

CHAPTER 6

Customs and Excise Department

<h3>Management of intellectual property rights enforcement work</h3>

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MANAGEMENT OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT WORK

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MANAGEMENT OF INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT WORK

Executive Summary

1. The Customs and Excise Department (C&ED) is responsible for the enforcement work against intellectual property rights infringement. The work includes conducting investigations and taking enforcement actions against infringement of intellectual property rights; detaining goods at importation for the purpose of enforcing boundary measures; arranging and supervising the examination and identification of seizures by trademark and copyright owners; conducting inspections on licensed optical disc mastering and replication factories to guard against manufacturing of pirated optical discs and stampers; controlling the import and export of optical disc mastering and replication equipment; and applying to the court for the confiscation of financial proceeds obtained from intellectual property rights infringement crimes. The work is performed mainly by the C&ED's Intellectual Property Investigation Bureau (IPIB), which had an establishment of 233 staff as at 31 August 2012. The Audit Commission (Audit) has recently conducted a review of the C&ED's management of intellectual property rights enforcement work.

Investigation of infringements

2. *Use of Case Processing System.* The C&ED uses a computerised Case Processing System (CAPS) to support the processing of investigation cases. According to the IPIB Work Manual, the case records in the CAPS database should be updated at least bi-monthly. However, for 1,371 of the 12,045 outstanding cases as at 30 April 2012, the CAPS records had not been updated for 7.7 months on average and according to the system, over 50% of the outstanding cases had been outstanding for over five years. In addition, for the majority of the outstanding cases recorded in the CAPS database, details of investigation progress and results were not recorded. The lack of timely updates and maintenance of the records has diminished the usefulness of CAPS as an effective management tool.

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3. ***Conduct and monitoring of investigation of intellectual property rights infringement.*** The Head of the IPIB Operations Group is responsible for reviewing all suspected intellectual property rights infringement cases to determine whether investigation is required. Audit examination of 70 outstanding infringement cases revealed that five had not been investigated without documented justification or approval. Of the 65 cases being investigated: (a) for 29 cases, progress reports were not prepared after conducting investigation work, contrary to the requirement of the IPIB Work Manual; (b) for 15 cases without follow-up action taken for two years or more, there was no record to show that the supervisory officers concerned had given any directives as to whether these cases should still be pursued; and (c) for 18 cases, although the Head of the IPIB had given approval to close the cases, action to update the CAPS database had not been taken up to 30 April 2012 (after the lapse of about seven years on average).

4. ***Spot checks on optical disc factories.*** Since 1998, the IPIB has conducted surprise spot checks on optical disc factories to guard against manufacturing of pirated optical discs and stampers. According to the IPIB, because of its sustained and rigorous enforcement action, there have been no signs of any significant pirated optical disc manufacturing taking place locally in recent years. With the rapid advancement in the Internet and other technologies, the mode and methods used in pirating literary and artistic works have changed. However, the IPIB has continued to conduct around 300 spot checks on optical disc factories every year. With the decrease in number of optical disc factories in recent years, the average number of spot checks per factory has increased from 3 in 1999 to 12 (planned) in 2012.

Management of seized articles

5. In conducting an enforcement operation, IPIB staff have the power to seize articles suspected to be related to intellectual property rights infringement. According to the IPIB Work Manual, after obtaining the court judgement that a case involves intellectual property rights infringement, an application to the court for a confiscation order should be made to forfeit the seized articles. After a confiscation order has been obtained, an application should be made to the C&ED Supplies Section for a destruction certificate to destroy the seized articles.

6. As at 1 April 2012, there were 625 concluded court cases pending the IPIB follow-up action on the seized infringing articles. Audit examination revealed delays

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of the IPIB in obtaining confiscation orders and destruction certificates. For example, for 144 cases, confiscation orders had not been obtained after a lapse of more than one year since obtaining the court judgement. In addition, for 28 cases with confiscation orders obtained in 2010 or earlier, destruction certificates had not been obtained.

