



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

2010 has already been a year of great successes for TIPO. In addition to the landmark signing of the Cross-Strait Agreement on IPR Protection and Cooperation with Mainland China, our office has also stepped up collaboration with foreign IP authorities to produce new and closer relationships abroad. This increased exchange will be a tremendous boost to the development of technological industries, both in Taiwan and in partner regions.

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Special Report

Cross-Strait Agreement on IPR Protection and Cooperation, supplementary legislation approved by Legislative Yuan

At a special session on August 17, 2010, the Legislative Yuan passed the 17-article Cross-Strait Agreement on IPR Protection and Cooperation, along with amendments to Articles 27 and 28 of the Patent Act, Articles 4 and 94 of the Trademark Act, and Article 17 of the Plant Variety and Plant Seed Act. All amendments were promulgated by the Presidential Office on August 25 and entered into force on September 12.

The Patent Act amendment contains new language stating that patent applicants claiming priority rights shall declare, in the written application, the foreign country or WTO member territory in which the corresponding application was filed, and shall also submit the documents issued by the foreign country or WTO member territory government evidencing the acceptance of said foreign application. The Trademark Act amendment consists of a similar addition and is now written in the following manner: "An application of trademark, which was filed in a country or WTO member territory mutually recognizing priority right with Taiwan and was registered in pursuance to the domestic legislation of that country, may claim priority right in Taiwan...The priority right applicant shall submit a certified copy of the application admitted by the said foreign country or WTO member territory." The amended Plant Variety and Plant Seed Act now states that applicants for plant variety rights in Taiwan may claim priority rights on the basis of the applicant's first application for a plant variety right duly filed in a foreign country or WTO member territory, so long as priority rights are mutually recognized between Taiwan and the foreign territory and the Taiwanese application is filed within a specified time period.

USPTO patent attorney Jeffrey Siew visits TIPO

Mr. Jeffrey Siew, a patent attorney with the United States Patent and Trademark Office (USPTO), was in Taipei on July 1, 2010 to give a speech for TIPO patent examiners. Examiners learned about recent USPTO policies and measures, and gained valuable insight on topics such as the Patent Prosecution Highway (PPH) and various other examination practices. Mr. Siew was then invited to tour TIPO's Patent Division to witness the working environment and examination procedures of in-house examiners.

34th Japan-Taiwan Economic and Trade Conference holds midterm review meeting in Tokyo

At the midterm review meeting of the 34th Japan-Taiwan Economic and Trade Conference, held on July 15, 2010 in Tokyo, Japan, both sides conducted a comprehensive review of all issues concerning exchange between Taiwan and Japan in recent years. The delegations also discussed possible future avenues for partnership, such as the Intellectual Property Academy Collaborative Initiative, which was proposed and outlined by Japan at the meeting.

High-ranking EPO official visits TIPO to inquire about potential cooperation issues

Dr. Pedro Osona, the European Patent Office (EPO) head of development for China and Korea, was in Taipei for a visit with TIPO officials on July 22, 2010 to discuss current and potential cooperative ventures between the EPO and TIPO. Among the items discussed were: trial use of the EPO online patent database EPOQUE-net and associated user training, partnership on patent examiner training, data exchange, common classification systems, a comparative study of search and examination procedures, and electronic exchange of priority documents. The two sides agreed to build upon their current foundation of cooperation by developing additional opportunities for partnership in the future.

Taiwan-UK holds first-ever IPR digital videoconference

On July 26, 2010, the first Taiwan-United Kingdom digital videoconference on IPR affairs was convened. Both sides began the meeting with presentations on the current administrative affairs of their respective IP offices (UK-IPO and TIPO), before exchanging opinions on key issues of mutual interest. Included among these issues were the development of an agreement on design patent data exchange, exchange of information on pharmaceutical patent examination guidelines and other relevant practices, and Taiwan IPR litigation procedure. The DVC proved to be a successful activity toward increasing mutual understanding of general IPR affairs in both governments, representing an effective new channel of communication for future bilateral cooperation. Both sides agreed to adopt a series of similar DVCs on a regular, biannual basis.

