



經濟部智慧財產局

INTELLECTUAL PROPERTY OFFICE

MINISTRY OF ECONOMIC AFFAIRS

April - June 2016

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

*On July 1, 2016, TIPO's Director General WANG Mei-hua was appointed to Vice Minister of the Ministry of Economic Affairs (MOEA). Ms. WANG took up the role as TIPO's Director General on December 3, 2007. During her tenure, DG WANG was dedicated to amending the Patent Act, the Trademark Act, the Copyright Act, the Trade Secrets Act, and other IPR-related laws and regulations. She spared no effort to promote international exchanges and cooperation and succeeded in establishing PPH partnerships with the US, Japan, Korea, and Spain, PDX partnerships with Japan and Korea, as well as partnership with Japan on mutual recognition of deposit of biological materials. Vice Minister WANG now supervises key affairs involving commerce management, international cooperation, review of appeals, intellectual property, standards and inspection, international trade, as well as trade negotiations.*

*The Deputy Director General HONG Shu-Min is newly-promoted as Director General as of August 18, 2016. Ms. Hong has worked in IP field for nearly 30 years. Prior to this appointment, she was in the position of TIPO's Trademark Division Director, Secretary General, and Deputy Director General. For years she has been dedicated to establishing a sound regime and preparing for cross-strait exchange. Successfully completing IP chapter's negotiation on ASTEP, she was also the leading negotiator in mutual cooperation including those with Singapore, TIFA with the U.S., the EU and the U.K. Leading all staff members of TIPO, DG Hong will continue her commitment to build a more robust IP regime to make Taiwan more competitive.*

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## Special Report

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### The 2016 International IPR Conference

On May 26, 2016, TIPA and V&E cohosted the 2016 International IPR Conference at NTU's Tsai Lecture Hall. USPTO's Silicon Valley Office Director John Cabeca was invited to talk about "Recent Changes Implemented in the USPTO and the Significance of the Silicon Valley Office for High Technology Companies, Including Start-ups" and TIPO's Section Chief Shih Wei-ren from Copyright Division reported on "Recent Copyright Issues in Taiwan of the Digital Era." Over 200 people attended the conference.

### The 4th Academic Seminar on Copyright Regimes

On April 28, 2016, NTU's Center for Law, Technology and Ethics, college of law, TIPA, and IPPA cohosted the 4th Academic Seminar on Copyright Regimes at NTU's Tsai Lecture Hall. The seminar addressed the changes made in Taiwan and Japan's copyright regimes for accession to the TPP, the third comprehensive draft amendment to the Copyright Act, whether pornographic films should be protected by the Copyright Act, as well as online copyright infringement cases.

### Taiwan-Japan examiners exchange on extending patent terms of pharmaceuticals

JPO's Patent Examiner OSABE Yoshiyuki met with TIPO's examiners for a two-day lecture (June 15-16, 2016) on extending patent terms of pharmaceuticals. Mr. Yoshiyuki gave an overview of Japan's Supreme Court rulings and the Revised Examination Guidelines. The examiners shared experiences and exchanged thoughts on respective examination practices of extending patent terms. The exchange saw attendance of over 40 people from the Ministry of Health and Welfare, Council of Agriculture, IP Court, and Petitions and Appeals Committee of the Ministry of Economic Affairs.

## Legislative Amendments

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### Amendments to IP Laws for TPP Accession

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 requirements. 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: Acts circumventing effective technological protection measures for commercial advantage or financial gain will be subject to criminal penalties. Where the significant detriment inflicted on the copyright holder due to reproduction and transmission in digital form, certain contraventions which are liable for criminal penalties will be indictable without a complaint. The amendment will also introduce protection of encrypted program-carrying satellite and cable signals.

The draft amendment to Trademark Act has passed first reading in the Legislative Yuan on July 12 whereas the draft amendments to Patent Act and Copyright Act are being reviewed in the Legislative Yuan following a review in the Executive Yuan on August 4 and 11 respectively.

