

April 27, 2009

To: Secretariat of Intellectual Property Strategy Headquarters, Cabinet Secretariat

Council for Intellectual Property Protection on Internet (CIPP)

CIPP Report for FY 2008

As you have already known as a participant, the CIPP, since FY 2005, 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 2009 as it represents a consensus of right holders (individuals and organizations) and Internet auction operators.

[Outlines]

1. Successfully kept the percentage of auctioned infringing goods 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. As a result of the CIPP's efforts, a downward trend was observed in actions to auction infringing goods compared with the situation at the time of the establishment of the council.
3. Made revisions to the CIPP Bylaws and expanded members.
4. Further promoted the "Japanese Approach."
5. Further ask the Japanese government to take actions to the countries which manufacture / sell infringing goods.

Background to the discussions and changes in actual conditions during FY 2008

This fiscal year’s activities involved the steady promotion of traditional measures centering on removals as well as the implementation of an effectiveness verification to find outcomes from the past efforts based on the “Japanese Approach” (for details, see the CIPP Report for FY 2007) between auction operators and right holders. In addition, we logically derived remaining problems from an analysis of the verification results and discussed measures for them.

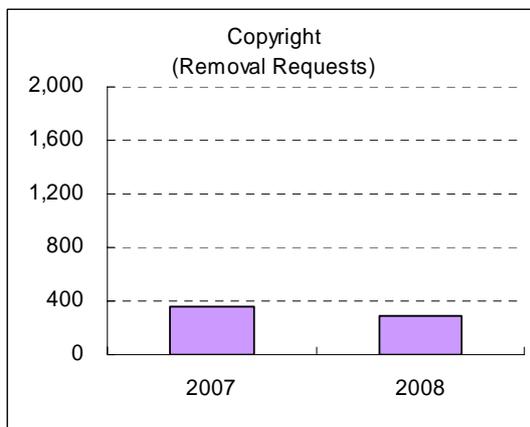
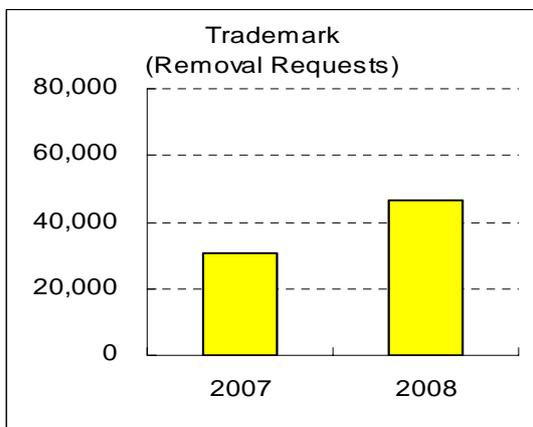
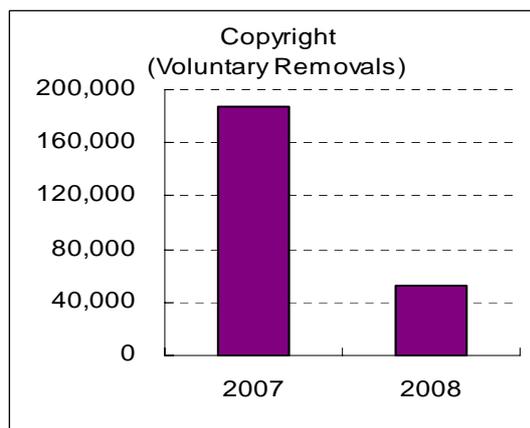
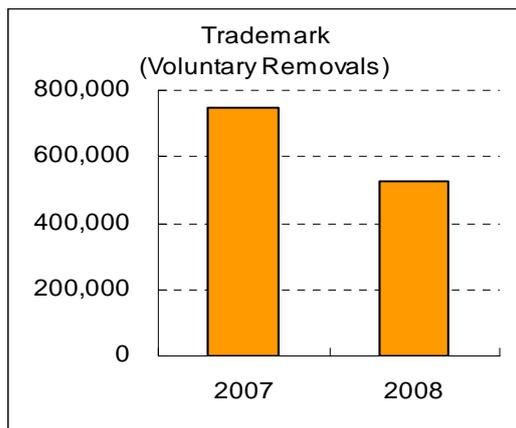


Table 1: Changes in Voluntary Removals by CIPP Participating Operators and Removal Requests from CIPP Participating Right Holders in Past Two Years^{i ii}

ⁱ Removal requests were directed to five companies: Yahoo! Auction, Rakuten Auction, Bidders Auction, MOBAOKU, and girls auction. (Note that girls auction was added in December 2007.)

ⁱⁱ The figures on removal requests from right holders include the cases where individual auctioned items or IDs of the sellers were suspended.

1. Voluntary removals by auction operators and removal requests from right holders

- (a) Table 2 shows the voluntary removals by auction operators. As in the previous fiscal year, proper operation was carried out in accordance with the “Guidelines for Prevention of the Distribution of Intellectual Property Rights Infringing Goods” (hereinafter referred to as the “Guidelines”). Compared with the figures in the previous fiscal year, the trademark and copyright decreased 223,614 cases and 135,108 cases, respectively.

	Trademark	Copyright	Total
2007	748,416 cases	187,909 cases	936,325 cases
2008	524,802 cases	52,801 cases	577,603 cases

Table 2: Changes in Voluntary Removals by Operators in Past Two Years

- (b) Table 3 shows the removals based on removal requests from right holders. The increase from the previous fiscal year in the trademark was due to the inclusion of removal requests to “girls auction,” a major mobile auction site, from December 2007. Therefore, it does not mean that the situation was worsening.

