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*Customs and Excise Department
Assistant Commissioner (Intelligence and Investigation)*



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THE
LAW SOCIETY
OF HONG KONG
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Face to Face with

ALBERT HO CMSM

*Customs and Excise Department
Assistant Commissioner (Intelligence and Investigation)*

By Cynthia G. Claytor

專訪

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On 5 June, coinciding with World Anti-Counterfeiting Day, the Intellectual Property Investigation Bureau of Hong Kong Customs was highly commended by the Global Anti-Counterfeiting Group and presented with a Global Anti-Counterfeiting Award to recognise its outstanding achievements in combating counterfeiting and piracy.

Following on the heels of this success, *Hong Kong Lawyer* speaks with Albert Ho, CMSM, the Assistant Commissioner of Hong Kong Customs overseeing the Intellectual Property Investigation Bureau to learn more about the Bureau's work, its achievements and the challenges it faces due to rapid technological advances and the increasing popularity of e-commerce.



“ The challenges ahead will not be easy and IPIB will continue the innovative efforts to tackle IP crimes which has allowed Hong Kong Customs to accomplish the achievements. ”

Since its colonial days as a free port, Hong Kong has maintained its strategic position as an *entrepôt* in Asia and a gateway to China. With over 250 million tonnes of goods passing through the City annually and its proximity to the Pearl River Delta, Hong Kong has realised its importance to intellectual property rights (“IPR”) protection and has implemented

stringent and innovative anti-counterfeiting and piracy enforcement measures, for which it was recently commended.

At the helm of Hong Kong’s anti-counterfeiting and piracy efforts is Assistant Commissioner Albert Ho, CMSM, of Hong Kong Customs’ Intellectual Property Investigation Bureau (“IPIB”). Ho currently

oversees all Customs intelligence and investigation work, which not only covers IP crimes, but also narcotics, smuggling, illicit cigarette activities, organised crime and money laundering.

Ho is a Certified Fraud Examiner (“CFE”) and is the director of the local chapter of the Association of Certified Fraud Examiners (“ACFE”) in Hong Kong. He is also a member of the Chartered

Institute of Linguists based in London. He holds a Bachelors and Masters degree in Laws and a Masters degree in Applied Criminology from the University of Cambridge. Ho was admitted to the Middle Temple (Inns of Court School of Law) and called to the bar (barrister) in England and Wales and in Hong Kong. In 2012, he was awarded the Hong Kong Customs and Excise Medal for Meritorious Service ("CMSM") by the Hong Kong SAR Government.

Unique IP Enforcement Regime

Hong Kong's IPR enforcement regime is unique in that Hong Kong Customs is the only enforcement agency responsible for investigating and prosecuting IP offences within the territory and at the boundary control points.

"Given its exclusive jurisdiction, IPIB can operate as a one-stop shop. If an IPR owner has a complaint, they can just deal with one Customs officer from the time the complaint is lodged until the time the counterfeit goods are destroyed. This approach is convenient for the IPR holders and the general public. It also enables the IPIB to carry out its work efficiently, which is particularly important when complicated IP right issues are involved," says Ho.

IP Cases are Different

Ho explains that combating IP crime is quite different from other Customs-related work. "For most Customs crimes, like smuggling, heavy involvement of the private sector is not required. But for IPR offences, cooperation between Customs and IPR owners is indispensable."

"After Customs seizes counterfeit

or pirated goods, we need IPR owners' help to confirm the goods are fakes. Half of the time, IPR owners are the only ones who can tell. We also need their assistance with enforcement actions," Ho explains. "We can provide evidence of infringing activities, but they must come to court to prove their right to enforce the copyright or trademark."

Technology and the Law

Keeping the law aligned with advances in technology is difficult. "Innovation is wonderful," Ho beams, "but it often causes many practical problems." The invention of peer-to-peer ("P2P") networks, he says, offered users many new benefits, allowing users to directly

transfer or share files that contain a large amount of data in a very short amount of time.

Even though P2P technology is perfectly legal – technology is neutral – Ho shared that they have caused a lot of damage.