Taiwan, Czech Republic sign MOU, reach new ground in bilateral IPR relations

On September 13, 2010, TIPO Director General Wang, Mei-hua was in Prague, Czech Republic alongside Josef Kratochvil, President of the Industrial Property Office of the Czech Republic, to co-sign the Memorandum of Understanding Regarding Cooperation between TIPO and IPO-CZ. The main points of the MOU include regular exchange of English-language office publications, experience-sharing on the organization and hosting of IPR-related events, and reciprocal personnel exchange, whereby both parties will inform each other about IPR-related events hosted by the respective offices and provide invitations to attend. In addition, each party may request from each other technical assistance that will satisfy the specific interests of each party. In the future, the two parties agree to work toward closer, more substantial interaction and cooperation on each of the above matters while promoting exchange on new technologies and innovations, in order to spark growth of domestic industries in both countries.

2010 Cross-Strait Trademark Forum held in Guizhou Province, PRC

A gathering of representatives from industries, government agencies and academic institutions were invited to take part in the 2010 Cross-Strait Trademark Forum on September 15 in Guizhou Province, PRC. Leading the Taiwanese delegation was Chinese Commercial & Industrial Coordination Society (CCICS) President Chang, Pen-tsao. The delegation exchanged opinions and formed practical, in-depth discussions with delegates from Mainland China on the following cross-strait issues: recent and future amendments to trademark laws and practices; how to secure sustainable industrial development by establishing fixed systems of IP management; application and examination of geographical certification marks and collective marks; and unfair competitive practices in relation to trademark use.

Legislative Amendments

Formality patent examination standards amended and promulgated

As part of efforts to carry out Taiwan's new legal regime and enhance examination quality while also reflecting recent administrative reforms, TIPO has compiled a record of all disputes from the past two years relating to formality examination practices for the purpose of amending formality examination standards.

Among the amended guidelines include new standards for determining filing dates, proper courses of action when receiving applications containing foreign languages or partial omissions to specifications or figures (drawings), and the ex officio designation or amendment of representative figures in invention patent or utility model applications.

TIPO revises procedures for reviewing amended patent invalidation actions

In the past, amendments made by patentees during invalidation actions were required to be in accordance with the provisions of Article 64 of the Patent Act. To minimize excessive processing delays, if such a request was determined as ineligible by the terms of Article 64, TIPO would not notify the patentee and would continue with the invalidation action directly as originally submitted.

However, after further consideration, in cases where patentees submit incorrect or incomplete amendment requests (i.e. those that fail to meet the provisions of the Patent Act, Article 64), TIPO will now notify the patentee of the reason(s) for which the request was considered ineligible and will specify a deadline by which a response must be received, in order to better guarantee the rights of all patentees. To reduce further delays, TIPO will, in principle, only issue one such notice to the patentee.

New supplementary regulations for amended Copyright CMO Act approved by TIPO

In response to the recent amendment to the Copyright Collective Management Organization (CMO) Act, a series of 10 supplementary regulations was revised and published to the official TIPO website in September 2010 for public viewing. This series included the following publications: 'Copyright CMO Fee Payment Guidelines', 'Application Guide to Reviews of Copyright CMO Royalty Rates & CMO Royalty Rate Review Application Forms', 'Copyright CMO Merger Application Guide', 'Procedures for Approving Copyright CMO Applications', 'TIPO Operating Procedures for User-Requested Reviews of Copyright CMO Royalty Rates', 'Standards For Application Fees Related To Copyright Affairs', 'Minimum Number of Promoters Required for Individual Categories of Created Works when Submitting Applications for Copyright CMO Establishment', 'Application Guide for Copyright CMO Establishment', 'Application Guide for Additional Categories of Works Under Copyright CMO Management', and 'Organization Regulations for the TIPO Copyright Review And Mediation Committee.'

