

March14, 2018

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for Fiscal Year 2017

Since fiscal 2005, the CIPP has been committed to solve the problem of the infringement of intellectual property rights (IPR) on the Internet through 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. We believe that the secretariat knows this, having participated in our meetings.

We would like the secretary to see this report as a representation of consensus among right holders (individuals and organizations) and Internet service operators.

[Overview]

1. A Report from the Effectiveness Verification Committee

For this fiscal year, we have continued to verify 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 verification results based on grouping by the occurrence rate of infringing goods in order to clearly show the effectiveness of voluntary 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").

For Group 1, the occurrence rate of IPR-infringing goods has been kept at a low level, as in last fiscal year, as a result of removals of such goods through Platformers' voluntary patrols and information from right holders

For Group 3, compared with the year before and two years ago, the occurrence rate of

infringing goods this fiscal year declined greatly in one of the two services. We were able to confirm that our measures against IPR-infringing goods has been paying off. Meanwhile, as for the other service we began to verify from this fiscal year, the occurrence rate is quite high. While we will implement concrete countermeasures through this council, the situation needs to be improved as rapidly as possible due to the extremely high occurrence rate.

2. A Report from the Guidelines Committee

We discussed how the “Guidelines for the Prevention of Distribution of IPR-Infringing Goods on the Internet” (from here on referred to as the “Guidelines”), which had been revised in fiscal 2016, were implemented and what the latest infringement cases were.

Also, on novelties described in the Guidelines annex document, which have been the topic of discussion from the council’s previous meeting, we exchanged opinions to confirm the contents and their implementation.

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 1 “Effectiveness Verification Implementation Method”) at the “Effectiveness Verification Committee,” which consists of right holders’ personnel who were in charge of removal requests and their counterparts at Platformers. We have conducted the verification based on these procedures.

① The range of exhibits for effectiveness verification

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

② Exhibits for effectiveness verification

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

(i) “Exhibits of Infringing Goods”

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

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

These are the exhibits having a probability of infringement but do not directly offer visible evidence of infringement for platformers to remove such exhibits, following the information provided (when checked against the Guidelines, etc.). They are categorized into two types. (1) Exhibits of goods where a right holder can judge the infringement from the texts and images on screen and removal is possible as long as the right holder makes such a request to Platformers (“Exhibits of Infringing Goods Not Yet Informed”), or (2) Exhibits of goods which are undoubtedly considered to be infringing from various factors once a right holder purchases the goods and makes a confirmation (“Exhibits of Goods Having a High

Probability of Infringement”).

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’ exhibits.

(i) Group 1 (The average occurrence rate of infringing goods’ exhibits in the last three years is less than 2 percent): 6 services belonged to this group.

(ii) Group 2 (The average occurrence rate of infringing goods’ exhibits 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’ exhibits in the last three years is more than 10 percent): 2 services belonged to this group.

(2) Verification Results

① Auction

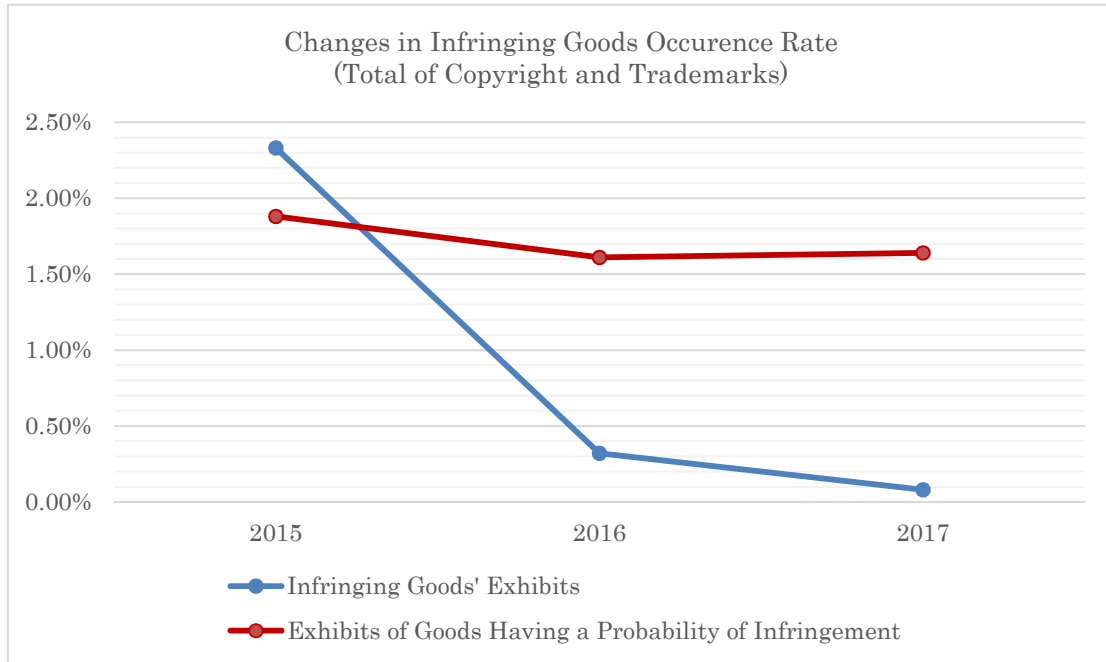
(i) “Infringing Goods’ Exhibits” Occurrence Rate

