



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE

MINISTRY OF ECONOMIC AFFAIRS

January – March 2013

## Quarterly Report on Taiwan's Intellectual Property Rights Protection

*In response to the industry's demand for strengthening protection of trade secrets, amendment to parts of the Trade Secrets Act was promulgated by Presidential Order on January 30, 2013 and went into effect on February 1. Major revisions include: a) increased criminal liability for any illegal obtainment, usage, or disclosure of trade secrets by means of theft or unauthorized reproduction; b) for trade secrets that are obtained through theft and are intended for use overseas, the punishment is severer.*

**Wang, Mei-hua**

**Director General, Intellectual Property Office (TIPO)**

## Special Report

---

### AmCham Delegates Visit TIPO

A group of 15 AmCham delegates visited TIPO on the afternoon of January 9, 2013 and were received by DG Wang. Both parties exchanged views on issues of concern to AmCham. The delegates appreciated and recognized TIPO's efforts in promoting the amendment to Trade Secrets Act and strengthening IPR protection.

### TIPO-JPO Exchange of Patent Examiners

Four patent examiners from JPO visited TIPO from January 21 to February 1, 2013 for exchanges in examination practices. The four examiners also visited Hsinchu Science Park, Industrial Technology Research Institute, and IP Court to gain a better understanding of how patent practices are carried out in Taiwan.

### TIPO Attends 36<sup>th</sup> APEC/IPEG Meeting

A delegation led by TIPO division director, Mr. Wen-fa Huang, attended the 36<sup>th</sup> APEC/IPEG Meeting held on January 28-29, 2013 in Jakarta, Indonesia. While there, TIPO delegates reported on the expanded scope of protection for design patent and the amendment to Trade Secrets Act. Exchanges and experience sharing were also carried out with attending members.

### MOEA Convenes the 1<sup>st</sup> 2013 Coordination Meeting on IPR Protection

The 1<sup>st</sup> 2013 Coordination Meeting on IPR Protection was held on February 26 and attended by representatives from the Judicial Yuan, Mainland Affairs Council, Fair Trade Commission, Council of Agriculture, Council of Indigenous Peoples, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Education, Customs Administration of Ministry of Finance, National Policy Agency, and MOEA's Joint Optical Disk Enforcement Taskforce (JODE). In addition to reports given respectively by Customs Administration, Industrial Development Bureau and TIPO on "joint investigation by international customs," "MIT (made in Taiwan) Smile Logo," "the new Patent Act and provisions, corresponding measures of related laws and regulations," and "severe Internet infringement now becomes indictable without a compliant, blocking access to overseas websites suspected of severe Internet infringement, and trial project for ISP and the 'three-strikes' provision," discussions pertaining to strengthening IPR policies and regulations, enhancing investigations of piracy and counterfeiting, border control measures, campus IPR protection, guidance for establishing licensing mechanism of exploiting copyrighted works, IPR awareness activities, enhancing international exchange and cooperation, and awarding new inventions were also carried out.

### Launching of the "Innovating IP Values for SMEs Project"

The "Innovating IP Values for SMEs Project" was launched by MOEA's Small and Medium Enterprise Administration to help SMEs capable of technical innovation to engage in diversified use of IP values and to enhance SMEs' IPR awareness. Relevant measures for the 2013 implementation of IPR protection are as follows:

1. Online value-adding center for IPR of SMEs: As of March 31, a total of 339,362 people had visited the website, 460 enterprises used the survey on IPR competitiveness, 85,854 people browsed the IPR Q&A section, 10,575 people downloaded sample confidentiality contracts, 8,231 people signed up to online IPR courses and 20, 539 people read articles in the IPR Column.
2. Counseling service provided by value-adding center for IPR of SMEs: As of March 31, a total of 38 requests for IPR counseling service had been filed and respectively given suggestions based on individual needs. Upon receiving requests through phone calls, the center would provide referral service or assign a consultant for on-site counseling and then evaluate if subsequent in-depth counseling is necessary.

## Legislative Amendments

---

### Amendment to parts of the Trade Secrets Act was promulgated by Presidential Order on January 30, 2013 and went into effect on February 1

The amendment is carried out in response to the industry's demand for strengthening trade secrets protection. Major revisions to the Trade Secrets Act are as follows:

1. Any illegal obtainment, usage, or disclosure of trade secrets by means of theft or unauthorized reproduction is liable to a maximum of 5 years imprisonment and a possible fine of NT\$1 million to NT\$10 million. When the profit gained exceeds the maximum fine, the court may increase the fine within three times of the profits gained.
2. In view of the large-scale headhunting for domestic S&T professionals by foreign companies entailing possible theft of trade secrets, the new Act provides that for trade secrets that are obtained through theft and are intended for use overseas, the punishment is higher. Prison term for such violation is one to ten years, and in addition, a fine between NT\$3 million and NT\$50 million. However, if the profit gained exceeds the maximum, the court may increase the fine to within two to ten times of the profit gained.

