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**Intellectual Property Rights
Business Council (IPRBC)**



EUROPEAN CHAMBER
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IN HONG KONG
香港歐洲商務協會

IPRBC
Position Paper

About the IPRBC

The European Chamber of Commerce Intellectual Property Rights Business Council (IPRBC) has an overall competence for the whole spectrum of intellectual Property Rights (IPR). Its aim is to represent the interests of the EU industry and EU Business Associations in dealing with government departments, enforcement authorities and other organizations in the EU, Hong Kong and Macao.



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Abbreviations

CCMA	Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters
C&ED	Customs and Excise Department
EU	European Union
HKIRC	Hong Kong Internet Registration Corporation Limited
ETSS	Engineering Training Subsidy Scheme
Hong Kong	The Hong Kong Special Administrative Region
IP	Intellectual Property
IPR	Intellectual Property Rights
IPRBC	The European Chamber of Commerce Intellectual Property Rights Business Council
IPRPA	Intellectual Property Rights Protection Alliance
TDO	Trade Descriptions Ordinance, Cap. 362
UK	United Kingdom
US	United States of America

1. IPR Enforcement at the Border

1.1 Hong Kong Legislation - Transshipments

The import of counterfeit and pirated goods is a market annually worth nearly half a trillion US dollars. Specifically, more than 5% of goods imported into the European Union are counterfeit and IPR-infringing goods, amounting in value to approximately EUR 85 billion.

The main producers of these products are emerging countries, with People's Republic of China occupying the top position.¹ However, seizures from Hong Kong contribute 26% of the European seizure caseload.² As such, defence at the border continues to be an important and effective way to prevent and reduce the circulation of counterfeits.³

The Trade Descriptions Ordinance (TDO)⁴ confers on the Hong Kong Customs and Excise Department (C&ED) the responsibility for criminal enforcement against counterfeit goods. The TDO includes powers for the C&ED to take enforcement action against transhipped goods but does not cover goods in transit. With Hong Kong being one of the most important shipping hubs in the world, both transit or transshipment operations present opportunities to mask the origin of illicit goods.⁵ This is why Hong Kong appears to be the second-highest ranking source for counterfeit items in both EU and US seizure data in the past few years.

Recommendations:

- Promote cargo control systems that enable tracking of transhipped goods, in order to check the proper origin of goods and to better target those with an illicit origin.
- Increase information-sharing sessions between rights owners and enforcement authorities to identify common trends and sources.
- Increase cooperation between public and private stakeholders to address general issues and trends, share best practices and discuss concrete cases.

¹ <http://www.oecd.org/industry/global-trade-in-fake-goods-worth-nearly-half-a-trillion-dollars-a-year.htm>.

² <https://www.europol.europa.eu/publications-documents/2017-situation-report-counterfeiting-and-piracy-in-european-union>.

³ <http://www.tradelawdevelopment.com/index.php/tld/article/viewFile/7%282%29%20TL%26D%20388%20%282015%29/262>.

⁴ <https://www.elegislation.gov.hk/hk/cap362!en@2014-12-05T00:00:00?pmc=0&m=0&pm=1>.

⁵ <https://www.ip-watch.org/weblog/wp-content/uploads/2013/05/FTZ-report.pdf>.

1.2 The cooperation among C&ED and the EU (The Action Plan)

There is keen Customs co-operation on enforcement of intellectual property rights (IPRs) with the objective to improve targeting of shipments of IPR infringing goods destined for the European Union (EU) and to eliminate illegal IPR activities.

The first cooperation agreement between Hong Kong and the EU, the Agreement on Cooperation and Mutual Administrative Assistance in Customs Matters (CCMAA) was signed on 1 June 1999. The main objective of this agreement was to provide a legal framework to promote supply-chain security and trade facilitation.

The cooperation between Hong Kong and the EU was further fostered 16 years later with the adoption of an Action Plan between the C&ED and the EU facilitating the exchange of information and detention statistics on IPR infringing goods and the conduct of joint analysis on general risks and trends with the EU member states. However, the sharing of statistical data between the European Commission and the C&ED would take place on a voluntary basis without any binding obligation. The Action Plan has recently been reviewed and refined by both sides in July 2016.

In Europe the new regulation 2015/2424⁶ entered into force on 23 March 2016. It expressly regulates IPR protection in a broad range of situations. It states that the proprietor of an EU registered trademark has the right to prevent third parties from bringing goods, without authorization, with a trademark identical or essentially identical with the EU trademark, into the EU; these kinds of goods would be detained by Customs officials broadly in all customs situations even if they are in transit or transshipment, warehousing, free zones or temporary storage.

Recommendations:

- IPRBC encourages the European Union to follow Hong Kong's example, where the C&ED signed a Memorandum of Understanding with various express cargo companies on the clearance of express consignments (MOU).⁷ In this way the European Union Customs could improve their cooperation with shipping companies on customs controls and the facilitation of trade.
- Suggest EU should introduce a new post of "IP Attaché" in Hong Kong, in order to provide a consistent point of contact for all Member State enforcement authorities with the C&ED so as to facilitate sharing of data and effective enforcement by EU and the C&ED for cross-border cases.

