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**COMMENTS: SPECIAL 301 OUT-OF-CYCLE REVIEW - TAIWAN**

**November 5, 2004**

***Submission Information***

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***Comments***

Taiwan has made significant headway over the past 6 - 12 months in protecting intellectual property rights. Taiwan President Chen Shui-bian, Premier Yu Shui-kun, and the members of the Legislative Yuan have demonstrated their understanding of the importance of IPR protection by passing crucial amendments to the Copyright Law, by providing IPR-specific training for judges and prosecutors, by the planned creation of a dedicated IPR court, as well as by increasing policing of the problem on Taiwan's streets and at its ports.

It is important that these efforts continue, and for piracy and counterfeiting rates to be significantly reduced on a permanent basis. The US-Taiwan Business Council and our members will continue to closely monitor progress in this area. Nevertheless, the August 2004, passage of significant amendments to the Copyright Law in Taiwan's Legislative Yuan addressed a top U.S. priority, and is a welcome development for the American business community. Taiwan has also taken concrete steps in the other key areas of concern.

The US-Taiwan Business Council recognizes Taiwan's efforts and the significantly improved environment for IPR protection in Taiwan, and therefore supports removing Taiwan from the Special 301 Priority Watch List, provided that recent progress in curtailing IPR infringements is sustained.

**SUPPORTING INFORMATION**

***Changes to the Taiwan Copyright Law***

**2003**

The first set of amendments to the Copyright Act entered into force on July 11, 2003. The 2003 changes consisted of 53 amendments and 13 new provisions, including changes as follows:

- The unauthorized copying of optical disks for profit was criminalized
- Maximum criminal fines increased to NT\$8 million (US\$238,800)
- Complaints from right holders are no longer required in order for enforcement agencies to initiate enforcement actions

- Civil compensation was increased from NT\$1 million (US\$29,850) to NT\$5 million (US\$149,250) when the infringement is ruled as severe

### **2004**

Additional changes to the Copyright Act entered into force on September 1, 2004 - when 13 provisions of the Copyright Act underwent major revisions - included:

- The law now states that technological protection measures adopted by a copyright holder cannot be disarmed, destroyed or otherwise circumvented without the authorization of the copyright holder
- The distinction between "for profit" and "not for profit," was clarified
- The minimum prison sentence in cases of "pirating optical disks for the purpose of selling or leasing" and the "selling of pirated optical disks" was changed to six months
- Customs was given *ex officio* authority to hold import/export shipments whenever the presence of pirated works is suspected

### ***Other Measures***

- Taiwan's National Police Administration has moved to make the Integrated Enforcement Task Force (IETF) a permanent body under the jurisdiction of the police force
- A new, 220-man police unit specializing in preventing intellectual property rights infringements will begin operations on November 1, 2004
- In October 2003, the Ministry of Justice issued a directive urging all prosecutors to request for heavy penalty when prosecuting an IP-infringement case, and suggested that prosecutors should appeal to higher courts in cases where a penalty is deemed too light
- Taiwan is currently moving to establish specialized IP courts

### ***Statistics***

As of 2003, Taiwan is no longer among the top ten sources of counterfeit goods seized by U.S. customs. According to the Department of Homeland Security, Bureau of Customs and Border Protection, seizures of counterfeit goods originating from Taiwan continue to fall, as follows:

| <b>Year</b>         | <b>Value of Seizures<br/>Taiwan Origin</b> | <b>Taiwan % of<br/>Overall Seizures</b> | <b>Taiwan Rank<br/>Top Offenders</b> |
|---------------------|--|---|--------------------------------------|
| 2002                | US\$26.51 million                          | 26.78%                                  | 3                                    |
| 2003                | US\$610,000                                | 0.65%                                   | Not in top 10                        |
| <b>Part of Year</b> |  |   |                                      |
| 2003, first half    | US\$322,386                                | 0.85%                                   | 8                                    |
| 2004, first half    | US\$60,000                                 | 0.09%                                   | Not in top 10                        |

Those numbers are down from a high in 1999 of US\$42.24 million in seizures, when Taiwan was the country of origin for over 42.88% of total U.S. Customs IPR seizures. Taiwan was also the number one place of origin of seizures for that year.

It seems that the changes to the copyright law and increased enforcement are having a positive impact on the IP Infringements rate in Taiwan. According to a report by the Ministry of Justice, as of June this year 1,532 suspects were convicted of IP infringement in 2004, marking a decrease of 11.70% over the 1,735 convictions for the same period in 2003.

However, suspects in five of those cases were given more than 3 years of imprisonment as a result of their conviction of IPR infringement, compared to only 2 cases from the same period in 2003. Also according to the Ministry of Justice, between January and June 2004 the percentage of IP suspects actually being detained for their suspected IP infringements also increased by 151.59% over the same period last year..

In addition, the number of cases of IP Infringement uncovered, as well as the number of suspects involved, has continued to decline over the last few years, reflecting the decrease in IP infringement in Taiwan.

|                             | No. of Cases | % Change       | No. of Suspects | % Change      |
|-----------------------------|--------------|----------------|-----------------|---------------|
| <b>Full Year Data</b>       |              |                |                 |               |
| 2001 (1-12)                 | 5270         |                | 6114            |               |
| 2002 (1-12)                 | 5118         | -2.88%         | 6269            | 2.54%         |
| 2003 (1-12)                 | 4660         | -8.95%         | 5713            | -8.87%        |
| <b>% Change (2001-2003)</b> |              | <b>-11.57%</b> |                 | <b>-6.56%</b> |

|                             | No. of Cases | % Change       | No. of Suspects | % Change       |
|-----------------------------|--------------|----------------|-----------------|----------------|
| <b>Partial Year Data</b>    |              |                |                 |                |
| 2002 (1-6)                  | 2722         |                | 3307            |                |
| 2003 (1-6)                  | 2459         | -9.66%         | 3044            | -7.95%         |
| 2004 (1-6)                  | 1931         | -21.47%        | 1931            | -36.56%        |
| <b>% Change (2002-2004)</b> |              | <b>-29.06%</b> |                 | <b>-41.61%</b> |

Units: Persons/Cases

### **Sources**

Taiwan Intellectual Property Office, [www.tipo.gov.tw](http://www.tipo.gov.tw)

Ministry of Justice, [www.moj.gov.tw](http://www.moj.gov.tw)

U.S. Customs and Border Protection, Department of Homeland Security, [www.cbp.gov](http://www.cbp.gov)

Exchange Rate Used: US\$=33.50

### **ABOUT THE US-TAIWAN BUSINESS COUNCIL**

The US-Taiwan Business Council ([www.us-taiwan.org](http://www.us-taiwan.org)) is a membership-based non-profit association founded in 1976. The Council provides its members with business intelligence, access to a network of companies involved in business between Taiwan and the United States, and serves as a vital representative in dealing with investment, business development, and intellectual property matters.