

TAIWAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: On January 16, 2009, USTR announced its decision on the 2008 out-of-cycle review (OCR) of Taiwan and removed it from the Watch List, for the first time since 1998. Taiwan has indeed improved its IPR and enforcement regime and IIPA commends the government. However, a number of critical reforms still need to be made, particularly with respect to Internet piracy, and other tasks remain regarding campus-related issues. IIPA therefore submits this Special Mention report to highlight these and other issues. IIPA urges that Taiwan's actions in 2009 be carefully monitored to determine whether Taiwan should remain off the Watch List.

Executive Summary: Internet piracy is, for most copyright industries, the most urgent problem in Taiwan. While the important task of reducing book piracy is still not completed, other forms of physical piracy are generally under control. Additional resources and improved training in Internet enforcement techniques are necessary particularly at the police level. Taiwan should adopt its ISP bill with the changes suggested in this submission including establishing clear secondary liability for ISPs. This would foster better cooperation among rights holders and the ISP community. Internet piracy must be made a public crime. IIPA commends the Ministry of Education for prohibiting the use of filesharing software, including that of the FOXY service, on its educational network, TANet. MOE should monitor use across all its school levels and strictly enforce its order. MOE's action plan on dealing with on-campus commercial photocopying also needs continued work and monitoring, although IIPA recognizes that there have been significant efforts toward cooperation, complemented by exemplary off-campus enforcement, in recent months.

Priority actions to be taken in 2009: IIPA requests the following actions by the government of Taiwan, which, if taken, would result in the most significant commercial benefits to the copyright industries:

Enforcement

- Implement the order banning use of filesharing software and promote other effective and deterrent policies and penalties for online infringements occurring over the government-owned TANet.
- Continue island-wide, self-initiated raids against illegal photocopying during peak academic copying periods, and continue to work to implement campus legalization action plans.
- Provide improved training and manpower to the IPR police (IPRP) and to the joint internet infringement inspection special taskforce (JIST).
- More effectively monitor exports of blank ODs to regions like Latin America.
- Extend coverage of the new IP courts to criminal copyright cases in Taiwan's courts of first instance.
- Lengthy copyright royalty rate reviews by TIPO should cease in favor of direct and free negotiations between collecting societies and users.

Legislation

- Adopt, as soon as possible, ISP liability legislation with an effective notice and takedown system, and with the few amendments urged by IIPA.
- Adopt anti-camcording criminal legislation.
- Adopt copyright term extension legislation.

For more details on Taiwan's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.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: 2004-2008¹

INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level								
Motion Pictures ²	NA	NA	NA	NA	NA	NA	98.0	51%	40.0	40%
Records & Music	4.4	22%	4.9	21%	16.2	28%	21.5	26%	49.4	36%
Business Software ³	122.0	39%	118.0	40%	91.0	41%	56.0	43%	88.0	43%
Entertainment Software ⁴	NA	NA	202.9	94%	NA	NA	161.9	42%	123.0	63%
Books	NA	NA	16.0	NA	18.0	NA	18.0	NA	20.0	NA
TOTALS	126.4		341.8		125.2		355.4		320.4	

PIRACY AND ENFORCEMENT UPDATES IN TAIWAN

Over the last year, piracy of physical product 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. Recent months have also seen stellar cooperation between authorities and book publishing representatives in trying to address the ongoing commercial photocopying issue. However, Internet piracy continues to threaten all these gains.

Internet piracy and enforcement : Internet piracy continues and has replaced physical piracy in the marketplace for many industries, requiring a significant increased response from Taiwan's government. Over 67% of Taiwan's population used the Internet as of mid 2008 (15.4 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 the music, movie and entertainment software industries in Taiwan.

To illustrate how Internet piracy has supplanted physical piracy, the local recording industry has estimated that the losses incurred from physical piracy have dropped to around US\$13 million (for all repertoire -- U.S., other foreign and local), but using raid data and monitoring done of sites with respect to issuing cease and desist letters, Internet piracy losses are roughly estimated at US\$231 million or 18 times as great. IFPI-Taiwan was involved with the authorities in 363 raids in 2005 with 35 of those involving the Internet, about 9% of raids. In 2008 there were 212 raids with 122 involving the Internet, about 58%. It reports that the number of Internet raids went down because piracy on blog sites went down, and that enforcement actions had a deterrent effect in 2007-2008 (combined with welcome education campaigns conducted by the Taiwan Intellectual Property Office (TIPO)), although as detailed below there are recent developments with prosecutions that may undermine this.