TIPO issues administrative orders following new Developmental Act for Creative & Cultural Industries

Following the recent enactment of the Developmental Act for Creative and Cultural Industries, TIPO has issued a series of four administrative orders that were drafted in conjunction with the Act. The four orders – Regulations on Licensing and Royalties for Created Works Owned by Unknown Rights Holders; Regulations on Pledge Registries and Pledge Registry Inspections for Created Works; Regulations Governing Collection of Application Fees for Use of Created Works Owned by Unknown Rights Holders; and Regulations Governing Collection of Pledge Registry Fees for Created Works – were each promulgated and entered into force on September 24, 2010.

With the approval of these new orders, if a user wishing to obtain licensing of publicly-released material for the purpose of producing cultural or creative works is unable to contact the rights holder after having made every effort to do so and is thus unable to obtain licensing, the user may now inform TIPO for the purpose of obtaining a compulsory license and an investigation will subsequently be conducted. Users who, upon the completion of this investigation, are granted a compulsory license and have already deposited royalty payments may begin use of such material within the scope granted by the compulsory license. In addition, when economic rights belonging to cultural and creative industries are made the object of a pledge, rights holders may now apply to TIPO to register the establishment, assignment, alteration, extinguishment, or limitations of such pledge, in order to help cultural and creative industries obtain bank financing through the use of economic rights as pledges and to guarantee the security of such transactions.

Latest Developments

1. On July 13, 2010, the Ministry of Education convened a meeting of the Inter-Agency Consultation Group for Campus IPR Protection. At the meeting, participants reviewed implementation progress of the Campus IPR Action Plan at Taiwanese colleges and universities over the previous academic semester. The group also discussed and confirmed revisions to plan implementation for the upcoming 2010-2011 school year.
2. On September 10, 2010, TIPO hosted a seminar to examine contentious issues relating to collective offenses and continuous offenses in criminal copyright infringement cases. A total of 78 guests attended the seminar, including judges, prosecutors, attorneys and business owners.
3. The 2010 Taipei International Invention Show and Technomart, the largest annual event of its kind in Asia, was held September 30-October 3, 2010 at the Taipei World Trade Center Exhibition Hall. Centered around the three main themes of "smart life", "biotech and medicare", and "green future", the show attracted 630 companies and institutions from 21 countries worldwide. Over 2,000 inventions and technologies were on display and were viewed by a total of 97,728 buyers, consumers and spectators, a 15% jump from last year's total. All figures represented record highs for the six-year-old event. An estimated US\$100 million in transaction value was created from the four-day show and subsequent negotiations.
4. The third-annual Hong Kong – Taiwan 'My Video' Competition was wrapped up in October 2010 after judges chose the best of 234 total submitted entries. Five winners were announced in each of the three categories; those selected were deemed to be the most creative, most entertaining and most effective videos for promoting original productions and for warning against the infringement of previously-copyrighted works. An award

ceremony was held in Hong Kong on October 16 to recognize the winners. The Taiwan Foundation Against Copyright Theft, one of the event co-organizers, held a press conference in Taipei on October 20 to present the winning videos and reiterate copyright protection concepts.

Enforcement and Latest Statistics

National Police Agency (NPA)

1. Enforcement news (July - September 2010):

- On September 21-23, the NPA launched an intensive three-day, island-wide search of markets, shopping areas, night markets, factories, warehouses, storage containers, newspaper inserts and the World Wide Web for illegally-imported counterfeit goods. As a result of the campaign, police uncovered 47 new cases of counterfeit imports, involving a total of 52 suspects.
- From July to September 2010, the NPA held a series of 17 seminars on economic policing practices, which included three basic-training seminars for Taiwan Police College students. All classes focused on increasing understanding of copyright laws and helped improve the abilities of current and future officers to investigate IPR infringement cases. The seminars drew a total of 2,154 officers and students and received roughly 92,000 visits to the NPA's online digital classroom.