"About ten years ago, when a P2P technology known as BitTorrent gained traction worldwide, many users began watching and sharing movies and other copyrighted content free of charge. Since Hong Kong has a vibrant movie industry, this illegal file sharing scheme caused a lot of damage to local companies in this sector," Ho explains.

"When Customs realised the magnitude of the problem, we set up a joint task force with the movie industry. The department made

its first arrest in April 2005 – it was an internet user known by the alias 'Big Crook', who had posted a 'torrent' file, enabling other users to download films from his computer using BitTorrent technology. We arrested Big Crook for releasing copyrighted movies online through BitTorrent in violation of Hong Kong's copyright laws. While this case ultimately led to a conviction," Ho says, "it caused a lot of controversy."

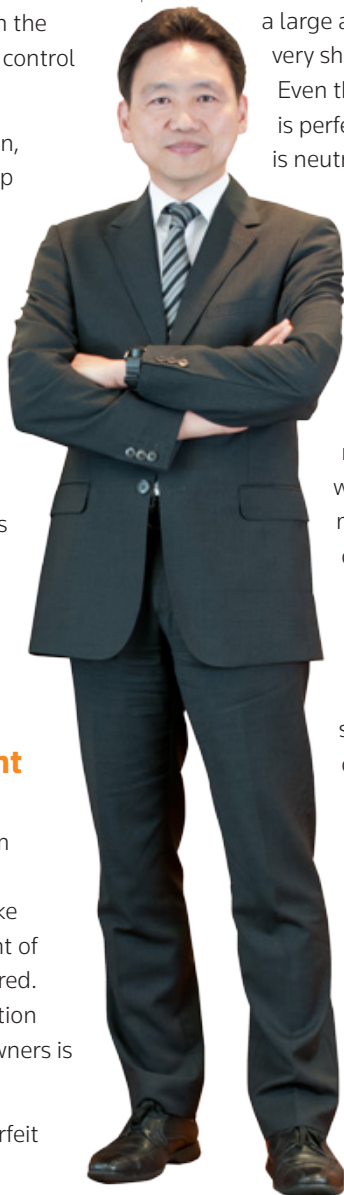
At that time, the defendant was believed to be the first in the world to be convicted of an IP crime that involved the use of file sharing technology. The case also raised many novel legal issues, such as whether making available a digital copy on the Internet constitutes distribution of copyrighted works under the copyright law. Luckily, the court answered it in the affirmative, sending a strong message to infringers using these platforms. However, Ho frankly admitted that though it was difficult to anticipate the court verdict at that time, Customs still instituted prosecution decisively with a view to curbing the prevalent P2P infringing acts.

Enforcement Innovation

As the BitTorrent case illustrates, law enforcement must be creative to keep pace with the rapid changes in technology. Since the IP industry is very innovative and IP infringers are very innovative, Ho explains that he and his colleagues try to talk about enforcement in terms of innovation.

Last year the IPIB established the Electronic Crime Investigation Centre ("ECIC") to conduct research on how criminals are using technologies to commit cybercrimes with the aim of developing new cyber monitoring systems to assist enforcement officers and designing better training programmes for investigators.

Ho indicated that IPIB has also deployed a strategy that they like to refer to as *technology versus technology*. One example Ho provided of this strategy





was the implementation of the newly-developed Lineament Monitoring System I Plus, which uses web crawler technology to automatically detect and track down illicit file sharing through cyber-lockers. The system automatically browses discussion forums around the clock to search for suspicious posts and file sharing activity. Information on suspicious activity is then directly transmitted to Customs officers for further investigation. Ho notes that IPIB also employs similar technology to search e-auction sites selling counterfeits and to track down IP infringement by file sharing through BitTorrents.

"We use these technologies because the internet is so vast that it is just not financially feasible or effective to use human resources alone," Ho explains. "In such a globalised and internet-reliant world, this is the only way we can work efficiently and effectively."

Taking a Bigger Bite Out of Syndicated Crime

It's no secret that the business of counterfeited and pirated goods is one of the largest underground industries in the world and it's rapidly growing. Given the lucrative profits involved and the ease with which products can be moved in the online/digital space, this underground economy is receiving

billions in investment from transnational criminal enterprises.