### Update on the Comprehensive Draft Amendment to Copyright Act

In line with the development of internet era and digital convergence, the third draft amendment to Copyright Act was published on October 30, 2015 for seeking public inputs. After revising its text, the fourth draft amendment was published on April 13, 2016. It was submitted to the Executive Yuan for review on 6th September and will later be sent to the Legislative Yuan for review.

The key revisions of the fourth draft amendment include: 1. Adjustments for more reasonable assignment of authorship; 2. Amendments to moral rights to promote circulation and exploitation of works; 3. Clarification of provisions regarding distribution and rental rights, to promote harmony in the market; 4. Modifications to the protection of performers and sound recordings; 5. Modification of the copyright exceptions on economic rights; 6. Addition of provisions for compulsory licensing when the identity of the economic rights holder is unknown, and for registration of pledges of economic rights; 7. Modification of border control measures; and 8. Review of obsolete criminal liabilities.

### Notice for Prosecuting Significant Violation of Trade Secrets Act

Criminal liabilities are introduced in the amended Article 13-1 and 13-2 of Trade Secrets Act since January 30, 2013. In accordance with the four main policy directions, namely, reinforcing prosecutor's investigative skills, strengthening communication with the industries, establishing consistent and predictable standard of investigation procedure as well as facilitating international exchange in enforcement, Taiwan High Prosecutors Office has formulated Notices for Prosecuting Significant Violation of Trade Secrets Act with reference of regulations in the EU, the US and Japan. The Notice takes into effect since April 19, 2016.

## Latest Developments

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### Cross-Strait Exchanges of Patent Examiners in 2016

TIPO's three senior patent examiners and one IP Court's judge visited SIPO, the Patent Reexamination Board of SIPO and Beijing IP Court to exchange experience on reexamination and administrative remedy actions during March

20-25, 2016. A total of five patent examiners from China's State Intellectual Property Office came to Taiwan to begin a five-day (May 16-20) exchange with their TIPO counterparts.

This was the fourth exchange, the examiners used patent applications filed with both offices to discuss prior art search, examination process, and examination results in TIPO and SIPO's substantive examination. They also shared experiences in assessing inventive step, and review of examination quality.

### 2016 Cross-Strait Trademark Examiners Exchange

On May 9-13, a group of six people representing the Cooperation Center for Trademark Examination, Trademark Review and Adjudication Board and Trademark Office of SAIC of mainland China visited Taiwan. During the visit, they had exchange with TIPO's trademark examiners on topics including substantive examination mechanism and practice of trademark dispute cases and the operation of the Cooperation Center for Trademark Examination while TIPO shared trademark quality check sampling and program in enhancing examination quality. They then take a field trip to Sun Moon Lake Dong Feng Black Manor to see how geographical certification mark of Sun Moon Lake's black tea is implemented and visit Criminal Investigation Brigade to exchange on enforcement measures and efficacy.

### Cross-Strait IP Enforcement Forum

The representatives of Criminal Investigation Brigade attended the Cross-Strait IP Enforcement Forum organized by the Business Development Foundation of the Chinese Straits On April 5-8. The representative made a speech on "The Design Advantage of IPR Corp and its Operation" to brief Taiwan's investigative mechanism for breaches and the cooperative mechanism between TIPO and CIB.

### Workshop on Licensing Public Performance of Works Used in Movies

According to TIPO's long-held administrative interpretation, economic rights holders may not claim their rights to public performance of elements (i.e. works of music, literature, drama, and dance) used in audiovisual works publicly presented. In the latest draft amendment to the Copyright Act, TIPO re-defined "public performance" (Art. 3(1)8), stipulating that such elements may be publicly performed in public presentation of audiovisual works. This is in consideration of relevant international conventions and legislative trends of other countries.

On the afternoon of May 6, 2016, TIPO held a workshop on licensing public performance of works used in movies to learn how Taiwan's movie industry would respond to the amendment and how this would affect licensing market and development of the industry. A total of 23 people from the Ministry of Culture, Bureau of Audiovisual and Music Industry Development, CMOs, National Theater Association R.O.C., TACP, as well as up/mid/downstream sectors of the movie industry attended the event.