2. Inspection news (July - September 2010):

- In the period from July to September 2010, NPA enforcement agencies uncovered a total of 915 IPR infringement cases involving 1,108 suspects and the seizure of 213,833 optical disks (see Table 1). These figures mark a 20.15% decrease in cases and a 13.02% decrease in suspects compared to the same period in 2009, which saw 1,146 cases (565 trademark and 581 copyright) involving 1,274 suspects (629 trademark and 645 copyright). However, there was a significant rise in the number of confiscated ODs last quarter when compared to the third quarter of 2009; in all, 213,833 ODs were confiscated from July to September 2010, representing a 117.82% jump from the 98,169 ODs seized during the same three months in 2009. Among cases uncovered last quarter, 509 involved trademark infringement (618 suspects), and 406 involved copyright infringement (490 suspects). Most of the decrease in IP infringement cases related to copyright infringement, as the NPA saw a 30.12% drop in copyright-related arrests last quarter. The reduced figures stem mainly from the legal principle that requires an initial complaint from rights holders in order to begin investigation of a copyright infringement offense, coupled with the recent proliferation of infringement activities conducted over the Internet, which has made detection by rights holders more difficult.
- NPA enforcement agencies uncovered three cases of newspaper inserts with advertisements for counterfeit and pirated products during this quarter, one more than the two such cases handled during the same period in 2009. The NPA did not conduct any infringement-related phone disconnections during this quarter, as was the case during the third quarter of 2009. These low numbers provide clear evidence of how newspaper inserts are gradually being replaced by the Internet as a method for selling counterfeit goods.
- NPA officers discovered 50 cases of infringement at night markets and other shopping centers from July to September 2010, a sizeable decrease from the 87 such cases handled during last year's third quarter. This drop reveals how business operators have been forced to conceal their whereabouts and avoid detection by selling their counterfeit inventory from unmanned sales bins.
- The number of Internet infringement cases decreased by 38.54% from the same July - September period in 2009, from 698 last year to 429 this past quarter. This sharp decrease may be explained by the following factors:
 - A higher proficiency of Internet knowledge among users has made detection of IP infringement more difficult for investigators.
 - Infringers often provide false personal information when registering online accounts or set up websites outside Taiwan in order to avoid detection.
 - Infringers often conduct transactions through express courier services instead of face-to-face and withhold direct contact information, thus making it difficult for investigators to locate their whereabouts.
 - The main focus of investigators has moved away from smaller misdemeanors and offenses to the more major, less frequent infringement cases that require application of search warrants and more time to complete thorough investigations.

3. Future objectives:

- In relation to sales of pirated or counterfeit goods via newspaper inserts, transactions at night markets and over the Internet remain the more common types of infringement. With regard to future tactics, the NPA recognizes the need for stronger enforcement of online infringement and illegal night market sale investigations.
- The NPA also emphasizes continued promotion of training programs to improve the investigative skills and legal knowledge of all police officers when fighting online infringement crimes.

Table 1: Statistics for IP Infringement Cases (July – September 2010)

Unit: case/person

Year	Total		Trademark		Copyright		
	No. of Cases	No. of Suspects	No. of Cases	No. of Suspects	No. of Cases	No. of Suspects	No. of CDs Confiscated
2010 (Jul.- Sep.)	915	1,108	509	618	406	490	213,833
2009 (Jul. - Sep.)	1,146	1,274	565	629	581	645	98,169
Percentage Change: 2010 (Jul. - Sep.) /2009 (Jul. - Sep.)	-20.15%	-13.02%	-9.91%	-1.74%	-30.12%	-24.03%	117.82%

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

IPR Police

1. IPR Police inspection results (July to September 2010):

- Total cases uncovered: 97 copyright infringement cases involving 97 suspects, and 250 trademark infringement cases involving 295 suspects. The total market value of these infringed products was estimated by right holders at approximately NT\$1.95 billion.
- Internet infringement: 188 cases involving 208 suspects
- Storefronts: 100 cases involving 134 suspects
- Night markets: 35 cases involving 21 suspects
- Newspaper inserts: 3 cases involving 6 suspects
- Factories: 1 case involving 1 suspect
- Other forms of infringement: 20 cases involving 22 suspects

