



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE
MINISTRY OF ECONOMIC AFFAIRS

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Quarterly Report on Taiwan's Intellectual Property Rights Protection

In response to global technological advances and legislative developments, TIPO is continuously engaged with review and revision of copyright-related laws in the hopes of providing a safer IP environment for right holders and users alike.

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Special Report

TIPO grants full reinstatement to patent, trademark applications delayed due to 3/11 Japanese earthquake

Japan is the top foreign source of patent applications to Taiwan, sending over 10,000 cases annually to TIPO. As a result of the recent major earthquake and tsunami disaster that hit Japan on March 11, 2011, some difficulties in transmitting or sending information between Japan and Taiwan may occur while the affected areas recover. Accordingly, TIPO has issued the following public notice: “Patent and trademark applicants whose cases have, due to the Japanese earthquake disaster of March 11, 2011, been delayed beyond the statutory time limit may apply for reinstatement in accordance with Article 17, Paragraph 2 of the Patent Act, and Rule 10 of the Implementing Regulations of the Patent Act, or Article 9 of the Trademark Act. TIPO will assess the specific conditions of each case before determining appropriate leniency measures.”

Copyright legal terms and definitions examined at first legislative consultation meeting of 2011

Officials from TIPO’s Copyright Division convened their first legislative consultation meeting of the year on February 16, 2011. Invited to the meeting was a panel of experts who shared their views on contentious issues such as distribution rights, rental rights and the first-sale doctrine. On the issue of distribution rights, the invited panel helped clarify inconsistencies between the definition of “distribution” and the scope of distribution rights, as TIPO studies the possibility of revising these terms in the future. The guests also shared their ideas on exhaustion of distribution rights (first-sale doctrine) and whether relevant copyright regulations should be defined under the scope of “fair use” or “economic rights”. In addition, the committee agreed to discuss revisions to the definitions of “public broadcasting”, “public performance” and “public transmission” at the following consultation meeting scheduled for April 16, 2011. The upcoming agenda will feature a review and detailed discussion of legal concerns relating to public presentation and public performance – which mainly stem from the recent proliferation of online data transmission technology, such as the use of online multimedia-on-demand (MOD) services that can be used to publicly transmit copyrighted music or video at business venues such as restaurants and hotels – and how these issues relate to exploitation of economic rights.

Legislative Amendments

Trademarks Examination Guidelines on Retail Service entered into force on February 1, 2011

Since Taiwan first allowed trademark registration for retail services, a number of applicants have shown confusion over what constitutes a retail service under Taiwan trademark law. Consequently, trademark applications often list an excessive number of items of retail service that depict unreasonable representations of actual business operations and obstruct fair market competition. These obstacles also increase the difficulties of conducting practical trademark examinations, wasting manpower and other administrative resources. In other instances, creators of self-made goods have applied for trademark registration on retail services instead of on normal goods, creating inconsistencies between the scope of trademark rights and actual transaction types which prevent full protection for these trademarks. Therefore, TIPO has introduced a set of guidelines that shed light on the basic ideas behind retail service and retail service examinations. The guidelines clearly explain the definitions, nature, and types of retail services, examination of retail service terms, criteria for determining the similarities between retail services and other goods and services, and proper usage of retail service trademarks. The presence of these guidelines will serve as a valuable source for TIPO examiners in the future.

TIPO announces amendments to patent application forms as of March 1, 2011

In conjunction with the newly-launched online file wrapper inspection service for published patent applications, TIPO has amended its patent application forms and related patent filing guides to include the following reminders to applicants: (1) When submitting a patent application, applicants should carefully read the statement regarding personal data protection. (2) Applicants are advised not to disclose their private information on any documents or communications other than the application form. Otherwise it is deemed that they give consent to TIPO to disclose such documents to the public.

Latest Developments

1. On January 1, 2011, TIPO's online search database of similar trademarks was made available free of charge to the public. The database has been re-designed in a more user-friendly format and contains the same search functions as those used by TIPO trademark examiners. Anyone wishing to apply for registration of a trademark can easily browse potentially-similar marks by inputting relevant data on the mark to be registered. The database (Chinese version) can be accessed via the following link:
http://tmsearch.tipo.gov.tw/TIPO_DR/index.jsp

2. On January 24, 2011, TIPO hosted the Forum for the Prevention of Copyright Infringement on Electronic Book Platforms. A collection of scholars, government officials and representatives from e-book providers and related associations were invited to the event to share their views on some of the most pressing legal and practical copyright infringement concerns currently facing domestic e-book platforms. The following key issues were discussed at length during the forum:
 - A. Do e-book providers have access to any copyright verification mechanisms when determining content to sell on their service platforms?
 - B. Do e-book providers impose any conditions on copyright owners making infringement claims in addition to existing legal requirements? (eg. requesting proof of existing litigation against infringers or provisions prohibiting claims made by third parties)
 - C. Do Taiwan courts have legal jurisdiction over providers operating from foreign servers?
 - D. What are the best ways of eliminating the current obstacles to e-book industry growth that are brought on by online piracy?

