

Performance Report on Intellectual Property Rights Protection in Taiwan

Towards Developing Adequate and Effective IP Protection Environment

2003



Intellectual Property Office



INTELLECTUAL PROPERTY OFFICE
MINISTRY OF ECONOMIC AFFAIRS

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—Towards Developing Adequate and Effective IP Protection
Environment

Intellectual
Property
Office



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PERFORMANCE REPORT

ON INTELLECTUAL PROPERTY

RIGHTS PROTECTION IN TAIWAN

Towards Developing Adequate and Effective IP Protection Environment

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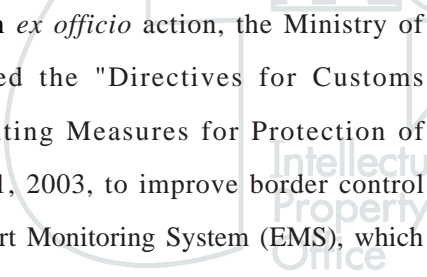

I. PREFACE

Recognizing that effective protection of intellectual property right serves not only as our commitment to the international community, but also as the drive to industrial and national competitiveness upgrading, the Taiwan government has continued implementing relevant intellectual property right protection affairs by formulating the "IPR Action Plan 2003-2005", after the completion of the "2002 IPR Action Year" campaign.

In conjunction with its accession to the WTO, Taiwan has conducted a thorough examination of all IP-related legislation. We have revised and implemented IP laws and regulations to bring the level of our IP regime into conformity with the TRIPS Agreement, as well as with other relevant international conventions. As a WTO member, Taiwan completed its first IP review exercise at the TRIPS council meeting in late November 2002. The amended Patent Act was promulgated on February 6, 2003, with certain provisions entered into force on March 31 and others scheduled to take effect in July 2004. The amended Trademark Act was promulgated on May 28, 2003 and took effect on November 28, 2003.

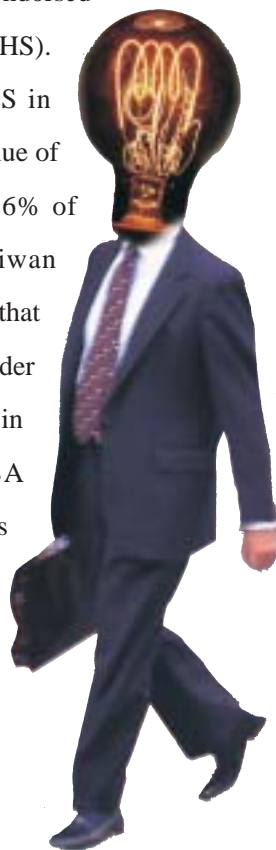
It is worth noting that the new Copyright Act, which entered into force on July 11, 2003, has provided necessary measures to deal with piracy and counterfeiting. Not only has it broadened the scope of public crime to apply to sale or display of optical disks at night markets and to increase civil remedies and criminal penalties, but has also afforded protection to electronic right management information.

To address the efficiency of the Copyright Act to deal with digital piracy, the Ministry of Economic Affairs (MOEA) issued an administrative order on September 5 on the "Enforcement/Interpretation Guidelines for the Copyright



Act." In dealing with *ex officio* action, the Ministry of Finance (MOF) issued the "Directives for Customs Authorities in Implementing Measures for Protection of Trademark and Copyright" on July 1, 2003, to improve border control measures. More importantly, the Export Monitoring System (EMS), which has been implemented since 1992, extended its scope to cover inspection of inbound and outbound optical disks starting from October 1, 2003, so that a national level of comprehensive enforcement network has been fully developed to deal with piracy and counterfeiting.

Taiwan's persistent and relentless efforts and achievements in carrying out adequate and effective IP measures have been endorsed by the U.S. Department of Homeland Security (DHS). The latest IP seizures report released by the DHS in January 2004 shows that for fiscal year 2003, the value of goods seized from Taiwan was US\$610,000 (0.6% of overall seizures). This improvement places Taiwan outside the top ten violators to the U.S., indicating that measures against piracy and counterfeiting and border control mechanisms are being effectively executed in Taiwan. In addition, according to the 2003 BSA survey on software piracy rate in Asia, Taiwan's piracy rate for 2002 followed closely behind Japan's. These figures indicate that meaningful results have been achieved through Taiwan's IP enforcement and law amendments.



II. IP PROTECTION POLICIES

To fulfill the goal of "Challenging 2008–National Development Scheme" and to facilitate a healthier IP environment, the main policy and measures for the "IPR Action Plan 2003-2005" are as follows:

● Building a Healthy IP Legislative Regime

To synchronize with the development of digital technology, to meet with the growing domestic industrial demand and to sustain competitiveness in the 21st century, the formulation of a National IP Policy and Strategy as a source of reference for prospective strategic industrial development is needed. To ensure that IP legal framework stays current with international norms, timely amendments of IP related laws and border control regulations are necessary in creating a solid foundation for Taiwan's IP legislation.

● Reinforcing IP Enforcement Mechanisms and Improving Crackdown Performance

Prosecutorial, police, and investigative authorities are to continue to work together in combating counterfeiting and illegal production of ODs. In order to enhance enforcement capabilities, the establishment and legalization of special IP enforcement taskforce is imperative. The responsibility of the Integrated Enforcement Task Force (IETF) is to carry out, with the assistance of local police precincts, nation-wide random inspections at night markets, shopping centers and of other IP infringement activities while the Joint Optical Disk Enforcement Taskforce (JODE) inspects optical disk production plants.

● Improving the Implementation of Border Control Measures

To further enhance border control measures in combating the export of

pirated and counterfeit goods, it is necessary to amend related regulations to provide the legal basis for *ex officio* actions and to improve border control mechanisms for the enforcement of trademarks, copyrights, and optical disks.

● Assisting Industries on Developing IP Management and Corporate Identification System

In order to strengthen Taiwan's image and global competitiveness, the government assists enterprises in establishing proper management system for IP, commercializing their patents, and formulating corporate identification system as well.

● Promoting Software Assets Management

Official instructions are given to increase budget for computer hardware and software procurement to achieve a piracy-free environment for all government agencies. Private entities are also urged to set up internal administration and monitor the use of authorized software.

● Engendering Public Awareness and Education and International Cooperation

In order to improve Taiwan's international image, engendering proper IP awareness through educational and promotional activities is needed. To facilitate international exchange and cooperation for public awareness program through relative agencies is also important in demonstrating Taiwan's efforts toward developing a healthier IP protection environment.