### Protection for the Traditional Intellectual Creations of Indigenous Peoples

On May 9-10, 2016, an educational training on regulations of the traditional intellectual creations of indigenous peoples was held in Hsinchu by Council of Indigenous Peoples, aiming to facilitate indigenous peoples' obtaining the exclusive right of their traditional intellectual creations and disseminate among government agencies and tribes the Protection Act for the Traditional Intellectual Creations of Indigenous Peoples along with relevant regulations. On May 21, one dissemination activity to the Protection Act and an information session about general application for the exclusive right of the traditional intellectual creations of indigenous peoples were held in Pingtung. On June 26, an analysis was given during the lecture on tribe development and the exclusive right of traditional intellectual creations in Taichung.

## Enforcement and Latest Statistics

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### National Police Agency (NPA)

#### 1. Enforcement Statistics (April-June 2016):

From April to June, 2016, a total of 635 copyright infringement cases were uncovered involving 714 suspects and 678 trademark infringement cases were uncovered involving 747 suspects. The market values of these uncovered infringing goods were estimated by rights holders to be around NT\$1,946,836,699.

#### 2. Major Cases (April-June 2016)

20 automatic bikes and 810 affixing labels breaching trademarks VESPA owned by Italian manufacturer Piaggio and RS ZERO owned by Japanese manufacturer Yamaha Motor are uncovered. The total market value of counterfeit goods is around NTD\$66,000,000. This contravention is under investigation by Prosecutors Office in Taiwan Hsinchu District Court.

### 3. International cooperation

- (1) On April 19, 2016, during a visitation to Japanese Association's Chief Commissioner Mr. Sakamoto and the Interchange Association, Japan (IAJ), IPR Corp has reflected that certain brand owners spend a long time on appraisal, resulting in extreme police force consumption to secure evidence of violation. A cooperation model similar to IPR Business Partnership between Customs Administration and international organizations is then suggested to conduct seminars with Japanese companies on a regular basis.
- (2) On April 26, 2016, the Immigration and Customs Enforcement of United States Department of Homeland Security and American Institute in Taiwan visited IPR Corp to exchange on issues regarding online criminal investigation.
- (3) On May 23, 2016, the Brand Protection Division in Asia Pacific region of Adidas Group's Director Huang visited IPR Corp to exchange on educational training of uncovering counterfeit goods and international conference.
- (4) On June 2, 2016, the Asia Pacific region's Vice Chairman Mr. Feng of MPAA visited IPR Corp. Both sides exchange opinion on enforcement issues.

### 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 Apr. -Jun.	1,313	1,461	678	747	635	714	865
2015 Apr. -Jun.	1,298	1,475	695	769	603	706	71,089
Percentage Change: 2016/2015 Apr. -Jun.	1.16	-0.95	-2.45	-2.86	5.31	1.13	-98.78

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

### Joint Optical Enforcement Taskforce (JODE)

From April to June 2016, JODE conducted 81 inspections of OD factories, printing plate factories and other related facilities. This total is 46 times less than 127 inspections in Q2 2015. In addition, JODE conducted 8 documented audits of the internal control and audit systems of outstanding OD factories after advising them on the establishment of such systems.

### JODE's Inspection Results (April-June, 2016)

		2015	2015	2016
		Jan.-Dec.	Apr.-Jun.	Apr.-Jun.
Number of Inspections		444	127	81
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 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

### 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 April to June 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	0	32	0	2	0	4	77
Number	0	3,575	0	139	0	2,377	-

- (2) From April to June 2016, there are 35 trademark infringement cases in total lodged either by an advice or by a complaint; there are totally 122 cases lodged by an advice filed for extension.

