

March 12, 2019

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Office

Council for Intellectual Property Protection on Internet (CIPP)

### **CIPP Report for Fiscal Year 2018**

The CIPP is a private organization established in December 2005 by Rights Holders and their organizations as well as Internet service operators with an aim to prevent the distribution on the Internet of goods that infringe intellectual property rights (IPR).

Since its foundation, the CIPP has been discussing voluntary measures on various issues surrounding goods that infringe IPR caused by transactions on the Internet through collaborative activities among Rights Holders and Internet service operators and by inviting as observers 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.

We would like the secretary to see this report as a representation of consensus among Rights 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 Rights Holders as well as CtoC (customer-to-customer) marketplace operators such as Auction and Flea-Mas (from here on referred to as “Platformers”).

● Considering the recent expansion of distribution in the markets where transactions on the Internet occur, we believe that the effectiveness of verification of measures against infringement through the CIPP is enhancing for all groups.

● 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 alerts from Rights Holders.

● As for Group 2, a CtoC Platformer which was categorized in Group 3 in last fiscal year has been moved to Group 2 as a result of our assessment on its actions to removal requests in the past three years. If it continues to take similar actions, it is expected to move to Group 1.

● As for a CtoC Platformer in Group 3, which was included in the verification from last fiscal year, the occurrence rate of infringing goods this fiscal year has been improved to the level of Group 1’s. It is expected that it will continue to do so in the next fiscal year.

## **2. A Report from the Guidelines Committee**

● The committee 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 2017, were implemented and what the latest infringement cases were.

- Because good results were produced by implementing the Guidelines, the committee all agreed that the effectiveness verification should continue to be done based on these guidelines.

### **3. A Report from the Third Committee**

- From this fiscal year, we decided to set up the Third Committee to deal with issues the above two committees cited for consideration until last fiscal year. The new committee will review measures to counter IPR-fringing goods at the BtoC (Business to Customer) marketplace operators (from here on referred to as the “BtoC Platformers”) as well as how to do the CIPP's public relations.

- In this fiscal year, the Third Committee discussed what future measures should be, considering the BtoC Platformers' characteristic features, such as whether or not there should be guidelines specifically for them.

- The committee also invited people from relevant government ministries and agencies such as the Finance Ministry's Custom and Tariff Bureau as observers to be briefed about the distribution of IPR-infringing goods in cross-border transactions. The discussions were conducted among those who are involved with implementing effective measures to prevent the IPR-infringing goods.

## **1. A Report from the Effectiveness Verification Committee**

### **(1) The Effectiveness Verification Method**

This year, as in previous years, we set up operational procedures (please see Document 2 “Effectiveness Verification Implementation Method”) at the “Effectiveness Verification Committee,” which consists of those who check the infringement situation as Rights Holders and their counterparts at CtoC Platformers. We have conducted the effectiveness verification based on these procedures.

#### ① The scope of effectiveness verification

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

#### ② Types of exhibits for effectiveness verification

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

##### (i) “Exhibits of Infringing Goods”

Exhibits of the goods that could be judged as infringement of a copyright or a trademark, based on on-screen texts or images, that would allow Rights Holders to request CtoC Platformers to suspend such goods' entry.

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

These are the exhibits of goods that do not directly offer visible evidence of infringement in the provided information (when checked against the Guidelines, etc.) that would allow CtoC operators to remove them as infringing goods but have characteristics as in the following:

(1) Exhibits of goods which are deemed to be have infringed a copyright or trademark as a result of appraisal of on-screen texts and images by Rights Holders and if the Rights Holders make a request for removal, CtoC Platformers can take action for removal (“Exhibits of Infringing Goods Without Notice”), or (2) exhibits of goods which are deemed as without doubt being infringing goods if the Rights Holders purchase and appraise the goods based

on various pieces of information (“Exhibits of Goods Having a High Probability of Infringement”).