III. LEGAL FRAMEWORK

● Passage of the New Copyright Act

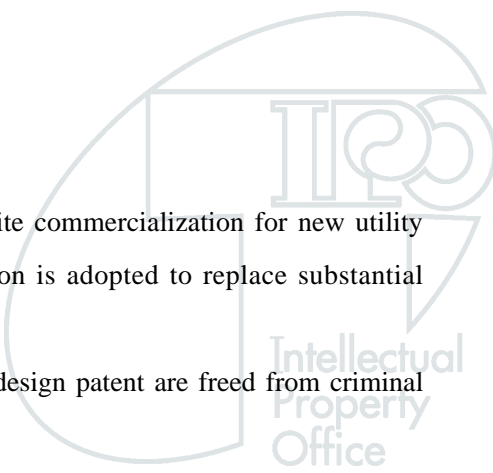
To protect copyright use and to provide a healthier digital environment, the Amendments to the Copyright Act took effect on July 11, 2003. A total of 53 amendments were made, including 13 new insertions. In terms of civil remedies, the amount of statutory compensation is increased from NT\$1 million to NT\$5 million (US\$143,000), when the infringement is ruled as severe in nature. In the case of criminal penalties, fines have been increased to up to NT\$8 million (US\$230,000). The new Act also expands the scope of public crimes so as when unauthorized reproduction of optical disks with the intent to profit is established, complaints from copyright holders will no longer be required for enforcement agencies to initiate enforcement actions.

The new Copyright Act has provided necessary measures to deal with piracy and counterfeiting, it also balances the rights of copyright owners and users, and balances the benefits between public and private interests.

● Amendments to the Patent Act

Amendments to the Patent Act were promulgated on February 6, 2003. The new Act is to reflect the needs of the public and to be consistent with international norms. It is also to enhance Taiwan's international competitiveness and create a sound patent examination system. Important reforms are as follow :


1. In order to simplify the levels of patent administrative litigation, the cause of opposition and the cause of cancellation were combined, and the opposition system was abolished.
2. To further comply with Article 28 of the TRIPS Agreement, "offering for sale," is listed as part of the patent right.

- 
3. To pursue faster process and expedite commercialization for new utility model patent, formality examination is adopted to replace substantial examination.
 4. Infringements on utility patent and design patent are freed from criminal liabilities after March 31, 2003.

Amendments to the Trademark Act

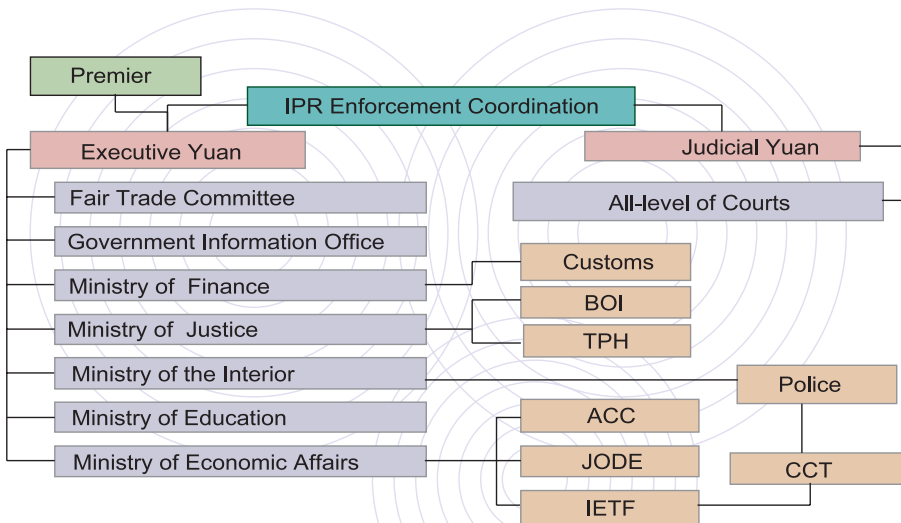
In order to protect trademark right holders and consumers, and to maintain fair market competition, the Amendments to the Trademark Act was promulgated on May 28, 2003, and entered into force on November 28, 2003. These amendments constitute a comprehensive modification of the Trademark Act and involve adjustments to the trademark system as well as changes to application documentations. In line with amendments to the principal Act, the Trademark Act Enforcement Rules took effect on December 12, 2003.

The new Trademark Act consists of amendments to 50 articles, insertion of 40 articles, and deletion of 23 articles. Major elements and key changes include: 1. Adding sounds and 3-dimensional shapes to what may be registered as trademarks. 2. Specifying the legal basis for acceptance of an electronic trademark application. 3. Enhancing protection provided to famous trademarks. 4. Adopting a new system under which anyone may file opposition to the granting of a trademark within 3 months after public notice of registration is provided. 5. Enhancing the protection provided to geographical indications for wines and spirits. 6. Specifying border control measures applicable to trademark-infringing goods.

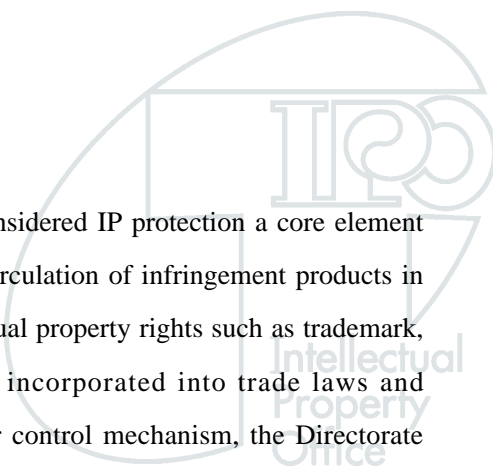


IV. ENFORCEMENT

Taiwan's enforcement efforts in curbing IP infringements require the continuous and on going cooperation of several competent authorities, including the Integrated Enforcement Task Force (IETF) of the National Police Administration of the Ministry of Interior (MOI), the Bureau of Investigation (BOI) and Prosecutors' Office of the Taiwan High Court of the Ministry of Justice (MOJ), the Directorate General of Customs of the Ministry of Finance (MOF), the Anti-Counterfeiting Committee (ACC) and the Joint Optical Disk Enforcement Taskforce (JODE) of MOEA, among others. Premier Yu convened a cabinet-level IP review meeting on March 3, 2003 to define the role and responsibilities of Taiwan's IP enforcement network. MOEA convenes IP Coordinating Meetings on a regular basis to coordinate the division of work among these authorities in enforcing IP protection policies.



