

August 25, 2017

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for Fiscal Year 2016

As you have already known as a participant, since fiscal 2005, the CIPP has been committed to collaborative activities on the private-sector level by inviting the Secretariat of Intellectual Property Strategy Headquarters at the 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 that you will refer to this report as a consensus of right holders (individuals and organizations) and Internet service operators.

[Overview]

1. A Report from the Effectiveness Verification Committee

- For this fiscal year, we verified the effectiveness of the measures against infringement not only in the Internet auction services (from here on referred to as the “Auction”) but also in the flea market applications (from here on referred to as “Flea-Ma”). At the same time, we have catalogued and organized the results based on grouping by the occurrence rate of infringing goods in order to more clearly show how efforts by right holders as well as C2C (customer-to-customer) marketplace operators such as Auction and Flea-Mas (from here on referred to as “Platformers”). We have to note that during this fiscal year, as well as last year, there were no Platformers who will be categorized in Group 2 (See Document 3).
- For Group 1, we confirmed that the occurrence rate of IPR-infringing goods has been kept at a low level, as in last fiscal year, as a result of Platformers’ voluntary patrols

and removals upon given notice from right holders

- For Group 3, compared with the year before and two years ago, the occurrence rate of infringing goods this year declined greatly. We were able to confirm that our measures against IPR-infringing goods has been paying off.

2. A Report from the Guidelines Committee

We discussed how the “Guidelines for the Prevention of Distribution of Internet IPR-Infringing Goods” (from here on referred to as the “Guidelines”), which had been revised in FY2010, were put into practice and what the latest infringement cases were.

In addition, we considered a draft for revising the Guidelines in order to reorganize the entire format following a decision at our previous meeting to include Flea-Ma under the Guidelines.

Also, we clarified the role of the Guidelines annex in combatting infringement and examined which categories, texts and goods should be added for verification purposes.

1. A Report from the Effectiveness Verification Committee

(1) The Effectiveness Verification Method

This year, as in previous years, we set up operating procedures (please see Document 2 “Effectiveness Verification Implementation Method”) at the “Effectiveness Verification Committee,” which consists of individuals who were in charge of removal requests on the right holders’ side and their counterparts on the platformers side. We have conducted the verification based on these procedures.

① The range of goods for effectiveness verification

For this fiscal year, we decided to examine seven services, including Auction as well as newly added Flea-Ma services.

② Goods for effectiveness verification

For this fiscal year, as in the previous year, we divided the goods for effectiveness verification into two categories.

(i) Infringing Goods

These consist of offered items that could be judged as infringement upon a copyright or trademark based on their on-screen texts or images, and that would allow right holders to request Platformers to suspend such goods.

(ii) “Goods Having a High Probability of Infringement”

These are the goods which have no direct visible grounds for infringement in the provided information (when checked against the Guidelines, etc.) that would allow platformers to remove such goods. However, (1) they are the goods which are deemed to be have infringed a copyright or trademark as a result of appraisal of the texts and images on screen by a right holder and if the right holder makes a request for removal, Platformers can take action (“Infringing Goods Without Notice”), or (2) they are the goods which are deemed as without doubt being infringing goods as a result of purchase and appraisal based on various pieces of information by the right holder (“Infringing Goods which Need Confirmation”).

③ Grouping of Platformers

In order to clarify further the achievements of voluntary action by right owners and Platformers, from this fiscal year, we divided Platformers' services into Groups 1 to 3 by the occurrence rate of infringing goods.

(i) Group 1 (The average occurrence rate of infringing goods in the last three years is less than 2 percent): 6 services

(ii) Group 2 (The average occurrence rate of infringing goods in the last three years is more than 2 percent but less than 10 percent): 0

(iii) Group 3 (The average occurrence rate of infringing goods in the last three years is more than 10 percent): 1

