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## From 301 Watch List to leading light - Taiwan's copyright turnaround

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Just three years ago, when Taiwan was on the [Office of the US Trade Representative's \(USTR\) Special 301 Priority Watch List](#), the US copyright industry estimated that its losses from copyright piracy in Taiwan reached a high of \$847.9 million. Although Taiwanese authorities declared 2002 the year of IP protection, the results were mixed. Industry associations and local government officials openly discussed ways to tackle copyright infringement, but piracy investigations and prosecutions were not keeping pace with infringing activities.

Fast-forward to 2005, the final year of the Taiwanese government's IP Rights Action Plan for 2003 to 2005 and the picture is very different. The plan has resulted in:

- major revisions to the Copyright Act (see [Taiwan's new copyright provision reflects influence of DMCA](#));
- increased cooperation between government agencies on copyright enforcement; and
- campaigns targeted at reducing end-user business software piracy, the illegal copying of textbooks and infringements over the Internet.

The action plan appears to be making significant headway and the US copyright industry reported that in 2004 its estimated trade losses in Taiwan were down to \$315.5 million, less than half of the total just two years before. The USTR has responded to these dramatic improvements by removing Taiwan from the 301 Priority Watch List during an out-of-cycle review at the end of 2004 (see [Taiwan leaves Special 301 Priority Watch List at long last](#)). So what is the secret of Taiwan's turnaround?

### Revisions to the Copyright Act

The USTR has cited the amendment of the Copyright Act and enhanced enforcement efforts as part of the reason that Taiwan was removed from the 301 Priority Watch List. The amended law was promulgated on September 1 2004 and:

- closed loopholes from the earlier version of the act;
- increased the fines for certain infringing behaviour; and

- enhanced customs officials' ability to prevent the importation and exportation of infringing products.

The earlier version of the Copyright Act required that in order for an infringer to face criminal liability for copyright infringement, he/she had to have "intent to profit" and be found to have made five or more copies of the protected work. Those restrictions were removed in the 2004 amendments, giving copyright owners and enforcement officials greater ability to use the criminal sanctions available in the Copyright Act to deter pirates.

The 2004 revisions also increased the criminal penalties for (i) the pirating of optical disks for the purpose of selling or leasing, and (ii) the sale of pirated optical disks. These two areas have been among the focal points of the government's efforts to reduce copyright piracy in Taiwan (see [Taiwan seizes record number of fake disks, but problem persists](#) and [Taiwan gets tough on optical disk piracy](#)). The amended act raised the minimum penalty for these forms of infringement to a prison term of up to six months.

The revised Copyright Act also allows customs officials, *ex officio* or at the request of a copyright owner, to delay the import or export clearance of goods that they suspect may infringe copyright. Since this amendment took effect, Customs has implemented the Enforcement Rules for Suspending Release of Infringing Copyrighted Works (see [IP Office amends customs measures for suspected infringing works](#)), in order to further establish standard procedures for handling such cases. Customs has also been active in detaining both inbound and outbound infringing products, and referring cases to the appropriate copyright owners and authorities.

### **Improvements in copyright enforcement**

As part of the action plan, in February 2003 the government developed and promulgated the Implementation Plan to Reinforce IP Rights Protection. Pursuant to this, the [National Police Agency](#) has increased its efforts to prevent pirated goods being sold at night markets and shopping malls, and monitored the Internet and media outlets in order to root out sellers of pirated products. The central government has also increased the potential rewards for informants or police officers that uncover illegal optical disk plants, or provide information that leads to the seizure of pirated goods or the equipment used to copy pirated optical disks.

In a year-to-year comparison, the total number of pirated optical disks confiscated in 2004 was over 23% lower than the total number confiscated in 2003. This same period saw an even more dramatic decrease in the number of pirated optical disks from Taiwan seized by US Customs (ie, \$60,000 for the first half of 2004 as compared to \$322,000 for the first half of 2003). Taiwan's government sees the dramatic decrease in seized pirated goods as a result of the enhanced deterrent offered by the stronger Copyright Act as well as the government authorities' more effective enforcement efforts.

The past several years have also seen the market for pirated goods move from traditional night markets and shopping centres to sales over the Internet. In 2004 the police began directing more of their efforts towards halting the online sale of pirated goods, and initiated over 160 cases against internet-related infringements. Local and national government agencies are continuing to work together to try to crack down on organized crime syndicates behind the web-based sale of pirated goods (see [Police move the fight against piracy online](#)).

