

April 1, 2012

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for FY 2011

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 2012 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 as a result of the implementation of certain measures including voluntary patrols by auction operators and removals upon notice from right holders.

2. Report of the Guidelines Committee

In addition to the verification of the guidelines revised last year, we discussed whether or not there is a need to revise the guidelines.

1. Report of the Effectiveness Verification Committee

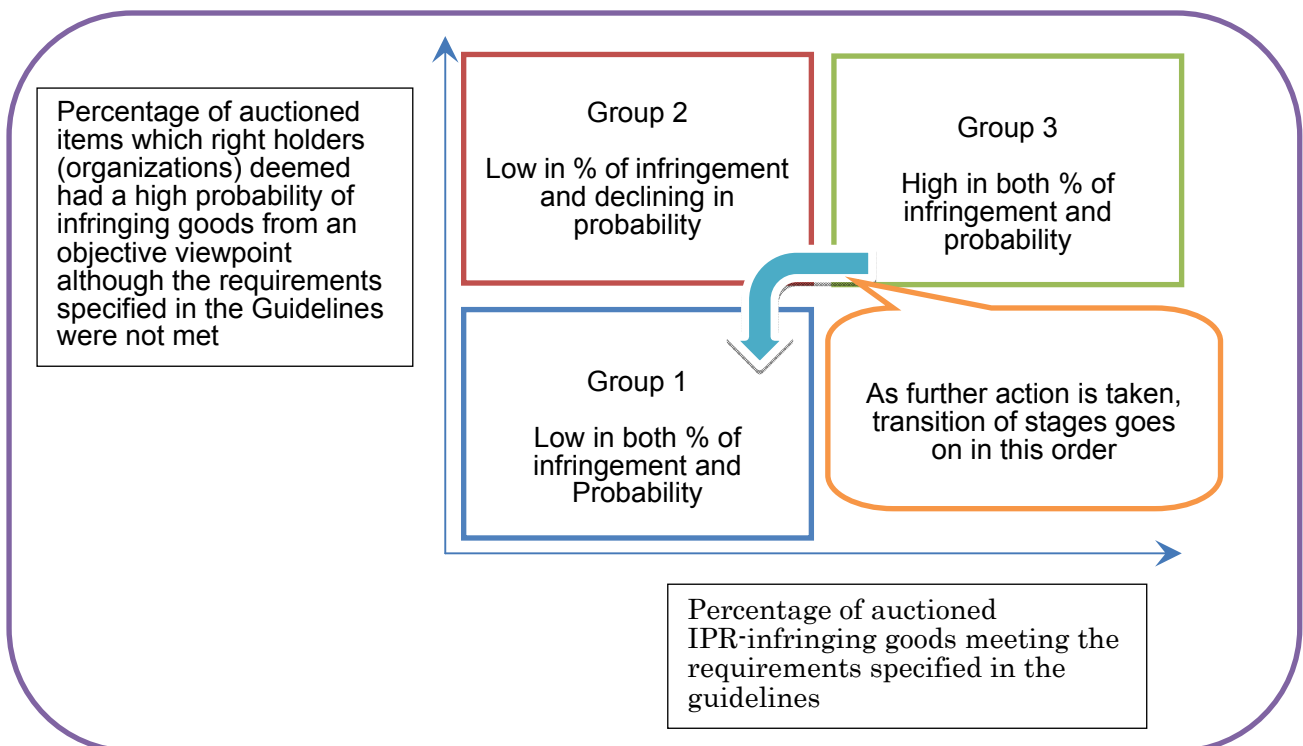
(1) Effectiveness Verification

As usual, we set up the “Effectiveness Verification Committee” consisting of the individuals who were actually in charge of removal requests and voluntary removals. This year, as in the past years, auctioned items were divided into two groups to carry out verification: (i) auctioned items which were judged as infringement of a trademark or copyright based on their on-screen text or graphics and would allow right holders to make suspension requests to auction operators (Table 1), and (ii) auctioned items which had a high probability of infringing goods as a result of purchase and appraisal based on various pieces of information although there was no direct ground in the provided information allowing auction operators to remove such goods (Table 2).

This year some right holders, who could afford, decided to perform verification more than once during the period. The verification was carried out based on the new guidelines revised in 2011. Details of the implementation overview are as indicated in Annex 1.

As in the previous years, the targets of the verification were, in addition to Group 1 (three member companies; see the figure below for the definition of the groups), Group 2 (two member companies) and Group 3 (one non-member company) that is inferred to take almost no action against IP infringing goods.

