



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE  
MINISTRY OF ECONOMIC AFFAIRS

January - March 2017

# Quarterly Report on Taiwan's Intellectual Property Rights Protection

*On March 27, 2017, copyright experts and scholars as well as members of the five major associations of universities and colleges were invited to take part in a consultation meeting organized by TIPO, to discuss the issue of "fair use for copyrighted works held by university and college libraries". Topics touched upon included copyright matters relating to lending services as well as Article 48 of the Copyright Act, which specifies rules governing the rights of libraries, museums, history museums, science museums, art museums, and other cultural institutions open to the public, to reproduce their collections.*

## Special Report

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### A consultation meeting on the issue of fair use for copyrighted works held by university and college libraries

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The major topic of discussion at the meeting was “whether such libraries can provide electronic copies of their collections to their readers”, a contested issue that TIPO officials and attending experts and scholars later offered explanations about. It was explained that if university and college libraries have signed licensing contracts with their e-journal or database service providers, allowing the provision of electronic copies to readers, then the type of use would be applicable in terms of contractual stipulations. However, if no licensing rights have been granted in this regard, then such libraries would not be allowed to provide electronic copies of their collections to the readers under Article 48 of the Copyright Act.

## Legislative Amendments

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### An amendment to the Patent Act was promulgated on January 18, 2017, and has come into effect on May 1, 2017, at the discretion of the Executive Yuan.

An amendment to the Patent Act was promulgated on January 18, 2017, and has come into effect on May 1, 2017, at the discretion of the Executive Yuan. Related regulations such as the Enforcement Rules of the Patent Act, Guidelines on Patent Formalities Examination, and Guidelines on Patent Substantive Examination have also come into effect on May 1, 2017. More lenient requirements regarding the grace period were introduced this time around. Major revisions to the Patent Act include:

#### **1. Extending the grace period and easing restrictions on disclosures**

The grace period in the Patent Act is extended from six months to 12 months and there is no longer restrictions on the patterns of disclosures made by applicants themselves. Provisions regarding the grace period will now also apply to patents with disclosure made with or without the applicants' intent, to promote publication and dissemination of technologies.

#### **2. Specifying situations that the grace period would not apply**

The grace period would not apply based on the grounds of disclosures of independent inventions of others, but only in accordance with disclosures of inventions in application for a patent. In addition, publication made in the Patent Gazette is made with the aim to avoid duplication of investment in the same R&D project, or to make known to the public the exact scope of claims of granted patents. On the other hand, the grace period is set out to ensure that inventions do not fail the novelty or inventive step tests due to exceptional disclosures made prior to their applications.

The two systems are obviously different from each other in terms of their purposes. As such, provisions regarding the grace period would not apply to patents that have been made public in the Patent Gazette.

#### **3. Removing the requirement for applicants to claim the grace period at the time of filing a patent application**

The grace period would apply to all patent applications that comply with relevant laws, and applicants would no longer be required to claim the grace period at the time of filing patent applications with TIPO. However, applicants can still make such claims if they believe that regulations governing the grace period would apply for their cases when they file patent applications. In that case, applicants should make an announcement stating the fact that disclosures about their inventions have been made and the date of such disclosures, and provide relevant documents to serve as proof.

4. The amendment applies to applications filed on and after the date it came into force, i.e. May 1, 2017; for applications made before the amendment, old regulations governing the grace period would apply.

### The Ministry of Economic Affairs makes amendments to a table attached to Article 19 of the Enforcement Rules of the Trademark Act after the 11th Edition of the Nice Classification of the WIPO comes into force

As the 11th Edition of Nice Classification of the World Intellectual Property Organization (WIPO) has come into force on January 1, 2017, the Ministry of Economic Affairs promulgated on March 16, 2017, amendments to a table attached to Article 19 of the Enforcement Rules of the Trademark Act.

