

June 24, 2016

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office

Council for Intellectual Property Protection on Internet (CIPP)

### **CIPP Report for FY 2015**

As you have already known as a participant, since FY2005, the CIPP has been committed to the collaborative activities on the private-sector level by inviting the Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office, National Police Agency, Ministry of Economy, Trade and Industry, Ministry of Internal Affairs and Communications, Agency for Cultural Affairs, Japan Patent Office, and Consumer Affairs Agency as observers in order to solve the problem of the distribution of intellectual property rights (IPR) infringing goods arising from Internet services.

We hope you will reference this report as a consensus of right holders (individuals and organizations) and Internet service operators.

#### [Overview]

##### 1. Report of the Effectiveness Verification Committee

- For Group 1, we confirmed that the infringing goods occurrence rate has been kept at a low level as a result of the implementation of certain measures including voluntary patrols by Internet service operators and removals upon notice from right holders.
- For Group 3, as the infringing goods occurrence rate for trademark-related auctioned items decreased compared with the previous year, we were able to confirm that the action against IPR-infringing goods is paying off.

##### 2. Report of the Guidelines Committee

We checked the operation status of the “Guidelines for the Prevention of Distribution of Internet IPR Infringing Goods” (hereinafter, referred to as the “Guidelines”) which were revised in FY2010, and examined whether the Guidelines should be revised.

As a result of discussions, we were able to confirm that no particular problems occurred after approximately five years of operation following the last revision. We were also able to reconfirm that it is beneficial for both operators and right holders to exchange the latest information regarding new types of infringement, etc. because the world of the Internet is changing from day to day.

## 1. Report of the Effectiveness Verification Committee

### (1) Effectiveness Verification Method

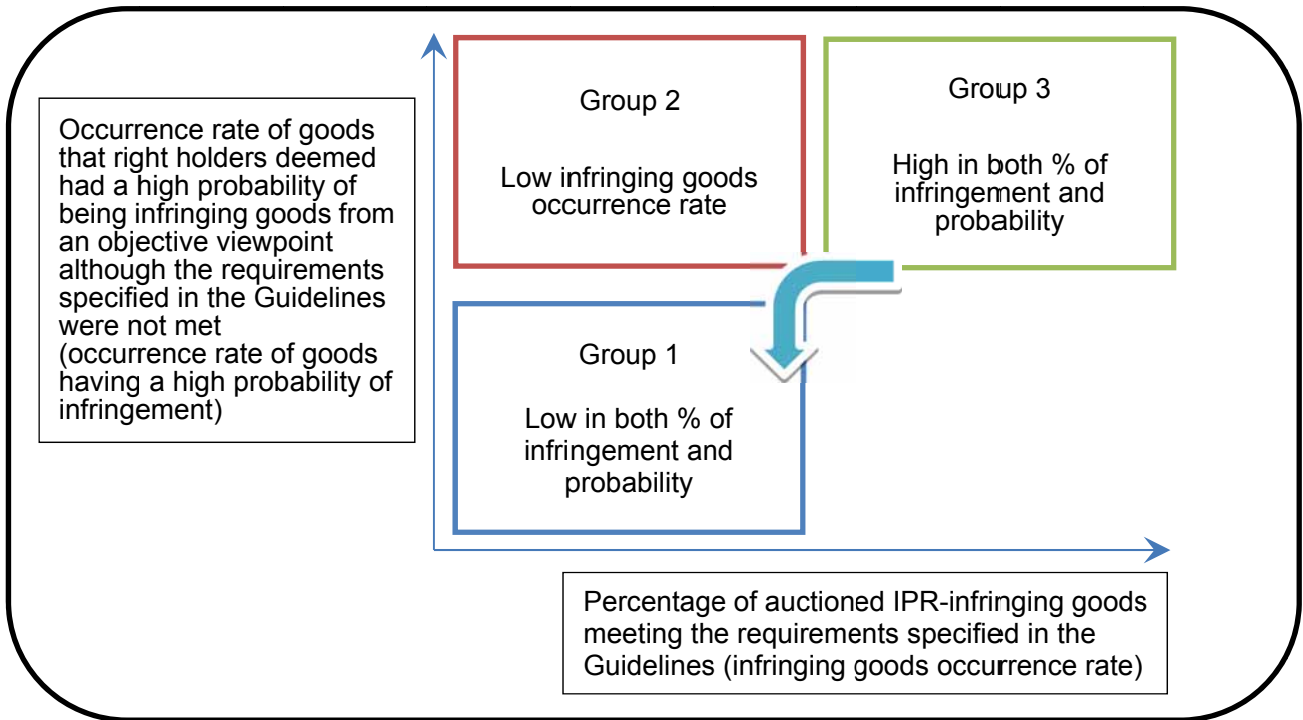
This year, as in previous years, we set up the “Effectiveness Verification Committee” consisting of the individuals who were in charge of removal requests on the right holders’ side and voluntary removal on the operators’ side. Effectiveness verification was performed in accordance with Annex 1, “Effectiveness Verification Implementation Method.”