FOXY (www.gofoxy.net) is the most notorious P2P site in Taiwan and remains the most significant problem for the

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. For information on the history of Taiwan under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2009SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.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 2008 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Taiwan, and follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at <http://global.bsa.org/idcglobalstudy2007/>. 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.

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>; <http://www.internetworldstats.com/>

recording industry. It is estimated that 400,000 users are online with FOXY at any one time. FOXY was raided twice and remains under investigation by prosecutors. The site is hosted in the U.S. by an American citizen originally from Taiwan. Action by the Taiwan prosecutor is still pending.⁶ The issue to be resolved now, we understand, is whether Article 87(7) is applicable. This is the new P2P law's provision added to the Copyright Law in 2007 which provides for criminalizing the provision of software or other technologies from which the infringer has "receive[d] benefit." and where there is an "intent to allow the public to infringe economic rights."

A new problem is Gogobox (www.gogobox.com.tw), which is a cyberlocker site where users pay membership fees for storage space for their own collection (legitimate and pirate). The site has no search function but it operates in a manner allowing forums and BitTorrent seeds easy access to download music and movies without authorization. Action against this site also implicates Article 87(7), discussed above.

Many P2P and auction sites are located in mainland China and it is suspected that many pirates have moved their servers to China. China is now the biggest source of pirate music in Taiwan. The Taiwan authorities must find a way to block access to these sites, where technically possible.

The recording industry reports that, while sale of physical product has been dropping precipitously every year, and was down 27% by value from the 3Q 2007 to 3Q 2008, legitimate online revenue remains at only about 10% of the total, but shrinking, legitimate market. While legitimate services are available in Taiwan, the ready availability of free music via Internet piracy has kept these services at a very low volume. The recording industry estimates that physical piracy has now been reduced to about 22%.

Even though there is no ISP legislation yet in Taiwan, its ISPs have generally been cooperative in responding to cease and desist notices in the hosted environment. In 2008, IFPI-Taiwan sent 1127 notices to ISPs and 909 sites were blocked, for a compliance rate of over 90%. ISPs have not, however, cooperated in working out a mechanism for dealing with P2P piracy by forwarding notices and suspending and terminating repeat infringer accounts. There are no negotiations ongoing between ISPs and rights holders at this time; those discussions lasted for four years and achieved little. Two years into those talks TIPO released its first ISP liability bill draft and discussions ceased while the parties struggled over shaping the bill.

MPA undertook 428 raids against Internet piracy in 2008. This number includes raids against auction sites dealing in hard goods as well. Complaints were filed in each case⁷ and prosecutors have indicted most the defendants named. MPA also sent 335 notices to ISPs; ISPs responded to most of these by removing the infringing content.

While Internet piracy is a very serious problem for the software industry, enterprise end user piracy continues to cause the greatest losses. BSA reports that in 2008, Taiwan had the second highest number of software infringements online in Asia. BSA sent out 32,158 C&D notices but the compliance rate is unknown. It also reports many *ex officio* raids by the enforcement authorities against sites selling software online. It filed 2 criminal complaints against Internet sites.

The recording and motion picture industries report that more judges have become reluctant to issue search warrants against Internet pirates. They often have a limited knowledge of the technology and request detailed explanations while reviewing applications which delays decisions. IFPI-Taiwan reports that at least 10 applications were denied in 2008. In addition, prosecutors have also become reluctant to prosecute Internet offenses. IFPI-Taiwan filed 114 cases involving Internet piracy in 2008, 40 of which are either still pending or were juvenile cases. Prosecutors closed 74 of these cases in 2008, but "suspension of indictments" were ordered in 63 of these, more than 85% of the total. In 2007, the figure was 74%. In these cases, the judge will suspend the indictment but order the defendant to make a donation to charity! This situation does not create deterrence against further piracy.