## 2. Major Inspections

Taipei Customs: As for counterfeiting goods transported by express delivery, there were 6 fraudulent hTC mobile phones uncovered on April 20, 360 bottles of CHANEL perfume uncovered on May 14, 100 watches breaching G-SHOCK and TOUGH MVT uncovered on May 24, 794 polo shirts breaching Abercrombie & Fitch and HOLLISTER uncovered on May 30, and 439 handbags breaching My Melody, Gudetama and Hello Kitty uncovered on May 30 as well. All the seized goods have been detained according to the laws and regulations of Taiwan.

## 3. International Exchange

(1) As part of active efforts to increase the exchange of information with foreign customs offices on counterfeiting, the Customs Administration from April to June 2016 provided information on 4 counterfeiting and piracy cases to customs offices of other nations.

### (2) Exchange and Collaboration with 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 on June 14 in Taipei, June 15 in Keelung, June 16 in Taichung and June 17 in Kaohsiung customs. There were 552 officers attended the workshops lectured by right holders and their agents.

## Taiwan High Prosecutors Office (THPO)

### 1. Enforcement Results (January-June, 2016)

District prosecutors offices across Taiwan uncovered 1 off-campus photocopying stores involving 1 suspect, and seized 1 illegally printed textbook. The infringing materials was worth NT\$266. The prosecutors offices will continue investigation to effectively deter such infringement.

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

Affirmed IPR infringement cases processed by Taiwan's district prosecutors offices from January to June 2016 totaled 1,398. Of these, 405 suspects in 308 cases were indicted under ordinary procedures; 318 cases involving 327 defendants were filed for summary judgment; 634 indictments involving 679 defendants were deferred; and 138 cases involving 147 defendants were closed by ex officio action. As shown in the table below, in the same period, 527 defendants were sentenced to prison terms at a conviction rate of 89.93%. Compared to the same period in 2015, the status of court rulings on IPR infringement cases (summary judgment included) is as follows. There are 732 indictments in 2016 and 884 in 2015, accounting for a 17.19% decrease. As for the number of convictions, there are 527 defendants being convicted in 2016, accounting for a 6.39% decrease over those (563) of the same period in 2015.

### Status of Adjudication of Taiwan District Prosecutors Offices 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.-Jun.	738	527	146	5	3	-	-	321	52	59	152
	2015 Jan.-Jun.	740	563	141	7	2	0	0	383	30	44	133
	Percentage Change(%)	-0.27	-6.39	3.55	-28.57	50	0	0	-16.19	73.33	34.09	14.29

Source : The Prosecutors' Office for the Taiwan High Court

## IPR protection education campaigns

### ● 2016 World IP Day Celebration

The World IP Day in 2016 is themed with "Digital Creativity : Culture Reimagined". To celebrate the World IP Day, the event was cohosted by TIPO, Taiwan International Screen Foundation, Music Copyright Society of Chinese Taipei and American Institute in Taiwan in the Mayor's Residence Art Salon on April 25, 2016. Director Jennifer Jao of Taipei Film Commission, music composer Xiao-wen Ding, Executive Director Ming-hsin Tsai of Animation & Comic Creative Association, Chairman Zheng-xiong Chen of Consummate Artwork Gallery along with representatives from cinema, music, animation & comic and art industry were invited to attend the symposium on the topic "Impact on the Cultural and Creative Industry in Digital Era". Practitioners from the cultural and creative industry and students in related majors in colleges and universities also attended the celebration event. The four speakers addressing on the impact

and influence which technology brought in each industry had enlightened attendees. The event is also an opportunity to disseminate the idea that the IPRs should be respected and protected.

● **The 2nd Meeting on Customs Information Exchange**

On June 23, the Customs Administration held the 2nd meeting on customs information exchange to promote use by customs personnel of the database on advised or requested customs judicial protection, and to strengthen investigation of IPR-infringing goods.

● **Campus IPR Assistance Team**

In May and June, the “Campus IPR assistance team” comprising 135 seed instructors from 23 universities went to 18 elementary, junior high, and senior (vocational) high schools using lively activities and short skits to promote IPR awareness to more than 2,000 students. A subsequent survey shows that over 70% of elementary schoolers became aware that sound recording, video recording, scanning and photocopying fall under reproduction stipulated in Copyright Act; over 90% students aware that both uploading videos to the Internet for public viewing and photocopying an entire textbook in separate times constitute violation of copyright.