## Latest Developments

---

### 2012 IPR Protection Service Group Informational Meetings Well Received

TIPO in 2012 held a total of 250 IPR Service Group informational meetings (162 in schools, 51 in enterprises and 37 in government agencies) that were attended by 25,832 people. In addition to the

lecture series organized upon request by various sectors, the meetings were held to instill correct copyright concept covering six targeted issues such as copyright use in business venues, schools, on the Internet, in publishing (e-books included) industry, copyright regime in mainland China, as well as legal use of copyrighted software by government agencies and state-run enterprises.

TIPO conducted surveys for each of the lectures or meetings in order to learn about the effects the Service Group had achieved. According to the survey results, the whole event received a satisfaction rate of 98.2% (very satisfied 33.6%, moderately satisfied 48.4% and slightly satisfied 16.2%). TIPO in 2013 will continue to step up its awareness campaigns and welcome different sectors to make the best use of the resources provided so as to jointly strengthen people's IPR protection concept.

#### Performance in Patent Examination

In 2012, TIPO in implementing the "Patent Backlog Reduction Project" concluded 52,425 invention patent applications; this is a tremendous jump of 15,798 cases (+43.13%) from 2011 (36,627 cases).

As of the end of 2012, pending invention patent applications totaled 152,511; this is a marked decrease of 7,968 cases from the 160,479 cases by the end of 2011. In other words, for the first time, the number of concluded patent applications exceeded the number of incoming substantive examination requests. The number of pending cases began to slide (-7,968 in 2012) from its peak after a continuous four-year incline (+17,523 in 2009, +13,045 in 2010 and +6,788 in 2011). The average time to conclude a case also dropped to 45.13 months from its peak of 47 months.

Under the continuous influx of examination capacity and the addition of new examiners, the number of concluded cases, from 2013 onwards, is expected to reach over 60,000 cases; examination pendency is expected to drop from the current 45.13 months to less than 43. With a steady decline in the next couple of years, both the number of pending cases and average pendency are expected to be dropped to 78,000 cases and 22 months in 2016, respectively.

#### TIPO in 2012 Completed 14 Types of Royalty Rates Review for a Sound Copyright Licensing Market Mechanism

To establish a sound environment for copyright licensing, TIPO in 2012 convened a total of 11 meetings for the exchange of opinions and 14 committee meetings for copyright review and coordination. These efforts led to the completion of 14 types of royalty rates review covering 8 categories, as listed below.

1. Radio stations: Completed review of royalty rates published by MUST and MCAT regarding public broadcasting of cultural or educational programs by radio stations and state-run broadcast channels.
2. Analog TV stations: Completed review of royalty rates published by MUST, MCAT and RPAT regarding public broadcasting by analog TV stations.
3. Concerts: Completed review of the lowest royalty rates published by MUST regarding respective licensing for for-profit public performances (including concerts, dramatic performances, etc.).
4. Satellite and cable TVs: Completed review of royalty rates published by MCAT regarding public broadcasting by satellite and cable TVs.
5. Cable, satellite broadcasting of music: Completed review of royalty rates published by ARCO regarding public broadcasting of music (music channel operators) by cable and satellite (including live broadcast).
6. Hotels, hospitals: Completed review of royalty rates published by MCAT regarding secondary use of original broadcasts and public performances at hospitals, clinics, wards of related medical facilities and public spaces; completed review of royalty rates published by RPAT regarding secondary use of original broadcasts at restaurants and hotels.
7. Computer karaoke machines: Completed reviews of royalty rates published by MUST, MCAT and TMCS regarding public performances of copyrighted works at karaoke and KTV bars (equipped with karaoke facilities) as well as regarding public performance and secondary use of copyrighted works on tour buses (equipped with karaoke facilities).
8. Public transmissions: Completed review of royalty rates published by MUST regarding public transmission.

The completion of royalty rates review will lead to a more comprehensive market mechanism for copyright licensing and better protection for users and rights holders. In 2013, TIPO will continue its royalty rates review of at least seven types including computer karaoke machines, TV and radio stations in order to strengthen market mechanism for copyright licensing.

