



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE

MINISTRY OF ECONOMIC AFFAIRS

January - March 2016

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

*In response to the development of patent infringement assessment and to stay in line with Patent Act amendment, TIPO initiated revision of "Directions for Patent Infringement Assessment" in 2014. The revision was made with reference to patent rulings and relevant documents in the US, Japan and China, and seven seminars held to solicit opinions from all circles in 2015. On February 5, 2016, TIPO published "Directions for Determining Patent Infringement". The directions are divided into Part I "Determining infringement of invention and utility model patents" and Part II "Determining infringement of design patents."*

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## Special Report

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### TIPO attends the 42<sup>nd</sup> APEC/IPEG meeting

On February 25 and 26, a TIPO's delegation attended the 42<sup>nd</sup> APEC/IPEG meeting in Lima, Peru. During the meeting, the delegates reported on how the tailor-made "IP SME Corner" helps SMEs use available IP resources and how TIPO's backlog reduction project can significantly shorten patent examination pendency.

### Amendments to IP Laws for TPP Accession

1. Following the Executive Yuan's policy to dash for Taiwan's inclusion in the TPP, TIPO has started drafting amendments to Patent Act, Trademark Act and Copyright Act to fill the gap with TPP regulations. The key amendments are as following:

- (1) Patent Act: It aims to extend the grace period, extend the term of protection due to unreasonable delay caused by the authority, and revise the indictable basis in response to patent linkage system.
- (2) Trademark Act: Importation and domestic use of counterfeit labels and packages will be liable for criminal penalties.
- (3) Copyright Act: The term of protection for copyright will be extended to 70 years after the death of the author of the work. Acts circumventing technological protection measures will be subject to criminal penalties. Certain contraventions which are liable for criminal penalties will be indicted without a complaint. The amendment will also introduce protection of encrypted program-carrying satellite and cable signals.

### 2. Strengthening Communication and Dissemination

To make Taiwan's Copyright Act comply with TPP regulations, a meeting was convened by TIPO in January to consult with scholars, experts, stakeholders and the public on the revision and interpretation of legal texts. Five consulting meeting were held to discuss the amendment with industries of film & television, popular music, vision, art performance and publication. In addition, in March the public hearing was held to seek advice from agents, experts, scholars and representatives from various institutes on draft amendment to Trademark Act. Communication and dissemination are strengthened by means of TIPO's official website, Facebook and ePapers.

## Legislative Amendments

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### TIPO completes revision to Directions for Determining Patent Infringement

In response to the development of patent infringement assessment and to stay in line with Patent Act amendment, TIPO initiated revision of "Directions for Patent Infringement Assessment" in 2014. The revision was made with reference to patent rulings and relevant documents in the US, Japan and China, and seven seminars held to solicit opinions from all circles in 2015. On February 5, 2016, TIPO published the "Directions for Determining Patent Infringement". The directions are divided into Part I "Determining infringement of invention and utility model patents" and Part II "Determining infringement of design patents."

In terms of invention and utility model patents, the key revisions include: Procedures are adjusted and streamlined. The "Reverse doctrine of equivalents" is removed from the procedure; The "prosecution history estoppel" is revised.

In terms of design patents, the key revisions include: New contents and cases are added that are related to the new types of protectable design (partial design, graph design, design of a set of articles, and derivative design) allowed for pursuant to the amended Patent Act of 2013.

### The Ministry of Justice Has Formulated Notices for Prosecuting Significant Violation of Trade Secrets Act

To ensure the protection for significant trade secrets or public interests as well as humanity is not outweighed than the other, the Ministry of Justice has formulated Notices for Prosecuting Significant Violation of Trade Secrets Act as a reference for the Prosecutors Office. The Notices takes into effect since April 19, 2016, following the revision and entry into force of Trade Secrets Act on January 30, 2013, in which Article 13-1 and 13-2 were introduced to impose criminal liabilities.

## Latest Developments

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### TIPO and NARLabs launch Information for IP Creation website

A PPT file containing links to and functionalities of available government databases on innovation and R&D is now available for download. Produced by TIPO, this PPT provides access to industry and patent information to help different sectors learn more about technological trends and types of market competition to plan out their IP portfolios.