(2) Verification Results

① Auction

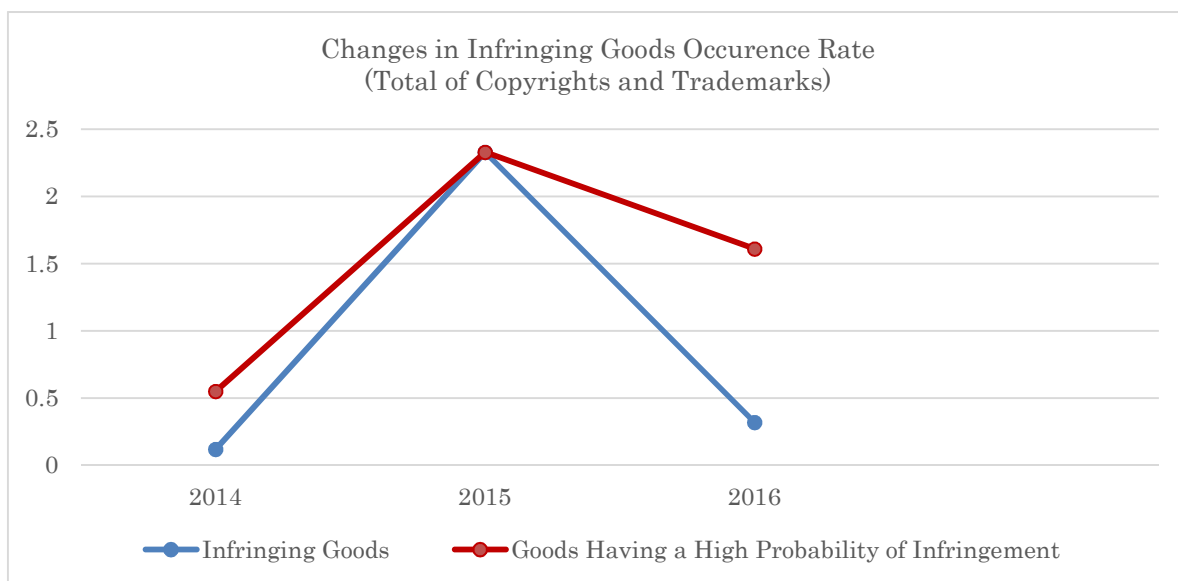
(i) “Infringing Goods” Occurrence Rate

		2014		2015		2016	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	5,607	0.03%	3,256	0.37%	2,328	0.04%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	2,919	0.27%	943	9.12%	1,399	0.79%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	8,526	0.12%	4,199	2.33%	3,727	0.32%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—

(ii) Occurrence Rate of “Goods Having a High Probability of Infringement”

		2014		2015		2016	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	5,607	0.78%	3,256	0.71%	2,328	1.98%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	2,919	0.10%	943	5.93%	1,399	1.00%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	8,526	0.55%	4,199	2.33%	3,727	1.61%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—

Changes in Occurrence Rate at Auction markets (Total of Copyrights and Trademarks)



② Flea-Ma

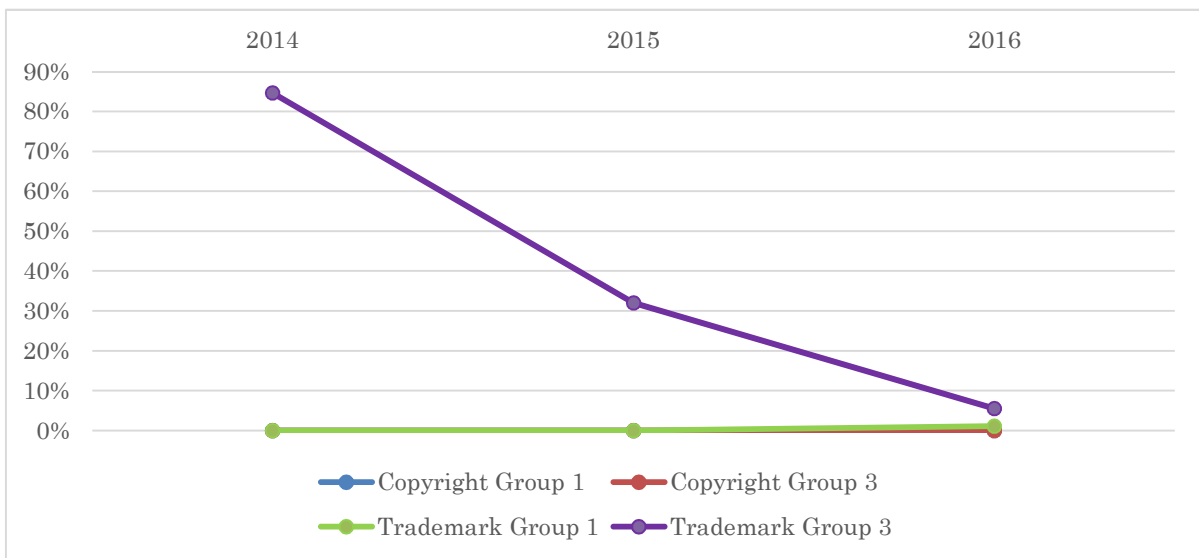
(i) "Infringing Goods" Occurrence Rate

		2014		2015		2016	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	—	—	—	—	3,924	0.00%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	242	0.00%
Trademark	Group 1	—	—	—	—	3,020	1.09%
	Group 2	—	—	—	—	—	—
	Group 3	1,200	84.7%	400	32.0%	3,924	4.46%
Total	Group 1	—	—	—	—	6,944	0.48%
	Group 2	—	—	—	—	—	—
	Group 3	1200	84.7%	400	32.0%	915	3.28%

