

# **How the Hong Kong Government's Business Guidance Policy on IP Is Developing**

by **Stephen Selby**

## **Introduction**

In April 2009 the European Commission (EC) issued a report entitled '*Making IPR work for SMEs*' – a report from the IPR Expert Group.<sup>1</sup> The report is typical of how around the world new thought is being given to developing innovative intellectual property protection strategies. This new thinking is often driven by a growing realization that for many economies, over 90 per cent of economic activity is in the hands of small and medium enterprises (SMEs), and that the mainstream of 'traditional' approaches to intellectual property protection is not working well for them. The recent financial turmoil and enterprises' limited access to bank finance are some of the issues that have spurred economies to speed up their policy-development in this area.

The EU experts make nine main recommendations:

- At the national level, put intellectual property protection under a single authority.
- Help enforcement authorities to gain a better understanding of SME operations.
- Use the techniques of Intellectual Capital Management (ICM)<sup>2</sup> to help SMEs to manage their IP portfolios better;
- Include enhanced IP enforcement as part of national innovation programmes.
- Co-ordinate between IP services provided by different agencies.
- Promote awareness among consumers of the implications of IP infringement.
- Learn from each-others' best practices and share case studies.
- Promote mediation services to help SME's stay out of the court system initially.
- Promote insurance schemes and mutual aid among SMEs to help defray the cost of IPR enforcement.

This new thinking in the EU resonates well with the line of thinking that we have developed in Hong Kong, China. It also shares many themes in common with the National IP Strategy of the People's Republic of China that was published in 2008.<sup>3</sup> Japan, Australia, Singapore and Chinese Taipei are examples of other APEC Economies that have been developing

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<sup>1</sup> [http://ec.europa.eu/enterprise/enterprise\\_policy/industry/ipr\\_report.htm](http://ec.europa.eu/enterprise/enterprise_policy/industry/ipr_report.htm)

<sup>2</sup> Also known as 'Intellectual Asset Management (IAM)'

new strategies to assist SMEs with their IP problems in the globalized economy.

## **Hong Kong SMEs**

### **SMEs in the economy**

According to Hong Kong's Census and Statistics Department<sup>4</sup>, "Financial services, trading and logistics, tourism, and producer and professional services are the Four Key Industries in the Hong Kong economy. They have been the driving force of Hong Kong's economic growth, providing impetus to growth of other sectors, and creating employment." Hong's GDP at current factor costs in 2007 was HK\$1,552,000 million, of which HK\$925,300 million (59.6%) was contributed by these four industry sectors. The four key industries employed about 48% of Hong Kong's workforce in 2007.

Unlike the 'Four Key Industries', Hong Kong SMEs are a more complex phenomenon. They form the backbone of local retail and other services, notwithstanding that the major industries have the greatest economic clout. At the same time, however, they are closely integrated into industrial production in the Mainland – especially in the Pearl River Delta.

According to a Hong Kong Government Source<sup>5</sup>, "As at March 2008, there were about 265,000 SMEs in Hong Kong. They constituted over 98 per cent of the territory's business units and accounted for about 50 per cent of private sector employment."

### **Existing support for intensive knowledge-based enterprises**

Hong Kong has developed strength in 'creative industries' such as film,

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<sup>3</sup> Compendium of China National Intellectual Property Strategy, Intellectual Property Protection in China, SIPO.gov.cn, June 6, 2008, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=214475&col\\_no=925&dir=200806](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=214475&col_no=925&dir=200806)

Although Hong Kong is a part of the People's Republic of China, the Strategy is not specifically extended to Hong Kong.

<sup>4</sup> [http://www.censtatd.gov.hk/hong\\_kong\\_statistics/four\\_key\\_industries/index.jsp](http://www.censtatd.gov.hk/hong_kong_statistics/four_key_industries/index.jsp)

<sup>5</sup> "Hong Kong: The Facts" – "Trade and Industry" Hong Kong Government Commerce and Economic Development Bureau. <http://www.gov.hk/en/about/abouthk/factsheets/docs/trade&industry.pdf>

design, animation and comics, digital media technology, advertising and architecture. There are some 32,000 creative industry-related establishments employing over 170,000 people and contributing some HK\$60 billion (4%) of Hong Kong's GDP annually.<sup>6</sup>

