the problem. The IPRP is authorized to have 220 officers available for these enforcement duties. Presently it has only 190. These additional 30 officers are urgently needed. Furthermore, the IPRP needs more and better broadband connections, more computers, and other improved equipment to take on this growing enforcement problem.

Optical Disc Production in Taiwan Has Shifted From Factory Production to “Burning”: Illegal burning of copyright content onto recordable discs is now clearly the predominant form of optical disc piracy in Taiwan. The remaining OD factory production problem now only involves the knowing export of blank media to often affiliated pirate operations outside Taiwan, particularly to Paraguay for transshipment to other countries in Latin America. JODE’s inspection report for all of 2007 is not yet available but inspections will likely be down again, as they were in 2006 from 2005.¹⁰ JODE reports issuing no fines to date but that 9 inspected plants closed voluntarily. The number of plants, mostly producing blank disks, is down from 83 plants in 2006 to a reported 77 in 2007. While pirate factory production is a minor problem, due to commendable enforcement by the enforcement authorities, it is important for Taiwan to continue to monitor the plants vigilantly to avoid backsliding. It remains a concern, for example, that in 2007, as in 2006, no fines or prosecutions against plants were instituted.

OD “burning” remains the biggest problem but even this problem has become less critical due to the growth of Internet piracy. The most recent report from the IPRP shows pirate optical disk seizures down about 84% and OD burner seizures down 63% through October 2007 from the same period in 2006.¹¹ Effective enforcement has reduced the number of night market stalls to under 190 (from a reported 324 in 2006).¹² Retail piracy is now predominantly through home delivery and flyer advertising.

Book Piracy: By far the most damaging piracy problem for U.S. and Taiwanese publishers alike in 2007 continued to be illegal photocopying of academic materials. Textbooks, journals, English language teaching (ELT) materials and professional reference books continued to be reproduced at an alarming rate, primarily on university campuses.¹³ Authorities have been quite cooperative in running raids against commercial photocopy shops (at least off campus) at copyright owners’ requests, and we are pleased to report that 2007 saw some self-initiated action by select local authorities, especially in Taichung. Such *ex officio* action is essential to combat illegal photocopying, especially looking toward activities of copy shops ON campus, and this proactive role by the government should be encouraged.¹⁴ Copy shops continue to grow more sophisticated in their efforts. Photocopy shops do not generally keep stockpiles of copies, but make them to order. Furthermore, print runs are often at night or after hours, with immediate offsite delivery to avoid detection. Thus, IIPA calls on the government to continue to strive for the employment of advanced investigative techniques to stem this form of piracy.¹⁵

Ministries of Justice and the Interior have re-evaluated for officers conducting raids on photocopy shops, with an aim to make these raids more palatable to them. IIPA commends this move. Ensuring that Taiwan’s officer reward schemes place adequate value on stemming book piracy is an important component of success in this area.

¹⁰ <http://www.tipo.gov.tw/eng/prosecution/jode.asp>

¹¹ <http://www.tipo.gov.tw/eng/prosecution/ietf.asp>. It is believed that virtually all these seizures were of “burned” discs.

¹² Source: IFPI-Taiwan

¹³ 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.

¹⁴ IIPA notes also that, due to the sensitivities police have expressed regarding on-campus actions, it is critical that MOE fully and effectively implement its April 2007 action plan, discussed further below.

¹⁵ 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.

The industry continues to suffer from some procedural inconsistencies in prosecution, especially in Tainan.¹⁶ Undue hurdles relating to Powers of Attorney and proof of copyright ownership continue to plague the attempts at convictions in this district, and IIPA calls for streamlining of these requirements to avoid unnecessary burdens in the quest for effective prosecution.

The Ministry of Education (MOE), in its Action Plan, called for the issuance of additional programs to deal with illegal photocopying on campus, with a deadline of September 2007. These programs were to include measures designed to minimize illegal copying at on-campus facilities. The action plan needs to adequately address internal sanctions for violations, such as assessments that impact the schools' budgets and mechanisms for terminating leases of on-campus photocopy shops that are caught engaging in illegal activity. The plan should also deal with on-campus enforcement concerns. To the extent that the plan fails to address all of these components now, the authorities should work with right holders to ensure that appropriate measures are included.

The importance of getting an effective plan into place—and enforcing that plan—deserves to be underscored here. Publishers report that, as enforcement against off-campus facilities has increased through the years, illegal operations are shifting toward Taiwan's campuses. On-campus infringement is rapidly becoming the primary problem for the industry. Meetings in mid-to-late 2007 with MOE indicated that they are willing to move an on-campus plan forward, and TIPO has expressed the same willingness. Unfortunately, at least since September 2007, action has not followed. In order to make significant strides towards reducing book piracy in Taiwan, this action must follow in 2008. The next university term opens this month and next, with another window of opportunity in September and October. IIPA calls on Taiwan to start implementing the plans it has, and to strengthen the MOE initiative regarding on-campus infringements of books.