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 Because Internet piracy is not a "public crime, rights holders must file a complaint before the police will act. Given the seriousness of these offenses, IIPA and its members urge Taiwan to make Internet piracy a public crime as well. See discussion below.

Academic publishers report a significant growth in Internet piracy, much through the Ministry of Education's university intranet system, TANet (see discussion below). 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 both motion pictures and music.

The Taiwan government's university computer network, TANet, which is operated by the Ministry of Education (MOE), continues to be 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 rights 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 (TIPA). The task force met twice in 2008, in May and November, and the copyright industries urge that more frequent meetings be held.

IIPA reported in its 2008 submission that MOE's actual implementation of this plan had been minimal to that date (February 2008). However, on November 25, 2008, MOE announced that it has prohibited the use of P2P filesharing software on TANet and particularly targeted FOXY. Prior to this order, some universities had limited the bandwidth on TANet available to students, but this was not uniform across the system. The order allows for certain exceptions in certain circumstances, but MOE has requested each level of the educational system to implement this new policy. IIPA welcomes this development, and urges MOE to ensure that it is fully implemented. The TIPA members will carefully monitor and report on implementation.

However, it appears that a number of colleges and universities have sought to bypass MOE's TANet rules. Recently the recording industry discovered that these universities were using the ADSL broadband service from HiNet or other private ISPs other than TANet to access the Internet. These ADSL users, either students in dormitories or faculties in offices, access unauthorized copyrighted materials by using P2P software and avoid MOE's monitoring. This is a serious loophole in MOE's new policy banning the use of file-sharing software on TANet. IIPA strongly urges MOE to take all necessary steps to secure the implementation of its new policy to encompass not just TANet but all ADSL users on campus as well.

In TIPO/MOEA's "Implementation Plan for Strengthening Internet Infringement Preventive Measures," JIST was given the 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 200. These additional 20 officers are urgently needed. Furthermore, the IPRP needs more and better broadband connections, more computers, and other necessary equipment to take on this growing enforcement problem.

Physical piracy and enforcement: Illegal burning of copyright content onto recordable discs is now clearly the predominant form of optical disc piracy in Taiwan, though all industries report that OD piracy has significantly diminished 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. While pirate factory production is a very 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.

The most recent report from the IPRP shows pirated optical disc and CD seizures are up from 2007 while such seizures were way down in 2007 compared to 2006, indicating that problems still exist.⁸ IFPI-Taiwan estimates there are only about 20 stalls selling pirated music OD product in Taiwan with most of these in Chung-Li City, and it believes that this form of

⁸ <http://www.tipo.gov.tw/eng/prosecution/ietf.asp>. It is believed that virtually all these seizures were of "burned" discs.

music piracy is under control. However, MPA had 345 raids against street vendors in 2008, up from the 190 in 2007, indicating that street vendor piracy for home video product is still not under control.

End-user piracy of business software: The rate of business software piracy decreased again in 2008 from 40% in 2007 to 39% in 2008 but losses to U.S. software publishers increased to \$122 million in 2008. BSA continues to have a good working relationship with the enforcement authorities and is able to get the cooperation of the police and prosecutor's office for end user enforcement actions fairly promptly. Nevertheless, many of the procedural problems noted in IIPA's past submissions, continue to persist in 2008, 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.

Book piracy: By far the most damaging piracy problem for U.S. and Taiwanese publishers alike in 2008 continued to be illegal photocopying of academic materials. Textbooks, journals, English language teaching (ELT) materials and professional reference books are being reproduced regularly, primarily on or near university campuses.⁹ 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 the occurrence of late 2008 island-wide raids, which resulted in seizures of almost 1000 infringing copies. These raids, in part self-initiated by Ministry of Justice and IPRP officials, tackled 56 shops in seven cities.¹⁰ 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.¹¹ Copy shops continue to grow more sophisticated in their efforts. They 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.¹²

The industry continues to suffer from some procedural inconsistencies in prosecution, especially in Tainan.¹³ Undue hurdles relating to Powers of Attorney and proof of copyright ownership still 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, including the role of campus staff and faculty in encouraging use of legitimate materials.¹⁴ To the extent that the plan fails to address all of these components now, the authorities should work with rights holders to ensure that appropriate measures are included.