Combating Internet piracy

7. With the rapid advancement in the Internet technology, different software/technologies and websites are available for Internet intellectual property rights infringers to share/distribute or trade infringing materials over the Internet. In April 2007, the IPIB developed a tailor-made Internet monitoring system to combat illegal file sharing activities on the Internet, with focus placed on the predominant file sharing software being used at the time (i.e. BitTorrent). The system has since been used to detect infringing activities on peer-to-peer file sharing networks created using BitTorrent. Audit notes that, apart from BitTorrent, there are other software/technologies commonly used for file sharing. However, the IPIB Internet monitoring system can only monitor BitTorrent networks at present. The IPIB needs to enhance the system or develop appropriate technologies and countermeasures to combat suspected Internet infringing activities using up-to-date software/technologies.

Audit recommendations

8. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner of Customs and Excise should:**

Investigation of infringements

- (a) **take measures to ensure that IPIB staff properly maintain the CAPS database for effective monitoring and control of investigation cases;**
- (b) **require the IPIB to:**
 - (i) **take measures to ensure that investigation progress is closely monitored by supervisory officers, and records of their monitoring work are properly kept;**

Executive Summary

- (ii) **review the 15 long outstanding cases in paragraph 3 above and other similar cases to determine whether further investigation is warranted and take appropriate action accordingly;**
- (iii) **take prompt action to update the CAPS database in respect of the status of the 18 cases in paragraph 3 above, and identify any other similar cases in the CAPS database for necessary follow-up action; and**
- (iv) **review the overall extent of spot checks on optical disc factories taking into account changed circumstances such as the reduced number of such factories, with a view to enhancing cost-effectiveness;**

Management of seized articles

- (c) **review the cases of delays in obtaining confiscation orders and destruction certificates to identify areas requiring improvement;**
- (d) **based on the review results, implement measures to ensure that the officers concerned take prompt actions to obtain confiscation orders and destruction certificates; and**

Combating Internet piracy

- (e) **periodically review and explore the feasibility of enhancing the IPIB Internet monitoring system or developing appropriate technologies and countermeasures to combat piracy activities on the Internet using up-to-date software/technologies.**

Response from the Administration

9. The Administration agrees with the audit recommendations, and has undertaken to continue protecting intellectual property rights through legislation, law enforcement, public education and cooperation with stakeholders.

PART 1: INTRODUCTION

1.1 This PART describes the background to the audit and outlines the audit objectives and scope.

Background

1.2 According to the World Intellectual Property Organization of the United Nations, intellectual property refers to creations of the mind and is divided into two categories:

- (a) industrial property, which includes inventions (patents), trademarks, industrial designs and geographic indications of source; and
- (b) copyright, which includes literary and artistic works, such as novels, poems, plays, films, musical works, drawings, paintings, photographs, sculptures and architectural designs.

1.3 Protection of intellectual property rights protects creativity. The efforts of writers, artists, designers, software programmers, inventors and other talents need to be protected in order to create an environment where creativity can flourish and hard work can be rewarded.

1.4 The Commerce and Economic Development Bureau assumes policy responsibility for intellectual property rights within Hong Kong. The Customs and Excise Department (C&ED) is responsible for enforcing the criminal aspects of intellectual property rights infringement (Note 1).

Note 1: *The Intellectual Property Department is responsible for: (a) advising the Secretary for Commerce and Economic Development on policies and legislation to protect intellectual property rights; (b) operating the Trademarks, Patents, Registered Designs and Copyright Licensing Bodies Registries; and (c) promoting intellectual property rights protection through public education. The scope of this review does not cover the work of the Department.*

Introduction

1.5 In a report released in May 2012 by the Office of the United States Trade Representative, Hong Kong was commended for its effective enforcement against intellectual property rights infringement. The report found that the C&ED had taken a wide ranging set of actions, leading to significant advances in limiting the availability of pirated and counterfeit products in market places.