⁶ http://www.wipo.int/wipolex/en/text.jsp?file_id=394959.

⁷ http://info.hktdc.com/shippers/vol24_4/vol24_4_airfr02.htm.

2. IPR Protection on the Internet

2.1 Hong Kong Approach Against Online IPR Infringements

Hong Kong's online customers face a greater risk of unknowingly buying counterfeit goods than high-street retail customers. The fight against the sale of counterfeit goods online is an increasingly serious issue in Hong Kong and worldwide and should be made a key priority on the HK Government's agenda. In this regard, the C&ED has worked closely with the IPR industry through the Intellectual Property Rights Protection Alliance (IPRPA) to tackle this problem.⁸

Another alarming phenomenon is the rise in sales of counterfeit products online by teenagers, using social media platforms as vehicles for these kinds of activities. In order to address this issue, the C&ED established the Youth Ambassador Against Internet Piracy Scheme, with the purpose of creating a strong alliance with the objective of fighting of illegal file-sharing activities by using BitTorrent (BT) software on the internet.⁹

In 2015 the C&ED and the University of Hong Kong developed a programme targeting counterfeiting activities on social media. This programme is called "SocNet System", and it is designed to detect and manage crime migration in different internet networks, including social media platforms.

Another initiative to track down these unsafe websites and to combat the improper use of the .hk domain name is the Hong Kong Internet Registration Corporation Limited (HKIRC). It is a non-profit distributing organisation that is committed to serve the internet community of Hong Kong. Its objectives are to promote Hong Kong as an international centre for e-commerce and the development of the administration of Internet domain names in Hong Kong.¹⁰

Recommendations:

- Enhance the effectiveness of SocNet, increasing its monitoring capacity of social media accounts.
- Improve cyber investigation and employment of new technologies.
- Intensify IPR awareness campaigns, especially towards youngsters on the internet.

⁸ http://www.customs.gov.hk/en/enforcement/ipr_protection/partnership/index.html.

⁹ https://www.iprpa.org/eng/anti_campaign.php.

¹⁰ <https://www.hkirc.hk/content.jsp?id=43>.

- Design a novel and ambitious public awareness strategy, frankly addressing the impact of counterfeiting (e.g. funding of terrorist and criminal organizations, catastrophic consequences on sustainability and social responsibility) and focusing more on mainstream communication channels (i.e. social media).

2.2 Effective investigative Techniques in Europe and Abroad

For better enforcement of intellectual property rights online, the new trend of the digital world, which is conferring an increased role for intermediaries, should be taken into account. Internet intermediaries, according to the OECD definition, “bring together or facilitate transactions between third parties on the Internet. They give access to, host, transmit and index content, products and services offered by third parties on the Internet or provide Internet-based services to third parties”.¹¹ Among the practices which can better guarantee the enforcement of intellectual property rights enforcement online, it is important to take into account the increasing role and liability of intermediaries.

In general, internet intermediaries may have different and potentially competing simultaneous roles, as intermediaries, end-users and content/service providers. Over the last few years, there has been a significant shift in the role of intermediaries in the Internet environment. Originally these intermediaries behaved in a passive way with regard to copyright-infringing activities on their networks, or cases in which the content was hosted or transmitted without the consent of its copyright owner. However, increasingly, internet intermediaries have taken a more active role in relation to the content and service they provide. This development should therefore raise the liability of intermediaries and more regulation should be imposed on them to ensure they help protect intellectual property rights.

Recommendations:

- Raise awareness about the role that intermediaries play and their responsibility.
- Support a new system of controls which can prevent the IPR infringement on internet, such as “Network Monitoring”.¹² For example, new software have been created recently, and they would allow businesses to scan network machines, employees email accounts and personal computers. This type of technology has to be balanced with the right of employees to privacy.

¹¹ <https://www.oecd.org/internet/ieconomy/44949023.pdf>.

¹² <http://ubiquity.acm.org/article.cfm?id=1008537>.

3. IPR Protection at Trade Fairs

3.1 Monitoring of International Trade Fairs and Exhibitions

Every year, a high number and great variety of international trade fairs are organized in Hong Kong. These fairs attract a high volume of buyers and visitors from all over the world. However, European brands have repeatedly found infringing products displayed in these international fairs, which damage Hong Kong's role as an international trade hub. European brands have tried to work with the organizers of the trade fairs to issue administrative actions against the infringers but the situation has not improved. Therefore IPR enforcement at trade fairs usually relies on the intervention of HKC&E, and it is observed that the criminal actions taken by HKC&E against identical trademark infringement (i.e. a sign looking identical as the registered one) have effectively induced a deterrent effect against infringement diffusion.

Recommendations:

- Provide clear guidelines for trade fair exhibitors and visitors to comply with the needs related to IPR protection.
- Design and implement alternative solutions to deter display of non-identical infringement (i.e. in case of trademarks, a non-identical sign looking similar to the registered one).