### ③ Grouping of CtoC Platformers

In order to clarify further the achievements of voluntary action by Rights Holders and CtoC Platformers, we divided CtoC 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): 1 service

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

## (2) Verification Results

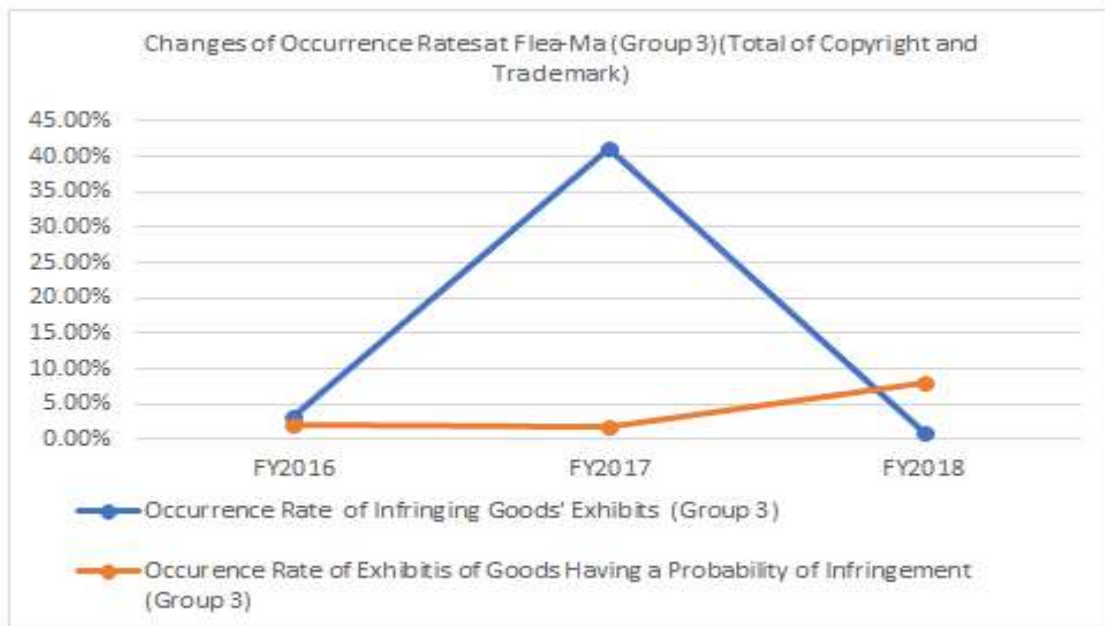
### ① Auction

#### (i) Occurrence Rate of “Exhibits of Infringing Goods”

		2016		2017		2018	
		# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate
Copyright	Group 1	2,328	0.04%	2,972	0.07%	2,427	0.16%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	1,399	0.79%	2,147	0.09%	2,062	0.44%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	3,727	0.32%	5,119	0.08%	4,489	0.30%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—

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

		2016		2017		2018	
		# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate
Copyright	Group 1	2,328	1.98%	2,972	0.64%	2,427	0.01%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Trademark	Group 1	1,399	1.00%	2,147	3.02%	2,062	0.02%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—
Total	Group 1	3,727	1.61%	5,119	1.64%	4,489	0.02%
	Group 2	—	—	—	—	—	—
	Group 3	—	—	—	—	—	—



