

Final Report from the Guidelines Committee

The Guidelines Committee has held discussions to revise the “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods” issued on March 14, 2008. This is the report on the combined results. The keywords in the Keyword Annex significantly increased from 43 to 105 as a result of the discussions and the guidelines are most advanced at this point. However, we suggest that the guidelines be revised as required on an ongoing basis because things are changing day by day in the Internet community.

1. Background

As stated in the CIPP Report for FY 2009, we decided to establish the Guidelines Committee in regard to the “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods” to organize the matters common both to right holders and auction operators for the purpose of sharing renewed common understandings based on the reality of the current distribution through auctions.

2. Participants

Association of Copyright for Computer Software
Union des Fabricants
Recording Industry Association of Japan
Japanese Society for Rights of Authors, Composers and Publishers
Honda Motor Co., Ltd.
Yahoo Japan Corporation
DeNA Co., Ltd.
girls auction Co., Ltd.
Rakuten Auction, Inc.

(Honorifics omitted; listed in random order)

3. Date of Meeting

First committee meeting: Friday, July 2, 2010
Second committee meeting: Tuesday, September 14, 2010
Third committee meeting: Wednesday, October 27, 2010
Fourth committee meeting: Tuesday, November 2, 2010

4. Details and Results of Discussions

- Review of the body of the guidelines

The eligibility of reporters was revised. (See Attached Document (a).)

- Review of the Keyword Annex

As CIPP members (both corporate right holders and operators) proposed new keywords that need to be added, we held discussions about the wording that should be included in the keywords based on the trend and specific examples of actually auctioned infringing goods. In addition, the “Remarks” column was newly created for keywords to add descriptions about the existing and new keywords. (See Attached Documents (b) and (c).)

Attached Documents

(a) Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods (Body) *

Disclosed Document

(b) Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods (Annex A) *

Disclosed Document

(c) Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods (Annex C) *

Undisclosed Document

Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods

Issued on: March 14, 2008

Revised on: December 13, 2010

■ Introduction

These guidelines (“Guidelines”) are a summary of the actions that right holders and Internet auction operators (“Site Operators”) should take to prevent the distribution of IPR infringing goods (“Illegal Items”) through Internet auction sites.

The concerned parties shall make their best efforts in their own capacity on the assumption that removing auctioned items pursuant to these Guidelines is not enough to achieve the above purpose and that it is essential to take collaborative and comprehensive measures such as engaging in activities to raise awareness of consumers, identifying infringers, claiming damages, and lodging criminal complaints.

Adequate attention shall be paid in order not to deprive consumers of their legitimate interests in practicing these Guidelines.

* Please note that these Guidelines specify certain voluntary activities centering on the removal action and that the disclosure of “identification information of the senders,” which falls into the category of “secrecy of communications” stipulated in the Constitution and the Telecommunications Business Act is excluded from the scope hereof and is left to the Council for the Guidelines on the Providers’ Liability Limitation Act in view of the strict requirements under the Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Senders (“Providers’ Liability Limitation Act”).

1. Removal of Illegal Items and Judgment Criteria of Illegal Items

In principle, Site Operators shall take the removal action for the auctioned items in Internet auctions (“Auctioned Items”) when:

- A. The Site Operator can objectively and independently judge from the perspective of an ordinary third party that the Auctioned Item is an illegal article;
- B. The Site Operator can judge based on the legitimate right holder’s report or prima facie evidence that the Auctioned Item is an illegal article; or
- C. The Site Operator and the right holder shares a common perception.

Specific criteria for individual cases shall be as follows.

A. Specific criteria for the case where Site Operators can objectively and independently judge from the perspective of an ordinary third party that the Auctioned Item is an illegal article.

The description of the item has any of the following. (For more information, see Annex A) **Note**

- (1) The seller’s statement admitting that it is an IPR infringing item.
 - (2) Statement leading to an inference that it is an IPR infringing item.
 - a. Statement leading to a strong inference that it is an IPR infringing item (general).
 - b. Statement leading to a strong inference that it is an IPR infringing item (quality).
 - c. Combination of the statement and others informing that it is an IPR infringing item, or statement deemed to be lack of conclusive evidence that it is an authentic item.
- * The Site Operator shall judge based on the statement and other descriptions whether or not the Auctioned Item is illegal.