To strengthen enforcement actions against copyright pirates and counterfeiters, the Organised and Serious Crimes Ordinance ("OSCO") was amended to capture syndicated piracy and counterfeiting offences. Under OSCO, Customs has more expansive powers to investigate syndicated IPR infringement. Customs can also seek heavier penalties from the court and confiscate crime proceeds derived from piracy and counterfeiting.

Customs also co-operates with the IPR industry and overseas law enforcement agencies and continuously monitors the market to target the organised and transnational nature of IP crime in cyberspace.

To illustrate this point, as well as the sharp teeth that OSCO has given Customs, Ho noted his department's recent work on the Megaupload case, which involved a large-scale transnational cyber-locker syndicate and OSCO-related offences. During a global snap operation led by the US Department of Justice ("US DOJ") and the Federal Bureau of Investigation ("FBI"), Customs was able to seize over HK\$300 million in liquid assets belonging to a hi-tech criminal syndicate, which aided the US DOJ and

FBI in shutting down Megaupload's illegal operations.

Electronic Recordation and Triage Centre

Ho explains that it is essential for the IPIB to collaborate with IPR owners, but some IPR owners are neither located in Hong Kong nor have a representative here. "We realise that sometimes Hong Kong isn't an IPR owner's main market or that their presence in the market is small and for those reasons, an IPR owner may not want to bother coming all the way to Hong Kong or appointing a representative to enforce their IPR. To foster and enhance collaboration with these IPR owners, the IPIB set up the Electronic Recordation and Triage Centre (the "ERTC") to save them money and help them avoid the hassle of travelling," Ho says.

Ho explained that it was also set up because it is quite problematic when an IPR owner does not want to come. When the IPIB takes criminal action, an individual's civil liberties are at stake. "We not only seize goods, we also arrest suspected offenders. When an arrest is made, the offender may be detained for up to 48 hours for the investigation after which they may be prosecuted and end up in jail, which raises very serious human rights issues. Given what's at stake, we are doing all we can to encourage and facilitate IPR owner participation so as to ensure the fairest possible and most efficient treatment to suspects during the criminal justice process," Ho contends.

So how does the Centre work? If an IPR owner is located overseas, after the IPIB identifies what it believes to be counterfeit goods, it contacts the IPR owner. The Centre has installed a high-definition internet television link so if an IPR owner cannot come right away, they can just log on to their computer, wherever they are located, and examine the goods through a video link during the initial investigation phase. Once

they send their genuine goods, the confiscated goods and the genuine goods are compared through the video link so the owner can determine whether the goods are fakes. If the case is urgent, the IP owner can just send over a digital file to us and authorise IPIB to print it out by a 3-dimensional printer and carry out the comparison procedures abroad. "This system gives us the confidence to go out, seize the goods and then arrest the offenders," Ho says.

Customs-Business Partnership in IPR Protection

Since IPIB is reliant on the private sector's help, it set up the Intellectual Property Right Protection Alliance (the "Alliance") in 2004 with the IPR industry to enhance their partnership. Ho explains that the Alliance enables IPIB to better monitor the market and take prompt action against infringers, which leads to better IPR protection in Hong Kong. He also noted that the Alliance provides a forum where both parties can communicate and share intelligence.

Additionally, the IPIB has launched programmes with different sectors within the IPR industry, such as the *E-auctioning with Integrity Scheme* with internet service providers, and the *Jewellery Integrity Campaign* with the jewellery industry. It has also implemented the Fast Action Scheme with trade fair organisers to expedite the handling process for exhibition-related claims. As exhibitions generally only last for one to two days, this Scheme allows the IPIB to more quickly respond on behalf of those who register their protected products before the exhibition. This process eliminates the need to clear the status of IPR owners, which can sometimes take up to two weeks.

Raising Public Awareness

To curb the problem from the demand side, Customs has attached great importance to raising public awareness of IPR protection. Ongoing publicity and

education programmes are organised to shed light on the economic harm these activities cause as well as the health and safety issues that arise when the supply chain is invaded with fake goods.

Significant emphasis is also placed on educating young people to respect IPR and to distance themselves from any form of IPR infringement. The Youth Ambassador Against Internet Piracy Scheme – comprised of local youth organisations and their members – was developed to engage youth in the fight against internet piracy, as well as allow them to cultivate the sense of respect for IPR, explains Ho.