		2015		2016		2017	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	3,256	0.37%	2,328	0.04%	2,972	0.07%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	943	9.12%	1,399	0.79%	2,147	0.09%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	4,199	2.33%	3,727	0.32%	5,119	0.08%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—

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

		2015		2016		2017	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	3,256	0.71%	2,328	1.98%	2,972	0.64%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	942	5.93%	1,399	1.00%	2,147	3.02%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	4,199	1.88%	3,727	1.61%	5,119	1.64%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—

Changes in Occurrence Rate at Auction markets (Total of Copyright and Trademark)



② Flea-Ma

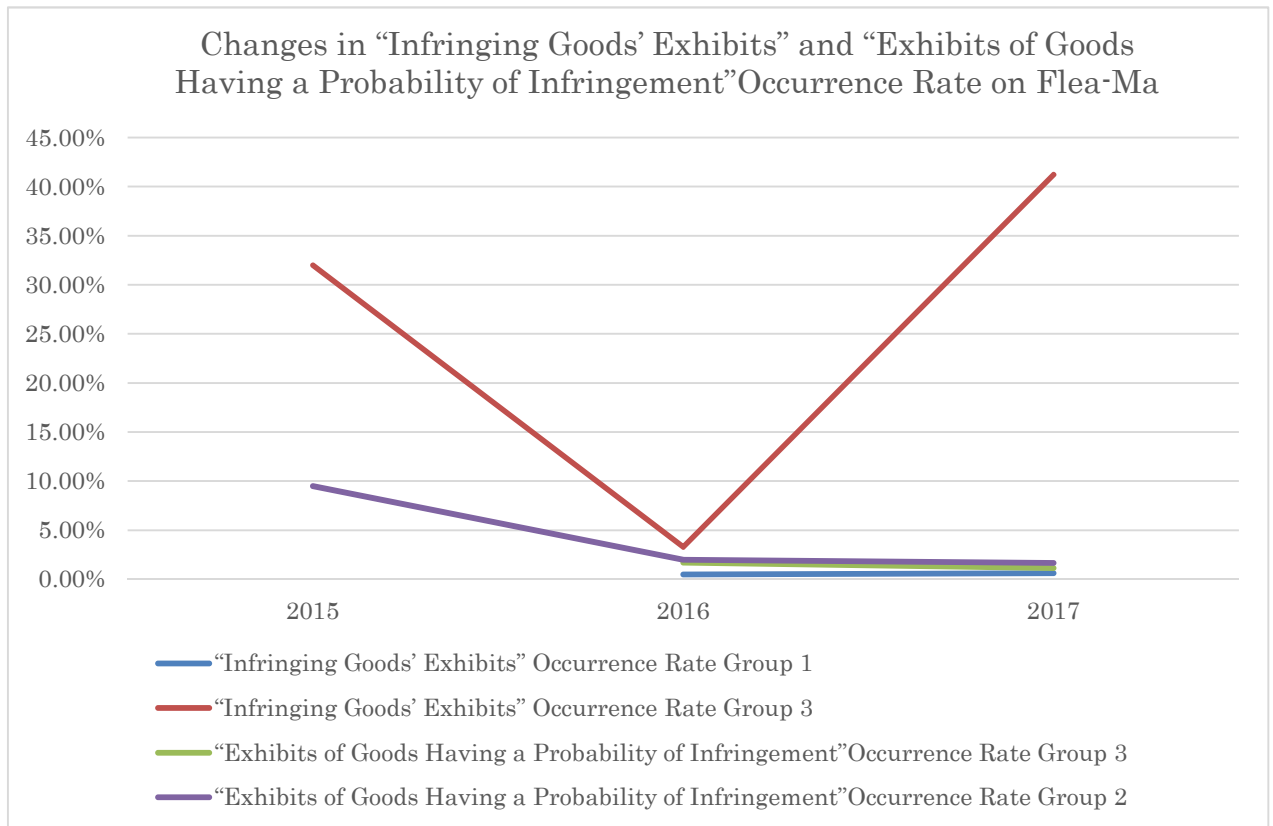
(i) "Infringing Goods' Exhibits" Occurrence Rate

		2015		2016		2017	
		# of verified items	% of infringement	# of verified items	% of infringement	# of verified items	% of infringement
Copyright	Group 1	—	—	3,924	0.00%	6,430	0.26%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	242	0.00%	477	26.20%
Trademark	Group 1	—	—	3,020	1.09%	5,093	1.06%
	Group 2	—	—	—	—	—	—
	Group 3	400	32.0%	673	4.46%	2,302	56.25%
Total	Group 1	—	—	6,944	0.48%	11,523	0.61%
	Group 2	—	—	—	—	—	—
	Group 3	400	32.0%	915	3.28%	2,779	41.22%