Intellectual Property Investigation Bureau

1.6 The C&ED's enforcement work for protecting intellectual property rights is performed mainly by its Intellectual Property Investigation Bureau (IPIB). The IPIB's responsibilities include:

- (a) conducting investigations and taking enforcement actions against persons suspected of committing offences relating to copyright infringement under the Copyright Ordinance (Cap. 528) and the Prevention of Copyright Piracy Ordinance (Cap. 544), and forgery of trademarks and false trade descriptions under the Trade Descriptions Ordinance (Cap. 362);
- (b) detaining goods at importation for the purpose of enforcing boundary measures;
- (c) arranging and supervising the examination and identification of seizures by trademark and copyright owners;
- (d) conducting inspections on licensed optical disc mastering and replication factories to guard against manufacturing of pirated optical discs and stampers (the master discs);
- (e) controlling the import and export of optical disc mastering and replication equipment; and
- (f) applying to the court for the confiscation of financial proceeds obtained from intellectual property rights infringement crimes.

Organisation and resources

1.7 The IPIB, headed by a Senior Superintendent of Customs and Excise, is composed of the Operations Group and the Administration and Support Group. There are three divisions under each of the two Groups. An organisation chart of the IPIB is at Appendix A. As at 31 August 2012, the IPIB had an establishment of 233 staff, comprising 217 disciplined and 16 civilian staff. In 2011-12, the C&ED expenditure on intellectual property rights protection was \$95 million.

Procedural guidelines

1.8 IPIB staff are required to follow the policies and guidelines promulgated in the Customs and Excise Service Standing Orders (Note 2) and the IPIB Work Manual in performing their duties. The Manual includes the procedures for handling various offences and processing seizures of pirated and counterfeit goods.

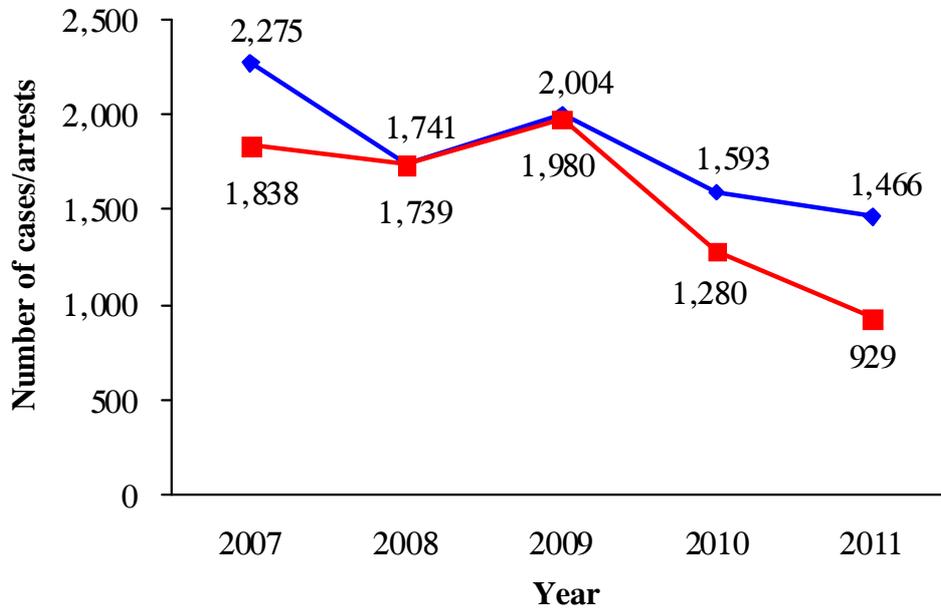
Investigations, seizures and arrests

1.9 In 2011, the IPIB processed 1,466 new investigation cases, arrested 929 persons and seized pirated and counterfeit goods worth \$112 million. Figures 1 and 2 show the IPIB enforcement statistics for the past five years.

Note 2: *The Customs and Excise Service Standing Orders are made by the Commissioner of Customs and Excise under the authority of section 20 of the Customs and Excise Service Ordinance (Cap. 342). The Standing Orders convey to C&ED staff the basic principles and policy guidelines in connection with the administration and operational matters of the Customs and Excise Service. They are intended to be directives of a permanent nature.*