Hong Kong's Significant Achievements and Long-Standing Commitment

On 5 June, the international community gathered at the GACG Awards Ceremony, where the GACG highly commended the IPIB for its long-standing commitment to combating piracy and counterfeiting and presented the IPIB with a GAC Award in the category of National Public Body.

"I am humbled by this recognition. I must hasten to say that this Award is not just Hong Kong Customs alone but belongs to the thousands of passionate IP right owners and international law enforcement colleagues who work hard

to fight IP crimes together with us on a daily basis. The challenges ahead will not be easy and IPIB will continue the innovative efforts to tackle IP crimes which has allowed Hong Kong Customs to accomplish the achievements," Ho said.

GACG presents GAC Awards every year on World Anti-Counterfeiting Day (a day established in 1998 to raise public awareness of the international costs of counterfeiting and piracy) to individuals and organisations that have made outstanding achievements and have 'gone the extra mile' in the battle against the trafficking of counterfeit and pirated goods.

Even though the IPIB has captured the international community's attention and praise for its strategic investigation and enforcement measures and its wide-ranging collaborative efforts, which have enabled it to make significant strides in IPR enforcement, Ho humbly acknowledges the challenges IPIB must overcome – namely, tackling the borderless online and transnational IP crimes; and identifying high-quality fakes and ensuring new products in local markets are genuine. It's Ho's hope that the IPIB will be able to work more closely with the Alliance and the IPR industry to tackle these problems through cooperation and further officer training programmes. ■



“未來的路充滿挑戰，香港海關在這方面的工作已取得一定成果，日後仍會再接再厲，以創新手法打擊知識產權罪行。”



在本年6月5日世界反假冒日(World Anti-Counterfeiting Day)，全球反假冒組織(Global Anti-Counterfeiting Group)高度嘉許香港海關版權及商標調查科，並授予「全球反假冒大獎」(Global Anti-Counterfeiting Award)，以表揚該科在打擊冒牌和盜版的傑出表現。

《香港律師》訪問了香港海關助理關長(情報及調查)何仕景 C.M.S.M.，以了解香港海關的工作和成就，以及科技迅速發展和漸趨普及的電子商貿對海關執法所帶來的挑戰。

香港從殖民地年代開始一直是個自由港，處於亞洲主要轉口港以及中國跳板的戰略性位置。現在每年有超過2.5億噸貨品經香港處理，加上毗鄰珠江三角洲，香港海關意識到保護知識產權的重要性，推行了全面創新的反冒牌和盜版執法措施，獲得國際嘉許。

領導香港海關反冒牌及盜版工作的是助理關長(情報及調查)何仕景C.M.S.M.。何仕景目前負責指揮海關情報和調查工作，當中除了知識產權罪行外，還包括販毒、走私、私煙活動、有組織犯罪及洗黑錢等。

何仕景是一位特許詐騙審查師(CFE)及

特許詐騙審查師學會(ACFE)香港分會的董事委員，亦是英國特許語言學會Chartered Institute of Linguists的會員。他持有法律學士及碩士學位，並在劍橋大學取得應用犯罪學碩士學位。他亦是英格蘭和威爾斯中殿兼香港高等法院大律師，並在2012年獲香港政府頒授香港海關榮譽獎章(CMSM)。

獨特的知識產權執法制度

香港的知識產權執法制度的獨特之處，是由香港海關一個執法機構同時負責調查和檢控本地及跨境侵權活動。

何仕景表示：「版權及商標調查科擁有專責的執法權力，全面保護知識產權，從申訴到冒牌物品被銷毀的整個過程，都由香港海關版權及商標調查科全面負責，大大提升了執法的效率。」