Meetings with MOE have continued, with mixed messages about MOE willingness to move the on-campus plan forward. In order to make significant strides towards reducing book piracy in Taiwan, this action must follow in 2009. The next university term opens this month and next, with another window of opportunity in September and October. IIPA calls on Taiwan to keep working toward implementation of the plans it has, and to strengthen the MOE initiative regarding on-campus infringements of books.

⁹ 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.

¹⁰ Targeted cities include Taipei, Taichung, Tainan, HsinChu, I-Lan, HwaLian and TaoYuan.

¹¹ 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.

¹² 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.

¹³ 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.

¹⁴ One new concern is the increasing prevalence of unauthorized compilations, or "common teaching booklets." Lecturers must be instructed not to create compilations for class use without proper permissions from affected publishers.

Entertainment Software Piracy: Pirated video game products remain available in the country. Nintendo of America continues to actively pursue actions against vendors of counterfeit and pirated NOA products. In April 2008, the Taiwan High Court imposed a jail sentence of six months and 15 days on the owner of a store that had been in operation in the country since 2001. The case stemmed from a raid against the store in February 2002. Similarly, in August 2008, the Banchiao District Court sentenced a vendor of pirated and counterfeit cartridges and video games to 16 months. This case was brought as a result of a police raid in October 2007 in which the individual was found in possession of counterfeit and pirated Nintendo video games. In both cases, the sentences are to be served and neither defendant is eligible for probation. These sentences send a clear message to retailers that there will be little tolerance for piracy.

Specialized IPR Court and the IPR Branch of the Taiwan High Prosecutors office commenced on July 1, 2008: IIPA has welcomed the development of the IPR Court. Reports are that 700 civil cases have already been filed with that court. The court now consists of 8 judges and 14 technical examination officers (transferred from TIPO) who have been allocated to first instance trials. Through the end of 2008, the recording industry has three criminal cases before the IPR Court's appellate level; MPA has five.

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 remedy this deficiency and to clarify arguments now being made that, somehow, first instance criminal IPR trial courts would be "unconstitutional."

We also welcome the establishment of the IPR Branch in the prosecutors office. This was a reform that IIPA had pressed for in 2006 and 2007. It consists 4 prosecutors and 4 court clerks.

Below are comprehensive statistics on the recording industry's and motion picture industry's enforcement activities against Internet and physical piracy in 2008.

RECORDING INDUSTRY INTERNET RAIDS TAIWAN						
Type	Cases	Files	Suspects	Surf times	Members	Host Computer
P2P	16 (including 2 P2P operators and 14 P2P users)	753	18	817,342	0	10
Stream	4	2,404	4	33,545,428	81,789	1
Network	0	0	0	0	0	0
Blog	90	15,836	90	23,977,539	0	9
Club	2	673	2	244,878	0	0
Forum	2	16,841	3	461,051	1,296,982	4
Search Engine	1	80	1	0	0	1
Total	122	36,587	125	59,046,238	1,378,771	25

MOTION PICTURE ASSOCIATION INTERNET RAIDS TAIWAN						
Type	Cases	Files	Suspects	Pirated discs	Seized burners	Host Computer
P2P Platform	2	200	4	0	0	4
Blog	17	4,301	17	0	0	1
The uploaders of Gogobox	245	283,182	246	0	0	22
Forum (operator and users)	25	27,201	26	0	0	3
Streaming	39	11,490	39	0	0	0
Search Engine	1	90	1	0	0	1
Hard goods website	6	0	7	220,390	390	9
Auction sellers	93	0	101	24,565	74	22
Total	428	326,464	441	244,578	464	62