As described in the “Effectiveness Verification Implementation Method,” this year, too, auctioned items were divided into two groups for carrying out the verification; (i) auctioned items that could be judged as infringing upon a copyright or trademark based on their on-screen text or graphics, and that would allow right holders to request auction operators to suspend them (see Figure 1, horizontal axis, and Table 1), and (ii) auctioned items that were deemed as without doubt being infringing goods as a result of purchase and appraisal based on various pieces of information by the right holder, even though there were no direct grounds in the provided information (when checked against the Guidelines, etc.) that would allow auction operators to remove such goods (see Figure 1, vertical axis and Table 2).

This year, too, member companies were categorized into three groups, Groups 1 to 3, and there was no change from last year in the composition of each group. Details are as follows.

- Group 1  
3 member companies
- Group 2  
1 member company  
(This group is not subject to analysis because the service has been suspended)
- Group 3  
1 member company  
(In terms of copyrights, this group is not subject to analysis because of the scarcity of items for the verification parameter)

[Figure 1: Definition of “Percentage” and Descriptions of Goods]



(2) Verification Results

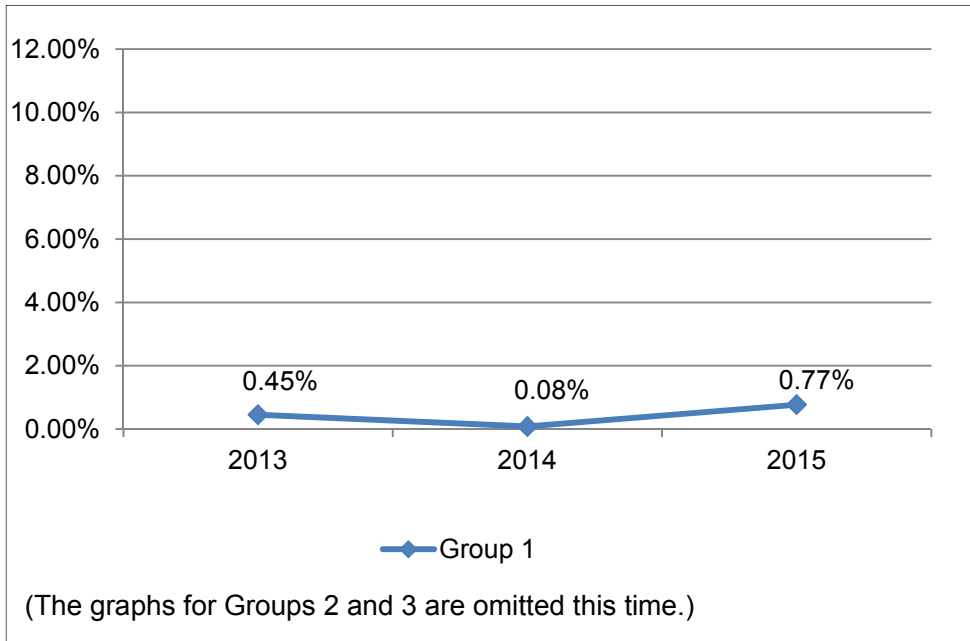
Table 1 Infringing Goods Occurrence Rate

		2013		2014		2015	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	7,381	0.18%	9,044	0.02%	4,762	0.25%
	Group 2	49	0.00%	37	0.00%	—	—
	Group 3	690	0.00%	602	0.00%	—	—
Trademark	Group 1	7,833	0.71%	5,364	0.17%	2,292	1.83%
	Group 2	96	0.00%	7	0.00%	—	—
	Group 3	1,040	58.85%	1,200	84.67%	400	32.00%
Total	Group 1	15,214	0.45%	14,408	0.08%	7,054	0.77%
	Group 2	145	0.00%	44	0.00%	—	—
	Group 3	1,730	35.38%	1,802	56.38%	400	32.00%