Figure 1

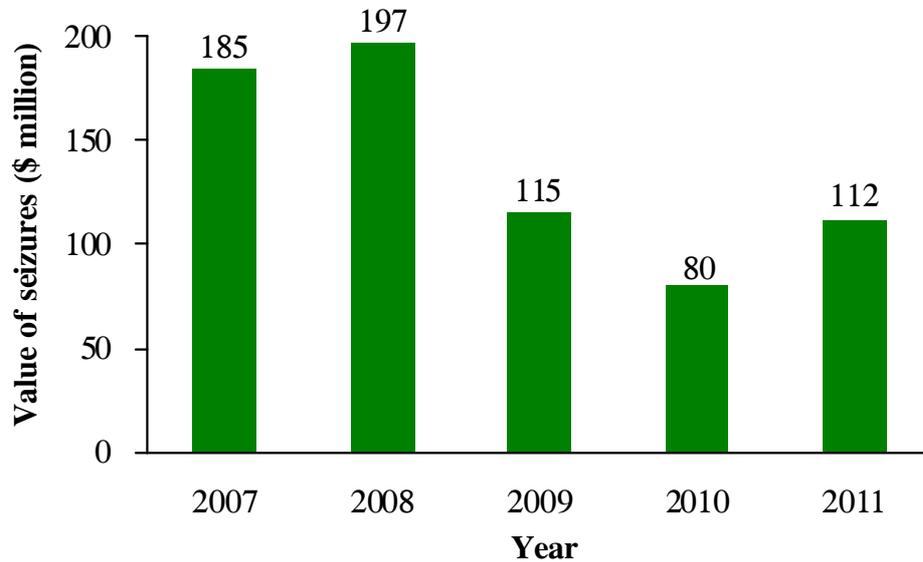
**IPIB investigation and arrest statistics
(2007 to 2011)**



Legend: ◆ Number of new investigation cases processed
 ■ Number of persons arrested

Source: *IPIB records*

Figure 2

**IPIB seizure statistics
(2007 to 2011)**

Source: IPIB records

Audit review

1.10 The Audit Commission (Audit) has recently conducted a review of the C&ED's management of intellectual property rights enforcement work. The review has focused on the work of the IPIB in the following areas:

- (a) investigation of infringements (PART 2);
- (b) management of seized articles (PART 3);
- (c) combating Internet piracy (PART 4); and
- (d) strategic planning and performance measurement (PART 5).

Audit has found room for improvement in the above areas and has made a number of recommendations to address the issues.

Introduction

General response from the Administration

1.11 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that the audit findings will help the management of intellectual property rights enforcement work in a substantial way.

1.12 The Secretary for Commerce and Economic Development welcomes the audit review and notes that the Commissioner of Customs and Excise has accepted all the recommendations for following up in earnest. He has said that the Administration will continue to protect intellectual property rights through legislation, law enforcement, public education and cooperation with stakeholders.

Acknowledgement

1.13 Audit would like to acknowledge with gratitude the full cooperation of the staff of the C&ED during the course of the audit review.

PART 2: INVESTIGATION OF INFRINGEMENTS

2.1 This PART examines the following issues relating to the investigation of intellectual property rights infringements:

- (a) use of Case Processing System (paras. 2.2 to 2.10);
- (b) conduct of investigation work (paras. 2.11 to 2.15);
- (c) monitoring of investigation progress (paras. 2.16 to 2.21); and
- (d) spot checks on optical disc factories (paras. 2.22 to 2.28).

Use of Case Processing System

2.2 Before December 2001, the C&ED relied largely on a manual system to process investigation cases. In December 2001, the C&ED implemented a computerised Case Processing System (CAPS) to support the processing of investigation cases. The main functions supported by CAPS include information reporting, investigation processing, case processing, prosecution and management of seized articles.

2.3 As the support service for some major hardware components of CAPS would cease by 2013, in April 2011 the C&ED obtained funding of \$45.7 million to implement a replacement system by June 2013. According to the C&ED, the replacement system will provide functional enhancements to bring about benefits in case processing in various aspects, including the incorporation of features to facilitate data input, case monitoring and control, seizure storage and disposal.

2.4 Audit examination revealed that the IPiB did not properly maintain the CAPS database for effective monitoring and control of investigation cases. Details are in paragraphs 2.5 to 2.8.

