

April 19, 2011

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for FY 2010

As you have already known as a participant, since FY 2005, the CIPP 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 2011 as it represents a consensus of right holders (individuals and organizations) and Internet auction operators.

[Overview]

1. Report of the Effectiveness Verification Committee

We confirmed that the percentage of auctioned infringing goods had remained at a low level since the establishment of the Effectiveness Verification Committee as a result of the implementation of certain measures including voluntary patrols by auction operators and removals upon notice from right holders. Furthermore, steady decline of the infringement rate and other improvements were found in the auction operators who had joined in the CIPP during the last fiscal year.

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

In order to promote the “Japanese Approach,” an English translation of the CIPP Report for FY 2009 was produced and published on our web site. Meanwhile, we started a new initiative by introducing the aims of the CIPP to non-member right holders (organizations).

3. Report of the Guidelines Committee

The “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods” were revised and put into practice in January 2011 as the Guidelines Committee was established

to organize the matters common both to right holders (organizations) and auction operators for the purpose of sharing renewed common understandings based on the reality of the current distribution through auctions.

## 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 would be deemed to be infringing goods based on various pieces of information indicating that their right holders would definitely claim they were infringing goods if they were purchased and checked by the right holders although there was no direct ground in the provided information allowing auction operators to remove such goods (Table 2). Please note that the verification was carried out based on the unrevised guidelines because it would take a certain period of time to disseminate and actually put into practice guidelines although the purpose of the verification was to find that the certain measures including voluntary patrols by auction operators and removals upon notice from right holders were effectively functioning. Details of the implementation overview are as indicated in Annex 1.

As in the previous year, the verification was carried out not only for Group 1 (three member companies, Tables 1 and 2) as stated in the implementation overview but also for Group 2 (two member companies, Tables 3 and 4), and Group 3 (one non-member company, Tables 5 and 6) that is inferred to take almost no action against IP infringing goods.

#### [Definitions of Groups]

	Percentage of auctioned IPR-infringing goods meeting the requirements specified in the guidelines	Percentage of auctioned items which right holders (organizations) deemed were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met
Group 1	Low↘	Low↘
Group 2	Low↘	High↗
Group 3	High↗	High↗

\* Group 1 refers to the auction operators, who have low percentages in both the auctioned IPR-infringing goods meeting the requirements specified in the guidelines and those 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 refers to the auction operators, who have low percentages in the auctioned infringing goods but have high percentages in those highly likely to be infringing goods.

\* Group 3 refers to the auction operators, who have high percentages in both the auctioned infringing goods and those highly likely to be infringing goods.

## (2) Verification Results

[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%
2010	3,019	0.43%	9,068	0.77%	12,087	0.69%

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%
2010	3,019	0.36%	9,068	1.61%	12,087	1.30%

Table 2: Percentages of auctioned items which right holders (organizations) 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, two entities)]

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	–	–	–	–	–	–
2009	225	6.22%	38	0.00%	263	5.32%
2010	242	1.65%	161	1.86%	403	1.74%

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%
2010	242	17.36%	161	0.62%	403	10.67%

Table 4: Percentages of auctioned items which right holders (organizations) 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, two entities)]

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2008	–	–	–	–	–	–
2009	451	69.62%	19	0.00%	470	66.81%
2010	300	84.33%	55	0.00%	355	71.27%

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%
2010	300	15.33%	55	9.09%	355	14.37%

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

### (3) Analysis

Group 1 (Table 1) taking proactive actions against IPR-infringing goods partially shows an extremely small increase but is stabilized at a lower level in general. Although the figures in Group 2 (Table 3) is less favorable than those in Group 1 (Table 1), one of the two operators

steadily decreased percentages of infringing goods in trademarks. We hope that they will further strive to make improvements by enhancing their patrols, confirming identification, or implementing any other alternative measures.

On the other hand, the verification on a non-CIPP member company, which was carried out as in the previous fiscal year, showed that both the percentages of infringing goods and probability remained at a high level and that there was no sign of responding to requests for improvement from right holders and others.

Please note that the percentages of auctioned items, which were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met, increased from the previous fiscal year but this was primarily because part of the verification criteria were revised by the Effectiveness Verification Committee. For more information, see Annex 1.

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

As in the previous fiscal year, English translation of the report for FY 2009 is posted on the CIPP website. We have so far raised awareness of general Internet auction users<sup>1</sup> and this fiscal year, took an action against IPR-infringing goods. As a result of the efforts since the foundation, measures based on the “Japanese Approach” were disseminated in order to attract attention of right holders (organizations) to the CIPP’s activities.<sup>2</sup>

## 3. Establishment of the Guidelines Committee

Since the formulation of the “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods” in 2008, individual companies have independently refined their removal criteria. However, sellers of IPR infringing goods had adopted increasingly sophisticated techniques over time and with social changes, and therefore the Guidelines Committee was established to organize understandings among old and new members for the purpose of sharing renewed common understandings. The revised guidelines are as indicated in Annex 2. (Please

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<sup>1</sup> This refers to the experimental awareness-raising activities aimed at buyers of illegal items through the cooperation of some right holders and auction operators. For more information, see the CIPP Report for FY 2006. (<http://www.cipp.jp/pdf/060605.pdf>)

