

March 31, 2008

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for FY 2007

This is to report this fiscal year's outcomes in the CIPP, which, since FY 2005, has been committed to the collaborative activities on the private-sector level by inviting the Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat, National Police Agency, Ministry of Economy, Trade and Industry, Ministry of Internal Affairs and Communications, and Agency for Cultural Affairs as observers in order to solve the problem of the distribution of intellectual property rights (IPR) infringing goods arising from Internet auctions.

We hope this report will help you plan IPR protection policies for this fiscal year as it represents a consensus of right holders (individuals and organizations) and Internet auction operators.

[Outlines]

1. Implemented certain measures based on the "Guidelines for Prevention of the Distribution of Intellectual Property Rights Infringing Goods," including appropriate voluntary patrols and removals upon notice from right holders.
2. Set up a website for "reporting activities" and "raising public awareness."
3. Carried out an effectiveness verification to measure overall effects of various efforts.
4. Created associate membership to expand members.
5. Appealed to the government for dissemination and expansion of the "Japanese Approach."

Background to the discussions and changes in actual conditions during FY 2007

This fiscal year's activities involved the steady promotion of traditional measures centering on removals as well as the implementation of an effectiveness verification to find outcomes from the past efforts between auction operators and right holders. In addition, we logically derived remaining problems from an analysis of the verification results and discussed measures for them.

(1) Voluntary removals

Proper operation was carried out mainly by three major companies in accordance with the "Guidelines for Prevention of the Distribution of Intellectual Property Rights Infringing Goods" lately established (hereinafter referred to as the "Guidelines"). Actual achievements are as follows.

- Trademark cases: 748,416 cases
- Copyright cases: 187,909 cases (From January to December, 2007)

(2) Collaborative awareness-raising activities by right holders and Internet auction operators

- Setup of a website (<http://www.cipp.jp/>)

We set up a website for the CIPP on June 19 2007 and started reporting our activities.

- Raising awareness of users

As in the previous fiscal year, part of right holders and the largest auction operators collaboratively carried out an activity to raise awareness of those who bought IPR-infringing goods. In addition to the activity, we conducted a three-month follow-up survey to find what items those buyers purchased through auctions. As the results of the follow-up survey showed that none of them had subsequently traded IPR-infringing goods, we believe that the awareness-raising activity served as a deterrent against purchases of IPR-infringing goods. It may help the prevention of the distribution of IPR-infringing goods if we raise awareness and invite attention of the buyers who felt guilt about purchasing the goods in addition to raising awareness of malicious sellers. In terms of awareness-raising activities for the general public, since right holders, auction operators and the government have already carried out their own substantial programs on an ongoing basis, we saw no need in providing CIPP original contents and decided to just offer links.

(3) Effectiveness verification

- Application of the Guideline by auction operators resulted in the voluntary removals as indicated in (1). Removal requests from right holders are as shown in the table below.

	Trademark	Copyright	Design right	Total
2005	81,491 cases	18,263 cases	2 cases	99,756 cases
2006	60,929 cases	3,557 cases	5 cases	64,491 cases
2007	30,907 cases	365 cases	2 cases	31,274 cases