## Latest News

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### TIPO representatives attends the 44th meeting of the Asia-Pacific Economic Cooperation (APEC) Intellectual Property Rights Experts Group (IPEG 44)

On February 18-19, 2017, TIPO officials attended the 44th meeting of the Asia-Pacific Economic Cooperation (APEC) Intellectual Property Rights Experts Group (IPEG 44) in Nha Trang City, Vietnam. During the meeting, TIPO officials briefed on the joint royalty rate system in Taiwan by looking at the joint royalty rate system for karaoke machines launched in 2015, and shared experiences with other member economies.

Karaoke machines are hugely popular in Taiwan and a wide range of songs are programed in these devices. However, in the past, users had to obtain licensing from different copyright collective management organizations (CCMOs) to be able to use the contents legally, which was simply inconvenient, and a lot of times, disputes would arise, demanding the mediation of competent authorities. To solve those problems, TIPO has designated songs played by karaoke machines into the category where a joint royalty rate would apply, and requested three CCMOs to negotiate relevant rates and decide which one would serve as the one-stop-shop collector. As no agreement has been reached, the Music Copyright Society of Chinese Taipei (MÜST) has requested TIPO to make the decision.

With these measures in place, content-users will be able to obtain licensing in a simpler and more affordable manner, an incentive for the general public to gain licensing and use contents through legal means. In the meantime, CCMOs will be able to cut costs and boost margins when conducting their licensing business, which would be conducive to stabilizing the licensing market and promoting the wider use of created contents.

### Taiwan and the US signs an MOU to strengthen cooperation on combatting intellectual property infringement and trade fraud crimes

On February 22, 2017, Taiwan and the US signed a Memorandum of Understanding (MOU) in Washington D.C. to strengthen cooperation on combatting intellectual property infringement and trade fraud crimes. The two sides agreed to facilitate cooperation between law enforcement authorities and work together to share best practices, techniques, and information. The signing of the MOU marks the advancement of mutual cross-border, cross-discipline, and cross-department cooperation between Taiwan and the US authorities, which is indeed an important milestone for Taiwan-US IPR cooperation.

After the signature, prosecution, police, investigation, and customs authorities in Taiwan, such as the Ministry of Justice (MOJ), the Investigation Bureau of the MOJ, the National Police Agency (NPA) of the Ministry of the Interior, and the Customs Administration of the Ministry of Finance (MOF), will be able to work even more closely together with their counterparts in the US, on investigations on cross-border and new types of crimes. They will also be able to better share relevant techniques and practices, thereby allowing them to fight against IPR offences in a more effective manner. The MOU will also support law enforcement capacity building, which may prompt more effective IPR law enforcement and the creation of an environment more conducive to industrial innovation and cultural creations.

### TIPO sends examiners to attend a high-level trademark examination training program organized by GIPA, USPTO

To enhance its examiners' understanding about international regimes and practices for trademarks, TIPO sent two trademark examiners to attend a high-level trademark examination training program organized by the Global Intellectual Property Academy (GIPA) on February 27 to March 10, 2017, which is under the auspices of Trademark Examiner Exchange program with the USPTO.

### Director General Shu-min Hong of TIPO visited Tokyo and Osaka and gave talks on the systems for geographical certification marks and geographical collective trademarks in Taiwan, to Japanese businesses, on March 20-24, 2017, at the invitation of the Japan-Taiwan Exchange Association

To promote IPR exchanges and cooperation between Taiwan and Japan, Director General Shu-min Hong of TIPO visited Tokyo and Osaka and gave talks on the systems of geographical certification marks and geographical collective trademarks in Taiwan, to Japanese businesses, on March 20-24, 2017, at the invitation of the Japan-Taiwan Exchange Association. In addition, the Taiwanese delegation also briefed on Taiwan's examination practices for trademark squatting cases as well as paid a visit to the Japan Intellectual Property Association (JIPA) and the International Association for the Protection of Intellectual Property of Japan (AIPPI JAPAN). During these meetings, the two sides exchanged view on a number of issues, including IPR events around the world, as well as Taiwan's plans and timetables for the amendment of its IPR-related laws, such as the Patent Act, the Trademark Act, and the Copyright Act, in which the Japanese businesses have expressed a great interest.