<sup>2</sup> This refers to Japan’s unique problem solution, “cooperation of right holders and auction operators in working on problems will produce results.” For more information, see the CIPP Report for FY 2007. (<http://www.cipp.jp/pdf/080331.pdf>)

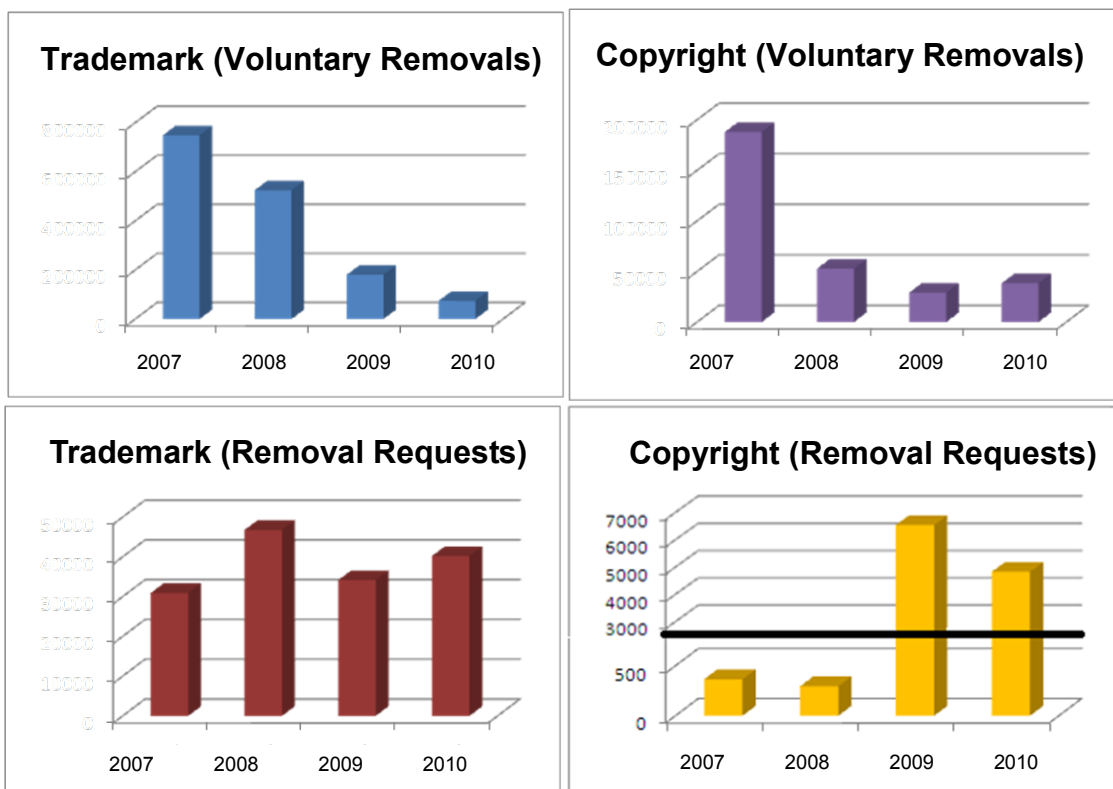
note that the guidelines are partially published because publication of the full text would result in disclosing how to auction infringing goods.)

#### 4. Summary

The CIPP meeting has been held 22 times during the past five years after its foundation. The original member operators and right holders (organizations) have further deepened the mutual understanding while the new member operators and right holders (organizations) have actively strived to protect intellectual property rights for sound development of the Internet. As a result, favorable numerical results are found in the effectiveness and verification for each fiscal year. The CIPP will continuously promote Japan's unique problem solution (Japanese Approach), "cooperation of right holders and auction operators in working on problems will produce results." Next fiscal year, enhanced protection of intellectual property rights will be promoted through a system for closer communications between the CIPP member operators and right holders (organizations). At the same time, we will further strengthen our power of dissemination to the international community for example by redesigning our website.

**ANNEX**

Changes in the Numbers of Voluntary Removals, Overall Auctioned Items, and Removal Requests



(a) Voluntary Removals

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

	Trademark	Copyright	Total
2007	748,416	187,909	936,325
2008	524,802	52,801	577,603
2009	180,253	29,202	209,455
2010	74,025	38,338	112,363

Table 7: Voluntary Removals by Group 1 (Three Member Operators) in Past Four Years



(b) Overall Auctioned Items in Major Auction Sites

	Yahoo! Auction	Rakuten Auction	Bidders	MOBAOKU
2007	16,500,000	530,000	2,800,000	3,100,000
2008	18,170,000	1,070,000	5,370,000	3,340,000
2009	22,500,000	2,050,000	6,380,000	3,640,000
2010	22,120,000	2,840,000	7,660,000	4,510,000

Table 8: Overall 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 as of the end of December.

(c) Removal Requests from Right Holders

	Trademark	Copyright	Design Right	Total
2007	30,907	365	2	31,274
2008	46,747	294	0	47,041
2009	34,129	6,542	0	40,671
2010	40,200	4,826	0	45,026

Table 9: Removal Requests from Right Holders

\* 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 some right holders change target auction sites to monitor infringing goods each year and the number of removal requests from right holders depends on the target auction site chosen, it is difficult to simply compare the figures year by year.

\* The number of copyright-related removal requests increased during 2009 because right holders intensively made removal requests as infringing goods were auctioned on a recurring basis in certain contents. The year 2010 shows the same tendency.

## 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.