The links are now also available at the Information for IP Creation website, jointly launched by TIPO and NARLabs. This website is a one-stop-shop platform that incorporates links to information on six major types: patent, non-patent, business trends, R&D talents, research projects, reports and results, and updates on patent litigation. Users can also access this website at TIPO's IP SME Corner.

<http://www.tipo.gov.tw/public/Attachment/51218581961.pptx>

<http://ipinfo.stpi.narl.org.tw/>

### MOEA hosts the 1<sup>st</sup> IPR protection coordination meeting of 2016

On February 26, 2016, the Ministry of Economic Affairs (MOEA) held the year's first interagency IPR protection coordination meeting to learn about the results of enforcement work in 2015 by police agencies, the Ministry of Justice, and customs offices. The meeting came to a resolution on strengthening campus IPR education campaigns, promoting Internet copyright protection, and providing guidance on setting up licensing mechanisms for use of copyrighted works.

Issues on strengthening trade secret enforcement were also discussed. The MOJ promised to continue enhancing law enforcement personnel training, facilitate communication and cooperation with industrial sectors, establish investigation SOP, and promote exchanges with foreign counterparts. With continuous improvement in the quality and efficiency of trade secret investigation, the R&D results of local and foreign companies will be securely guarded.

### TIPO adjusts Joint Royalty Rate for Karaoke Machine to Respond MCAT's Registration Revocation and Dissolution

Since 2015, the user can acquire a collective license from MÜST (Music Copyright Society of Chinese Taipei), MCAT (Music Copyright Association of Taiwan) and TMCS (Music Copyright Intermediary Society of Taiwan) after making a one-off payment in the single window MÜST based on the joint royalty rate for public performance using karaoke machines whether it is for business or public interests.

Due to alleged financial and administrative contravention of MCAT, TIPO raised concern that MCAT was not competent to properly operate the business of collective management. Thus, recently TIPO has revoked MCAT's registration approval and issued a dismissal order on February 24, 2016. Except for the licensing contracts entered before the dismissal order takes into effective, MCAT is no longer in part of the collection and distribution of joint royalty since February 25, 2016.

The joint royalty rate is adjusted since February 25, 2016 by TIPO:

1. NT\$6,300 (originally NT\$9,000) per karaoke machine per year if the exploitation is for business;
2. NT\$4,410 (originally NT\$6,300) per karaoke machine per year if the exploitation is for cultural, educational, or other purposes in the public interest; NT\$2,205 (originally NT\$3,150) per karaoke machine per year if the exploitation is non-profit and for the purpose of public interests.

(The price listed above is tax-excluded)

In terms of the licensing contracts entered before February 24, 2016, licenses issued by MÜST and TMCS remain unchanged. While MCAT is now in liquidation, it is entitled to the income of royalty derived from the contracts entered before that date and distributing to its members accordingly for the purpose of settling pending affairs. Users can choose to sustain the existing contracts till they expire. Until then performing publicly the copyrighted work managed by MCAT is still legal.

### Advancing laying-open is no longer a prerequisite for requesting AEP, PPH and TW-SUPA from April 1, 2016

Before April 1, it was mandatory for AEP, PPH and TW-SUPA applications which request for accelerated examination and has not yet been laid open to file a request for advancing the laying-open of the application and pay \$1,000 fee.

Recently TIPO's backlog reduction project has turned out successfully. The examination pendency has gradually shortened in the past few years. As a result, we have seen a gradual increase in the number of applications that have not yet been laid open (18 months) but are already undergoing substantive examination. Taking into account of the objective of PPH program, it may impede the PPH cooperation if the examination can only start with a request for advancing the laying-open of the application. Referring to the practice adopted by JPO, KIPO and USPTO, it does not require statutory laying-open in their PPH guidelines. Thus, since April 1, 2016, it no longer requires advancing the laying-open for AEP, PPH and TW-SUPA applications which request for accelerated examination and has not yet been laid open. It is hoped to optimize all accelerated examination programs and save applicants from paying extra fees for advancing the laying-open for applications.