#### 2013 Informational Meetings on Trade Secrets Act Amendment

In order to strengthen protection of trade secrets, provisions pertaining to increasing criminal liability, increasing penalties for using trade secrets in foreign jurisdictions, and prosecution and criminal liability of juristic persons have been amended. To help people from different sectors understand the contents of the amendment, TIPO starting from March 5 had joined hands with the National Science Council, Industrial Development Bureau and Department of Industrial Technology to organize ten informational meetings at science and industrial parks in Taipei, Taoyuan, Hsinchu, Tainan, Kaohsiung and Hualian. These meetings covered topics such as basic concepts of trade secrets, civil and criminal liabilities involving trade secrets infringement, experience sharing on key sample cases and litigation practices, as well as establishment of trade secrets management mechanism.

#### An informational meeting on "Making Use of Government Resources & Creating Opportunities for Corporate Optimization"

An informational meeting on "Making Use of Government Resources & Creating Opportunities for

Corporate Optimization” was held on March 28, 2013 by MOEA’s Small and Medium Enterprise Administration to share the resources and results of a project on “Innovating IP Values for SMEs.” Sample cases were shared during the event to help SMEs better understand how appropriate use of IP can enhance a company’s competitive edge. Attended by a total of 55 people, the meeting also provided counseling service based on respective corporate needs.

#### Establishing “Licensing Information Platform for Commercial Karaoke Machines”

To help service providers and users and to enhance transparency in licensing information of karaoke manufacturers, TIPO in March 2013 completed the “Licensing Information Platform for Commercial Karaoke Machines.” This platform enables relevant karaoke manufacturers to appropriately disclose information pertaining to songs that have been legally licensed and stored in karaoke machines. The information provided is available to people from different sectors.

## Enforcement and Latest Statistics

### National Police Agency (NPA)

#### 1. Enforcement News (January-March 2013):

From January to March, 2013, a total of 141 copyright infringement cases were uncovered involving 170 suspects and 487 trademark infringement cases were uncovered involving 549 suspects. The market values of these uncovered infringing goods were estimated by rights holders to be around NT\$3,943,877,644. The types of infringement are as follows:

- Internet infringement: 392 cases involving 413 suspects
- Night market inspection: 107 cases involving 117 suspects
- Store inspection: 127 cases involving 187 suspects
- Other types of infringement: 2 cases involving 2 suspects
- Total: 628 cases involving 719 suspects

#### 2. Major Cases Involving Economic Crime (January-March 2013)

The Intellectual Property Rights Police (IPRP) is the competent policing authority that dispatches two policemen to work with the JODE on a regular basis for the investigation of unauthorized reproduction of ODs. From January to March 2013, a total of 105 dispatches were made, covering visits to 153 manufacturers and 27 visits to night markets; no infringing activities were uncovered. Investigations that are conducted intensively can effectively deter illegal activities such as unauthorized reproduction of ODs.

#### Statistics for IPR Infringement Cases (January-March, 2013)

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 ODs Confiscated |
| 2013<br>Jan. -Mar.                            | 1,317        | 1,522           | 799          | 900             | 518          | 622             | 14,089                 |
| 2012<br>Jan. -Mar.                            | 1,421        | 1,620           | 832          | 925             | 589          | 695             | 30,907                 |
| Percentage Change:<br>2013/2012<br>Jan. -Mar. | -7.32        | -6.05           | -3.97        | -2.70           | -12.05       | -10.50          | -54.41                 |

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

### Joint Optical Enforcement Taskforce (JODE)

From January to March 2013, JODE conducted 153 inspections (83 daytime and 70 nighttime) of OD factories, printing plate factories and other related facilities. This total is 29 times less than those of the same period in 2012 (182 inspections; 92 daytime and 90 nighttime). In addition, JODE conducted 16 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 during the same period also took part in a total of 27 night market sweeps.

#### JODE’s Inspection Results (January-March, 2013)

| Number of Inspections                                                                |                      | 2012      |       | 2012      |       | 2013      |       |
|--------------------------------------------------------------------------------------|----------------------|-----------|-------|-----------|-------|-----------|-------|
|                                                                                      |                      | Jan.-Dec. |       | Jan.-Mar. |       | Jan.-Mar. |       |
|                                                                                      |                      | 699       |       | 182       |       | 153       |       |
|                                                                                      |                      | Day       | Night | Day       | Night | Day       | Night |
|                                                                                      |                      | 351       | 348   | 92        | 90    | 83        | 70    |
| Number of Cases Found Violating the Optical Disk Act                                 |                      | 0         |       | 0         |       | 0         |       |
| Number of Plants Closed                                                              | Manufacturing Plants | 2         |       | 0         |       | 0         |       |
|                                                                                      | Packaging Plants     | 0         |       | 0         |       | 0         |       |
| Number of Cases Prosecuted                                                           |                      | 0         |       | 0         |       | 0         |       |
| Number of Suspects Prosecuted                                                        |                      | 0         |       | 0         |       | 0         |       |
| Number of Administrative Dispositions Administered According to the Optical Disk Act |                      | 0         |       | 0         |       | 0         |       |
| Number of Machines Confiscated                                                       |                      | 0         |       | 0         |       | 0         |       |
| Number of Illegal ODs (Pieces) Confiscated                                           |                      | 0         |       | 0         |       | 0         |       |