B. In the case where the Site Operator can judge based on the legitimate right holder’s report or prima facie evidence that the Auctioned Item is an illegal article, the following shall apply in regard to the eligibility and procedures of the report or prima facie evidence from the legitimate right holder to the Site Operator.

- 1. Eligible Reporters
 - (1) Right holder
 - (2) Japanese unit as a subsidiary wholly owned by the right holder foreign corporation
 - (3) Agent of (1) or (2) (limited to those who are qualified as a lawyer in Japan)
 - (4) Person duly authorized by the right holder under an agreement or otherwise in implementing measures against IPR infringement.

2. Reporting Method

A report shall be made:

- (1) In the manner set forth in the “Guidelines on the Providers’ Liability Limitation Act” established by the Council for the Guidelines on the Providers’ Liability Limitation Act; or
- (2) In the manner according to the agreement with each auction operator.

3. Prima Facie Evidence

In order to make a report, the reporter needs to declare in writing “it has not produced the item,” “it has not granted a license for manufacturing or the like of the item,” or “it is obvious on the basis of authenticity.”

4. Exclusions

The following is excluded from these Guidelines by their nature foreign hereto.

- Allegation of infringement of copyrights about those whose creativity is in question.
- Those involving the similarity assessment under the Unfair Competition Prevention Act.
- Patent infringing goods

C. Since the Site Operators and right holders shares a common perception in regard to handling of the following items and aspects in removal of illegally auctioned items, they are specified in these Guidelines. (For more information, see the annex) Note

- (a) Corporate goods (novelty)
- (b) Ink-jet printers
- (c) Scenarios, collections of settings
- (d) DVD labels, packages
- (e) Games, business software, educational materials
- (f) Data of parts, manual DVD
- (g) Free gifts
- (h) Navigation to another site
- (i) Evaluation section

*** Note: The detailed criteria are not disclosed to the public because confidential information is included in them.**

2. Both the Site Operators and right holders shall be committed to activities to prevent the distribution of fraudulent articles.

1. Even if there is a conflict of opinions between both parties in regard to removal of illegally auctioned items, they shall respect each other's positions and engage in negotiations by maintaining dignity in words and actions as business persons.
2. Each party shall have a single point of contact for removal of illegally auctioned items by appointing as the negotiator a person who has adequate legal expertise and common sense.
3. Both parties shall actively exchange opinions and information through the Council for Intellectual Property Protection on Internet ("CIPP") and others.

2-1. Site Operators shall actively engage in the following activities.

1. As a measure against illegally auctioned items, Site Operators shall establish a voluntary patrol system according to the expansion of their individual business size, such as the number of auctioned items (transaction volume).
2. If right holders patrol Internet auction sites to find any infringement of their own rights, Site Operators shall cooperate with them.

2-2. Right holders shall engage in activities to protect their own rights and enforce such rights on the following assumption.

1. Right holders shall be aware that it is necessary for them to engage in the activities to protect and enforce their own rights at a reasonable cost and under a reasonable system in order to ensure the protection of rights and socially required stability of the market.
2. In order to make a request to a Site Operator, rational explanations shall be given in regard to the relationship between the right in question and the right holder, and the ground of the allegation.
3. In order to make an allegation pursuant to Paragraph 2, right holders shall collect and keep materials that serve as the ground of the allegation.
4. In order to make an allegation pursuant to Paragraph 2, right holders shall not make any request without specific ground.
5. If any cooperation is requested by Site Operators for a reasonable purpose, such as data to be used for voluntary patrols, right holders shall cooperate in providing information to the extent possible for them to disclose.

3. Change of Guidelines and Others

1. As required, the CIPP shall consider reviewing these Guidelines once a year or so.
2. Notwithstanding the regular review pursuant to the preceding paragraph, these Guidelines may be changed from time to time as required with the approval of the CIPP.
3. Although these Guidelines are established based on agreement among the CIPP members, non-members shall be encouraged to take actions in line herewith.

No.	Criteria	Category	Corresponding Wording	Target Item Auctioned	Remarks
1	(1) Remover	General	Not authentic.		
2			Imitation.		
3			Non-certified product.		
4			Equivalent of the authentic product		
5			Counterfeit.		
6			Replica.		
7			Product perfectly replicating XX.		
8			Not original.		
9			Precise duplicate.		
10			Fake.		
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