## Enforcement and Latest Statistics

### National Police Agency (NPA)

#### 1. Enforcement News (January-March 2016)

From January to March 2016, a total of 508 copyright infringement cases involving 600 suspects and 729 trademark infringement cases involving 815 suspects were uncovered. The total market value of all the seized goods was estimated by right holders at NT\$8,106,153,554.

#### 2. Enforcement results (January-March 2016)

Unauthorized broadcasting numerous TV programs produced by SET TV to unspecified audiences by the app “LUV TV” is uncovered. As a result, the server used by the app was confiscated and the broadcast of the “LUV TV” was ordered to be terminated. The confiscated breaching articles include approximately 112 Taiwanese programs for up to more than 3,000 episodes.

#### 3. International Exchanges

- (1) On February 18, 2016 Taiwan’s criminal police corps invited Japan’s Intellectual Property Promotion Association to have a discussion on the investigation strategy to combat Japanese adult movies on DVDs, hoping to persuade the court to give a verdict pursuant to Copyright Act.
- (2) The secretary general Xu-Sheng Huang of the Business Development Foundation of the Chinese Straits paid a visit to the criminal police corps on February 18, 2016. It is pointed out that mainland China’s insufficient protection for IPRs is concerned by United States Trade Representative (USTR), International Intellectual Property Alliance (IIPA). The criminal police corps attended the first cross-strait IPR forum to share its experience.
- (3) To facilitate investigation in American firms, the criminal police corps and American Institute in Taiwan have decided to establish mutual cooperation through semiannual meetings on February 23, 2016.

#### Statistics for IP Infringement Cases

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
2016 Jan. -Mar.	1,237	1415	729	815	508	600	13
2015 Jan. -Mar.	1,362	1,552	764	837	598	715	106,782
Percentage Change: 2016/2015 Jan. -Mar.	-9.18	-8.83	-4.58	-2.63	-15.05	-16.08	-99.99

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

### Joint Optical Enforcement Taskforce (JODE)

From January to March 2016, JODE conducted 75 inspections of OD factories, printing plate factories and related facilities. This total is 35 times less than 110 inspections in Q1 2015. In addition, JODE conducted 11 documented audits of the internal control and audit systems of outstanding OD factories after advising them on the establishment of such systems. No contravention is found.

#### JODE’s Inspection Results (January – March, 2016)

		2015	2015	2016
		Jan.-Dec.	Jan. -Mar.	Jan. -Mar.
Number of Inspections		444	110	75
Number of Cases Found Violating the Optical Disk Act		0	0	0
Number of Plants Closed	Manufacturing Plants	0	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

## Customs Administration, MOF

### 1. Inspection Results:

- (1) 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 2016 yielded the following results:

Category	Trademark Violations		Copyright Violations		Export ODS Without Source ID Code	False Declaration of Source ID Code	False Declaration of Trademark
	Exports	Imports	Exports	Imports			
Cases	2	16	0	3	0	5	46
Number	7,255	107,136	0	134	0	103,960	-

- (2) From January to March 2016, there are 28 trademark infringement cases in total lodged either by an advice or by a complaint; there are totally 91 cases lodged by an advice filed for extension.

### 2. Major Inspections

- (1) Keelung Customs: On January 29, the customs uncovered 100,000 fraudulent "MICRO SD" memory cards transported by sea.
- (2) Taipei Customs: As for counterfeiting goods transported by express delivery, there were 22 pieces of "NIXON" watches uncovered on February 19 and 1,440 pieces of "CHANEL" cosmetic products uncovered on February 25.

All breaching goods are confiscated complying with the laws.

### 3. International Exchange

- (1) As part of active efforts to increase the flow of information between foreign customs offices on counterfeiting, the Customs Administration from January to March 2016 provided information on 7 counterfeiting and piracy cases to customs offices of other nations.
- (2) Strengthening exchanges and collaboration between right holders and right holder groups
- Seven workshops aiming to develop customs officers' ability in distinguishing authentic goods from fraudulent ones and to expand their know-how were held in Taichung, Kaohsiung, Keelung and Taipei customs on March 7-8 and March 10-11, 2016 individually. There were 296 officers attended the workshops lectured by right holders and their agents.
  - The "IPR Protection Seminar" hosted by trademark right-holder group "REACT" were held in March 14-15, 2016. The National Police Agency of the Ministry of the Interior, Intellectual Property Office, Ministry of Justice and the Customs Administration attended to exchange know-how in crime investigation to IPR infringement. Among the attendees, 27 were representatives of the Customs Administration.