Hong Kong's Chief Executive chairs a Task Force on Economic Challenges which has recently identified six knowledge-intensive sectors which require particular attention. These comprise testing and certification, medical services, innovation and technology, culture and creative, environmental and educational services. These six industries have been identified as having potential to join the traditional 'four key industries' in terms of importance to Hong Kong's economy. Hong Kong has just established a 'Create Hong Kong' office at a cost of HK\$300 million to provide additional support and co-ordinate government policy and administration in relation to these six industries. The new office will manage funding and provide such one-stop services as fund approvals, marketing and the nurturing of young creative professionals.<sup>7</sup>

Over the past ten years, the Hong Kong Government has invested heavily in support of research, development and the creative industries. A Cyberport and Science and Technology Park have been constructed to provide an environment where hi-tech industries can operate with a high level of logistic support. Both the Cyberport and the Science and Technology Park provide subsidized accommodation of a number of years in a centre with state-of-the art IT support and intellectual property services.

Support funds have also been set up to support research and operations in the Film industry as well as research and development and local technology transfer.

## **Reasons for introducing the ICM model in Hong Kong**

### **Possible gaps in support for innovation**

Notwithstanding the Hong Kong Government's efforts in supporting

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<sup>6</sup> Press Release announcing the establishment of the CcreateHK Office. 1 June 2009.

<sup>7</sup> Hong Kong Budget, 2009-10.

innovation among Hong Kong SMEs, certain gaps are apparent.

The main practical thrust of the earlier support system is aimed principally at —

- Providing reasonable funding support in areas where the private financial sector is less prepared to provide support.
- Identifying and removing bureaucratic obstacles to the operation of creative industries.
- Training up human capital in the creative industries field.
- Assisting with specialized accommodation in Hong Kong's limited accommodation market.

On the other hand, the Hong Kong Government's policies had not been based on a *theoretical structure* for encouraging the constructive use of knowledge resources.

### **IPD's public education program**

Since 1997, Hong Kong's Intellectual Property Department has developed a wide range of marketing and education aimed at raising public awareness of the importance of intellectual property (IP) protection.<sup>8</sup> The program includes both broadly-based promotion such as television advertising and thematic street advertising, and sector-based activities such as talks in secondary schools, participation in exhibitions and seminars for the business sector.

To take account of the degree of integration of Hong Kong SMEs in the economic activity of the Pearl River Delta, the IP Department has carried out a series of seminars for enterprises operating in important economic centers in the Pearl River Region, with the assistance and support of local People's Governments in Guangdong.<sup>9</sup>

### **SME problems**

Ten years' experience of these outreach programs has provided an insight

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<sup>8</sup> [http://www.ipd.gov.hk/eng/promotion\\_edu.htm](http://www.ipd.gov.hk/eng/promotion_edu.htm)

<sup>9</sup> [http://www.ipd.gov.hk/eng/ip\\_cooperation\\_corner.htm](http://www.ipd.gov.hk/eng/ip_cooperation_corner.htm)

into the many problems faced by SMEs in the Region. As our out-reach program is centred on IP protection, it is natural that protection of IP in the region is one of the major issues raised with us by SMEs.

However, the relative strengths and weaknesses of IP protection systems in the Region are only *a part of* the problem. Many of the problems that SMEs encounter originate in the management (or lack of it) of the SMEs themselves. Such problems include –

- A lack of appreciation of what knowledge resources the SMEs should be trying to protect.
- A lack of any knowledge-management framework or strategic thinking.
- Ignorance of risk assessment methodologies.
- A lack of understanding of risk mitigation measures that might be available.
- A general unwillingness on the part of SMEs to invest in management support.
- A tendency to try to address IP infringement problems only after they have occurred, and
- An aversion to litigation or legal remedies

### **Prevention and Cure**

Against this background, Hong Kong's Intellectual Property Department decided to attack the problem from a different angle: "Prevention is Better than Cure". The implications of this change of approach can be summarized as follows, with heavier emphasis being shown by listing closer to the top:

<b>Traditional Approach</b>	<b>Prevention Approach</b>
■ Registered Rights	■ Information Security
■ Copyrights	■ HRM
■ Commercial Secrets	■ Commercial Secrets
■ HRM	■ Copyrights
■ Information Security	■ Registered Rights

In the course of developing this new approach, the Department came to realize the benefit of underpinning program planning with an established theoretical discipline. We thus came to adopt Intellectual Capital Management both as the theoretical base and as the marketing concept.