To cultivate talents with a good knowledge of the theory and practice of the Protection Act for the Traditional Intellectual Creations of Indigenous Peoples, and to promote understanding about this Act among faculty and students of universities and colleges in Taiwan, the Council of Indigenous Peoples has initiated a talent-cultivation program dedicated to promote people’s understanding about this Act, by seeking universities and colleges to volunteer to hold relevant talks, intensive courses, and credit courses. As of the deadline, ten universities and colleges have applied to take part in the program.

**The MOE denies access to overseas websites offering pirated textbook materials through the TANet**

To strengthen IPR protection among universities and colleges, the Ministry of Education (MOE) has signed an MOU with the Taiwan Book Publishers Association, a rights-holder organization, on August 29, 2016, and denied the access to foreign rouge websites offering pirated textbook materials through the Taiwan Academic Network (TANet), in March 2017, at the request of the rights-holder.

**Law Enforcement Results and Statistics**

**The National Police Agency (NPA)**

**1. Law Enforcement Results (January to March 2017)**

From January to March 2017, a total of 568 copyright infringement cases involving 675 suspects and worth NT\$1,382.59 million, and a total of 543 trademark infringement cases involving 646 suspects and worth NT\$604.89 million were recorded. In total, there were 1,111 IPR infringement cases involving 1,321 suspects, with the amount of money lost as a result reaching NT\$1,987.48 million. The abovementioned cases were later transferred to district prosecutors’ offices for further investigation.

**2. Major Cases (January to March 2017)**

The Intellectual Property Rights Police (IPRP) of the NPA of the Ministry of the Interior has seized counterfeit goods such as counterfeit handbags of Hermes, Chanel, Louis Vuitton, Gucci, Celine, and Dior. The total amount of the fake goods seized was estimated at NT\$4 million.

**3. International Exchanges**

- (1) On January 19 and February 16, 2017, AIT officials paid a visit to the IPRP, to talk about cooperation on the fight against IPR crimes.
- (2) On February 21-22, 2017, Under Armour, a US sportswear company, paid a visit to different investigation units of the IPRP, to exchange authentication methods adopted and to introduce people in charge of authentication to each other.
- (3) On March 9, 2017, representatives of five major rights-holder groups in Taiwan paid a visit to the IPRP, to talk about cooperation on the fight against IPR crimes.
- (4) On March 13, 2017, representatives of the Japan-Taiwan Exchange Association paid a visit to the IPRP, to talk about cooperation on holding IPR law enforcement workshops together.

**Statistics for IP Infringement Cases (January to March 2017)**

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
Jan-Mar 2017	1,111	1,321	543	646	568	675	62,971
Jan-Mar 2016	1,237	1,415	729	815	508	600	13
Percentage Change (Jan to Mar 2017 / 2016)	-0.82	-2.76	-11.24	-11.16	11.69	6.48	6,297

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

## The Joint Optical Disk Enforcement Taskforce (JODE)

From January to March 2017, the Joint Optical Disk Enforcement Taskforce (JODE) of the Ministry of Economic Affairs has conducted a total of 73 inspections on OD factories, printing plate factories, and related facilities, two times less in comparison with the same period of time last year (75 times). The JODE also advised law-abiding OD factories to establish an internal control and audit system and has carried out, during this period, 11 relevant documented audits in this regard. No major violation was found as a result.

### JODE's Inspection Statistics (January to March 2017)

		2016	2016	2017
Number of Inspections		Jan.-Dec.	Jan-Mar.	Jan-Mar.
		331	75	73
Number of Cases Found Violating the Optical Disk Act		0	0	0
Number of Plants Closed	Manufacturing Plants	1	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		0	0	0
Number of Machines Seized		0	0	0
Number of Illegal ODs (Pieces)		0	0	0

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

## The Customs Administration

### 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 2017 yielded the following results:

Jan-Mar 2017	Trademark Violations		Copyright Violations		Exported ODs without a SID Code	False Declaration of SID Codes	False Declaration of Trademarks
	Imports	Exports	Imports	Exports			
No. of cases	1	38	0	0	0	2	63
No. of items	309	32,689	0	0	0	6,400	898,255

From January to March 2017, there are 29 trademark infringement cases in total lodged either by an advice or by a complaint; there are totally 147 cases lodged by an advice filed for extension.