IP Enforcement Framework



Taiwan government has always considered IP protection a core element in its national policy. To prevent the circulation of infringement products in domestic and foreign markets, intellectual property rights such as trademark, patent, and copyright of goods are incorporated into trade laws and regulations. To further enhance border control mechanism, the Directorate General of Customs of MOF and related authorities have adopted intensive IP protection enforcement measures for different commodities to form a tight-nit border control network.

Internal Enforcement

Ministry of Interior

Enforcement Policies of National Police Administration, Ministry of Interior

The National Police Administration (NPA) promulgated the "Implementation Plan to Reinforce Intellectual Property Right Protection" in February 2003, and undertook effective measures to clamp down on attempts to sell pirated optical disks through night markets, the Internet, and newspaper advertisements, and on production of pirated disks by manufacturers. Pursuant to the Implementation Plan, police authorities are urged to investigate the source of pirated or counterfeit materials in conjunction with weekly crackdowns. Police under the Criminal Investigation Bureau (CIB) are assigned to conduct rigorous searches on the Internet to crack down on instances of infringement cases. All police authorities have been instructed to sustain efforts to counteract this new type of infringement activity. The NPA also established a system of heavy penalties and awards to convey to the police that IP enforcement is to be one of their top priorities in their daily routine. The NPA instructed its affiliated

police authorities on May 6, 2003 to undertake twice-weekly raids on suspicious optical disk plants, warehouses, marketplaces, night markets and other business locations. In addition to regular crackdowns, the NPA also initiates random simultaneous nation-wide crackdown so as to combat piracy effectively.

Furthermore, the NPA formulated an "Implementation Project for Police Authorities in Cracking Down Pirated ODs at Night Markets", whereby local police undertook regular and random crackdowns 4 times a week. OD piracy has been reduced as a result of these frequent raids and confiscations of infringing goods.

Cyber Crime Taskforce (CCT), Criminal Investigation Bureau (CIB), NPA

The Cyber Crime Taskforce (CCT) is established under the Criminal Investigation Bureau of NPA. CCT has been dispatched to conduct rigorous searches on the Internet to crack down on instances of infringement cases. All police authorities have been instructed to redouble efforts to eradicate this new type of infringement activity.

Establishment of the Integrated Enforcement Task Force (IETF)

IETF was established on January 1, 2003, to work in cooperation with the Joint Optical Disk Enforcement Taskforce (JODE) in implementing raids and seizures of manufacturing devices, raw materials and products of underground plants. IETF comprises 220 police officers and has two teams and six squads dispatched to six cities across Taiwan. The mission of IETF is to conduct inspections and raids against IP infringements. IETF functions like any other police forces in that they are on duty 24 hours a day, 7 days a

Total IPR Police Force:220

Headquater (9)
Team 1 (6)
Taipei Squad (49)



Taoyuan Squad (35)



Taichung Squad (33)



Chiayi Squad (33)



Hualien/Pingtung
Squad (16)



Team 2 (6)
Kaohsiung Squad (33)



Island-wide IETF Squads

week. IETF conducts crackdowns upon tips and reports as well as on their own initiatives. The inspections that IETF focuses on are piracy over the Internet, piracy via flyers and piracy at the source. IETF also cuts off sales channels through crackdowns at night markets, inspections of warehouses and cut off sales via telecommunications.

Since IETF's establishment in January 2003, a total of 4110 inspections were conducted at night markets, retail shops and shopping centers island-wide and some 36,990 police officers were mobilized. The number of confiscated music and video CDs dropped significantly since the new Copyright Act went into effect on July 11, 2003. The number of confiscated music CDs dropped 89.74% from 435,860 pieces for January to July to 44,710 pieces for August to December. The number of video CDs also

IETF'S Inspection Results (Jan.-Dec. 2003)

Month	No. of Inspections		No. of Police Involved		No. of Music CDs Confiscated	No. of Video CDs Confiscated
	Total	Monthly average	Total	Monthly average		
Jan. to July (Before entering into force of new Copyright Act)	2364	337	21276	3039.4	435,860	174,227
Aug. to Dec.	1746	349	15714	3142.8	44,710	108,399
Monthly percentage change between Aug. to Dec./Jan. to July		+3.5%		+3.4%	↓ 89.74%	↓ 37.78%
Jan. to Dec. Total	4110		36990		480,570	282,626

dropped 37.78% from 174,227 pieces for January to July to 108,399 pieces for August to December, further indicating that deterrent effect has been achieved.

As of December 2003, a total of 2,017 cases of infringements were reported, involving a total value of infringing goods of NT\$6.62 billion



(US\$192 million), and 1,025 suspects arrested.

Enforcement Results

In 2003, police authorities across Taiwan handled 4,660 cases of IP infringement cases. These resulted in 5,713 suspects being arrested and indicted. The figures for infringement cases and suspects, compared to those for 2002, decreased by 8.95% and 8.87%, respectively. The total market value of all pirated materials confiscated amounted to more than NT\$12.62 billion (US\$365 million), representing a 26.09% increase from the NT\$10 billion seized during the previous year. The decline in infringement cases and suspects demonstrate a solid record of achievement by law enforcement authorities to stamp out underground activities.

A total of 2,617 copyright infringement cases were uncovered in 2003, making up 56.15% of all infringement cases pursued. In the same year, 2,014 cases of trademark infringement and 29 cases of patent infringement

were also discovered. The value seized for copyright infringement cases was at NT\$8 billion, or 64% of the total market value seized. Also, the number of copyright cases and suspects decreased substantially by 35.09% and 32.55%, respectively, in 2003 compared to 2002. These data show the effectiveness of police crackdowns and the adequacy of the new Copyright Act in deterring piracy.