### **Design parameters of the ICM program**

Following an initial period of familiarization with sources and participation in international fora discussing the development of ICM, the Department developed contacts with the Scottish IAM Centre and studied their experiences.

Although ICM has been implemented in a small number of business organizations in Hong Kong and is taught in some academic institutions, there was insufficient demand to support the development of an ICM support service industry. The realization that there was a market failure in this area spurred the Department to develop a pilot scheme with the aim of raising awareness of ICM as a tool for developing innovation in enterprise, while at the same time spurring a market demand which would serve as an encouragement to develop a local ICM support industry. The Department's programme complements other efforts such as the 'CreateHK Office', rolling out a simple, theoretical management framework that can be adopted by any enterprise, regardless of its size or scope of operations.

The Government's ICM program has been developed taking into account stakeholder values and practical constraints –

- It seeks to provide information to the maximum number of organizations with the minimum amount of financial and staff resources (eight staff members and a budget of about HK\$3 million.)
- Services are provided free of charge.
- It aims at providing maximum convenience to clients in terms of the time investment by clients (generally not more than six hours' direct contact) and provision of services at the client's premises.
- It is a limited program covering approximately 12 months.
- It uncovers strategic options but does not provide strategic or legal advice.

The clientele of the scheme has been mainly targeted to SMEs, given the resource constraints of the scheme. Clients are required to be Hong Kong SMEs (as the scheme is funded by Hong Kong tax-payers' money) and the services can only be delivered within Hong Kong itself.

As performance indicators, the Scheme aims to contact up to 30,000 SMEs and it is hoped that 300 SMEs will complete the program. Those that complete the program will be presented with a 'certificate of participation'. Participating SMEs are encouraged to write their own, simple IC Report.

### **The training**

The first phase of the project involved the training of eight Intellectual Capital Consultants. The consultants had been hired from the local labour market on one-year contracts. They are degree-holders with a financial services background and a good knowledge of local SME operations. They are required to operate with confidence in both English and Chinese and to have good personality for consultancy work.

The Department called for competitive tenders for a training program. The tender was won by the Hong Kong Polytechnic University, who developed and delivered a three week training course including a practicum and assessment. International experts from Sweden and Japan joined local experts

in conducting the training scheme.

## **Execution**

The consultancy service is delivered as follows:

### *Preparation*

- Before we start, we get some background information about the organization.
- If they have publications or a web page, it may be enough.
- Based on the information, we'll prepare for the first meeting

### *First round*

- Our consultant goes to client's office.
- For the first round, we need two to three hours of the client's time.
- We'll discuss a standard worksheet with the client.

### *Preparation for second round:*

- We analyze the information provided in the first round.
- We do a first draft of a value tree to discuss with the client.
- We prepare to discuss weightings and risks with the client.

### *Second Round*

- Takes two to three hours.
- We report to the client on our work.
- We work with the client to decide the weightings.
- We work with the client to analyze the risks.
- We work with the client to find ways to eliminate or minimize risks.

### *Desirable further outcome from the client:*

- To create a written Intellectual Capital Report for internal reference
- To prepare a public Intellectual Capital Statement to show the client's stakeholders
- To look into longer-term professional services to perfect the client's process

The above activities are supported by some documentation, including an introduction to the concepts of ICM<sup>10</sup>, a simple service agreement and a non-disclosure agreement binding the consultants. In the course of preparing the clients to sign these agreements, the Department briefs the client on the nature and purpose of a non-disclosure agreement and protection of private

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<sup>10</sup> [http://www.ipd.gov.hk/eng/ICM/guide\\_icm\\_e.pdf](http://www.ipd.gov.hk/eng/ICM/guide_icm_e.pdf)

personal data. Though not explicitly stated as such, these briefings are an essential part of the educational process for SMEs.

Unlike ‘pure’ ICM consultancy services, the Intellectual Property Department’s scheme includes a strong element of promoting IP management and protection as a tool in risk-mitigation relating to enterprise intellectual capital.

### **Initial Results**

The program was rolled out on 5 March 2009. During and after the roll-out, enterprises have enrolled in response to –

- Workshops
- Public advertising
- Media reports
- Direct introductions.