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2007 AND 2008 TAIWAN				
ACTIONS	Motion Pictures 2007	Motion Pictures 2008	Sound Recordings 2007	Sound Recordings 2008
Number of raids conducted	726	876	401	212
Number of DVD-Rs seized	396,015	731,837	86	0
Number of DVDs seized	77,600	519,890		0
Number of CDs and CD-Rs seized	40,653 (CD-R)	2,597 (cd-r)	1,286,338	22352
Number of investigations	1,648	1,523 (exclude C&D notices)	1053 (652 no raid actions but only sending C&D notices)	1339 of which were only C&D notices
Number of VCD lab/factory raids	1	2		8
Number of cases commenced	486	587	401	212
Number of Indictments	356	405	149	52
Number of Convictions (including guilty pleas)	453	526	390	135
Acquittals and dismissals	NA	6	2	0
Number of cases Pending	614	669	11	677
Number of factory cases pending	0	0	12	5
Total number of cases resulting in jail time	223	208	127	671
Suspended prison terms				
Maximum 6 months	0	0	11	28
Over 6 months	0	0	5	1
Over 1 year	132	105	5	1
Total suspended prison terms	132	105	50	30
Prison terms served (not suspended)				
Maximum 6 months	73	80	64	28
Over 6 months	16	21	4	11
Over 1 year	2	2	9	2
Total prison terms served (not suspended)	91	103	77	41
Number of cases resulting in criminal fines		15	2	2
Up to \$1,000	5	7	0	0
\$1,000 to \$5,000	5	4	1	0
Over \$5,000	1	4	1	2
Total amount of fines levied (in US\$)	\$46,488	\$34,060	NA	\$14,000

COPYRIGHT LAW AND RELATED ISSUES

The critical issue this year, discussed below in more detail, is to secure passage of the ISP liability legislation in the Legislative Yuan. However, there are some other issues which have been detailed in previous years' reports that are also important. 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>.

ISP liability: On August 27, 2008, the Taiwan Intellectual Property Office (TIPO) submitted its draft ISP bill to the Executive Yuan (EY) for review and approval. On October 1, 2008, The EY approved a bill and sent it to the Legislative Yuan (LY) for adoption. It is hoped that the bill will pass before the LY session ends in June. While the bill is a significant advance and is the logical next step following passage of the P2P legislation in 2007, it continues to have a few deficiencies which we hope are corrected in the LY:

- The final bill deletes the prior specific language on secondary liability. TIPO has said that existing law in Articles 28, 185 and 188 of the Civil Code are sufficient. IIPA prefers a specific reference to the secondary liability of ISPs in the circumstances noted. This will ensure clarity.
- Article 90quinquies should be clarified to that the obligations of ISPs for forwarding notices from rights holders in the P2P context (an important and welcome modification from earlier drafts) is tied directly to the obligation of ISPs to have, and to implement, a copyright policy on terminating repeat infringers. As drafted this connection is not clear.
- Article 90octies (1) and novies(1) should be modified to make clear that ISPs are liable if they know, or should have known from facts of which they were aware, that infringing activity is occurring on their service, and they fail to take down the infringing content even if the rights holder has not served a notice on the ISP. The current bill appears to absolve the ISP of liability unless it has actual notice as a result of having been sent a notice by the rights holder. This encourages ISP's to turn a "blind eye" to obviously infringing content, and do nothing unless notified by the rights holder. This is unacceptable.
- Article 90octies (2) should be amended to delete the word "directly." It should be sufficient that the ISP receive a financial benefit e.g., advertising revenue, for its service which contains infringing material. It would be impossible to connect revenue received "directly" to infringement, thus insulating ISPs from liability in these situations.
- Article 90quinquies should be amended to delete "a broad consensus" and "unless the measures impose an unreasonable burden" on the ISP. The obligation to employ technological measures on their services to reduce piracy should not be avoidable by the mere unwillingness of ISPs to become part of such a broad consensus.

P2P legislation: IIPA commends Taiwan for adopting 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 in our 2008 submission the fact that the services, Kupeer.com and Hip2p.com, closed immediately, and the deterrent impact the new law appears to have had. We note also that the proper scope of the "financial benefit" that must be received for there to be a criminal offense, pursuant to Article 87(7), appears unclear and has been a reason for the hold up in the criminal indictment of FOXY.

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 rights 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 rights holders to unearth these crimes, Taiwan's criminal provisions should now be further amended to include Internet piracy as a "public crime." Rights 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: TIPO now requires that rates proposed by collecting societies must be reviewed and approved by TIPO in advance. This delays the process and moreover, TIPO then has no power to enforce the rates against users who refuse to pay such approved royalties. The recording industry reports that many users refuse to pay these royalties. If this situation does not improve, it is suggested that the review mechanism be abolished in favor of direct and free negotiation among the collecting societies and their users.

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.