知識產權個案與別不同

何仕景解釋說，打擊侵權罪行有別於海關的其他工作。「大部分海關罪行，例如走私等，大都不會涉及業界。但對於侵權案件，版權及商標調查科和權利人之間的合作卻不可或缺。」

他續稱：「海關檢獲冒牌或盜版貨品後，我們需要權利人協助確認貨物真偽，並需要他們出庭作證。」

科技與法律

要確保法例跟得上科技發展十分困難。何仕景笑言：「創新是好事，但也帶來許多實際問題。」他表示，對等式網絡架構(peer-to-peer network)的發明為用

戶帶來眾多嶄新好處，讓用戶能在很短的時間內直接傳送或分享含大量數據的檔案。雖然此等技術完全合法，卻對知識產權帶來許多負面影響。

「大概十年前，點對點的檔案分享程式在全球興起，很多使用者開始免費觀看和分享電影及其他侵權的內容。香港的電影業蓬勃，這個非法檔案分享模式為本地公司帶來很大損失。」

「鑑於問題嚴重，香港海關與電影業界攜手合作，在2005年4月拘捕了名為「古惑天皇」的互聯網使用者，他在網上張貼了一個種子檔案(Torrent file)，讓其他人透過點對點技術(BitTorrent)從其電腦下載電影。「古惑天皇」因為透過點對點技術在網上發放侵權的電影，觸犯香港版權法而被捕。這宗案件最終被定罪，同時亦引起很大迴響。」

當時，「古惑天皇」相信是全球首個因利用檔案分享技術而違反版權條例被定罪的人。該案件亦引起很多前所未見的法律問題，例如在互聯網上提供數碼複本是否等同《版權條例》所指的發放侵權作品。最終法院作出的裁決及判詞，肯定此舉屬侵權行為，向使用這些平台

的侵權者發出一個強烈的訊息。但何仕景坦言，雖然當初難以預料法庭判決的結果，海關仍然果斷地對案件提出檢控，期望遏止當時盛行的點對點侵權行為。

創新的執法方式

從「古惑天皇」使用點對點技術侵權的案例可見，執法者必須運用創意才可以配合科技的急速發展。何氏解釋，由於知識產權行業以創新為先，侵權者所採用的手法亦層出不窮，他和同事們以創新的手法制定了多樣的執法模式。

去年，版權及商標調查科成立了「科技罪行研究所」(Electronic Crime Investigation Centre, 簡稱ECIC)，研究不法分子如何利用科技在網上犯罪，務求研發新的網絡監察系統來支援執法，並為調查人員提供培訓課程。

何氏表示，版權及商標調查科已制定一套簡稱為「科技打擊科技」的執法策略以對付網絡罪行，例如推行最新研發的「網線新一代」監察系統。這套系統使用網絡搜尋技術，自動偵測和追蹤透過網絡儲存空間(俗稱網盤)分享的侵權檔案，全天候自動監察討論區，搜尋可疑的帖子和檔案分享活動，可疑活動的相關資料會自動傳送給海關人員作進一步調查。何仕景表示，版權及商標調查科亦運用類似的技術搜尋售賣假貨的拍賣網站，以及記錄透過點對點技術分享檔案的侵權行為。

何氏解釋：「因為互聯網發展迅速、規模龐大，單靠人手監察，會消耗極大的資源並降低效率。我們利用這些技術提高了執法效能，在這個全球化和依賴互聯網的時代，我們只有這樣做才可以高效執法。」

嚴厲打擊犯罪集團

眾所周知，製造假貨和盜版產品是全球最大的地下產業之一，而且正在快速增長，該行業利潤豐厚，經營亦相當容



易，產品及營運可在互聯網上進行，吸引很多跨國犯罪集團投資數以億計美元於其中。

為了加強執法打擊侵權和盜版罪行，香港政府修訂了《有組織及嚴重罪行條例》(Organised and Serious Crimes Ordinance, 簡稱OSCO)，賦予海關更大權力去調查及打擊集團式的盜版和假冒行為。法庭可以加重刑罰，將從事盜版和假冒罪行的金錢收益充公。

香港海關亦與知識產權業界及海外執法機關加強合作，密切監察市場，打擊在網絡上進行的有組織及跨國侵權行為。

何仕景提及海關近年處理的「Megaupload」案件，說明海關如何與海外執法機構合作，以及如何利用《有組織及嚴重罪行條例》加強執法。

「Megaupload」案件涉及經營大規模跨國網絡貯存平台的集團，觸犯《有組織及嚴重罪行條例》有關的罪行。這項國際聯合突擊行動由美國司法部和聯邦調查局指揮，香港海關參與其中，成功檢獲該高科技犯罪集團價值3億港元的流動資產，協助美國司法部以及聯邦調查局關閉「Megaupload」的違法網路。