[Figure 1: Definitions and Descriptions of Groups]



(2) Verification Results

Table 1 % of infringing goods		2009		2010		2011	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	7433	1.22%	9068	0.77%	9007	0.90%
	Group 2	38	0.00%	161	1.86%	29	0.00%
	Group 3	19	0.00%	55	0.00%	4	50.00%
Trademark	Group 1	4540	1.28%	3019	0.43%	4517	0.42%
	Group 2	225	6.22%	242	1.65%	567	3.00%
	Group 3	451	69.62%	300	84.33%	400	99.25%
Total	Group 1	11973	1.24%	12087	0.69%	13524	0.74%
	Group 2	263	5.32%	403	1.74%	596	2.85%
	Group 3	470	66.81%	355	71.27%	404	98.76%

Table 2 % of goods with high probability		2009		2010		2011	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	7433	0.93%	9068	1.61%	9007	0.28%
	Group 2	38	26.32%	161	0.62%	29	27.59%
	Group 3	19	0.00%	55	9.09%	4	25.00%
Trademark	Group 1	4540	0.24%	3019	0.36%	4517	0.11%
	Group 2	225	4.89%	242	17.36%	567	5.11%
	Group 3	451	25.50%	300	15.33%	400	0.00%
Total	Group 1	11973	0.67%	12087	1.30%	13938	0.24%
	Group 2	263	7.98%	403	10.67%	596	5.70%
	Group 3	470	24.47%	355	14.37%	404	0.25%

Table 3: Total — % of Infringing Goods

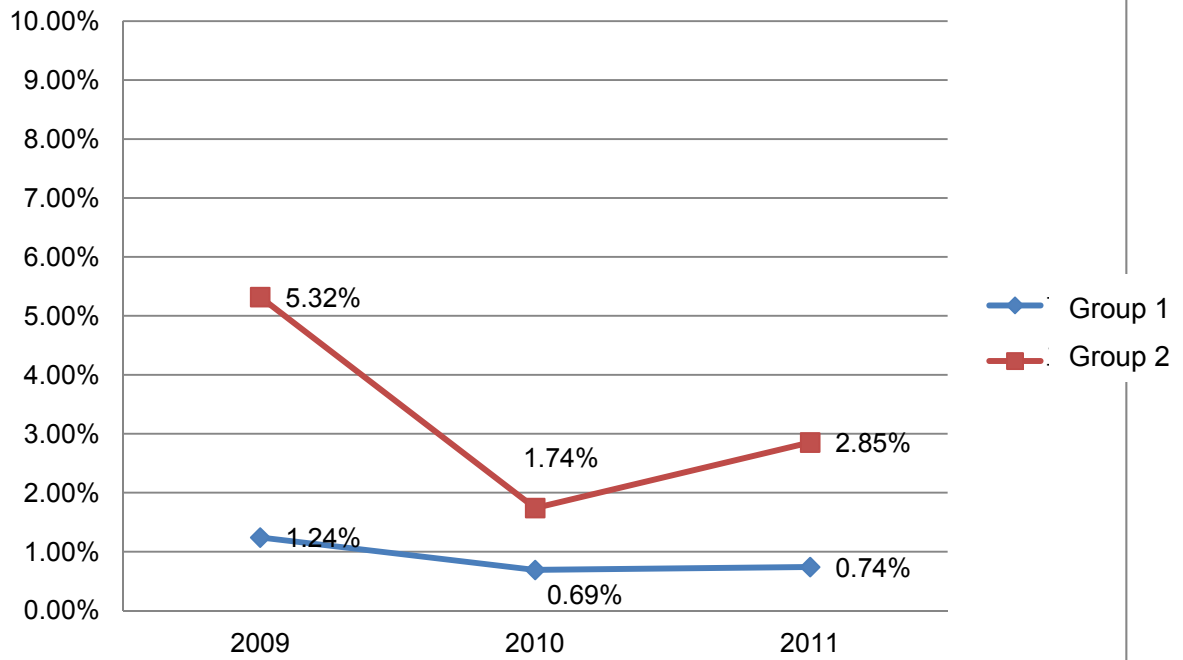
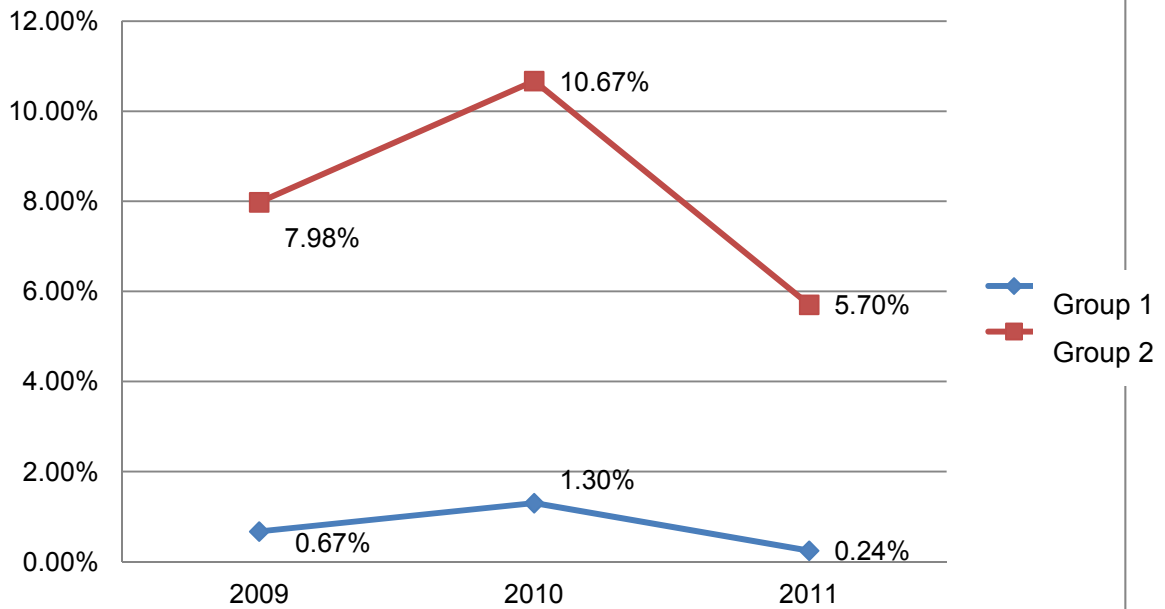