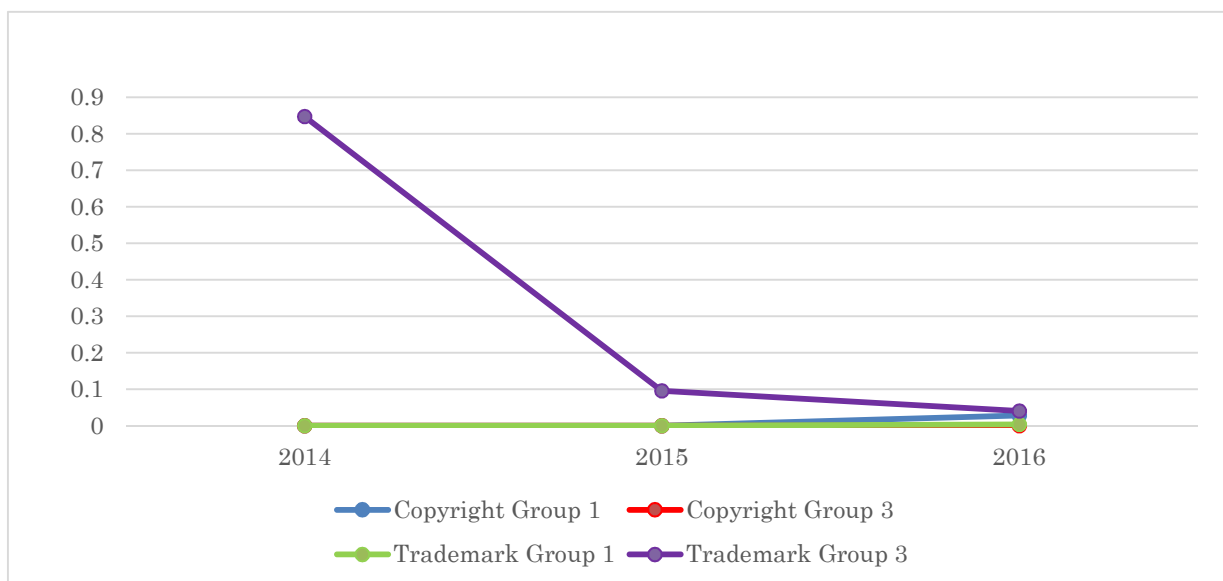
(ii) Occurrence Rate of “Goods Having a High Probability of Infringement”

		2014		2015		2016	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	—	—	—	—	3,924	2.80%
	Group 2	—	—	—	—	—	—
	Group 3	602	0.00%	—	—	242	0.00%
Trademark	Group 1	—	—	—	—	3,020	0.30%
	Group 2	—	—	—	—	—	—
	Group 3	1,200	84.7%	38	9.50%	673	4.01%
Total	Group 1	—	—	—	—	6,944	1.71%
	Group 2	—	—	—	—	—	—
	Group 3	1,802	56.4%	38	9.50%	915	2.95%

Changes in “Infringing Goods” Occurrence Rate at Flea-Ma (Total of Copyrights and Trademarks)



Changes in Occurrence Rate of “Goods Having a High Probability of Infringement” at Flea-Ma (Total of Copyrights and Trademarks)



*For graphics purposes, the occurrence rates for infringed goods and goods having a high probability of infringement are displayed separately.

(3) An Analysis of Verification Results

(i) Auction

Both of the occurrence rates of “Infringing Goods” and “Goods Having a High Probability of Infringement” are categorized in Group 1 and have been kept extremely low for this fiscal year as well. On copyrights, the occurrence rate of “Goods Having a High Probability of Infringement” rose slightly compared to the year before. This is due to the fact that we found a new type of goods categorized as “Goods Having a High Probability of Infringement.” From now on, appropriate countermeasures will be taken using cooperation between right holders and Platformers. Therefore, this slight increase in the occurrence rate in “Goods Having a High Probability of Infringement” will be a temporary one.