The concerns revealed at this event were compiled and will be discussed with officials from Mainland China through the joint working group for copyright established out of last year's Cross-Strait Agreement on IPR Protection and Cooperation. Other related government agencies will later be included in talks about how to solve disputes between book publishers and major cross-strait e-book companies relating to online copyright infringement of Chinese-language publications, an issue which severely hinders future development of the e-book industry.

3. As an effort to increase the transparency of patent examination process, TIPO has launched online service of file wrapper inspection for published patent applications on March 1, 2011. The service provides users with access to view publicly available documents of published patent applications since 2003 on the condition that the applications had not been granted or no office actions had been issued. By simply keying in the application number, publication number or certification number, users can access all the documents currently open for file inspection. This includes text of application forms, communications from applicant to TIPO and vice versa, amendments, and search report. The new service (Chinese only) can be accessed at TIPONet website.

Enforcement and Latest Statistics

National Police Agency (NPA)

1. Enforcement statistics (January - March 2011):

- a) A total of 1,208 cases relating to IPR infringement were uncovered, with 1,422 suspects apprehended. This total included 473 copyright infringement cases involving 548 suspects and 735 trademark infringement cases involving 874 suspects.
- b) Internet infringement: 280 cases involving 325 suspects
- c) Night markets: 67 cases involving 57 suspects
- d) Storefronts: 142 cases involving 184 suspects
- e) Newspaper inserts: two cases involving three suspects
- f) Factories: five cases involving six suspects
- g) Other forms of infringement: 712 cases involving 848 suspects

2. Inspection statistics (January - March 2011):

- a) On January 11, officers with the Taipei City Police uncovered an operation in Sanchong District, New Taipei City involving the unauthorized copying of licensed music and video files onto computer karaoke machines that were later sold to unspecified users. Seized at the scene were 16 song albums, 18 karaoke machines, 32 hard drives, 11 portable hard drives, two hard drive duplicators, one OD burner, two DVD players and 160 pirated ODs, along with a collection of assorted paper evidence that included song order forms, receipts, shipment forms and account records. All evidence was subsequently forwarded to local district prosecutors for further investigation in connection with suspected copyright violations.
- b) On January 26, a combined force of officers from the Taichung City Police Bureau, Miaoli County Police Bureau, Nantou County Police Bureau, Hsinchu City Police

Bureau, Hualien County Police Bureau, Hualien Harbor Police Office and the Telecommunication Police Brigade apprehended eight individuals suspected of operating a website for the purpose of selling unlicensed counterfeit goods. All evidence was subsequently forwarded to local district prosecutors for further investigation in connection with suspected trademark violations.

Table 1: Statistics of IP Infringement Cases (January – March 2011)

Unit: case/person

Year	Total		Trademark		Copyright		
	Cases	Suspects	Cases	Suspects	Cases	Suspects	ODs Confiscated
2011 (Jan. – Mar.)	1,208	1,408	734	859	474	549	137,467
2010 (Jan. – Mar.)	1,188	1,336	628	710	560	626	781,290
Percentage Change: 2011 (Jan. - Mar.) /2010 (Jan. - Mar.)	1.68%	5.39%	16.88%	20.99%	-15.36%	-12.30%	-82.41%

Source: National Police Agency (NPA), Ministry of the Interior

IPR Police

1. A total of 486 cases relating to IPR infringement were uncovered, with 560 suspects apprehended during January to March 2011. This total included 159 copyright infringement cases involving 166 suspects and 327 trademark infringement cases involving 394 suspects.
 - a) Internet infringement: 252 cases involving 280 suspects
 - b) Night markets: 36 cases involving 19 suspects
 - c) Storefronts: 142 cases involving 184 suspects
 - d) Newspaper inserts: two cases involving three suspects
 - e) Factories: five cases involving six suspects
 - f) Other forms of infringement: 49 cases involving 68 suspects