Since the new Copyright Act entered into force in July 2003, a decline in infringement cases is observed. 5,118 infringement cases were found in 2002, representing a 2.88% decrease from 5,270 infringement cases in 2001; 4,660 infringement cases were found in 2003, representing an 8.95% decrease from

Statistics for IP Infringement Cases

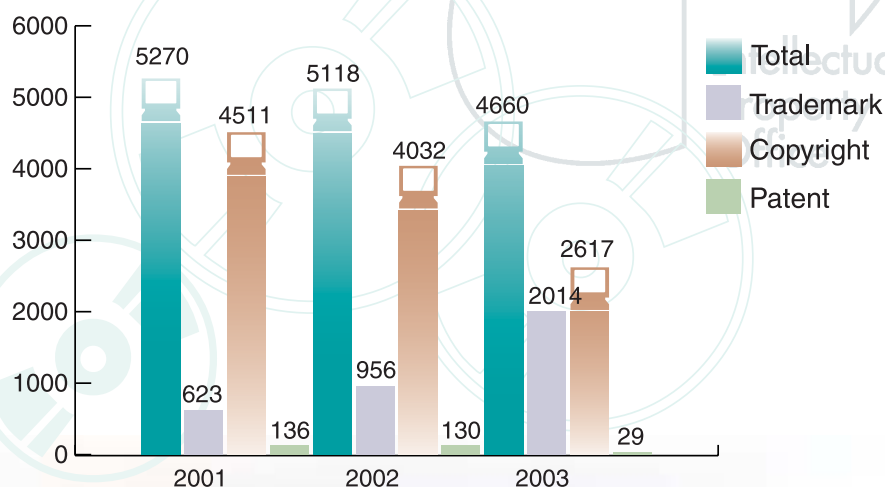
Unit : Case/Person; NTD = \$1000

Year	Total			Trademark		
	No. of Cases	No. of Suspects	Est. Market Value	No. of Cases	No. of Suspects	Est. Market Value
2001(1-12)	5,270	6,114	8,202,571.4	623	837	3,707,072.5
2002(1-12)	5,118	6,269	10,010,370.6	956	1,266	1,158,604.6
2003(1-12)	4,660	5,713	12,622,498.9	2,014	2,419	4,527,918.5
Increase Rate	-8.95%	-8.87%	26.09%	110.67%	91.07%	290.81%

Source: National Police Administration (NPA), Ministry of Interior

the number of infringement cases in 2002. Furthermore, there has been a substantial drop in copyright infringement cases and the number of suspects over the last three years, which indeed is an indication of the effective enforcement in deterring digital piracy.

2001-2003 Patent, Trademark, and Copyright Infringements



	Patent			Copyright		
	No. of Cases	No. of Suspects	Est. Market Value	No. of Cases	No. of Suspects	Est. Market Value
	136	186	300,024.6	4,511	5,091	4,195,474.2
	130	179	806,950.1	4,032	4,824	8,044,815.9
	29	40	15,224.8	2,617	3,254	8,079,355.4
	-77.69%	-77.65%	-98.06%	-35.09%	-32.55%	0.43%

Ministry of Economic Affairs

Anti-Counterfeiting Committee, Ministry of Economic Affairs

To encourage the public to provide more leads on IP infringement activities, especially on illegal optical disk manufacturers, the Ministry of Economic Affairs established an "Infringement Enforcement Rewards

Program" in March 2003. This program grants rewards to enforcement officers and informants whose tip-off leads to successful crackdown of underground optical disk plants. A maximum of NT\$10 million (approximately US\$300,000) reward can be granted. Also, to provide an extra incentive for IP enforcement officers and to boost their morale, the bonus for police officers who conduct crackdown activities and achieve outstanding results has been increased from NT\$200,000 (about US\$6,000) to NT\$2 million (about US\$60,000). In addition, the number of credit points awarded to police officers who crack down on IP infringers has been doubled from 5 points to 10 points per case. A bonus of 10 points is awarded on a 5-case increment. This reward is effective from March 1, 2003 to December 31, 2005.

The Anti-Counterfeiting Committee (ACC), together with authorities from prosecutors, police, and investigators, have assumed responsibility as



Minister Lin Yi-fu of MOEA held reward's program ceremony

coordinators and planners of anti-piracy activities. They also work closely with right holder groups through the mechanism of the Joint Project Enforcement Team. The team collects information on alleged infringement activities from the general public, forward these reports to the NPA or the BOI, and grant enforcement monetary rewards as appropriate. To make sure



Premier Yu attending anti-counterfeiting activity

that adequate and effective protection is sustained, ACC coordinates with relevant agencies to call for quarterly coordination meetings at MOEA to review enforcement activities. ACC also works closely with MOJ to organize monthly coordination meetings with participants of judges and representatives from relevant agencies to review the status of judicial rulings, tracking of warehousing, and other related matters. In 2003, more than NT\$15 million (US\$442,000) in rewards was granted to enforcement officials.

Joint Optical Disk Enforcement Taskforce

In order to implement the Optical Disk Act, the Intellectual Property Office (TIPO), the Industrial Development Bureau (IDB), the Bureau of Foreign Trade (BOFT), the Bureau of Standards, Metrology and Inspection (BSMI) and the Anti-Counterfeiting Committee (ACC) formed the Joint Optical Disk Enforcement Taskforce (JODE). To further its effectiveness in combating piracy, JODE will be reinforced by an addition of 20 military draftees this year.

There are 88 optical disk plants in Taiwan as of December 2003, 25 of which manufacture pre-recorded CDs. The plants are divided into three groups for inspections. 47 plants in Group A are blank OD plants listed on the stock exchange. 18 plants in Group B are pre-recorded OD plants with good record. 23 plants in Group C are pre-recorded OD plants, stamping plants, and newly established plants with violation records. JODE cooperates with IETF in conducting unscheduled inspections around the clock. OD

OD Company Inspection Types

Types	Number of Plants	Type of Plants	Inspection Implemented
A	47	Blank OD plants listed on the stock exchange	1-2 times per month No advance notice
B	18	Pre-recorded OD plants with good record	At least 2 times per month without advance notice, day or night
C	23	Pre-recorded OD plants, stamping plants, and newly established plants with violation records	Once per week without advance notice, day or night or holiday

plants in Group A are subject to inspections once or twice a month. Plants in Group B are subject to inspections at least twice a month. While plants in Group C are inspected once a week. JODE authorizes both regular and random inspections of legal and illegal optical disk factories, manages permits and applications for authorized manufacturers, reviews source identification codes (SID), examines the content of ODs, and polices the identification of pre-recorded ODs upon import or export.