(ii) Flea-Ma

From this fiscal year, four Flea-Ma operators were added to be subjected to our verification process. As the rate of infringement occurrence is low both for “Infringing Goods” and “Goods Having a High Probability of Infringement,” three out of the four were categorized in

Group 1. Meanwhile, as for the remaining one service which was categorized as Group 3, the occurrence rate was zero both for “Infringing Goods” and “Goods Having a High Probability of Infringement” regarding their respective copyrights. In terms of trademark rights, the occurrence rate for “Infringed Goods” declined from 84% to 32% and then to 3% this fiscal year. The occurrence rate for “Goods Having a High Probability of Infringement” reduced from 84% to 9% and to 4% this fiscal year. Therefore, we believe that a great deal of achievement has been made to curb the spread of infringing goods in the markets.

(4) Others

- The Association of Copyright for Computer Software (ACCS) said: “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 are still a certain amount of goods which right holders cannot tolerate.”
- Union des Fabricants said that when they made a trial investigation at several shopping malls and flea markets which were outside of our effectiveness verification services, the occurrence rate was nearly 100 percent in some of the services. Therefore, they pointed out that how to follow shopping mall and flea market operators outside the remit is a problem. However, as the UDF’s investigation was made as a reference for the future, the results were not included in our effectiveness verification report.

2. A Report from the Guidelines Committee

Based on the decision at a meeting of the CIPP in the last fiscal year to include flea market service operators to follow the Guidelines, the Guidelines Committee studied a proposal to revise the Guidelines.

It also clarified the role of the Guidelines' annex and examined which categories, texts and goods should be added in the Guidelines.

It also picked up issues related to the distribution of copied goods called novelties and discussed which brands, goods and keywords should be examined. However, it could not form a consensus as a group. This will continue to be discussed.

3. A Summary of Activities for This Fiscal Year

As stated above, it has been confirmed that we continued to be able to force down the occurrence rate of infringed 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 fiscal year onwards, we will study how to deal with new forms of infringement. We plan to tackle measures to combat IPR-infringing goods not only at the platformer level but also in shopping malls.

We would appreciate it if the government would introduce CIPP's work to other countries because the CIPP has made achievements unlike any other in the world and help its work to becoming recognized as the de facto standard of measures against IPR-infringing goods on the Internet.

Various Statistical Data

■ Number of goods offered (Unit: 10,000)

	2012	2013	2014	2015	2016
No. of goods offered	4,203	4,845	4,994	5,406	11,656

- ▷ Total figures from 5 out of 7 platformers who are official members of the CIPP.
- ▷ To calculate, we measured the number of items on offer at a certain time on a certain day in December of the relevant year and then calculated the daily average as “the number of offered items.”
- ▷ It is difficult to compare figures year-by-year and see a trend because there are fluctuations in the number of platformers operating.

■ Number of self-deletions

	2012	2013	2014	2015	2016
Copyrights	62,694	62,400	24,685	15,529	65,835
Trademark right	233,273	54,791	90,680	73,182	552,276
Total	295,967	117,191	115,365	88,711	771,043

- ▷ Total figures from 6 out of 7 platformers who are official members of the CIPP.
- ▷ Out of the 6, one platformer does not measure the number of self-deletions by the type of infringements. Therefore, its figures were added only to the total figures.
- ▷ As in the case of the above table, it is difficult to compare figures year-by-year and see a trend because there are fluctuations in the number of platformers operating.

■ Number of deletion requests from right holders

	2012	2013	2014	2015	2016
Copyrights	754	315	116	300	1,896
Trademark right	54,428	44,905	30,458	85,053	183,138
Total	55,182	45,220	30,574	85,353	185,034

- ▷ Total figures from 5 out of 7 platformers who are official members of the CIPP.
- ▷ The figures include the deletions of individual items as well as deletions caused by

stopping auctioneers' use of the service.

▷Some right holders change services and goods that they focus their surveillance on in order to undertake effective measures to combat the infringement of intellectual property rights. Therefore, it is difficult to compare figures year-by-year and demonstrate a trend.

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 the interests of consumers among others.
2. Right holders must be made aware that they should enforce their own rights, which are not automatically protected.
3. Platform providers should be aware that they should make active efforts to protect their own intellectual property rights for the development of a sound 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 also the secrecy of communication, and that they should take actions not to undermine the value of either aspect of business.