(ii) "Exhibits of Goods Having a Probability of Infringement" Occurrence Rate

		2015		2016		2017	
		# of verified items	% of probability	# of verified items	% of probability	# of verified items	% of probability
Copyright	Group 1	—	—	3,924	2.80%	6,430	1.07%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	242	0.00%	477	0.00%
Trademark	Group 1	—	—	3,020	0.3%	5,093	1.19%
	Group 2	—	—	—	—	—	—
	Group 3	400	9.50%	673	4.01%	2,302	3.30%
Total	Group 1	—	—	6,944	1.71%	11,523	1.13%
	Group 2	—	—	—	—	—	—
	Group 3	400	9.50%	915	2.00%	2,779	1.65%

Changes in Occurrence Rate of “of “Exhibits of Goods Having a Probability of Infringement” at Flea-Ma (Total of Copyright and Trademark)



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

(3) An Analysis of Verification Results

(i) Auction

Both occurrence rates of "Infringing Goods' Exhibits" and "Exhibits of Goods Having a Probability of Infringement" are categorized in Group 1. They have been kept extremely low for this fiscal year as well.

(ii) Flea-Ma

This fiscal year, we examined six Flea-Ma services. Four among the six are categorized in Group 1. The rate of infringement occurrence has been extremely low both for "Infringing Goods' Exhibits" and "Exhibits of Goods Having a Probability of Infringement."

Meanwhile, as for the two services which are categorized as Group 3, the occurrence rate at one of them has been steadily declining both for "Infringing Goods' Exhibits" and "Exhibits of Goods Having a Probability of Infringement." The other service has a high occurrence rate in "Infringing Goods' Exhibits." As a result, the occurrence rate of "Infringing Goods' Exhibits" rose on the whole compared to the previous fiscal year. We will need to proceed measures to lower the rate through measures decided by this council.

(4) Others

Some of right holders of trademarks reported that when they examined goods exhibited at several online shopping malls and flea market sites which are not included in this report's verification, they found that the infringement occurrence rate was nearly 100% in some of these sites. The right holders therefore cited that it will be a challenge as to how to pursue platformers who are not participants of the council. We have not included their finding in this report because their examination was conducted on a voluntary basis in order to get some knowledge for future talks.

2. A Report from the Guidelines Committee

The Guidelines Committee discussed how "Guidelines to prevent distribution of intellectual property infringing goods on the Internet" (from now on referred to as "the Guidelines") were implemented and the latest infringement examples. The Guidelines were revised in fiscal 2016.

It also covered novelty issues which were explained in a separate sheet of the Guidelines. In last year's meeting, the council decided to continue to discuss these issues. This year, we exchanged opinions about the contents of the novelty issues and the implementation measures.

Concerning the problem of distributing so-called "novelty goods" which infringe intellectual property rights, which is detailed in a separate Annex 1, we talked about whether (1) they should be placed as goods for removal or (2) as goods which will be judged "with other related information." We concluded that these should be positioned as (2) and necessary measures should be taken in this direction.

We also unified wording of these goods, explained in a separate Annex (3). It was suggested that the date should be included because the contents may change with the times.

3. A Summary of Activities for This Fiscal Year

As we stated so far, 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 begin working on new forms of combatting infringement. We plan to tackle measures to combat IPR-infringing goods in online 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. We hope that the government will support our work to becoming recognized as the de facto standard of measures against IPR-infringing goods on the Internet.

Various Statistical Data

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

	2012	2013	2014	2015	2016	2017
No. of goods exhibited	4,203	4,845	4,994	5,406	11,656	14,360

Total figures from six out of eight 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 goods exhibited.”

▷It is difficult to compare figures year-by-year and see a trend because there are fluctuations in the number of platformers when the data were taken.

■ Number of self-deletions

	2012	2013	2014	2015	2016	2017
Copyrights	62,694	62,400	24,685	15,529	65,835	25,528
Trademark rights	233,273	54,791	90,680	73,182	552,276	335,771
Total	295,967	117,191	115,365	88,711	771,043	3,149,053

▷Total figures of eight platformers who are official members of the CIPP.

▷Three out of the eight platformers do not keep records of self-deletions by the type of infringement. Therefore, their 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.

■ Number of deletion requests from right holders

	2012	2013	2014	2015	2016	2017
Copyrights	754	315	116	300	1,896	727
Trademark rights	54,428	44,905	30,458	85,053	183,138	320,617
Total	55,182	45,220	30,574	85,353	185,034	321,334

▷Total figures from seven out of eight platformers who are official members of the CIPP.

▷The figures include the deletions of individual items as well as deletions made after removals of sellers from the service.

▷ Some right holders change services and goods that they focus on during their surveillance in order to effectively 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) must 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.