Enforcement Results

As of December 2003, a total of 1,088 inspections were conducted, marking a 266% increase from the 297 inspections conducted during the

JODE Enforcement Performance

Jan. to Dec. 2003

		2002		2003	
Number of Inspections		297		1,088	
		Day	Night	Day	Night
		264	33	703	385
Number of Cases Found Violating the Optical Disk Management Statute		16		10	
Number of Plants Closed	Manufacturing Plants	10		9	
	Packaging Plants	5		1	
Number of Cases Prosecuted		12		7	
Number of Suspects Prosecuted				17	
Number of Administrative Disposition		6		8	
Number of Machines Seized		9		11	
Number of Illegal ODs and Total Value Seized	Pieces			303,575	
	Value			NT\$132,145,250	

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



same period in 2002. Of these, ten cases were found in violation of the Optical Disk Management Statute. Ten plants were ordered to close and cease operations. Seventeen suspects were prosecuted and eleven manufacturing machines as well as 303,575 pieces of illegal ODs and total value of NT\$132,145,250 were seized. Inspection results show that the number of illegal ODs and the total value seized have remained unchanged since July 2003, after the new Copyright Act took effect on July 11, 2003, indicating that control at the reproduction/distribution level is being administered effectively and adequately.

Underground OD plant found

Location: Sansia, Taipei County

Date: July 15, 2003

(1 injection machine)



Underground OD plants crackdown



Crackdowns at night markets



Inspections of warehouses



Cut off sales via telecommunications

Cutting off sales channels

Border Control Measures

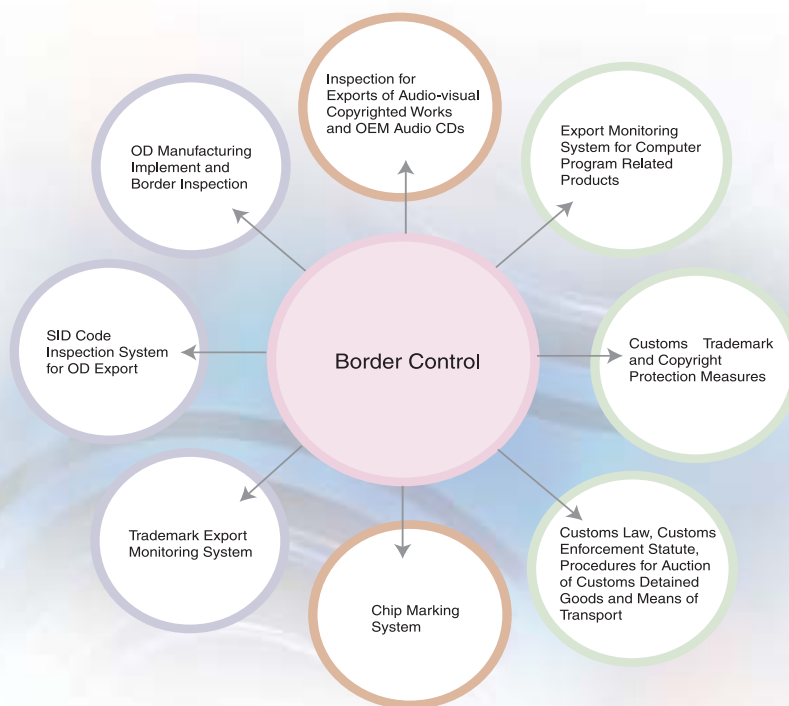
Ministry of Finance

Border Control Mechanism, the Directorate General of Customs

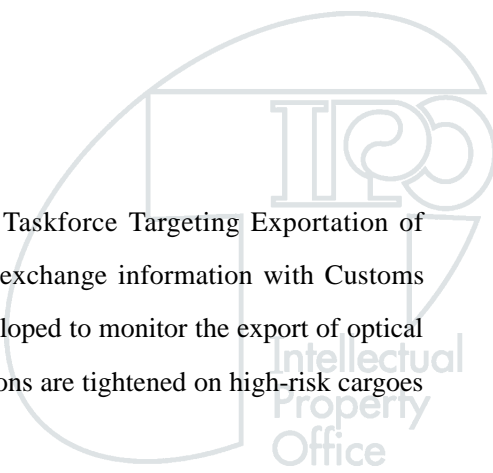
In the enforcement front, Taiwan government has also enhanced its border control measures in addition to its persistent in-land anti-piracy and anti-counterfeiting enforcement activities. The Directorate General of Customs of the Ministry of Finance and Customs Offices have implemented a set of border control measures to form a tighter network dealing with import and export. Taiwan IP border control measures includes: OD Manufacturing Implement and Border Inspection System, SID Code Export Inspection System, Inspection for Exports of Audio-visual Copyrighted Works and OEM Audio CDs, Export Monitoring System for Computer

Program Related Products, Border Control for Read-Only Memory Chips, Trademark Export Monitoring System, Directives for Customs Authorities in Implementing Measures for Protection of Trademark and Copyright, Guidelines for Taskforce Targeting Exportation of Pirated Optical Disks.

Taiwan IP Border control Measures



In order to deter counterfeiting activities and identify optical disk source, OD manufacturers are required to inscribe a SID code on all pre-recorded ODs. To further enhance border control of pre-recorded ODs exports, Customs authorities have begun on Feb. 25, 2003, inspecting pre-recorded audio and video ODs SID codes against the export declaration. In order to combat the export of pirated and counterfeit goods, the Directorate General of Customs of MOF established an IP specialty taskforce on March 6, 2003,



and promulgated the "Guidelines for Taskforce Targeting Exportation of Pirated Optical Disks". A network to exchange information with Customs offices of other countries has been developed to monitor the export of optical disks. Furthermore, stepped up inspections are tightened on high-risk cargoes and manufacturers.

To carry on with existing IP protection policies as well as to adopt new mechanisms set forth under the amended Trademark Act and Copyright Act, the Directorate General of Customs promulgated the "Directives for Customs Authorities in Implementing Measures for Protection of Trademark and Copyright", which entered into force on July 1, 2003. The Directives provides the legal basis for border control officers to enforce trademark and copyright infringements.

In an administrative order effective as of October 1, 2003, outbound inspection of four additional items on software OD has been incorporated under the Export Monitoring System (EMS), which was initially implemented in 1992 to deal only with outbound software programs. The improved integrated mechanism provide Customs inspectors, TIPO's IT experts, and MPA experts who assist in the inspection with one-stop service to jointly inspect pirated ODs, while not impeding trade facilitation programs already in place.

In 2003, Customs found violations in 6 cases of products without imprinted SID codes upon exportation (involving more than 102,788 ODs) and 8 cases involving suspected pirated ODs (more than 12,427 pieces). Customs also found 320 cases of trademark false declaration upon exportation, in which 17 cases were counterfeiting.