② Flea-Ma

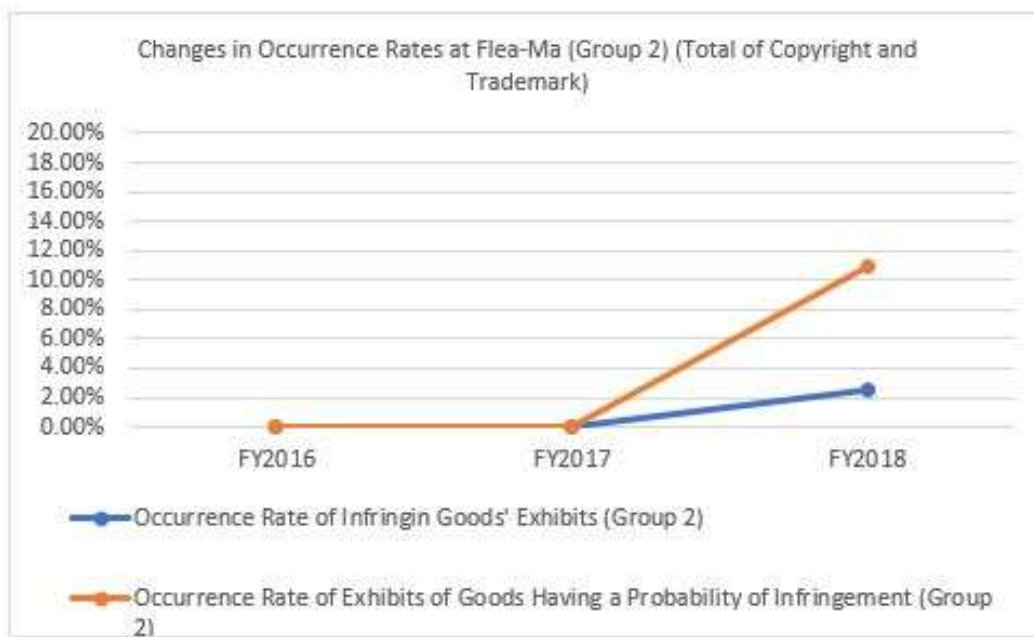
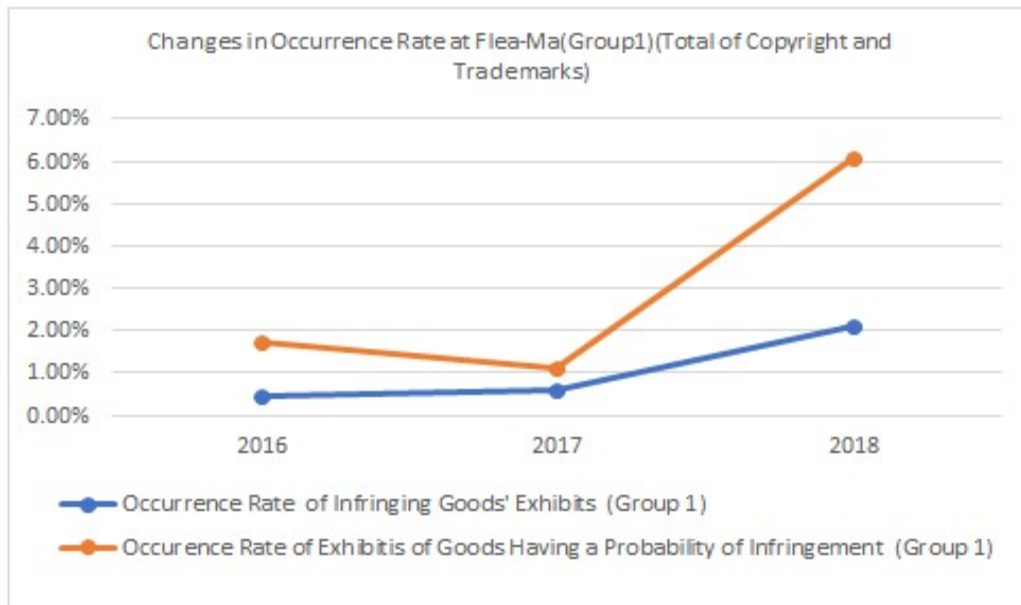
(i) Occurrence Rate of “Exhibits of Infringing Goods”

		2016		2017		2018	
		# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate
Copyright	Group 1	3,924	0.00%	6,430	0.26%	3,506	1.06%
	Group 2	—	—	—	—	705	0.14%
	Group 3	242	0.00%	477	26.20%	76	0.00%
Trademark	Group 1	3,020	1.09%	5,093	1.06%	4,389	2.96%
	Group 2	—	—	—	—	1,083	4.16%
	Group 3	673	4.01%	2,302	56.25%	753	0.93%
Total	Group 1	6,944	0.48%	11,523	0.61%	7,895	2.12%
	Group 2	—	—	—	—	1,788	2.57%
	Group 3	915	3.28%	2,779	41.22%	829	0.84%