Since the roll-out (about 4 months), 123 enterprises have joined the scheme and two-thirds of them have completed the process. Five are in the process of preparing IC reports. The size of enterprises serviced under the scheme so far ranges from one person to 6,000 employees<sup>11</sup>. The range of business activities include design, retail, bio-tech, manufacturing, financing, education, hotel, business services etc.

### **Consultant feedback**

The consultants who are delivering the services have valuable experience in delivering services to SMEs in Hong Kong. They remarked that clients were generally responsive (having already signed up to join the scheme.) However securing the time-slots to deliver the services was not always easy.

Generally, clients would nominate a suitable level of staff to interface with the consultants. Sometimes the management took part. Occasionally, however, the level of commitment in terms of rank and status was not satisfactory.

The consultants remarked that in some small start-up enterprises, the general level of understanding of all aspects of business management was weak.

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<sup>11</sup> 6,000 employees is clearly a larger scale than ‘SME’. The scheme has flexibility to provide services to large enterprises where practical.

## **Client feedback**

So far clients have been positive about the scheme. Some complain that the services do not go into sufficient depth (which we regard as a positive reaction.) Some clients would like a greater degree of hand-holding than what our scheme is designed to provide.

There is sometimes a misunderstanding that since the services are provided by the Intellectual Property Department, it must be a form of assistance in advising on individual infringement cases or help in registration of patent or trademark rights. There is also some expectation that consultants would be able to value enterprise knowledge assets in dollar terms – something that the Scheme is not designed to do.

Many clients ask for case studies that they can use for their own reference or to convince senior levels in the company. There is also a demand for examples of IC Reports that have been published. (Quality IC reports in Chinese are not readily available.) Although we hope that many clients will prepare IC Reports, clients frequently respond that they would like to publish a report; but they want the consultants to write it for them.

## **Conclusions**

### **Hong Kong's conclusions**

We have labeled this scheme 'ICM Lite'. It is clearly not intended as a full-blown ICM support service. The fact that without high-pressure marketing (e.g. direct sales and cold-calls) we have already signed up over 120 enterprises in just 4 months leaves us optimistic that we can meet the performance indicators set for the project.

Our scheme complements other efforts of the Government and takes a different approach from other schemes: we have no pre-conceived ideas on what a 'creative industry' is. As far as our scheme is concerned, *a 'creative industry' is any industry, however humble, that the managers choose to make creative.* We believe that ICM disciplines will –

- strengthen the ability of SMEs to identify possible innovative areas

for development,

- provide them with a discipline for making more informed decisions on future directions,
- identify gaps between existing client values and their own knowledge resources,
- identify risks inherent in their enterprise knowledge,
- appreciate better the value of and techniques available for protection of intellectual property, and
- develop strategies that will lead to prevention of intellectual property infringement instead of a belated attempt to remedy it after problems have occurred.

### **Possible application in the APEC economies**

The development of innovative industries needs a policy based in a sound theoretical framework. ICM provides such a framework; but promoting ICM is easier said than done.

Development of innovative products and services within the broader enterprise base does not necessarily rely on developing a pre-conceived list of 'creative industries' to be singled out for special attention. Innovation contains the concept of 'new' meaning that innovation can come from unexpected sectors and take unanticipated forms. Even from anecdote we know that innovation is as likely to come out of a garage as from a high-tech science park.

ICM is neither hard to grasp nor expensive to implement. Our 'ICM Lite' experiment demonstrates that enterprise managers can grasp the basic concepts easily. Typically after a half-hour's presentation, listeners are not asking "what is it?" but thinking "I can imagine what I'm going to use it for!" This easy, hands-on approach is proving effective in promoting innovation among smaller enterprises.

Developing a program which allows enterprises to 'play with' ICM, rather than listening to lectures or reading papers about it, will help ensure that enterprises develop a sense of ownership over the key concepts. 'ICM Lite' helps develop a feed-back between the client and service-provider, which will ensure that techniques can develop to meet user needs and that concepts

remain relevant.

While development of legislation and systems to enforcement IP effectively is vital, it is also expensive and time-consuming. Lesser-developed economies need to consider short-term strategies that provide good interim results while continuing their efforts to develop their economies' legal and enforcement systems. Training SMEs in ICM is a good interim measure.