Taiwan's persistent efforts and achievements in carrying out effective IP enforcement measures have been recognized by a recent report from the Customs and Border Protection (CBP) & Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security. The value of IP seizures in FY2003 from Taiwan was US\$610,000, a substantial drop from the US\$26,500,000 in FY2002. This improvement places Taiwan outside of the top ten IP violators to the U.S. a considerable progress from being the second top violator in 2002. It is particularly noteworthy that MEDIA seizures in FY2003 also dropped drastically from US\$23,000,000 (88% of overall seizures) in FY2002 to US\$23,870 (4%), indicating that border control mechanisms are being effectively executed in Taiwan.

International Enforcement Collaboration

Trans-National Computer Piracy Uncovered by Police

Trans-national piracy is a new trend that takes piracy across the borders. International collaborative effort is important in cracking down piracy of this kind effectively. On December 17, CCT and JODE uncovered a trans-national piracy group, in which major Microsoft infringements were found. The Taipei District Court Prosecutor's Office and the Taipei Division of the BOI uncovered yet another trans-national piracy group on December 24. According to the enforcement authorities involved in the crackdowns, the two suspected companies manufacture their pirated computer products in the Shenzhen and Dongguan areas, take shipping orders in Taiwan, launder the profits via certain banks in Taipei, and export the products via trading companies in Hong Kong. The scope of their exports covers five continents. The success of cracking down international crimes of this kind is impossible without international cross border collaborations.

V. JUDICIAL ASPECT

● Prosecutions and Enforcement

Ministry of Justice

The Prosecutors' Office of the Taiwan High Court of the Ministry of Justice (MOJ) is in charge of holding meetings of the Coordination Taskforce for IP Enforcement. This taskforce coordinates activities of all prosecutor authorities in the execution of IP infringement cases and taskforces that focus crackdowns on the Internet, night markets and flyers. In order to strengthen IP protection and deter piracy and counterfeiting, MOJ urges all prosecutors to request for heavy penalty when prosecuting an IP-infringement case. MOJ has also requested all courts to impose appropriate penalties on IP infringers and has developed a system for monitoring the judicial progress of those infringement cases judged to be "severe".

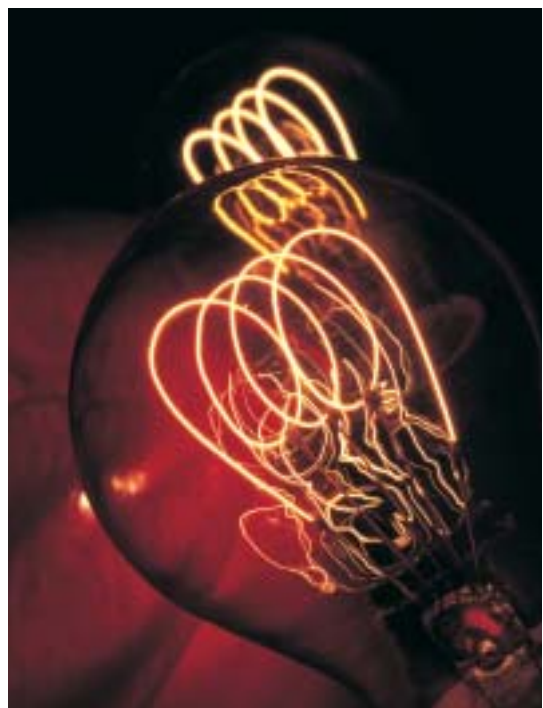
To further this objective, MOJ has instructed all levels of prosecutorial offices, when trying IP-related cases of criminal nature in which the judge's ruling might allow for commutations, prosecutors are to give thorough consideration to a number of factors, such as whether the infringers are repeat offenders, if the offense involves criminal rings, whether the defendant has

incited minors to commit IP crimes, as well as the value of the pirated goods involved. Only then are the prosecutors to consider any mitigating circumstances, such as the condition of the defendant's health, his or her level of education, the defendant's occupation and/or family situation. Prosecutors should also appeal



to higher courts in the case where a penalty is deemed too light.

Three new warehouses are now available for the storing of seized pirated optical disks and manufacturing equipment that IETF and JODE seized during inspections. These facilities are in operation in the northern, central and southern parts of Taiwan. With these warehouses in place, manufacturing equipment seized during raids can now be immediately removed and stored at these locations to eliminate any possibility of them being reused.



**IP Cases Investigated and Concluded by
Public Prosecutors' Offices of District Courts (Jan. to Dec. 2003)**

Table 1

Year	New Cases	Cases Investigated and Concluded			
		Subtotal	Crime		
2002 (1-12)	5,627		Copyright	Trademark	Patent
		5,704	3,847	1,358	499
		100%	67.44%	23.80%	8.75%
2003 (1-12)	6,567	6,545	3,256	2,558	731
		100%	49.75%	39.08%	11.19%
Absolute change Increase Rate	16.71%	14.74%	-15.36%	88.37%	46.49%

Enforcement Results

In 2003, 6,545 cases of IP infringement had been closed. By category, 3,256 cases were copyright infringements (or 49.75% of all infringement cases), 2,558 cases were trademark infringements (or 39.08% of the total), and 731 were patent infringements (or 11.19% of the total). As for the identity of suspects, most were retailers (representing 41.80% of all infringement cases) and followed by manufacturers (representing 16% of all infringement cases). The percentage of manufacturers of pirated OD as suspect increased by 7.6% from the same period in the previous year.

Of the 6,545 cases that were closed during 2003, 1,163 cases resulted in the suspects being prosecuted, and 1703 cases where the suspects were forwarded to the court for judgment. The total of these two categories is 2,866 cases, representing 43.79% of all cases closed. Cases with suspects forwarded to court for judgment increased by 50.18% over the same period last year. 2,483 cases did not advance to prosecution, representing 37.94% of the total. There were 160 cases with delayed prosecution and 12 cases with private prosecution.