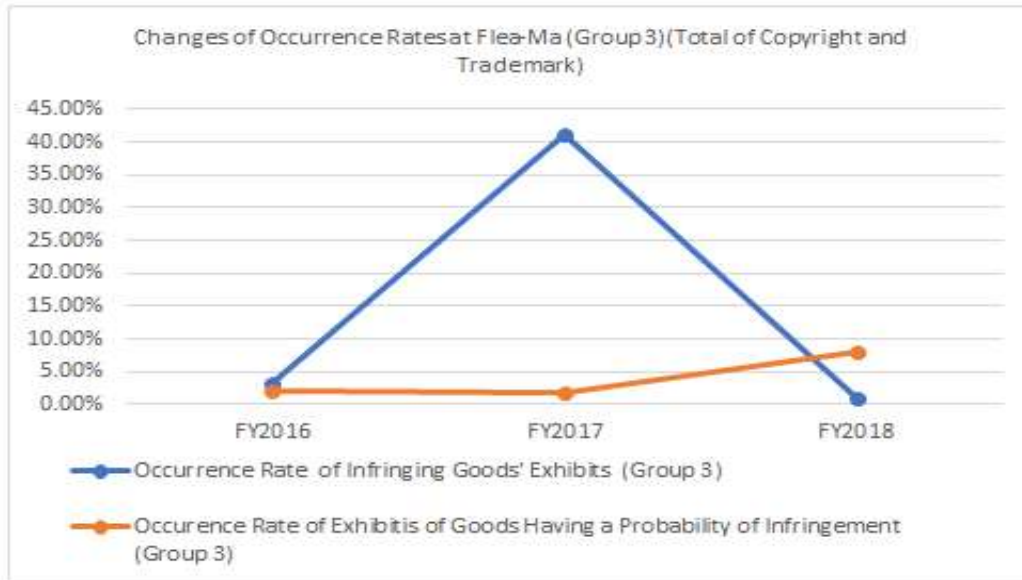
(ii) Occurrence Rate of “Exhibits of Goods Having a Probability of Infringement”

		2016		2017		2018	
		# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate	# of verified items	% of Occurrence Rate
Copyright	Group 1	3,924	2.80%	6,430	1.07%	3,506	2.31%
	Group 2	—	—	—	—	705	5.25%
	Group 3	242	0.00%	477	0.00%	76	26.32%
Trademark	Group 1	3,020	0.3%	5,093	1.19%	3,837	9.56%
	Group 2	—	—	—	—	1,083	14.59%
	Group 3	673	4.01%	2,302	3.30%	753	6.11%
Total	Group 1	6,944	1.71%	11,523	1.13%	7,343	6.10%
	Group 2	—	—	—	—	1,788	10.91%
	Group 3	915	2.00%	2,779	1.65%	829	7.96%





\* There were no services in Group 2 in fiscal 2016 and 2017.



### (3) An Analysis of Verification Results

#### (i) Auction

All Auction services are categorized in Group 1. The occurrence rates of “Exhibits of Infringing Goods” and “Exhibits of Goods Having a Probability of Infringement” have been kept extremely low for this fiscal year as well.

#### (ii) Flea-Ma

This fiscal year, we added one new service and a total of six Flea-Ma services were verified.

Four among the six are categorized in Group 1. The rate of infringement occurrence has been low both for “Exhibits of Infringing Goods” and “Exhibits of Goods Having a Probability of Infringement.” A service in Group 2 has shown initiative to meet removal requests and other measures over the past three years. From this fiscal year, it has moved up from Group 3 to Group 2. As for a service in Group 3, its infringement occurrence rate itself has improved to almost the level of Group 1. It is expected to keep on with similar work in the next fiscal year.

As we can tell from some service's move to different categories, it has become possible for each CtoC Platformer to share and accumulate their knowledge to judge the infringing

goods and measures to take by joining this committee. We can conclude that measures to combat infringing goods through this committee have become highly effective.

Also, since last fiscal year, we have been discussing the issue of distributing so-called "novelty goods" which infringe trademark rights. As the Guidelines was revised at the CIPP's Guideline Committee and these were implemented, the occurrence rate of novelty-goods' equivalent of "Infringing Goods' Exhibits" and "Exhibits of Goods Having a Probability of Infringement" has been curbed.

Meanwhile, as for one of the four services in Group 1, the occurrence rate of infringing goods exhibits has risen quite a lot compared to the other CtoC Platformers. The main reason is that, because effective countermeasures were taken in the CtoC Platforms with a high occurrence rate, a group of overseas exhibitors of infringing goods moved from there to other Platforms with a low occurrence rate.

From now on, we believe that the cooperation between Rights Holders and CtoC Platformers should be strengthened thorough lively exchange of opinions at the CIPP on how to combat groups of overseas exhibitors of infringing goods, who we cannot eradicate by measures for individual CtoC Platformers only. We view that an effective effort is needed to prevent the distribution of infringing goods in Japan in addition to solving the issues regarding individual CtoC Platformers.

