

April 6, 2010

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Council for Intellectual Property Protection on Internet (CIPP)

**CIPP Report for FY 2009**

As you have already known as a participant, the CIPP, 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, Agency for Cultural Affairs, and Japan Patent Office 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 FY 2010 as it represents a consensus of right holders (individuals and organizations) and Internet auction operators.

[Outlines]

1. Report of the Effectiveness Verification Committee

We successfully continued to keep the percentage of auctioned infringing goods at a low level as a result of the implementation of certain measures including voluntary patrols by auction operators and removals upon notice from right holders. Furthermore during this year, there has been a large improvement compared to the previous year in the number of auction operators participating as new observers. We will contact auction operators as they become identified and continue to expand membership.

2. Results of Publicity Activities (Increasing Awareness of “Japanese Approach”)

To promote the “Japanese Approach”, our report has been prepared in English, and published on our web site. In addition to conducting explanatory talks about the Japanese Approach in meetings between the Japanese and Chinese governments, the Japanese Approach has been suggested to foreign rights-holders organizations such as the IACC for their consideration and comment.

3. Institution of Removals Guidelines Committee

4. Institution of the Education Committee

5. Examination of Expansion in the Scope of Discussion of CIPP

6. Requests to Japanese Government

1. Report of the Effectiveness Verification Committee

(1) Survey

This fiscal year we again established an “Effectiveness Verification Committee” consisting of the individuals who were actually in charge of removal requests / voluntary removals, and carried out a verification by dividing targets into two groups: those 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 (Table 1), and those which were highly likely to be infringing goods from an objective viewpoint despite the lack of decisive factors (Table 2).

Outlines of the implemented verification are as indicated in the annex. As in the previous fiscal year, the current 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.

In addition to Group 1 (3 member companies) as stated in the implementation overview, this fiscal year, we have verified Group 2 (2 member companies, Table 3, and Table 4), and non-member Group 3 (2 Control Companies, Table 5 and Table 6) that are inferred to implement almost no strategy with respect to IP infringing goods.

<Group 1 (Yahoo, DeNA, Rakuten)>

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	13,334	1.39%	6,740	0.91%	20,074	1.23%
2009	4,540	1.28%	7,433	1.22%	11,973	1.24%

Table 1: Percentages of auctioned IPR-infringing goods meeting the requirements specified in the guidelines

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	13,334	0.19%	6,740	1.75%	20,074	0.72%
2009	4,540	0.24%	7,433	0.93%	11,973	0.67%

Table 2: Percentages of auctioned items which right holders deemed were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met

<Group 2 (Other member companies, 2)>

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	-	-	-	-	-	-
2009	225	6.22%	38	0.00%	263	5.32%

Table 3: Percentages of auctioned IPR-infringing goods meeting the requirements specified in the guidelines

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	-	-	-	-	-	-
2009	225	4.89%	38	26.32%	263	7.98%

Table 4: Percentages of auctioned items which right holders deemed were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met

<Group 3 (Non-member companies, 2)>

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	-	-	-	-	-	-
2009	451	69.62%	19	0.00%	470	66.81%

Table 5: Percentages of auctioned IPR-infringing goods meeting the requirements specified in the guidelines

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	-	-	-	-	-	-
2009	451	25.50%	19	0.00%	470	24.47%

Table 6: Percentages of auctioned items which right holders deemed were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met

(2) Analysis

Group 1 displays stable and prioritized strategies and shows only an extremely small increase which is at the lower end of the overall scale. Although the requirements specified in the Guidelines have not been met, there has been a reduction in the percentages of auctioned items deemed highly likely to be infringing goods from an objective standpoint. Consequently, the protection system was sufficiently maintained and as a result provides a verification of the effectiveness of the "Japanese Approach".