● **Strengthen Copyright Protection by Broadcasting**

In April, by broadcasting for 1,694 times in 22 broadcasters nationwide the 30-second advertisement disseminating the idea that illegally downloading music, video and articles are prohibited by laws, the advantage of raising awareness of copyright protection is acknowledged.

● **“Internet copyright” campaign activities**

In 2016, TIPO continues to use Facebook page to quickly disseminate IPR campaign information. The campaign includes activities of online quizzes with prizes titled “call for supporters of genuine works” and “how much do you know about copyright?” on Facebook page “Let’s support genuine works” on April 11 and May 6. As of the end of June, TIPO had posted over 81 pieces of information, responded to 34 online inquiries about copyright, and participated by approximately 2,500 users.

● **Ministry of Education’s campus IPR protection awareness campaigns**

1. Starting 2015, on-site university visits and guidance are jointly conducted under the MOE’s supervision. These on-site visits and guidance are conducted every four years. For the first half of 2016, the supervision is conducted in April and May. A total of 11 universities were visited and all of them passed.
2. Ministry of Education has reached initial consensus during the second TANet’s coordination meeting to block extraterritorial websites breaching textbook’s copyright on June 8, 2016.

● **“IPR Protection Service Group” Information Meetings**

From April to June, TIPO held a series of 87 “IPR Protection Service Group” information meetings to raise people’s IPR awareness. The topics and effects of the meetings are listed below.

Topics	Time, Venue and Number of Participants	Issues addressed and Effects
1. IPR Laws and Regulations	From April to June, TIPO and the Service Group organized 79 meetings (1 at government agencies, 9 at corporations, and 69 at schools) across Taiwan, with 6,653 people in attendance.	The meetings addressed patent, trademark, copyright, trade secrets, and layout designs of integrated circuits. On-site counseling was also provided to step up people’s IPR awareness. Survey shows that 90% of the attendants gained better knowledge of copyright; 80% of the attendants learned that photocopying a book in separate times constitutes copyright infringement.
2. Use Software Legally	Three meetings were held in New Taipei City, Taipei and Kaohsiung on April 15, May 13, and June 17, with 363 people in attendance.	The sessions illustrated concepts about computer programs and legally using computer software, giving an overview and provided explanations regarding software piracy commonly seen in government procurement and types of misleading licensing. Survey shows that more than 70% of the attendants know better about computer programs & copyright protection and licensing regulations in Copyright Act.
3. Copyright Cases on Mobile Telecommunication	2 sessions are held and participated by 151 people on May 20 in New Taipei City and June 24 in Taipei.	The sessions illustrate copyright legislations involving exploitation of mobile telecommunication and accompany with current events. Survey shows that more than 90% of the attendants realize that simply citing the source of reference does not justify fair use, and online video clips and pictures which are publicly accessible are also copyrighted works. The sessions help attendants understand better about copyright relating to mobile telecommunication.
4. Notable Regulations on Government Procurement and Related Business	2 sessions are held and participated by 296 people on June 14 and 27 in Taipei.	The sessions illustrate regulations relating to government procurement, dissemination and other businesses. Survey shows that more than 60% of the attendants know better about types of copyright exploitation in government agencies and stipulation of copyright in procuring contract.
5. Copyright Seminar for Cultural and Creative Industry – Analysis on Copyright Contract and Case in Digital Publication	1 session is held on June 3 in Taipei and participated by 118 people.	The lecturer from the industry shared licensing patterns and contractual practices in digital publication. There were attorneys helped clarify legislations and frequently asked questions involving copyright contracts. Survey shows that 98.2% of the attendants know better about copyright in cultural and creative industry and more than 70% showed approvals that the seminar benefits their profession. The seminar succeeded in lively exchanging views between speaker and attendants.