The government also changed the status of the Integrated Enforcement Taskforce, formed in 2003 to combat infringement of intellectual property, from a temporary task force into a permanent unit, renaming it the IP Rights Police. The force has 220 officers stationed throughout Taiwan who are specially trained to investigate and take action against piracy and infringement. In 2004 it reported over 1,200 cases and made over 1,000 arrests for IP infringement.

In order to upgrade the handling of IP rights enforcement cases, Taiwan's government has also provided many workshops and training courses for law enforcement officials,

prosecutors and judges. Officials believe that the legal framework now in place is in line with the [Agreement on Trade-Related Aspects of Intellectual Property Rights](#)' requirements and international standards, and are working with prosecutors and judges to ensure that key personnel are kept abreast of the latest legal and regulatory developments in Taiwan, as well as piracy trends.

### Reducing end-user infringement

Taiwan has also administered ongoing campaigns to reduce end-user infringement. In 1996 the [Business Software Alliance's](#) (BSA) Global Software Piracy Study found that 66% of software used in Taiwan was pirated. Over the past several years, the percentage of pirated software has consistently decreased and the most recent BSA study found the island's software piracy rate was at 43%. This is among the lowest in the Asian region, and well below the median for all countries. The government has stated its goal of reducing the piracy rate to below 40% by the end of 2005, and to this end is engaged in:

- enhancing public awareness of the consequences of copyright infringement;
- monitoring the use of legal software within government agencies and organizations subsidized by the government; and
- helping universities to obtain and use legal software.

While piracy figures have decreased, in its 2005 Special 301 Report the USTR highlighted the problem of copyright infringement on the campuses of Taiwan's colleges and universities. In the past, the illegal photocopying of entire textbooks was not uncommon. However, the [Ministry of Education](#), in connection with other agencies, has launched a series of campaigns aimed at increasing the awareness of IP rights among students in order to halt this practice. Police officers have visited photocopying centres surrounding colleges and universities, particularly at the beginning of each semester, to remind both staff and customers that photocopying copyright-protected material without permission infringes copyright.

The government has also worked to help universities negotiate discount prices on textbooks and establish channels for the sale of secondhand textbooks. It is still too early to tell how effective these measures have been, but enforcement officials are continuing to partner with colleges and universities to try to reduce the illegal copying of textbooks and other copyright-protected material on campus.

### P2P court cases

There have been two high-profile cases involving peer-to-peer (P2P) internet file-sharing services in Taiwan over the past couple of years. In June 2005 Taipei's Shihlin District Court acquitted P2P service provider [ezPeer](#) of criminal copyright infringement charges, holding that it did not actively engage in infringement. The court did not rule on civil liability for ezPeer as it lay outside the scope of the criminal proceedings (see [P2P operators not guilty of copyright infringement in criminal case](#)).

In September 2005 the Taipei District Court convicted another P2P service, [Kuro](#), and one of its subscribers of criminal copyright infringement. In that case, the court found that Kuro's managers were aware of the site's infringing behaviour and continued to earn subscription fees by advertising that users could download over 100,000 pop songs by using its file-sharing service. The conviction of one of Kuro's subscribers was also seen as confirming that users who engage in downloading unlicensed copyright-protected material may face criminal as well as civil penalties (see [P2P operators are convicted, yet controversy lingers](#)).

### IP court

Taiwan has committed to the establishment of an IP court. IP rights holders expect that this specialized court would not only resolve disputes more effectively, but also help to allocate

limited judicial resources efficiently. Although the Judicial Yuan drafted the IP Court Act in December 2003, it reviewed the draft internally for 18 months and then did not submit the draft act to Taiwan's legislature in September as originally announced.

### **Looking to the future**

The IPR Action Plan for 2003 to 2005 is winding down but it has succeeded in its objective of getting Taiwan off the USTR's 301 Priority Watch List by coordinating efforts between enforcement agencies. This success on the enforcement side has been complemented by the amendment of the Copyright Act to further strengthen rights holders' ability to go after infringers. The establishment of a specialized IP court would enhance the significant progress that has already been made on IP issues by the administrative and legislative branches.

While Taiwan is clearly moving forward on IP protection, enforcement agencies will need to address not only continuing issues, such as pirated optical disks and the re-shipment of infringing products from abroad, but also growing problems such as increasingly sophisticated piracy over the Internet.

The underlying problem of piracy is not going to disappear any time soon; however, it appears that the government has been extremely successful in achieving significant reductions in piracy rates through effective enforcement efforts and an increasingly robust legal and institutional framework for IP protection. In this context, Taiwan may well serve as a role model for other countries still on the USTR's 301 Priority Watch List.

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