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

智慧財產局廣告

## The Customs Administration, MOF

### 1. Inspection Results:

In compliance with the *Regulations Governing Customs Measures in Protecting the Rights and Interests of Trademark*, *Operational Directions for Customs Authorities in Implementing Measures for Protecting the Rights and Interests of Patent and Copyright*, and other border measures, the Customs Administration from January to March 2013 yielded the following results:

| Category | Trademark Violations |         | Copyright Violations |         | Export ODS Without Source ID Code | False Declaration of Source ID Code | Violation of SID Code | False Declaration of Trademark |
|----------|----------------------|---------|----------------------|---------|-----------------------------------|-------------------------------------|-----------------------|--------------------------------|
|          | Exports              | Imports | Exports              | Imports |                                   |                                     |                       |                                |
| Cases    | 0                    | 11      | 0                    | 2       | 0                                 | 3                                   | 0                     | 47                             |
| Number   | 0                    | 509     | 0                    | 120     | 0                                 | 1,430                               | 0                     | -                              |

### 2. Major Inspections

Major inspection results from this quarter include: Taipei Customs' January 8 discovery of 18 counterfeit "Gucci" and "Christian Dior" wristwatches brought in via express delivery; Kaohsiung Customs' February 6 discovery of 98 counterfeit "Cooler Master" computer components (cooling fan). All seized goods have been detained according to Taiwan law.

### 3. International Exchange

- (1) As part of active efforts to increase the flow of information between foreign customs offices on counterfeiting offenses, DGOC from January to March 2013 provided international counterparts with information on 4 counterfeiting and piracy cases.
- (2) On February 21, 2013, representatives from the Hong Kong office of the Immigration and Customs Enforcement (ICE) of the U.S. Department of Homeland Security (DHS) and Taiwan's Customs Administration co-hosted a discussion where both sides exchanged opinions on how to enhance exchange of security information on IPR infringement cases and an action plan for future cooperation on combatting counterfeiting.
- (3) Enhancing exchange and cooperation between rights holders and rights holder groups:
  - a. On January 24, 2013, Asia Pacific regional director of Pharmaceutical Security Institute (PSI) and representatives from Pfizer and Lilly visited Customs Administration to exchange views on the investigation of counterfeit drugs.
  - b. On February 22, 2013, a group containing Adidas Asia Pacific regional representatives and managers from Tang Dynasty IP visited Customs Administration to show their appreciation for Taiwan's efforts and dedication in the implementation of IPR protection. On February 26, the group visited Kaohsiung Customs to tour the exhibition of Megaports Initiative, operation of cargo inspection system, RFID e-Seal Monitoring System and learned more about Taiwan-U.S. counter-terrorism project, as well as how to create a customs environment that is safe, convenient and stays abreast of international standards by the application of state-of-the-art technology and equipment.
  - c. On March 12, 2013, a group of 10 people from Japan Intellectual Property Association (JIPA) visited Customs Administration to discuss and exchange views on issues concerning border protection measures for intellectual property at customs and to learn more about status of Taiwan customs' IPR enforcement through border measures.
  - d. On March 15, 2013, the manager for brand protection of NIKE's Taiwan branch visited Customs Administration to learn more about current implementation of border protection measures for trademark rights, including the latest legislative reforms and relevant affairs pertaining to a right holder filing a request with the customs for trademark right protection.
  - e. A total of 8 lectures on identifying authentic and counterfeiting goods by customs personnel were respectively held in Taipei, Kaohsiung, Taichung, and Keelung Customs on March 25, 26, 28 and 29, 2013. These lectures were given by rights holders and their agents on the techniques of identifying authentic and counterfeiting goods. A total of 471 people attended these lectures.

## Taiwan High Prosecutors Office (THPO)

### 1. Enforcement Results (January-December, 2012)

District prosecutors offices of the Ministry of Justice island-wide uncovered illegal photocopying of textbooks at 27 off-campus photocopy centers, involving 31 suspects and totaling NT\$2,018,278 and US\$37.98 worth of copyright infringement. The THPO will continue to conduct such investigations to effectively deter infringing acts of off-campus illegal photocopying of textbooks.