End-User Piracy of Business Software: The rate of business software piracy decreased again in 2007 from 41% in 2006 to 40% in 2007 but and losses to U.S. software publishers increased to were \$104 million in 2007. 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 of the police and prosecutor's office for enforcement action fairly promptly. Nevertheless, many of the procedural problems noted in IIPA's past submissions continue to persist in 2007, 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.

Entertainment Software Piracy: Pirated *Wii* game discs are now readily available in Taiwan, along with counterfeit cartridge-based games which continue to be exported from the country. In the second quarter of 2007, over 10,000 counterfeit *Wii* discs, imported from China, were seized in the country over a six-week period. While enforcement efforts continue, Nintendo of America (NOA) reports two (2) successful criminal prosecutions in 2007. In May, a Taiwan court imposed an eight month prison sentence on a pirate for violation of the company's copyrights. The action began in May 2005, when U.S. Customs authorities in Miami seized two shipments of counterfeit *Game Boy Advance* components, transshipped through the U.S. for Paraguay. NOA informed Taiwan Customs of the shipment and requested that an investigation be initiated into the shipping company (Salida Industry Co., Ltd) and its owner. The investigation resulted in the indictment of the owner for trademark and copyright infringement in February 2007, and the trial proceeded. Remarkably, the court also imposed a fine on the forwarding company of the shipment, DHL Taiwan. In June 2007, a second case resulted in the imposition of a 14-month prison sentence on the defendant for selling counterfeit Nintendo products. The defendant's store was raided in late 2003 and resulted in the seizure of over 700 counterfeit Nintendo games. The defendant had immediately appealed the December 2003 judgment but in June 2007, the court dismissed the appeal and ordered the defendant to begin serving the prison sentence.

¹⁶ The copy shop 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.

Specialized IPR Court Approved in 2007 for Commencement in 2008: In a development that has been commended by IIPA, the Legislative Yuan, in March 2007, approved the Judicial Yuan's recommendation for the creation of an Intellectual Property Court to handle all civil trial court and all civil and criminal appellate IPR cases. The IPR court will NOT, however, have jurisdiction over copyright and trademark cases at the trial level.

IIPA has urged that the IPR court mechanism be extended to first instance criminal cases. We understand that the Judicial Yuan continues to believe that copyright and trademark criminal 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 now scheduled to become operational in the second half of 2008.

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2007 TAIWAN			
ACTIONS	MOTION PICTURES	SOUND RECORDINGS	TOTALS
NUMBER OF RAIDS CONDUCTED	726	401	1127
NUMBER OF DVD-Rs SEIZED	396,015	86	396,101
NUMBER OF DVDs SEIZED	77,600		77,600
NUMBER OF CDs AND CD-Rs SEIZED	40,653 (CD-R)	1,286,338	1,326,991
NUMBER OF INVESTIGATIONS	1,648	1053 (652 no raid actions but only sending C&D notices)	2,701
NUMBER OF VCD LAB/FACTORY RAIDS	1		1
NUMBER OF CASES COMMENCED	486	401	887
NUMBER OF INDICTMENTS	356	149	505
NUMBER OF CONVICTIONS (INCLUDING GUILTY PLEAS)	453	390	843
ACQUITTALS AND DISMISSALS	NA	2	2
NUMBER OF CASES PENDING	614	11	625
NUMBER OF FACTORY CASES PENDING	0	12	12
TOTAL NUMBER OF CASES RESULTING IN JAIL TIME	223	127	350
SUSPENDED PRISON TERMS			
MAXIMUM 6 MONTHS	0	11	11
OVER 6 MONTHS	0	5	5
OVER 1 YEAR	132	5	137
TOTAL SUSPENDED PRISON TERMS	132	50	182
PRISON TERMS SERVED (NOT SUSPENDED)			
MAXIMUM 6 MONTHS	73	64	137
OVER 6 MONTHS	16	4	20
OVER 1 YEAR	2	9	11
TOTAL PRISON TERMS SERVED (NOT SUSPENDED)	91	77	168
NUMBER OF CASES RESULTING IN CRIMINAL FINES		2	2
UP TO \$1,000	5	0	5
\$1,000 TO \$5,000	5	1	6
OVER \$5,000	1	1	2
TOTAL AMOUNT OF FINES LEVIED (IN US\$)	\$46,488	NA	\$46,488

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.htm>.