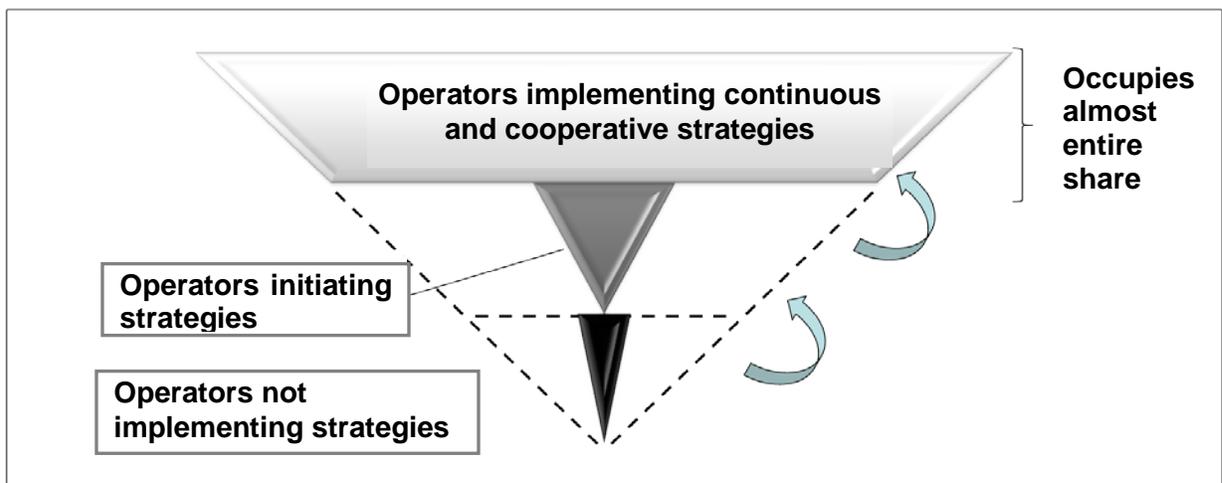
The figures in Group 2 compare unfavorably with the figures for Group 1, and we believe that there is a need for further improvement by implementation of increased patrols, personal confirmation, or

substitute strategies. One company of the two companies has demonstrated a large improvement from a level of infringement prior to joining the CIPP that was similar to Group 3. These results also verify the effectiveness of the “Japanese Approach”.

Verification of the Group 3 of non-member companies that were newly discovered by member companies was performed and attention must be drawn to the fact that more than half of the total goods for auction were goods infringing trademark rights. Although goods infringing copyright are not present in Group 2 or Group 3 (refer to Table 3 and Table 5), since the verification parameters are small, these figures should be merely treated as reference figures.

As discussed above, some points have been highlighted in relation to a sector of auction operators. However even when this is taken into account, on the basis of the study performed by the Union des Fabricants, the recent share in relation to fashion brands of Group 2 and Group 3 together is less than 3%, and therefore has little effect on the overall state of the auction market.

Going forward, it is important that continuous inducement is given in a stepwise direction of improvement in the form of Group 3 moving to the position of Group 2 and Group 2 moving to the position of Group 1. In this context, we will strive to continue improvement activities by incorporating outsiders who will probably demonstrate a share future increase.



2. Results of Publicity Activities (Increasing Awareness of Japanese Approach)

- (a) The reports for last year and two years ago have been translated into English, displayed on the CIPP website to thereby commence international notifications.
- (b) By invitation of the Ministry of Economy, Trade and Industry, etc., the CIPP has been involved in negotiations between the Japanese and Chinese governments in which we have explained the activities of the CIPP, its results, and the effectiveness of the Japanese Approach.
- (c) We received a visit from the Chairman of The International Anti-Counterfeiting Coalition (IACC) which is an American rights-holders organization, and we have explained the activities of the CIPP, its results, and the effectiveness of the Japanese Approach.
- (d) We have been contacted by Ebay Inc. which is the largest auction operator in the world, and subsequently received a visit from Ebay at our conference.

In today's world in which the public is more engaged with borderless transactions such as internet auctions, we will continue to develop our international publicity activities based on a recognition that the adoption of the Japanese Approach as a global standard is a matter of high priority.

3. Institution of the "Guidelines for Prevention of the Distribution of Intellectual Property Rights Infringing Goods" Committee

After preparing the "Guidelines for the Prevention of Distribution of Internet IP Infringing Goods" in 2008, each company has refined its internal removal standards. After coordinating overlapping matters, we have established a Removals Guidelines Committee with the goal of improving the common awareness including new members.

4. Institution of the Education Committee

A decision has been made to examine education strategies for the aim of attracting attention to the activities of the CIPP, of course by users of internet auctions, but also by rights holders that are not actively pursuing strategies in relation to IP infringing goods, and to include rights holders and rights-holders organizations together with internet auction operators. For that purpose, we are examining the establishment of an Education Committee.