電子備案協調中心

何氏解釋，版權及商標調查科與權利人的合作極為重要，但有些權利人身處海外，沒有本地代表。「我們發現，當香港不是主要市場，或者在香港的營運規模很小的時候，權利人可能不想專程來港或者委派代表處理侵權事宜。為了與這些權利人合作，版權及商標調查科設立了電子備案協調中心(Electronic Recordation and Triage Centre, 簡稱ERTC)，協助他們節省成本，免卻他們長途跋涉來港的麻煩。」

何仕景表示：「我們不只會檢取貨品，亦會逮捕疑犯。採取逮捕行動後，疑犯可被拘留最多48小時進行調查，之後他



們可能會被起訴或被判入獄，當中涉及人權問題。有鑑於此，我們會盡一切努力鼓勵和方便權利人參與，確保疑犯在刑事司法程式中獲得最公平和高效率的對待。」

這個中心如何運作？如果權利人身處海外，當版權及商標調查科查獲相信是侵權的物品後，該中心會聯絡權利人。該中心安裝了高清互聯網電視，即使權利人未能立即來港，不論他們身在何處，都能即時透過互聯網，在初步調查階段以視像審視該物品。當他們送真品過來後，我們會透過視像連結比較真假貨品，讓權利人確定該物品是否假冒。遇到緊急的個案，權利人只須把電子檔案傳送過來，版權及商標調查科會立即以三維立體列印機列印出來，在港進行比較程式。何氏表示：「這個系統讓我們更有信心展開行動、充公貨品並拘捕疑犯。」

海關與業界合作

由於版權及商標調查科的工作依賴業界的協助，香港海關在2004年與知識產權業界成立了保護知識產權大聯盟 (Intellectual Property Right Protection Alliance，簡稱「大聯盟」)，從而鞏固

雙方的合作。何氏解釋，大聯盟讓版權及商標調查科更密切監察市場，及時採取行動打擊侵權行為，從而更加有效地保護知識產權。他指出大聯盟提供了一個討論平台，讓雙方得以開展溝通和交流。

此外，版權及商標調查科亦與知識產權的不同界別展開各種合作計劃，例如與互聯網服務供應商推行「拍賣以誠計劃」，以及與珠寶業界推行的「珠寶玉石誠信計劃」。當局亦與大型展覽會舉辦單位推行「快速行動計劃」，務求加快處理與展覽相關的侵權執法行動。一般的展覽會只舉行一、兩天，透過這個計劃，版權及商標調查科可以在展覽期前已得悉有關產品資料，以便迅速執法。

提升公眾關注

香港海關認為提高知識產權保護意識非常重要，持續舉行公眾宣傳和教育工作，讓大眾意識到侵權活動所帶來的經濟損失，以及所造成的健康和安全問題。

香港海關特別重視教育青少年尊重知識產權，並鼓勵他們遠離任何形式的侵權行為。何氏解釋，由本地青少年組織及其成員發起的《青少年打擊網上盜版



大使》計劃鼓勵青少年打擊網上盜版行為，培養了他們尊重知識產權的意識。

香港海關的主要成果與長遠承諾

每年，全球反假冒組織都在世界反假冒日(在1998年設立，旨在使公眾更加關注冒牌和盜版對全球所帶來的損失)頒發「全球反假冒大獎」，嘉許在打擊冒牌和盜版物品有傑出成就和貢獻的人士和組織。

何仕景說：「獎項不單屬於香港海關，亦屬於每天與我們共同努力打擊相關罪行的眾多知識產權業界人士及各地執法人員。未來的路充滿挑戰，香港海關在這方面的工作已取得一定成果，日後仍會再接再厲，以創新手法打擊知識產權罪行。」

版權及商標調查科獲得國際社會的認同和表揚，肯定了香港海關在知識產權執法上的傑出表現。儘管如此，何仕景仍然謙虛地表示版權及商標調查科將克服重重困難，打擊無國界的網上及跨境知識產權罪行。何仕景希望版權及商標調查科能夠進一步加強與知識產權業界的合作，群策群力迎接未來的挑戰。 ■