	Defendant Identity			
	Manufacturer	Agent	Retailer	Other
	973	348	2,286	2,097
	17.05%	6.10%	40.07%	36.76%
	1,047	425	2,736	2,337
	16%	6.49%	41.80%	35.71%
	7.6%	22.12%	19.69%	11.44%

Table 2

Year	New Cases	Cases Investigated and Concluded			
2002 (1-12)	5,627	Subtotal	Indicted	Convicted	Delayed
		5,704	1,540	1,134	28
		100%	27%	19.88%	0.49%
2003 (1-12)	6,567	6,545	1,163	1,703	160
		100%	17.77%	26.02%	2.44%
Absolute change Increase Rate	16.71%	14.74%	-24.48%	50.18%	471.42%

Source : Prosecutors' Office of the Taiwan High Court

Judicial Proceeding Status

Judicial Yuan

In an administrative order issued by the Judicial Yuan in August 2003, infringement cases involved in copyright, trademark right, patent, integrated circuit layout, and trade secret are deem as severe cases, except when simple procedures are involved. The Judicial Yuan has established professional courts at the district courts of Taipei, Taichung, Tainan, and Kaohsiung. They have also assigned professional divisions at other district courts to process IP infringement cases. Taiwan's judicial authorities are committed to non-discriminating efforts in combating IP infringements, including dealing with cases involving foreign nationals. Judicial Yuan has issued a notice to all levels of courts that foreigners and natives alike are to be treated indiscriminately when dealing with the issue of POA. It is not necessary to require foreigners to present a notarization of POA if the other party does not argue the genuineness and authorization of the foreign party involved.

Status			
	Withdrawal	Self-employed prosecutors	Other
	1,791	10	1,201
	31.40%	0.18%	21.06%
	2,483	12	1,024
	37.94%	0.18%	15.65%
	38.64%	20%	-14.74%

Judicial Results

According to a report by the Ministry of Justice, as of December 2003, 3,552 suspects were convicted of IP infringement, marking an increase of 34.75% over the 2,636

convictions in 2002. Of the 3,552 convictions, 586 defendants (16.50% of total convictions) were sentenced to prison terms longer than six months. This number represents an increase of



153 defendants with heavy penalty over those subject to this category of sentences for 2002. As of December 2003, the affirmed guilty rate is 86.51%, higher than the 82.92% rate achieved for 2002.

Status of Adjudication of Public Prosecutors' Offices of District Courts (January to December 2003)

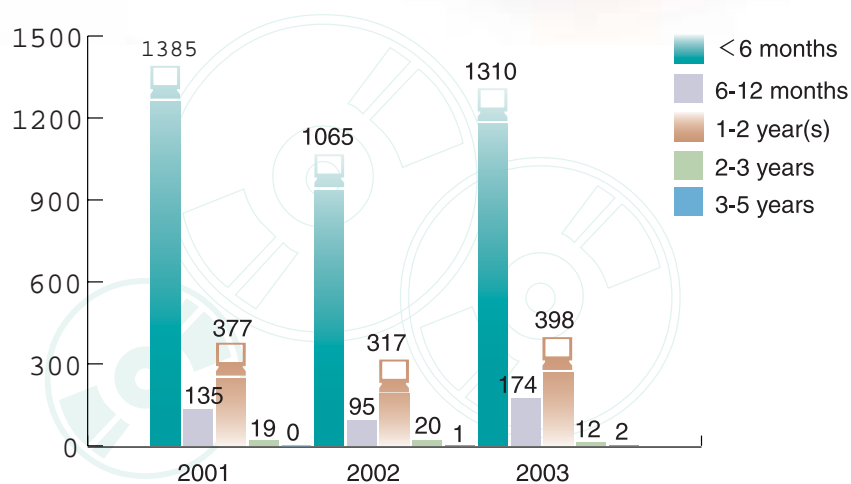
Year	Total	Imprisonment				
		Subtotal	Less than 6 months	6 to 12 months	1 to 2 year(s)	2 to 3 years
2002(1-12)	2,636	1,498	1,065	95	317	20
	100%	56.82%	40.40%	16.42%		
2003 (1-12)	3,552	1,896	1,310	174	398	12
	100%	53.38%	36.88%	16.50%		
Absolute Change/	+916	+398	+245	+153		
Percent Change:	34.75%	26.57%	23.00%	35.33%		
2003 (1-12)/ 2002 (1-12)						

Source : Prosecutors' Office of the Taiwan High Court

Protection for intellectual property rights has gained considerable respect in recent years. Consequently, judges have exercised leniency toward convicts in even fewer cases. This can be seen when reviewing prosecution statistics over the past three years. In 2002, cases with sentence of more than 2 years imprisonment were 21, compared with 19 convictions in 2001. There were two convictions sentenced to three to five years' imprisonment in 2003, increased one person compared with that in 2002. In 2003, convictions sentenced more than 6 months is 16.50% of the total number of imprisonments, higher than 16.42% of 2002.

unit: person

		Detentions	Fines	Not Guilty	Other	Guilty Affirmed Rate	Jail Term or Detention and Fines
	3 to 5 years						
	1	160	52	352	574	82.92%	68
		6.06%	1.97%	13.35%	21.77%		
	2	441	89	378	748	86.51%	60
		12.42%	2.50%	10.64%	21.06%		
		+281	+37	+26	+174		-8
		175.62%	71.15%	7.39%	30.31%		-11.76%



**Status of Adjudication of Prosecutor's Office of District Courts
2001-2003**

VI. PUBLIC AWARENESS

As an effort to sustain the Mr. Copyright campaign and to promote respect for IP, both MOEA and the Ministry of Education have contributed tireless efforts in adopting systematic IP protection activities such as holding public outdoors activities, campus campaigns and professional trainings and seminars for IP-related government officials.

Campus Education

In an effort to heighten public awareness for IP protection, the Ministry of Education has completed a standardized revision on its curriculum for all school levels. The new curriculum incorporates concepts of IPR into Elementary, Junior, and Senior High Schools' textbooks. In addition, the IPR Regulation Awareness Website, IPR Awareness Program for Teachers, and IPR Information Enquiry and Awareness Center have all been put into place as parts of the IPR Awareness Campaign. The IPR Regulation Awareness Website contains newspaper clippings for IP convictions, information on judicial rulings and domestic and international IPR standards to engender public awareness and understanding of IPR. Upon a joint effort with the Ministry of Economic Affairs to execute a series of IP awareness campaigns at tertiary institutions, the Ministry of Education has now included IP Awareness Program as a part of the evaluation criteria for all level of schools.

The Ministry of Education has also informed, in writing, colleges and universities island wide to formulate a guideline for students and faculty members on campus to not engage in copyright infringement activities such as downloading IP infringing materials. The Ministry of Education also is looking into the possibility of establishing second-hand bookstores in universities to encourage purchase of legal copies of textbooks.

Professional Trainings

TIPO carries out training seminars for 190 judicial prosecutors on IP

related laws and regulations. Six counterfeit enforcement seminars were given in 2003 to 330 police personnel to further enhance their professional capabilities. There were 251 participants in the IP Border Control Seminar held by the Customs Office.