Investigation of infringements

CAPS bi-monthly updating requirement not always followed

2.5 According to the IPIB Work Manual, the case records in the CAPS database should be updated at least bi-monthly. As at 30 April 2012, according to the CAPS database, there were 12,045 outstanding cases under investigation by the IPIB. In reviewing the last update dates of these 12,045 cases, Audit found that the bi-monthly updating requirement had not been followed for 1,371 (11%) cases. As at 30 April 2012, the CAPS records of these 1,371 cases had not been updated for 7.7 months on average.

Details of investigation progress not always input

2.6 Audit also found that although the case officers of 746 (6%) outstanding cases had input details of the investigation progress and results into the CAPS database for management review, only the words “in progress” had been input for the majority (i.e. 11,299 (94%) cases).

Long outstanding cases

2.7 Audit conducted an ageing analysis of the 11,299 “in progress” cases and found that most of them had been outstanding for years. In particular, 6,396 cases had been outstanding for over five years (see Table 1). These long outstanding cases warrant management attention. However, the lack of details in the CAPS database does not facilitate the monitoring of these cases.

Table 1

**Ageing analysis of 11,299 outstanding investigation cases
(30 April 2012)**

Case outstanding period (Year)	Number of cases
1 or less	787 (7%)
Over 1 to 2	953 (8%)
Over 2 to 3	1,145 (10%)
Over 3 to 5	2,018 (18%)
Over 5	6,396 (57%)
Total	11,299 (100%)

Source: Audit analysis of IPIB records

2.8 Audit notes that one prime objective of implementing CAPS in 2001 was to provide an efficient and effective management tool for the monitoring and control of investigation cases. However, the audit findings in paragraphs 2.5 to 2.7 suggest that the IPIB did not properly maintain the CAPS database for effective monitoring and control of investigation cases. In Audit’s view, the IPIB needs to take measures to ensure that IPIB staff make the best use of management tools available, particularly in the new CAPS to be rolled out in 2013 (see para. 2.3).

Audit recommendations

2.9 **Audit has recommended that the Commissioner of Customs and Excise should take measures to ensure that IPIB staff properly maintain the CAPS database for effective monitoring and control of investigation cases, including establishing controls to ensure that IPIB staff:**

Investigation of infringements

- (a) **comply with the requirement of the IPIB Work Manual to update the case records in the CAPS database at least bi-monthly;**
- (b) **input key information on the investigation progress and results of individual cases into the CAPS database for management review;**
- (c) **review the long outstanding cases in the CAPS database and take expeditious action to close those for which no further investigation is required; and**
- (d) **regularly conduct ageing analyses of outstanding cases in the CAPS database for case monitoring and control.**

Response from the Administration

2.10 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) all relevant personnel have been reminded to strictly comply with the CAPS bi-monthly updating requirement and record key investigation findings in CAPS, with system enhancements being introduced in tandem. Additional tools will be made available in the new CAPS to be rolled out in 2013 to keep track of the situation and to tighten up the control; and
- (b) a committee has been set up by the IPIB since April 2012 to expedite the closing of those long outstanding cases that do not warrant further investigation and to analyse the age profile of cases in hand.

Conduct of investigation work

2.11 The Head of the IPIB Operations Group is responsible for reviewing all suspected intellectual property rights infringement cases to determine whether investigation is required. If a case requires investigation, he will assign it to one of the five investigation divisions (see Appendix A) for conducting investigation work. Where further investigation is not required, the case officer should seek approval from the Head of the IPIB to close the case.

2.12 Audit selected 70 outstanding cases (Note 3) for examination. The audit findings on the conduct of investigation work are as follows:

- (a) ***Outstanding investigation cases.*** For 65 cases, the IPIB commenced investigation work (e.g. conducting surveillance/survey visits) within a month after receiving intelligence about the suspected infringement activities; and
- (b) ***Uninvestigated cases.*** For the remaining five cases, the IPIB had not investigated the suspected infringement activities. There was no documented justification or approval for not conducting investigation work. In August 2012, the IPIB informed Audit that the case officers had considered the cases as not warranting investigation but had not sought approval to close them due to other priority work in hand.