	Trademark	Copyright	Design Right	Total
2005	81,491 cases	18,263 cases	2 cases	99,756 cases
2006	60,929 cases	3,557 cases	5 cases	64,491 cases
2007	30,907 cases	365 cases	2 cases	31,274 cases
2008	46,747 cases	294 cases	0	47,041 cases

Table 3: Changes in Removal Requests from Right Holders in Past Four Yearsⁱⁱⁱ

- (c) Table 4 shows changes in total auctioned items in major auction sites, indicating consistent increases.

	Yahoo! Auction	Rakuten Auction	Bidders	MOBAOKU
2007	16.50 million cases	0.53 million cases	2.80 million cases	3.10 million cases
2008	18.17 million cases	1.07 million cases	5.37 million cases	3.34 million cases

Table 4: Changes in Total Auctioned Items in Major Auction Sites^{iv}

ⁱⁱⁱ Removal requests related to trademarks in 2008 were from Honda Motor Co., Ltd., Union des Fabricants (whose members include Louis Vuitton and Gucci), and Chanel Co., Ltd.

^{iv} 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 at the end of the month.

2. Effectiveness verification

(a) Survey

This fiscal year we again established an “Effectiveness Verification Committee” consisting of the individuals who were actually in charge of removal requests / voluntary removals, and carried out a verification by dividing targets into two groups: those which were judged as infringement of a copyright or trademark based on their on-screen descriptions and images and would allow right holders to make suspension requests to auction operators (Table 5), and those which were highly likely to be infringing goods from an objective viewpoint despite the lack of decisive factors (Table 6).

Outlines of the implemented verification are as indicated in the annex. As in the previous fiscal year, the current effectiveness verification did not cover the auctioned items which did not allow right holders and operators to determine on the screen whether or not they were infringing goods, or which were not identifiable before actually buying the items.

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2007	19,268	1.20%	5,063	0.51%	24,331	1.06%
2008	13,334	1.39%	6,740	0.91%	20,074	1.23%

Table 5: Percentages of auctioned IPR-infringing goods meeting the requirements specified in the guidelines

	Trademark		Copyright		Total	
	Verification Parameter	Percentage	Verification Parameter	Percentage	Verification Parameter	Percentage
2007	19,268	0.13%	5,063	0.32%	24,331	0.17%
2008	13,334	0.19%	6,740	1.75%	20,074	0.72%

Table 6: Percentages of auctioned items which right holders deemed were highly likely to be infringing goods from an objective viewpoint although the requirements specified in the Guidelines were not met

(b) Analysis

As a result of the survey, both trademark- and copyright-infringing goods slightly increased in number from the previous fiscal year. However, right holders did not feel, from their actual experience, that infringing goods increased and did feel that at least the protection system was sufficiently maintained. A low percentage was also indicated in the auctioned items which were highly likely to be infringing goods from an objective viewpoint although the requirements

specified in the Guidelines were not met. Based on these results of the effectiveness verification, we believe that it was surely difficult to auction the goods of the right holders who had promoted relevant efforts in cooperation with auction operators and had been active in enforcement.

In this verification, we often found that a single seller auctioned multiple infringing goods, which increased the percentage of auctioned infringing items. In other words, the infringement rate was kept low enough to allow auctioned items from a specific person to affect the overall infringement rate.

3. Revisions to the CIPP Bylaws

Working for several years since its establishment, the CIPP has received offers of participation from multiple companies / organizations and inquiries from overseas through concerned parties. We are proud of this situation because it is a proof that the CIPP has gained a certain status. As this trend seems to continue, we made revisions to the CIPP Bylaws mainly for the purpose of providing multiple membership statuses.

4. New members

Pursuant to the new bylaws, four companies and an organization indicated below are added as new observers.

girls auction Co., Ltd.

Chanel Co., Ltd.

(girls auction)

Shop Airlines, Ltd.

Association Against Counterfeit Product Distribution

(sekaimon)

eLADY Limited.

Conclusion

This fiscal year is characterized by the fact that a sharp decrease is observed in the removals based on voluntary patrols by auction operators and that the percentage of auctioned infringing items in the effectiveness verification is still kept at a low level, which is consistent with how right holders feel from their actual experience. Considering the growth in the total of auctioned items in auction sites, it can be said that “we successfully reduced actions to auction infringing items.” Our various measures have stopped trading / distribution through removals of auctioned items before winning bids were chosen. It is significant that we won the endurance game against sellers of infringing goods and lessened actions to auction infringing items.

According to the “Status of Arrests on Consumer and Financial Fraud Cases in 2008,” released this March by Consumer & Environment Protection Division, Community Safety Bureau, National

Police Agency, in terms of Trademark Act violation cases (such as counterfeit cases), 63.3% of confiscated counterfeit goods were smuggled from overseas, and the largest source country was now China, which overtook South Korea and smuggled most of those counterfeit goods to Japan. The CIPP is intended to protect the distribution of counterfeit goods or the like in auctions at the private-sector level. However, it is still important, in addition to measures at the point of entry into Japan, that those manufacturing / selling countries will take appropriate actions as drastic measures to create an environment where criminals will be arrested and punished without fail. We ask the Japanese government to continue pressing foreign governments to actively take necessary actions.

The CIPP will expand its activities by disclosing the English version of this report or otherwise to obtain a de facto standard in problems of intellectual property rights on the Internet for the purposes of improving some auction operators with a high percentage of auctioned IPR-infringing goods, who newly became observers of the CIPP this fiscal year, as well as winning more support from home and abroad with respect to the “Japanese Approach” advocated by the CIPP, which is proved to be remarkably effective, in order to ensure sound Internet auctions.

(Reference)

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.