2. Major cases:

- On July 15, investigators uncovered a location in Gongguan Township, Miaoli County where pirated optical disks were allegedly produced using computers and OD burners for the purpose of sale, in violation of copyright law. Seized evidence included 29,994 DVDs, 10,650 pornographic ODs, 2,848 audio CDs, 74 OD burners, and two computer hard drives. The case was subsequently turned over to district prosecutors for further investigation.
- On July 21, investigators uncovered a storefront in Banqiao City, Taipei County where suspected pirated video game ODs were sold to unspecified persons via catalogs on display inside the store. Seized from the scene were one supply of sales catalogs, 6,380 pirated ODs, and one OD burner device. All evidence was subsequently turned over to district prosecutors for further investigation.
- On August 7, IPR police investigators in Mituo Township, Kaohsiung County uncovered an operation involving unlicensed photocopying of assorted educational books for sale to unspecified users on the Ruten online shopping website in violation of copyright law. Among the seized evidence were 30 unlicensed photocopied books, a computer hard drive and OD burner, book binding machine, paper cutting machine, and photocopying machine. The case was subsequently turned over to district prosecutors for further investigation.

Joint Optical Disk Enforcement Taskforce (JODE)

From July to September 2010, JODE conducted 185 inspections (84 daytime and 101 nighttime) of OD factories, printing plate factories and related facilities. This total is slightly under that of the same period last year (96 daytime and 111 nighttime inspections in July-September 2009; see Table 2). JODE also conducted 69 documented audits of the internal control and audit systems of outstanding OD factories after advising them on the establishment of such systems.

Table 2: JODE Inspection Results (July – September 2010)

		2009		2009		2010	
		Jan. – Dec.		Jul. – Sep.		Jul. – Sep.	
Number of Inspections		820		207		185	
		Day	Night	Day	Night	Day	Night
		387	433	96	111	84	101
Cases Found In Violation of the Optical Disk Act		2		1		0	
Number of Plants Closed	Manufacturing Plants	6		1		0	
	Packaging Plants	0		0		0	
Packaging Plants		0		0		0	
Suspects Prosecuted		0		0		0	
Number of Administrative Dispositions		2		0		0	
Number of Machines Seized		0		0		0	
Number of Illegal ODs (Pieces)		2000		2000		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 (July – September 2010)

Jul.- Sep. 2010	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	0	65	0	11	0	0	0	169
Amount	0	375,879	0	4,615	0	0	0	0

2. Major cases:

On July 24, the Taipei Customs Office uncovered an import shipment of 5,904 Viagra pills illegally labeled with the Pfizer pharmaceutical brand; Taipei Customs also uncovered an import shipment of 850 pirated Nintendo Wii video game disks on August 25, and a shipment of 417 counterfeit Abercrombie & Fitch clothing items on August 31. A second import shipment of 161,200 counterfeit Viagra pills was uncovered by the Keelung Customs Office on September 4. All relevant evidence was seized by customs officials in accordance with Taiwanese law.

3. International exchange:

- As part of active efforts to increase the flow of data between foreign customs offices on counterfeiting offenses, the DGOC provided international customs offices with information on 18 counterfeiting and piracy

cases from July to September 2010.

- b) In order to assist with implementation of World Customs Organization strategies to intensify inspections of pirated optical disks, the DGOC convened a meeting of all regional customs offices in Taiwan on July 7. Representatives from the Taiwan Intellectual Property Academy (TIPA) were also invited to exchange views with DGOC officials on ways to improve inspections of pirated imports and exports.
- c) In a joint venture with the U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security, the DGOC hosted the Customs Border Enforcement Workshop on September 23-24 at the National Taipei University Hospital (NTUH) International Convention Center. The agenda consisted of eight discussion topics, which included International Narcotics & Precursor Smuggling Trends and Interdiction/Investigation Techniques, and Combating IPR Violations. U.S. government officials from the ICE, U.S. Customs and Border Protection, U.S. Secret Service, Drug Enforcement Administration (DEA), and Internal Revenue Service (IRS) took part in the workshop, along with representatives from customs and other inspection agencies in 12 countries, such as Belgium, Japan, South Korea, the EU, and the UK. The purpose of the event was to increase cooperation between Taiwanese and foreign customs agencies in the fight against cross-border smuggling practices.