#### **(4) Others**

Some of Rights Holders of copyrights told the CIPP that, because the diversification of services provided by CtoC Platformers who participate in the CIPP, a more effective verification method which reflects the situation on the ground, should be discussed and adopted. This opinion came from the fact that in early days following the setup of the CIPP, verification effectiveness tests were conducted for auction services only. For the purpose of "prevention of distributing IPR-infringing goods," the verification was conducted starting from exhibited goods with the shortest remaining time for auction because the purpose will be achieved as long as the infringing goods can be removed before the auction ends. Meanwhile, in flea market sites, there is no time lag before a purchasing contract is made, unlike auction sites. Therefore, the Rights Holders suggested that the verification should be conducted starting from the newest exhibits to prevent the distribution of IPR-infringing goods.

Based on these opinions, from next fiscal year, we believe that methods to obtain more appropriate verification results will be required, which will cater to a different service type for each CtoC Platformer.

Some of the Rights Holders of trademark rights told the CIPP that when they made a test verification on brands which do not share information with CtoC Platformers at present, they found that the occurrence rate of "Exhibits of infringing goods" at some brands was nearly 100 percent. Therefore, the Rights Holders said that the CIPP should discuss how to share information with these brands' goods.

## **2. A Report from the Guidelines Committee**

The Guidelines Committee discussed how "Guidelines for Prevention of Distribution of IPR-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 and in fiscal 2017.

Because good results were achieved when the revised Guidelines were implemented, the committee agreed that the effectiveness verification should be made based on the current Guidelines.

In the Effectiveness Verification Committee, there was a discussion on the occurrence rate of (1) "Exhibits of Infringing Goods Not Yet Informed", which means that they are the exhibits where Rights Holders can conclude that the copyrights/trademark infringement occurred, judged from the texts and images on screen, and action can be taken if they inform CtoC Platformers of their request to suspend the goods' entry.

It will be difficult to take action for these exhibits without a request to CtoC Platformers for stopping the exhibits. Considering this, the committee agreed that it will be desirable in principle to take actions following alerts from Rights Holders.

However, if infringing goods can be categorized by type in advance, some of the attendants suggested that the Guideline Committee could coordinate the Guidelines.

With due consideration to the opinion above, the attendants agreed that the Guidelines should be avoided from excessive segmentation and the Rights Holders and the CtoC

Platformers should review the Guidelines, as and when, to make it more clear and effective for both of them.

### **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 a low level this fiscal year by promoting a “Japanese approach” in which both Rights Holders and CtoC Platformers respect each other’s positions and collaboratively stand up against infringers.

In this fiscal year, the newly established Third Committee began to study measures to combat the IPR-infringing goods in the BtoC (Business to Consumer) Platforms. The Committee will continue to do so in the next fiscal year.

We will continue to report the results of our work to Society and at the same time further our discussion regarding measures to tackle new forms of infringements.

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 so that our efforts will be recognized as Japan's de facto standard of measures against IPR-infringing goods on the Internet.

## Various Statistical Data

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

	2016	2017	2018
Total no. of goods exhibited	11,656	14,360	10,736

▷ Total figures of eight 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 total 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 at the time when the data were taken.

### ■ Number of self-deletions

	2016	2017	2018
Copyrights	65,835	25,528	21,377
Trademark rights	552,276	335,771	309,941
Total	771,043	3,149,053	1,996,916

▷ Total figures of eight official members of the CIPP.

▷ Two 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 discover a trend.

### ■ Number of deletion requests from Rights Holders

	2016	2017	2018
Copyrights	1,896	727	6,286
Trademark rights	183,138	320,617	146,462
Total	185,034	321,334	152,748

▷ Total figures from seven out of eight 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 Rights Holders change services and goods that they focus on during their surveillance in order to effectively combat the infringement of IPR. Therefore, it is difficult to

compare figures year-by-year and demonstrate a trend.

#### Principles of the Japanese Approach

1. Both parties (Rights Holders and Platformers) 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 interests but also the interests of consumers among others.
2. Rights Holders must be made aware that they should enforce their own rights, which are not automatically protected.
3. Platformers should be aware that they should make active efforts to protect 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.