### 2. Status of Court Rulings (January-March, 2013)

Affirmed IPR infringement cases by Taiwan's district prosecutors offices totaled 911. Of these, 194 suspects in 166 cases were indicted under ordinary procedures; 212 cases involving 222 defendants filed for summary judgment; 484 indictments involving 499 defendants were deferred; and 49 cases involving 51 defendants were closed by ex officio action. During the period, 374 defendants were sentenced to prison terms at a conviction rate of 95.59%. Compared to the same period in 2012, the status of court rulings on IPR infringement cases (summary judgment included) is as follows. There are 416 indictments in 2013 and 464 in 2012, accounting for a 10.3% decrease from the year before. As for the number of convictions, there are 347 defendants being convicted in Q1 2013 and 474 in Q1 2012, accounting for a 26.8% decrease from the same quarter of last year. The adjudication of IPR cases by district prosecutors offices is outlined in the following table.



## Status of Adjudication of Taiwan District Courts on IPR Infringement Cases

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    | 2013 Jan.-Mar.       | 420                                              | 347      | 174            | 6           | 1           | 0         | -            | 151       | 15     | 16         | 0       |
|          | 2012 Jan.-Mar.       | 581                                              | 474      | 240            | 18          | 3           | 0         | -            | 190       | 23     | 28         | 2       |
|          | Percentage Change(%) | -27.71                                           | -26.79   | -27.50         | -66.67      | -66.67      | 0.00      | -            | -20.53    | -34.78 | -42.86     | -100.00 |

Source: The Prosecutors Office for the Taiwan High Court

## IPR Awareness

- The Ministry of Education continues to compile a report on how schools have handled alleged infringement reports provided by rights holder groups in Taiwan in the preceding two months. This report would address the concerns of rights holder groups and be forwarded to relevant government agencies. The Ministry has now compiled and responded to rights holders' reports from up to January 2013.
- The "Nation-wide Universities/Colleges Principals Meetings" was convened by the Ministry of Education on January 14-15, 2013 at Fo Guang University to strengthen on-campus IPR protection and to urge schools to step up their promotion of Campus IPR Protection Action Plan.
- On March 4, 2013, an official notice was sent by the Ministry of Education to request all universities and colleges to step up promotion of a respect for IPR in schools, to use licensed textbooks (including used ones) and to refrain from illegally photocopying books, teaching materials so as to avoid copyright infringement.
- On March 5, 2013, volumes of "A Handbook on Copyright Tips for Instructors" were distributed to all universities and colleges for reference and use in hopes of instilling proper, positive concepts of copyright in teachers.
- The 2013 IPR Protection Service Group informational meetings are a series of professional lectures launched in March by TIPO to strengthen public awareness of IPR. Now open for registration by the industries, non-government organizations and schools, the lectures will be arranged according to the topics (patent, trademark, copyright, trade secrets, layout designs of integrated circuits, etc.) requested. The event is free of charge and provides on-site counseling services. Current plans for the meetings are as follows:
  1. Informational Meetings on IPR Legislation: Lectures were scheduled in 15 organizations including Huaan University; TIPO in response to the requests from various sectors will, between May and December, dispatch the IPR Service Group for more lectures.
  2. Informational Meeting on Copyright Exploitation in Business Venues: Three information meetings have been scheduled between June and August for radio and TV operators, representatives from relevant associations and users of copyrighted works in convenience stores, department stores, shopping malls and small boutique shops. These meetings will enable rights holders and users to better understand copyright issues involving music, radio, and TV broadcast.
  3. Informational Meetings on Copyrighted Songs in Karaoke Machines: Three informational meetings have been scheduled between June and October to help karaoke machine manufacturers and representatives from relevant associations better understand how to obtain legal licenses for reproduced songs in and rental of karaoke machines.
  4. Informational Meetings on Internet Copyright: Three informational meetings have been scheduled between May and September to help representatives from university computer centers and relevant Internet content providers better understand the regulations governing Internet copyright, online blogs, sales involving copyright, as well as how music, movies and photos may be legally used online.
  5. Informational Meetings on Legal Use of Software by Government Agencies and State-run Enterprises: Three informational meetings have been scheduled between July and September to help employees from government agencies and state-run enterprises learn more about common types of software piracy and licensing modes that are often misleading.
  6. Informational Meetings on Copyright System in Mainland China: Three informational meetings have been scheduled between May and August to help people in the cultural and creative industries better understand mainland China's copyright system.