P2P Legislation: IIPA commends the adoption of the P2P bill amending Articles 87 and 93 and adding a new Article 97-1 to the Copyright Law. The amendments would make illegal, and subject to civil and criminal liability, the provision of file sharing services with the intent to facilitate infringement. TIPO also now has the authority to close an infringing P2P service once there is a conviction. This would prevent what occurred with Kuro, when it continued to operate illegally after the service was convicted and while on appeal. We have noted the initial raids done under these new amendments above. We also noted the fact that the services, Kupeer.com and Hip2p.com, closed immediately, and the deterrent impact the new law appears to have had.

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 often foresee that infringing activity is occurring over their services,¹⁷ but may not be aware of the specifics of each act of Internet piracy. IIPA understands that the ISP Bill is in its final stages at TIPO and would establish clear joint tortfeasor liability (and a form of vicarious liability where there is ability to control and a direct financial benefit) along with safe harbors much like those in place in the DMCA. In addition, there would be a statutory notice and takedown procedure that would have to be followed for ISPs to benefit from the safe harbors from liability for damages. Some technical changes are in the process of being finalized and IIPA has not seen the Bill as now proposed. There is a good chance that it will be acceptable, however, and, if so, we urge its prompt approval by the EY and its early passage by the LY.

Amend the Criminal Code to Make Internet Piracy a "Public Crime": In 2003, Taiwan designated as "public crimes" all offenses related to OD piracy, obviating the need for a right holder complaint and giving a push to the police undertaking raids directly when piracy was discovered or where it turned up in an investigation. This had an immediate and favorable impact on OD piracy in Taiwan. Given the vast increase in Internet piracy and its damaging impact on the legitimate market in Taiwan, plus the even greater difficulty for right holders to unearth these crimes, Taiwan's criminal provisions should now be further amended to include Internet piracy as a "public crime." Right holders would, of course, continue to work closely with enforcement authorities as they continue to do with OD piracy, but this added ability to react quickly and decisively to piracy on the Internet, is of critical importance if this growth is to be contained.

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 pirate "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: As of 2001, the Copyright Examination and Mediation Committee (CEMC) is no longer responsible for review of royalty rates proposed by collecting societies. However, TIPO still reviews what collecting societies submit to them as their proposed royalty rates for review and approval in advance. This review has caused serious harm to right holders, as detailed in prior submissions and TIPO should no longer require it. TIPO has proposed legislation that would abolish this review mechanism and would provide that administrative review

¹⁷ As a result of the *Kuro* decision and past decisions on accomplice or joint tortfeasor liability, awareness and foreseeability of infringing activities occurring over their services would appear to subject service providers to claims for copyright infringement, although this remains unclear. The ISP Bill would make such liability clear.

would only be undertaken if the parties have not been able to reach agreement. This legislation should be adopted as early as possible. In the interim, TIPO should stop conducting tariff reviews.

Earlier Proposed Legislation on Rental and Parallel Imports: 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 further consideration was not given in the LY. However, TIPO continues to raise the rental and parallel import issues with the USG in bilateral discussions. These amendments are not needed and IIPA opposes them. However, close monitoring by the USG 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 to 95 years from publication for sound recordings and other works of juridical entities.

TRAINING AND PUBLIC AWARENESS

The copyright industries continued to be actively involved in training and raising public awareness about copyright in 2007. The industries participated in a number of government seminars and trainings, including:

- On September 6, 2007 and October 18, 2007, IFPI-Taiwan was involved in three anti-piracy investigation-training events held by TIPO for the local police departments, with each training involving around 50 police officers;
- In September and October 2007, BSA provided three trainings for police on software piracy issues;
- MPA provided regular training seminars in 2007 including four trainings for police units, two trainings for JODE officers and five training programs for Customs officers. In addition it engaged in 25 educational campaigns at high schools and colleges.
- Nintendo of America's in-country representatives provided an extensive four-day training program for about 700 customs agents in Keelung, Taipei, Taichung and Kaohsiung. Another training program was held for 50 customs agents stationed at the Taoyuan International Airport. In addition, NOA provides its training manuals to law enforcement authorities in the country.

Conclusion

Internet piracy should be a significant focus of the enforcement authorities (in addition to action against end-user software piracy and illegal photocopying). More manpower is needed, as is more training and equipment. Legislative changes including, passage of the ISP bill and making Internet piracy a public crime are critical. Stepped up enforcement across the board to deal with this urgent problem is Taiwan's greatest challenge.

Taiwan continues to do an admirable job in its enforcement efforts against hard good piracy but needs to do more to combat illegal photocopying, especially on campus. MOE policies on this issue and on dealing with the use of TANet, remain inadequate and must be stepped up.