5. Examination of Expansion in the Scope of Discussion of CIPP

Since our foundation, the CIPP has solely performed activities related to the examination of strategies for the prevention of distribution of "IP infringing goods" by internet auctions as an urgent

issue. And, as indicated in this Report, our effort has been successful to the extent that the “Japanese Approach” has attracted attention from around the world.

The current problems occurring related to IP infringement on the internet are related to infringement on storage services or video sharing sites in particular with reference to copyrights. Our current members include operators developing such services and parties also include rights holders.

In view of these circumstances, in addition to problems related to internet auctions, the CIPP intends to examine the possibility of whether dialogue can be promoted between these private-sector parties within some framework in relation to the problems associated with storage services or video sharing sites.

#### 6. Requests to Japanese Government

As discussed above, in relation to strategies for IP infringement via the Internet in Japan, the private sector has, through its own efforts, already achieved world leading successes centering on internet auctions, and is currently considering an expansion in the scope of its activities. We have created the framework for a flexible response to problems that may arise in the future. On the other hand, there has been little development of rights infringement strategies in the countries of East Asia, and it is not an exaggeration to say that the situation is somewhat chaotic and is liable to cause damage to Japanese consumers. This situation not only is a cause of serious economic damage to domestic rights-holder companies, but also results in a situation of unfair competition to internet operators from foreign operators that continue to develop international business in a vacuum without any rights infringement strategies.

Therefore we request the Japanese Government to give their consideration to this situation, and we hope examination and implementation of an international policy transcending the governmental framework that cannot be achieved by the private sector in relation to increasing the overseas awareness of the Japanese Approach to thereby enable some means for preventing infringing acts from overseas and infringing acts in other countries.

(Annex)

Changes in Number of Voluntary Removals, Total Number of Items, and Number of Removal Requests

(a) Voluntary removals

Table 7 shows the voluntary removals by auction operators. As in the previous fiscal year, proper operation was carried out in accordance with the “Guidelines for Prevention of the Distribution of Intellectual Property Rights Infringing Goods.”

	Trademark	Copyright	Total
2007	748,416 cases	187,909 cases	936,325 cases
2008	524,802 cases	52,801 cases	577,603 cases
2009	180,253 cases	29,202 cases	209,455 cases

Table 7: Changes in Voluntary Removals by Operators in Past Three Years

\* In 2008, there is a transient effect of a large number (300,644 cases) of items for auction from a specified entity, and from 2009 that effect ceased. When that effect is discounted, 2008 includes 276,959 cases. Furthermore although this is related to the method of counting the number of requests for removal by rights holders, we have adopted a method of counting more closely aligned with the realities of some operators.

(b) Changes in Total Auctioned Items in Major Auction Sites

The total number of auctioned items maintains an increasing trend.

	Yahoo! Auction	Rakuten Auction	Bidders	MOBAOKU
2007	1650 million cases	53 million cases	280 million cases	310 million cases
2008	1817 million cases	107 million cases	537 million cases	334 million cases
2009	2250 million cases	205 million cases	638 million cases	364 million cases

Table 8: Changes in Total Auctioned Items in Major Auction Sites

\* The figures on Yahoo! Auction, Rakuten Auction and MOBAOKU represent their daily average values in December while the figures on Bidders represent the total of auctioned items at the end of December.

(c) Changes in Removal Requests from Right Holders

	Trademark	Copyright	Design Right	Total
2007	30,907 cases	365 cases	2 cases	31,274 cases
2008	46,747 cases	294 cases	0 cases	47,041 cases
2009	34,129 cases	6,542 cases	0 cases	40,671 cases

- \* Removal requests were directed to five companies: Yahoo! Auction, Rakuten Auction, Bidders Auction, MOBAOKU, and girls auction. (Note that girls auction was added in December 2007.)
- \* The figures on removal requests from right holders include the cases where individual auctioned items or IDs of the sellers were suspended.
- \* Since the object varied by year in relation to which infringing goods of an auction are monitored by rights holders, the number of removal request by rights holders is different depending on which auction is the object of monitoring. Therefore a simple comparison across years is difficult.
- \* The increase in the number of copyright-related requests for removal during 2009 was due to infringing goods routinely offered on auction in relation to specific contents, and therefore removal requests concentrated on copyright holders.

## (Reference)

### Principles of the Japanese Approach

1. Both parties (right holders and auction operators) 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.