2.13 As mentioned in paragraph 2.11, cases requiring investigation are assigned to investigation divisions for conducting investigation work. Audit is however concerned that for the five uninvestigated cases, there was no documentary evidence indicating that the relevant investigation divisions had obtained approval for not conducting investigation work. In Audit's view, the IPIB needs to tighten up the controls in this regard.

Note 3: *The 70 cases were still recorded as "in progress" cases as at 30 April 2012 in the CAPS database. The cases were selected from different investigation divisions of the IPIB in proportion to the number of cases they each processed.*

Audit recommendation

2.14 **Audit has *recommended* that the Commissioner of Customs and Excise should require the IPIB to tighten up controls over the conduct of investigation work by IPIB investigation divisions.** In particular, where a case officer proposes not to conduct investigation work on a case, he should be required to document the justifications and seek approval within a specified period after receiving the case assignment, and then close the case promptly.

Response from the Administration

2.15 The Commissioner of Customs and Excise agrees with the audit recommendation. He has said that all relevant personnel have been asked to adopt the recommended practice, and the IPIB Work Manual will be revised accordingly. Moreover, the new CAPS will provide features to monitor and control progress of investigations.

Monitoring of investigation progress

2.16 According to the IPIB Work Manual, case officers should report progress in a standard form, providing information including case status and details of investigation conducted. Supervisory officers are required to closely monitor the progress of investigation action under their purview.

2.17 For the 65 outstanding investigation cases (see para. 2.12(a)), Audit found room for improvement in the supervisory officers' monitoring of the investigation progress. Details are in paragraphs 2.18 and 2.19.

Review of investigation progress reports

2.18 For 29 (45%) of the 65 cases, the case officers did not prepare progress reports after conducting investigation work. There was no record to show that the relevant supervisory officers had raised queries in this regard. For 4 (6%) cases, the relevant supervisory officers had not initialled the progress reports. It was unclear whether they had reviewed the progress of these cases.

Monitoring of follow-up actions

2.19 Audit examination of the 65 outstanding investigation cases also revealed room for improvement in the IPIB's monitoring of follow-up actions:

- (a) ***Cases without follow-up action.*** Up to 30 April 2012, the case officers of 15 cases had taken no further action for two years or more (about six years on average) since the last investigation (e.g. surveillance/survey) action which produced no fruitful results. These cases were continuously reported as "in progress" in the CAPS database. For 2 of the 15 cases, the trademark owners had in fact informed the IPIB that there had been no infringements based on the last investigation results. Throughout the long reporting periods, there was no record to show that the supervisory officers concerned had given any directives as to whether these cases should still be pursued;

Investigation of infringements

- (b) ***Instruction from Head of IPIB not promptly implemented.*** For another 18 cases, the Head of the IPIB had given approval to close the cases. However, up to 30 April 2012 (after the lapse of about seven years on average), action to update the CAPS database had not yet been taken. There was no record to show that the supervisory officers concerned had monitored the situation; and
- (c) ***Further investigation of a closed case.*** In one of the 18 cases in (b) above, after a series of investigation actions in 1996 that revealed no irregularities, the Head of the IPIB instructed that the case should be closed. In January 2000, further investigation work was carried out by the team responsible but no irregularities were found. There was no documented justification or approval for the further work. Since the implementation of CAPS in 2001, the case had been recorded as a case in progress. Subsequent to Audit enquiry made in May 2012, the case was closed.

Audit recommendations

2.20 **Audit has recommended that the Commissioner of Customs and Excise should require the IPIB to:**

- (a) **take measures to ensure that investigation progress is closely monitored by supervisory officers, and records of their monitoring work are properly kept;**
- (b) **review the 15 long outstanding investigation cases identified by Audit in paragraph 2.19(a) and other similar cases to determine whether further investigation is warranted and take appropriate action accordingly;**
- (c) **take prompt action to update the CAPS database in respect of the status of the 18 cases reported by Audit in paragraph 2.19(b), and identify any other similar cases in the CAPS database for necessary follow-up action; and**
- (d) **review the case in paragraph 2.19(c) to determine whether there is weakness in the control over further investigation of closed cases and implement improvement measures as appropriate.**