2. On January 3, investigators in Tainan City's East District uncovered a supply of counterfeit clothing apparel and accessories that were illegally branded with well-known international labels. A total of 22,700 items were seized, including 12,400 printed with the Puma brand, 3,100 with Adidas, 1,040 with Chanel and 6,160 with Gucci. All evidence was subsequently forwarded to local district prosecutors for further investigation in connection with suspected trademark violations.
3. On January 4, investigators in Changhua County uncovered an operation involving the unlicensed production and sale of trademarked Hello Kitty apparel. Seized items included 36,452 pairs of socks and 7,461 pairs of pants, along with 25 pieces of counterfeiting equipment. All evidence was later forwarded to local district prosecutors for further investigation in connection with suspected trademark violations.
4. On March 3, investigators in Yunlin County uncovered an operation suspected of violating copyright and other criminal laws through the sale of pornographic and other pirated DVDs via order forms printed onto newspaper inserts. Seized on site were 6,035 pirated DVDs, 1,232 blank ODs and 30 OD burners, along with a supply of OD sleeves, home delivery forms and flyers. All evidence was later forwarded to local district prosecutors for further investigation.

Joint Optical Disk Enforcement Taskforce (JODE)

From January to March 2011, JODE conducted 168 inspections (81 daytime and 87 nighttime) of OD factories, printing plate factories and related facilities. This total is slightly under that of the same period last year (92 daytime and 102 nighttime inspections during the Winter 2010 period; see Table 2). JODE also conducted 55 documented audits of the internal control and audit systems of outstanding OD factories after advising them on the establishment of such systems.

In collaboration with the IPR Police, JODE officials also took part in a total of 12 night market sweeps from January to March 2011.

Table 2: JODE Inspection Results (January – March 2011)

		2010		2010		2011	
		Jan. – Dec.		Jan. – Mar.		Jan. – Mar.	
Number of Inspections		765		194		168	
		Day	Night	Day	Night	Day	Night
		367	398	92	102	81	87
Cases Found In Violation of the Optical Disk Act		0		0		0	
Number of Plants	Manufacturing Plants	5		2		3	
Closed	Packaging Plants	0		0		0	
Cases Prosecuted		0		0		0	
Suspects Prosecuted		0		0		0	
Administrative Dispositions		2		0		0	
Machines Seized		0		0		0	
Illegal ODs Seized (pieces)		2000		0		0	

Source: The Joint Optical Disk Enforcement Taskforce (JODE), Ministry of Economic Affairs

Directorate General of Customs (DGOC)

1. Inspection results:

Table 3: DGOC Inspection Results (January – March 2011)

Jan.- Mar. 2011	Trademark Infringement		Copyright Infringement		No SID Codes on Export ODs	False Declaration of Export ODs	Violation of SID Code	False Declaration of Trademark
	Export	Import	Export	Import				
Cases	3	34	0	5	0	3	0	116
Amount	10,000	14,113	0	1,073	0	5,100	0	0

2. Major cases:

On January 3, 2010, the Keelung Customs Office uncovered an import shipment containing 5,500 packages of counterfeit eating utensils illegally labeled with the Hello Kitty brand; Keelung Customs also uncovered a shipment of 120 imported counterfeit Disney rolling suitcases on January 27. On January 14, the Taipei Customs Office intercepted an import shipment containing 407 pieces of counterfeit Nike and Puma athletic apparel; Taipei customs inspectors also seized an import shipment of 528 pairs of counterfeit Ugg boots on January 26. On February 15, the Kaohsiung Customs Office uncovered an import shipment containing eight sets of counterfeit mechanical bearings unlawfully labeled with the Timken brand. All relevant evidence was seized by customs officials in accordance with Taiwanese law.

3. International exchange:

a) As part of active efforts to increase the flow of data between foreign customs offices on counterfeiting offenses, the DGOC provided foreign customs offices with information on 16 counterfeiting and piracy cases from January to March 2011.

- b) A delegation from the DGOC accepted an invitation to attend the 12th APEC Anti-Corruption and Transparency Experts' Task Force (ACT) Meeting, held on March 2-4, 2011 in Washington, D.C. as part of the APEC Senior Officials' Meetings 1. At the meeting, the DGOC presented a report on the implementation of Customs Medi-Fake Operation 2010, a DGOC initiative launched last year to combat the illegal importing of counterfeit pharmaceuticals into Taiwan.
- c) Accepting an invitation from the Interchange Association, Japan, a team of DGOC officials traveled to Tokyo and Osaka on March 7-11, 2011 to deliver a series of speeches to Japanese stakeholders and IP agents. The speeches outlined Taiwanese customs regulations and measures from both legal and practical perspectives as they relate to IP rights.
- d) On March 23, representatives from the Chinese National Federation of Industries (CNFI) and the China Association of Enterprises with Foreign Investment (CAEFI), Quality Brands Protection Committee visited the DGOC to exchange views on a number of issues of mutual interest. The meeting was a positive step toward establishing effective partnerships between customs offices and right holder groups that will present a strong, combined front against brand counterfeiting and piracy in the Taiwan Strait region.