### 2. Major Cases

Kaohsiung Customs: On January 6, 2017, Customs uncovered 137,646 sets of fake NSK bearings.

Keelung Customs: On February 9, 2017, Customs uncovered 309 sets of fake Glock toy guns and toy gun magazines.

### 3. International Exchanges

As part of its efforts to improve the flow of information on counterfeiting, the Customs Administration has provided five pieces of information to customs authorities of other countries, from January to March 2017.

## The Taiwan High Prosecutors' Office (THPO)

### 1. Law Enforcement Results (January to March 2017)

From January to March 2017, the District Prosecutors' Offices have uncovered seven off-campus photocopying stores involved in illegal photocopy activities. Eleven suspects were arrested, while 30 copies about police science, police policies, and cultural anthropology, five DVDs, two teaching optical discs, 27 course materials, four copies of course notes, 10,847 copies about art and languages, and 134 pieces of exam sheets were seized, totaling NT\$11.3 million. In the future, the District Prosecutors' Offices will continue their efforts on this front, so as to effectively deter such infringement.

2. Court Rulings (January to March 2017)

From January to March 2017, the District Prosecutors' Offices in Taiwan have investigated and closed a total of 551 cases suspected of IPR infringement. Among them, 121 suspects in 109 cases were indicted under ordinary procedures; 151 suspects in 145 cases filed for summary judgment; 252 suspects in 245 indictments were deferred; and 53 suspects in 52 cases were closed by ex officio action. In total, 276 defendants were convicted guilty at a conviction rate of 93.2%.

In comparison with statistics from the same period of 2016: the number of suspects indicted (including those filed for summary judgment) in 2016 stood at 380, while that in 2017 reached 272, resulting in a 28.4% year-on-year decrease. With regard to the number of suspects convicted, it stood at 287 in 2016 and 276 in 2017, respectively, resulting in a 3.8% year-on-year decrease.

Status of Adjudication of Taiwan District Courts on IPR infringement CASES

unit: person

Categories	Year	Results of Court Rulings													
		Total	Sentence								Exemption	Not Guilty	Not Prosecutable	Case Declined	Others
			Subtotal	Under 6 Months	6-12 Months	1-2 Year(s)	2-3 Years	Over 3 Years	Detention	Fines					
Total	Jan-March 2017	388	275	73	1	2	0	0	186	13	1	20	2	83	0
	Jan-March 2016	393	287	73	3	0	0	0	179	32	0	35	4	67	0
	YoY %	-3.05	-4.18	0	-66.67	0	0	0	-3.91	-59.38	0	-42.86	-50	23.88	0

Source : The Taiwan High Prosecutors' Office

IPR Awareness Campaigns

● Information exchange meeting for customs officials

On March 10, 2017, the Customs Administration of the MOF conducted its first information exchange meeting in 2017, to brief customs officials on measures and laws regarding IPR protection at the border.

● MOE IPR awareness campaigns

On February 17, 2017, the MOE sent an official notice to both public and private colleges and universities in Taiwan, requesting the educational institutions to promote the use of copyrighted textbooks, including second-hand ones, among their students, and to discourage the use of illegally copied textbooks and teaching materials, so as to not infringe the copyrights of the authors.

On March 28, 2017, the MOE sent an official notice to both public and private colleges and universities in Taiwan, requesting the educational institutions to remind their students that when they upload their audio or video works onto online streaming platforms, they have to make sure that their works do not go beyond the scope of copyright fair use principles.

On January 12-13, 2017, the MOE held a meeting for presidents of colleges and universities in Taiwan, during which the MOE urged participating presidents to further promote the action plan of IPRs protection on campus.