Table: Changes in Removal Requests from Right Holders in Past Three Years

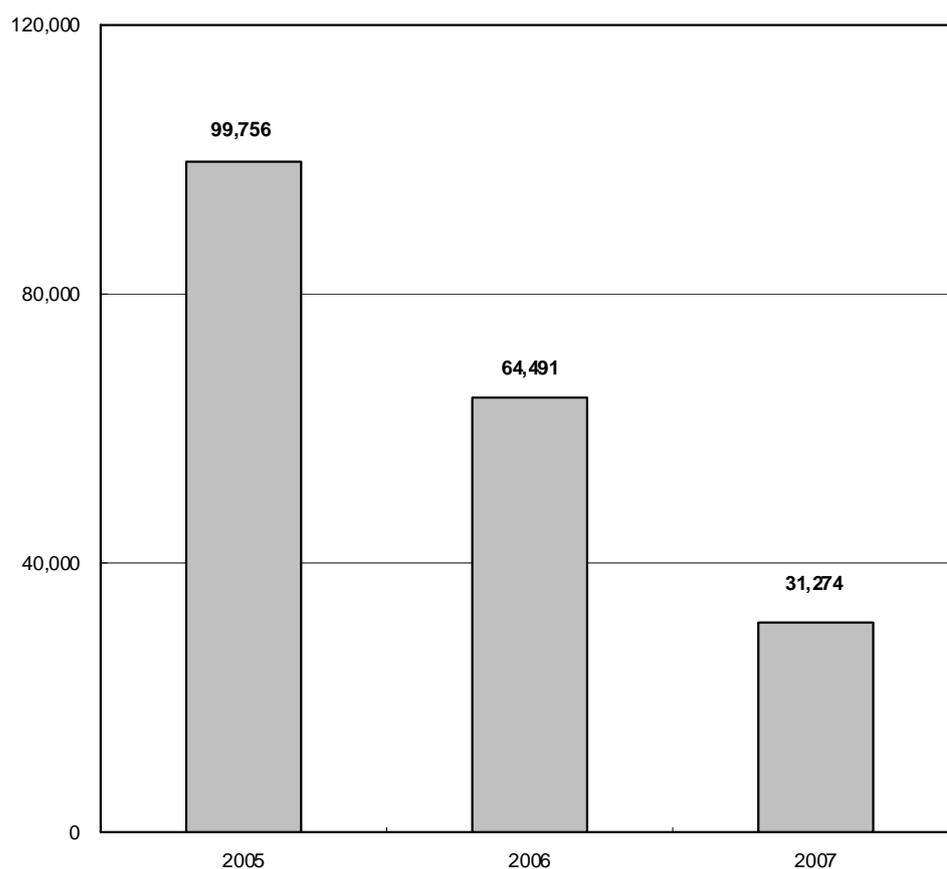


Figure: Changes in Removal Requests from Right Holders (By Year)

- We established an “Effectiveness Verification Committee” and carried out a verification by only identifying, as infringing goods or infringement, the auctioned items which were judged as infringement of a copyright or trademark based on their on-screen descriptions and images and would allow right holders to make suspension requests to auction operators. Outlines of the implemented verification are as indicated in the annex.

- Verified cases

Copyright: 5,063 cases Trademark: 19,268 cases

As a result, it is impartially proved that percentages of auctioned copyright- or trademark-infringing goods were extremely low. A low percentage was also indicated in the auctioned IPR-infringing goods which were difficult to identify. We accordingly found that it was surely difficult to auction the goods of the right holders who had promoted relevant efforts in cooperation with auction operators and had been active in enforcement. Please note that the effectiveness verification did not cover the auctioned items which did not allow right holders and operators to determine on the screen whether or not they were infringing goods, or which were not identifiable before actually buying the items. We will make a further study to determine whether we should implement a more in-depth verification in the future with respect to how items are auctioned and purchased by taking into consideration certain conditions including actual damages and enforcement by right holders.

- Percentage of auctioned IPR-infringing goods which were identifiable

Copyright: 0.51% Trademark: 1.20%

- Percentage of auctioned IPR-infringing goods which were difficult to identify

(Those which did not allow auction operators to identify)

Copyright: 0.32% Trademark: 0.13%

(4) New members

We decided to establish observer membership to promote participation of both parties for ensuring a higher degree of coverage. Currently an auction operator and a right holder (organization) are expected to participate. Although there are no restrictions on where applicants are located, qualification requirements include communication capability in Japanese, being an executive or employee of a legal entity in the case of right holders (individuals and organizations), and that a proxy must be qualified as a lawyer in Japan for attendance by proxy.

Conclusion

Participants now better understand each other as two years have passed since the establishment. As a result, activities of the CIPP are properly rated in international conferences of right holders. Japan adopted a unique problem solution through “collaborative efforts by both right holders and auction operators to show successful results” (Japanese Approach). The CIPP wished that the effectiveness of the Japanese Approach would be demonstrated, and is now very satisfied with the fact that the wish is fulfilled. We will try to have further achievements by increasing, in a phased manner, operators and right holders who share prerequisite understanding.

We have heard that unfortunately in the United States which has the world’s largest Internet auction industry, the situation has not yet improved at all because of the conflict between auction operators and right holders in lawsuits. Accordingly the CIPP would be very happy if its outcomes could help Japan demonstrate its advanced capability in the intellectual property area. We urge the government to spread these outcomes which Japan can boast to the world and improve the status of the country in the international society.

Principles of the Japanese Approach

1. Both parties shall be aware that they should fully respect each other’s positions and then make collaborative efforts in standing up against their common enemies, that is, infringers, in order to protect not only their own interest but also interest of consumers among others.
2. Right holders shall be aware that they should enforce their own rights, which are not automatically protected.
3. Auction operators shall be aware that they should make active efforts to protect intellectual property rights for sound development of the Internet.
4. Both parties shall be aware in the course of the promotion of countermeasures that they should agree on the equal importance of the protection of intellectual property rights and the securement of users’ freedom for business and secrecy of communication, and that they should take actions not to undermine values of both aspects.