● Public Awareness Activities

In response to the needs of various business entities, private enterprises, and colleges, TIPO organized 146 seminars on IP promotional campaigns in the Action Year of 2003. In conjunction with the passage of the Copyright Act, Trademark Act, and Patent Act, TIPO launched a series of promotional awareness programs to educate the public of the newly amended regulations.

These programs were aired on television, radio, published in the newspapers and posted on the Internet. TIPO also urges the public to respect intellectual property rights to ensure a healthier IP environment and to



Famous singers participating in anti-counterfeiting activity

strengthen Taiwan's global competitiveness. To further contribute to the facilitation of IP protection, TIPO hosted an educational interactive online game on IP awareness, which attracted 216,658 participants. IP protection campaign also found its presence in airport terminals, memorial halls, television and radio stations. Under the aide of the Government Information Office, IP protection films were played 24,752 times in 77 different locations.

● Software Assets Management

According to the Directorate General of Budget Accounting and

Statistics of the Executive Yuan, expenditures for government procurement of computer software increased by 18% from NT\$4.80 billion in 2001 to NT\$5.65 billion in 2002. This is evidential that Taiwan government is determined to embrace an authorized software working environment.

2000-2002 Computer Software Expenditure of Government Procurement

unit: NT\$ million

Year	Total Expenditure	Note
2000	2907	Survey includes: government agencies, schools, state-run enterprises, academic institutions.
2001	4800	
2002	5652	
2003	Survey underway	

Source: The Directorate General of Budget Accounting and Statistics of the Executive Yuan

To set an example for private organizations and entities nationwide, the government has taken the lead to use only copyright software. The Directorate General of Budget Accounting and Statistics of the Executive Yuan forbids end-user piracy in government offices and monitors software usage via intranet inspections. In the budget revision for Action Year 2004, priority was given to the procurement and use of authorized computer software. The Ministry of Education demands that all educational institutions carry out regular inspections for illegal software within the campus and monitor the procurement of only legal software. During promotional activities for the newly revised Copyright Act, emphasis was on online protection and copyright awareness within private sectors. Participants were encouraged to set up an internal administration system to monitor the use of authorized software and respect IPR in order to enhance industrial competitiveness.

VII. PARTNERSHIP

● International Cooperation

To improve Taiwan's international image of IP protection and to facilitate exchanges with foreign countries, two important seminars were held in October and December 2003. TIPO, the Bureau of Foreign Trade (BOFT), the European Economic & Trade Office, and the European Chamber of Commerce jointly held "Seminar on IPR Protection and Enforcement between Taiwan and Europe" on October 7. TIPO, BOFT, the Chung-Hua Institution for Economic Research and the American Institute in Taiwan held the "Seminar on IPR Protection and Enforcement between Taiwan and the



Taiwan-Europe IPR Seminar

United States" on December 9. Speakers were representatives from IIPA, MPA, BSA, IFPI, PhRMA, as well as officials from European Union, US Judge, Assistant Attorney, FBI agent, USPTO representative, US Customs Hong Kong Official and experts from Taiwan. The conferences provided the opportunity for relevant parties to acquire a better and fuller understanding of international regulations and trends relating to intellectual property rights as well as the enforcement efforts that Taiwan have accomplished.



Taiwan-U.S. IPR Seminar

● Development of Partnership to Exchange IP information

Recognizing that close partnership with right holder associations is crucial in effective and adequate protection of IPs, mutually benefiting interactions are maintained between TIPO and BSA, IFPI, and MPA, etc. Information on the latest IP enforcement results and market surveys are shared on a regular basis to monitor the effectiveness of enforcement efforts and to be made aware of what better actions need to be implemented to deal with the latest piracy trends.

Exchange of information among law enforcement agencies is also critical in combating trans-national criminal activities and cyber crimes. Cross border cooperation is essential in dealing with these criminal activities, especially in an emerging digital era, cyber crimes have become one of the most difficult criminal acts faced by enforcement agencies. The two trans-national piracy groups that were uncovered last December are an excellent example of how cross border cooperation can be successful in cracking down illegal activities.

VIII. PERSPECTIVES

In the November 2003 issue of Topics published by the American Chamber of Commerce in Taipei, the Editorial noted that "encouraging signs (are there) that Taiwan is finally taking serious steps to assure proper IPR protection", and that "Taiwan government's apparent determination to resolve the longstanding problem of IPR abuse deserves commendation." That being said, the Editorial also addressed the concern of how to "maintain the momentum without any let-up", which also happens to be our top priority in IP enforcement. Our near- and long-term objectives in maintaining and improving our IP environment include:

- Sustaining partnership with right holder associations;
- Facilitating cross border enforcement to deal with cyber crimes;
- Legalizing IETF to ensure that the continuity of task force members and professionalism are maintained;
- Providing adequate professional trainings and organizing bilateral workshops for prosecutors, judges, and law enforcement officers to keep them abreast of the latest developments in IP regulations and piracy trends;
- Communicating with relevant trade representatives to facilitate resolution to the issue of Power of Attorney.



IX. CONCLUSION

Effective implementation of IP enforcement not only tops the national agenda, but also motivates innovative development and industrial upgrading by safeguarding global competitiveness of the nation. By forecasting knowledge-based businesses in its Challenging 2008–National Development Scheme as the rising stars of this century, the government has undertaken actions and measures on hammering out an adequate and effective IP environment that complies with WTO standards, and establishing a comprehensive business environment, where national competitiveness can be boosted and economic growth can be lifted by attracting investments from domestic and foreign high-tech industries.

Being the first year of "IPR Action Plan 2003-2005", major achievements in the area of legislative amendments, policy formulation, enforcement results, and education promotion have been shown. However, the Copyright Act amendments and effective enforcement measures remain the concerns of international interest groups. At the 7th Presidential Economic Development Advisory Conference held in November 2003, President Chen Shui-bian stressed that issues regarding Copyright Act Amendments, IETF related legalization and criminal liability are to be included on the agenda in the "Intellectual Property Protection Establishment and Consolidation Plan", which is under the administration of the Executive Yuan. Taiwan's enforcement efforts in curbing IP infringements require the continuous and ongoing cooperation of several competent authorities, including government officials, judicial officials, police, investigation, and customs officials. All enforcement agencies will continue to work closely together in a sustainable manner toward developing a healthier IP protection environment in Taiwan.



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