Status of Court Rulings

(Taiwan High Court Prosecutors Office, HCO)

Between January and March 2011, district courts in Taiwan closed a total of 876 IPR infringement cases. Of these, 194 suspects in 157 cases were indicted under ordinary procedures, 283 cases involving 299 defendants resulted in summary judgments, 368 indictments involving 390 defendants were deferred, and 68 cases involving 73 defendants were closed by ex officio action. During the same period in 2010, a total of 375 defendants were sentenced to prison terms at a conviction rate of 91.2%.

The adjudication of IPR cases by Taiwan District Courts from January to March 2011 is outlined below (Table 4):

Table 4: Status of Adjudication of Public Prosecutors' Offices of District Courts

Unit: person

Year	Status of Adjudication and Number of Convictions										
	Total	Sentence								Not Guilty	Others
		Subtotal	Under 6 Months	6 – 12 Months	1 – 2 Years	2 – 3 Years	Over 3 Years	Detention	Fines		
2011 (Jan.-Mar.)	464	376	197	15	8	1	-	147	8	37	1
2010 (Jan.-Mar.)	502	413	213	16	5	1	-	169	9	31	-
Change (%)	-7.57	-8.96	-7.51	-6.25	6.00	0	-	-13.02	-11.11	19.35	-40.00

Source: Prosecutors' Office for the Taiwan High Court

IPR Awareness

1. In order to instill in teachers and students a greater respect for the hard work and original creations of third parties while also teaching correct legal concepts of IP rights, TIPO in 2011 will be continuing its annual multi-pronged IPR awareness campaign on school campuses. The campaign will include the following initiatives:

- a) IPR law presentations: IPR legal experts will travel to more than 20 colleges and universities in March and April 2011 to give presentations on IP-related laws and legal issues. In addition, members of the IPR Service Group – a collection of IPR experts from various private sectors – will be assigned to schools around Taiwan from May to December 2011 to give speeches on topics specific to the needs of each school.
- b) Copyright training for schoolteachers: A total of four informational meetings will be held from May to September 2011 in order to educate teachers of all educational levels on proper copyright concepts.
- c) Creative artist presentations: TIPO will be cooperating with colleges and universities to organize four copyright awareness presentations scheduled from May to October 2011. Accomplished creative artists will be invited to share their thoughts with post-secondary students on the value of original works, while relating some of the difficulties they have encountered with protecting their own creations. Through captivating and informative talks, the guest speakers will be able to give students a first-hand perspective on the importance of respecting IP rights.
- d) Student awareness tours: Members of legal service clubs at 18 universities were selected and trained by TIPO to conduct IPR awareness tours from May to November 2010. The student trainees were grouped into teams and sent to elementary and secondary schools around the island to promote positive IPR concepts through lively, informative presentations.
- e) Library copyright meetings: Staff from central, county, municipal, and school libraries around Taiwan will be invited to three copyright awareness meetings scheduled for September and October 2011. Attendees will learn about proper usage and interlibrary sharing of all types of library material, including books,

periodicals, electronic databases, theses/dissertations, and audio-visual collections. A special publication, The Library Copyright Handbook, will also been provided specifically for the meetings.

2. Under the direction of the Hong Kong Intellectual Property Department and Taiwan Intellectual Property Office, the Taiwan Foundation Against Copyright Theft will re-unite with the Hong Kong Intellectual Property Society to organize the fourth-annual Hong Kong – Taiwan ‘My Video’ Competition. Registrations will be accepted until June 30, 2011 and are open to all Hong Kong or Taiwan residents with an interest in original video production.
3. A series of 30-second online and radio announcements that remind business owners and the public about obtaining proper authorization before playing licensed audio and video works in business venues were produced by TIPO and broadcast around Taiwan. The advertisements were recorded in three languages (Mandarin, Taiwanese and Hakka) and aired a total of 63 times from March 7 to April 15 on the Broadcasting Corporation of China (BCC)’s NewsRadio and “I Like” channels. TIPO also solicited the aid of the Police Radio Station (PRS) of Taiwan, National Education Radio (NER), and the Executive Yuan Government Information Office (GIO) to air the announcements on 206 radio stations across Taiwan during public broadcasting hours.
4. On January 26, 2011, the Ministry of Education (MOE) held an annual review meeting to discuss its recently-completed 2010 Campus IPR Action Plan Assessment Tour and Awareness Seminar project. The campaign included a tour of 15 colleges and universities to assess each school’s implementation status of the MOE’s Campus IPR Action Plan along with a series of three regional IPR informational meetings held in Northern, Central and Southern Taiwan last year. Following the meeting, a recap of the tour was published in booklets that were later distributed to all schools for reference.