Table 4: Total — % of Goods with High Probability



(3) Analysis of Verification Results

A. Copyright-related Auctioned Items (Tables 1 and 2)

Group 1 was around 1% as usual. The numbers of auctioned copyrighted works in Groups 2 and 3 are so limited that their percentages significantly change as the actual counts fluctuate by a few. Therefore, it is difficult to say that we should perform an analysis in this situation.

B. Trademark-related Auctioned Items (Tables 1 and 2)

Group 1 was less than 1% as usual. Even in Group 2, the percentage of auctioned infringing goods was 3% indicating a slight increase but still a healthy number. The auctioned items with a high probability had been high in percentage last year but significantly improved this year, showing efforts of the member companies. Since almost all the goods were found to be infringing in Group 3, whose percentage of infringing goods was nearly 100% and where auctioned items with a high probability were rather decreasing.

C. Overall Trend (Tables 3 and 4)

Group 1 taking proactive actions against IPR-infringing goods partially shows an extremely small increase but is stabilized at a lower level (around 1%) in general as in the previous year. In terms of the numbers of Group 2, they slightly increased but the percentage of auctioned infringing goods remained to be around 3% in the total of the Copyright and Trademark categories, indicating a favorable result. Since the number of auctioned items with a high probability of infringement was half of the preceding year. Therefore, further cleanup can be expected as we continue taking action. On the other hand, approximately 99% of the auctioned items in Group 3 (non-member of the CIPP) were infringing goods and it is year by year worsening rather than improving. (In the tables, it is unable to illustrate the changes because all the figures were more than 50% as in the Trademark section.)

2. Report from Guidelines Committee

The Guidelines Committee was set up again this year as a venue for information sharing to address new tricks for auctioning as well as to check how the “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods,” which had been revised last year, were operated.

Although it is confirmed the newly revised guidelines have no specific defects, we reached the conclusion that we should hold a meeting of the Guidelines Committee again next year in order to further strengthen the cooperation among right holders and operators and to take swift and reliable action because the tricks used by those who auction IPR-infringing goods change on a daily basis. (For details, see Annex 2.)

3. Summary

As stated above, we successfully reduced the percentage of infringing goods in Group 1 this fiscal year as well and achieved numerical improvement in Group 2 year after year by promoting the “Japanese Approach” in which both right holders and operators respect each other’s positions and collaboratively stand up against infringers. As the Japan Merchandising Rights Association joined at the end of the fiscal year, the CIPP’s policies and effectiveness of its framework are widely recognized. Meanwhile, since operators were lately sued by sellers for removal of auctioned infringing goods, we are considering that when operators have trouble with sellers, right holders and operators should actively cooperate with each other and closely take specific measures based on relationships of trust after 2012. We would like to make the CIPP’s approach more robust to address the IPR-infringing tricks that changes on a daily basis.

We appreciate that the government would introduce to other countries the CIPP’s approach, whose outcome is unlike any other in the world, and help the approach be recognized as a de facto standard of measures against IPR-infringing goods on the Internet.

Statistical Data (Provisional Values)

■ Overall Auctioned Items

	2007	2008	2009	2010	2011
Yahoo! Auction	1,650	1,817	2,250	2,212	2512
Rakuten Auction	53	107	205	284	319
Bidders	280	537	638	766	785
MOBAOKU	310	334	364	451	432

In units of ten thousand.

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.

■ Voluntary Removals

	2007	2008	2009	2010	2011
Copyright	187,909	52,801	29,202	38,338	78052
Trademark	748,416	524,802	180,253	74,025	139792
Total	936325	577603	209455	112363	217844

■ Removal Requests from Right Holders

Directed to: Yahoo! Auction, Rakuten Auction, Bidders Auction, MOBAOKU, and girls auction (total of five auctions)

(Note that girls auction was added in December 2007.)

	2007	2008	2009	2010	2011
Copyright	365	294	6542	4826	2601
Trademark	30907	46747	34129	40200	71644
Total	31272	47041	40671	45026	74245

* 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. Accordingly, a similar tendency is observed. The same goes for the number of removal requests based on trademark rights during 2011.

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.