## Taiwan High Prosecutors Office (THPO)

### 1. Enforcement Results (January-December, 2015)

District prosecutors offices across Taiwan uncovered 17 off-campus photocopying stores involving 17 suspects, and seized 132 illegally printed textbooks. These infringing materials were worth NT\$101,196,041. The prosecutors offices will continue investigation to effectively deter such infringement.

### 2. Status of adjudication (January-March, 2016)

As shown in the table below, affirmed IPR infringement cases by Taiwan's district prosecutors offices from January to March 2016 totaled 789. Of these, 225 suspects in 169 cases were indicted under ordinary procedures; 151 cases involving 155 defendants filed for summary judgment; 319 indictments involving 343 defendants were deferred; and 70 cases involving 73 defendants were closed by ex officio action. In the same period, 287 defendants were sentenced to prison terms at a conviction rate of 89.13%. Compared to the same period of 2015, the status of court rulings on IPR infringement cases (summary judgment included) is as follows. There were 380 indictments in 2016 and 378 in 2015, accounting for a 0.53% increase. As for the number of convictions, there are 287 defendants being convicted in 2016, accounting for a 3.69% decrease over the same period (298) of last year.

## 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	2016 Jan.-Mar.	393	287	73	3	0	0	0	0	179	32	35	0
	2015 Jan.-Mar.	390	298	76	2	1	-	-	-	201	18	21	0
	Percentage Change(%)	0.77	-3.69	-3.95	50.00	-100	0	0	0	-10.95	77.78	66.67	0

Source : The Prosecutors' Office for the Taiwan High Court

## IPR Awareness

### ● IPR awareness information meeting series

Since this March, "IPR Protection Service Group" has been holding a series of information sessions to raise the public awareness in IPRs. The information sessions are held upon enrollment by the industries, NGOs and schools at all levels specifying with their concerning issues, including patent, trademark, copyright and trade secrets. During which it also provides on-site consultation service. As of the end of March, 14 rounds of information session are enrolled and one round has held. The following table shows the details:

Informational Meetings	Time, Venue and Number of Participants	Topics and effects
1.IPR Laws and Regulations	From January to March, TIPO and the Service Group organized 1 meeting at university with 80 people in attendance.	The concerned issues are elaborated and accompanied with on-site consultation. The survey shows that 90% of the attendants find it helpful to better understand copyright.

### ● Seed Talent Training Camp for Traditional Intellectual Creations of Indigenous Peoples

To help indigenous people train talents and develop ability in execution to realize protection for the traditional intellectual creations, Council of Indigenous Peoples has held two rounds of "Seed Talent Training Camp for Traditional Intellectual Creations of Indigenous Peoples" in Nantou and Hualien on January 20 and February 1 respectively. Through elaborating on "Protection Act for the Traditional Intellectual Creations of Indigenous Peoples", the training camp is designed to help indigenous peoples fulfill the Protection Act and file a request required by law.

### ● MOE's Campus IPR Protection Awareness Activities

- 1.Each month, MOE continuously compiles the alleged infringements tackled by schools and reported by rightholder groups prior to 2 months ago. Taiwan Book Publishers Association had reported two cases regarding infringing links to the unauthorized e-textbook on PTT bulletin board system of National Taiwan University. NTU has been informed of these two cases.
- 2.To cope with new challenges caused by the widespread digitalized information on the internet, the first meeting of Interagency Consultation Group for Campus IPR Protection was convened on March 23. In addition to consensus that has reached during the meeting, it is targeted to realize related policies.
- 3.On January 28-29, National Chi Nan University was appointed to host the "Conference of Principals from Colleges and Universities in 2016", during which the reinforcement in disseminating IPR Action Plan was again emphasized.
- 4.In February 2016, it is urged to promulgate the idea in colleges and universities not to breach copyright by illicitly copying books, course materials but instead using authorized textbook (second-hand books included).