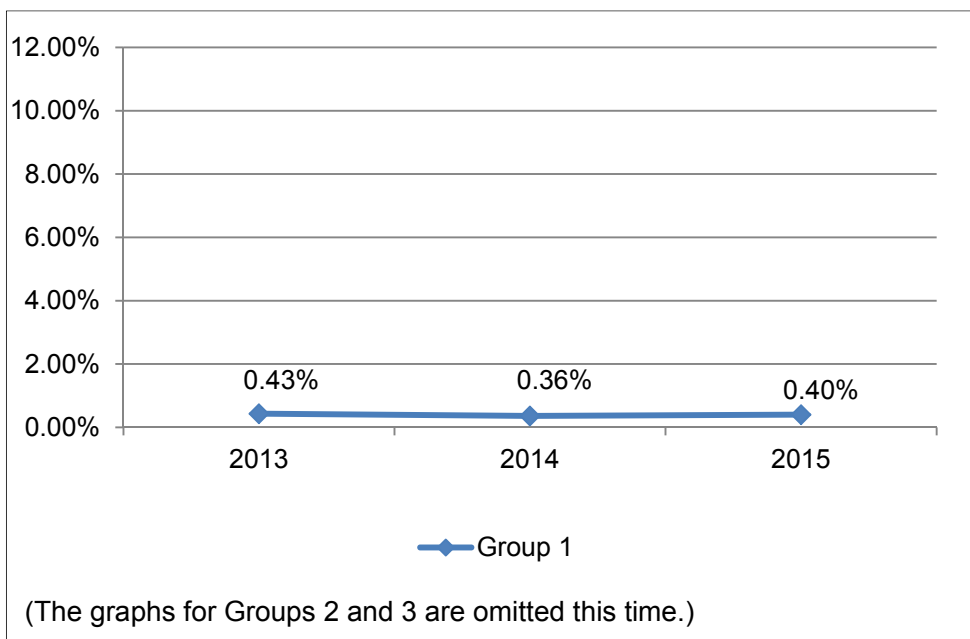
Table 2 Occurrence Rate of Goods having a High Probability of Infringement

		2013		2014		2015	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	7,381	0.58%	9,044	0.53%	4,762	0.59%
	Group 2	49	0.00%	37	86.49%	—	—
	Group 3	690	0.87%	602	0.17%	—	—
Trademark	Group 1	7,833	0.29%	5,364	0.07%	2,292	0.00%
	Group 2	96	0.00%	7	42.86%	—	—
	Group 3	1,040	13.37%	1,200	3.92%	400	6.25%
Total	Group 1	15,214	0.43%	14,408	0.36%	7,054	0.40%
	Group 2	145	0.00%	44	79.55%	—	—
	Group 3	1,730	8.38%	1,802	2.66%	400	6.25%

Graph 1 Changes in Infringing Goods Occurrence Rate of Group 1  
(Total of Copyrights and Trademarks)



Graph 2 Changes in Occurrence Rate of Goods Having a High Probability of Infringement of Group 1 (Total of Copyrights and Trademarks)



### (3) Analysis of Verification Results

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

For Group 1, the infringing goods occurrence rate slightly increased from the previous year to 0.25%. The occurrence rate of goods having a high probability of infringement also somewhat increased to 0.59%.

Group 2 is not subject to analysis because the service has been suspended.

Group 3 is not analyzed because of the scarcity of items for the verification parameter.

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

For Group 1, the infringing goods occurrence rate slightly increased from the previous year to 1.83%. The occurrence rate of goods having a high probability of infringement decreased to 0.00%.

Group 2 is not subject to analysis because the service has been suspended.

For Group 3, the infringing goods occurrence rate decreased to 32.00% from 84.67% in the previous year while the occurrence rate of goods having a high probability of infringement remained at a low level (6.25%). We believe that such decrease and low level display the effectiveness of the countermeasures that have been implemented by the relevant operators since the previous year to keep sellers of infringing goods from reoffending.

#### C. Overall Trends (Tables 1 and 2)

For Group 1, which is taking proactive action against IPR-infringing goods, the infringing goods occurrence rate remains stabilized at an extremely low level of less than 1%. Even with the occurrence rate of goods having a high probability of infringement added on, the occurrence rate has remained at a low level.