Status of Court Rulings (Taiwan High Court Prosecutors Office, HCO)

Between January and September 2010, district courts in Taiwan closed a total of 2,839 IPR infringement cases. Of these, 717 suspects in 560 cases were indicted under ordinary procedures, 702 cases involving 741 defendants resulted in summary judgments, 1,364 indictments involving 1,423 defendants were deferred, and 213 cases involving 226 defendants were dropped by ex officio action. During the same period in 2010, 1,222 defendants were sentenced to prison terms with a conviction rate of 83.8%.

The adjudication of IPR cases by Taiwan District Courts from January to September 2010 is outlined below (Table 4):

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

Unit: person

Sentence	Year	Status of adjudication and number of convictions										
		Total	Sentence								Not Guilty	Others
			Subtotal	Under 6 Months	6-12 months	1-2 year(s)	2-3 years	Over 3 Years	Detention	Fines		
Total	2010 (Jan.-Sep.)	1502	1222	622	57	20	2	-	495	26	105	3
	2009 (Jan.-Sep.)	1724	1352	651	96	18	2	-	529	56	107	3
	Change (%)	-12.88	-9.62	-4.45	-40.63	11.11	0	-	-6.43	-53.57	-1.87	0.00

Source: Prosecutors' Office for the Taiwan High Court

IPR Awareness

1. From July to September 2010, TIPO was active in planning copyright awareness events that were tailored to the unique demands of individual government agencies, schools, and businesses.
 - a) A series of four educational meetings entitled 'Proper Use of Licensed Software/Freeware in Government Offices, Schools and State-Owned Businesses', attracting approximately 300 participants in total.
 - b) One meeting entitled 'Proper Use of Licensed Software/Freeware in Small and Medium Enterprises', drawing representatives from nearly 60 SMEs.
 - c) One meeting on digital publication copyrights, with representatives from 75 e-book publishers and platform providers in attendance.
2. Copyright concepts were also advertised by TIPO during this quarter through the use of television, radio, billboards and the Internet:
 - a) Television and electronic billboards: a public service announcement warning against illegal camcording in movie theatres was broadcast on the six major Taiwanese TV stations during public broadcasting hours during July 2010, airing a total of 163 times; in September and October 2010, copyright protection awareness advertisements were displayed on electronic billboards in Taipei Rapid Transit System stations
 - b) Online copyright awareness campaigns via TV and radio advertisements: On August 14, a production that promoted uploading of original works to the Internet was aired on a Taiwanese television program; on September 1, Broadcasting Corporation of China (BCC) Radio produced an interview with TIPO on Internet copyrights in order to increase public understanding of online auction services and to teach positive concepts about online copyright use.
 - c) Internet awareness: From September to December 2010, TIPO will be partnering with the Taiwan Internet Association and 20 of its members – such as Hinet and Yahoo auction services and Yam blogging service – to post notices on member home pages or other visible locations that warn users against the purchase or sale of counterfeit and pirated goods over the Internet.
 - d) Printed material: A variety of IPR awareness publications were printed and distributed to all sectors during the previous quarter. The material included a directory of copyright collective management organization (CMO) regulations from past years, common formats for copyright licensing agreements in government agencies, a general guide to CMO regulations, common questions about the recent ISP Liabilities Act and corresponding implementation regulations, a guide to royalty rates for common use of licensed music on karaoke machines, information on when to pay royalties for funeral service music, and a guide to using third-party works during election campaigns.