For Group 2, graphical representation was not performed because the service has been suspended.

For Group 3, graphical representation was not performed because sufficient items were not secured for the verification parameter.

### (4) Other

- The Association of Copyright for Computer Software (ACCS) remarked, “The cooperation between right holders and operators has paid off as the copyright-related infringement rate has been almost 0% for these past several years. However, we are aware that there still exist illegally auctioned or offered items that are not covered by the Guidelines.”

- We received a report that the percentage of infringement was high in terms of the items that were set as targets by Honda Motor Co., Ltd. However, it is inherently impracticable to deal with those items at the discretion of operators. In addition, there were items that right holders and operators do not equally perceive as infringing items. Accordingly, they were excluded from the report made by the Effectiveness Verification Committee to this council.
- Union des Fabricants counted, as auctioned or offered items having a high probability of infringement, the bags and boxes for brand-name products as well as the auctioned or offered items that are not brand-name products but are shown in the search results of a brand name (e.g., searches for which the brand name is set as a search keyword). However, there were items that right holders and operators do not equally perceive as infringing items. Accordingly, they were excluded from the report made by the Effectiveness Verification Committee to this council.
- Certain right holders voluntarily performed experimental verification of shopping malls and flea markets. However, such verification was not included in the report from the committee because it was implemented solely for future reference and by means of an arbitrary verification implementation method.

## 2. Report from Guidelines Committee

The Guidelines Committee was set up as a venue for sharing information to address new auctioning tricks as well as to check the operation status of Guidelines which were revised in FY2010.

We found no particular problem in terms of the revised Guidelines. However, we confirmed that it is beneficial for both operators and right holders to exchange the latest information regarding new types of infringement, etc. because the world of the Internet is changing from day to day.

In order to make the scope of the guidelines clearer, we discussed expanding it to include operators and right holders other than the current members (as detailed in Annex 2).

## 3. Summary of Activities This Year

As stated above, it has been confirmed that we limited the occurrence rate of infringing goods in Group 1 to an extremely low level this fiscal year by promoting a “Japanese Approach” in which both right holders and operators respect each other’s positions and collaboratively stand up against infringers.

From next year onwards, we plan to work on measures against IPR infringement, not only in Internet auction services, but also IPR infringement in Internet shopping malls and IPR

infringement in new commerce services using smart phone applications. These new kinds of operators have already been admitted to the council.

We would appreciate it if the government would introduce CIPP's approach, which has results unlike any other in the world, to other countries, and help the approach become recognized as the de facto standard of measures against IPR-infringing goods on the Internet.



## Statistical Data

### ■ Overall Commercial Items

	2011	2012	2013	2014	2015
YAHUOKU!	2,512	2,631	3,149	3,678	4,240
Rakuten Auction	319	317	317	305	240
DeNA Shopping (Bidders)	785	888	1,048	707	682
MOBAOKU	432	367	331	304	244

- In units of ten thousand.
- Figures are daily average values in December (for DeNA Shopping values only, the figures are the total number of commercial items as of the end of December). Of the DeNA Shopping figures, the figures during the period 2011 to 2012 are from when the service was named Bidders.

### ■ Voluntary Removals

	2011	2012	2013	2014	2015
Copyright	78,052	62,694	62,400	24,685	15,529
Trademark	139,792	233,273	54,791	90,680	73,182
Total	217,844	295,967	117,191	115,365	88,711

- YAHUOKU!, Rakuten Auction, DeNA Shopping, MOBAOKU, and Shoppies (total of five services)

### ■ Removal Requests from Right Holders

	2011	2012	2013	2014	2015
Copyright	2,601	754	315	116	300
Trademark	71,644	54,428	44,905	30,458	85,053
Total	74,245	55,182	45,220	30,574	85,353

- YAHUOKU!, Rakuten Auction, DeNA Shopping, MOBAOKU, and Shoppies (total of five services)
- The figures on removal requests from right holders include cases where individual items were removed and the removal of individual items results from measures to suspend use by sellers.
- Some right holders change target services and target goods to selectively monitor to take proactive action against IPR-infringing goods. For this reason, it is difficult to analyze trends in the number of removal requests from right holders by simply comparing figures year by year.

#### Principles of the Japanese Approach

1. Both parties (right holders and platform providers) 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. Platform providers 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 the value of both aspects.