Response from the Administration

2.21 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) all relevant personnel have been asked to strictly comply with the requirement of reporting progress in a standard form and recording supervisory oversight. Features will be incorporated into the new CAPS to be rolled out in 2013 for this purpose. Besides, progress of individual cases is gauged through daily debriefings and/or regular meetings between the officer in charge and his/her supervisor, as a means to supplement the investigation progress reports;
- (b) since the IPIB has gone through the 15 cases in paragraph 2.19(a) and is satisfied that no further investigation is warranted, they have been closed and the CAPS database updated. Also, the 18 cases in paragraph 2.19(b) have been closed. An exercise is being carried out to identify and deal with other similar cases should they arise; and
- (c) the case in paragraph 2.19(c) is an isolated incident that does not carry any systemic implications. The new CAPS and the review being conducted by the IPIB should be able to prevent recurrence of similar events.

Spot checks on optical disc factories

2.22 In 1998, to tackle optical disc piracy activities, the Government introduced a licensing system for optical disc manufacturers. As part of the licensing control, the IPIB conducts surprise spot checks on optical disc factories to guard against manufacturing of pirated optical discs and stampers.

2.23 Since the introduction of the licensing control in 1998, the IPIB has deployed eight officers on a full-time basis to conduct around 300 spot checks on optical disc factories every year. With the decrease in number of optical disc factories in recent years, the average number of spot checks per factory has increased significantly. Table 2 shows the details.

Table 2
Spot checks on optical disc factories
(1999, 2011 and 2012)

Year	Number of factories	Number of spot checks	Average number of spot checks per factory
	(a)	(b)	(c) = $\frac{(b)}{(a)}$
1999 (Note 1)	98	303	3
2011	41	304	7
2012	26 (June 2012)	300 (Planned — Note 2)	12 (Planned)

Source: Audit analysis of IPIB records

Note 1: 1999 was the first full year after the introduction of the licensing system for optical disc manufacturers.

Note 2: Up to 30 June 2012, the IPIB had conducted 151 spot checks and found no irregularity.

Overall extent of checks

2.24 According to the IPIB, because of its sustained and rigorous enforcement action, there have been no signs of any significant pirated optical disc manufacturing taking place locally in recent years. With the rapid advancement in the Internet and other technologies, the mode and methods used in pirating literary and artistic works have changed. However, the IPIB has continued to conduct around 300 spot checks on optical disc factories every year. As shown in Table 2, in 2012 the IPIB plans to conduct an average of 12 spot checks on each factory (i.e. once a month), a three-fold increase over the average of 3 spot checks (i.e. once every four months) in 1999 when the infringement problem was more serious. In Audit's view, the IPIB needs to review the overall extent of spot checks, paying due regard to cost-effectiveness.

Conducting checks based on risk levels of individual factories

2.25 The IPIB classifies all optical disc factories into three risk levels, namely high, medium and low risk. Risk assessment is made annually based on a number of factors. According to the IPIB, its staff should conduct more frequent spot checks on higher risk factories. However, Audit examination of the spot checks conducted in the first half of 2012 revealed that spot checks were not conducted in accordance with the risk levels of individual factories. Table 3 shows the details.

Table 3

**Spot checks by risk levels of factories
(January to June 2012)**

Number of spot checks	Number of factories			
	High risk (a)	Medium risk (b)	Low risk (c)	Total (d) = (a) + (b) + (c)
1	—	—	1	1
4	—	—	2	2
5	—	—	2	2
6	—	2	13	15
7	—	—	6	
Total	—	2	24	26

Source: Audit analysis of IPIB records

2.26 Table 3 shows that although 24 factories were classified as low risk, one to seven spot checks were conducted in six months' time. In particular, 19 low risk factories were subject to the same or even higher frequency of spot checks than the two medium risk factories. In Audit's view, the IPIB needs to ensure that spot checks are conducted in accordance with the risk levels of individual factories.

Audit recommendations

2.27 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **review the overall extent of spot checks on optical disc factories taking into account changed circumstances such as the reduced number of such factories, with a view to enhancing cost-effectiveness; and**
- (b) **take measures to ensure that IPIB staff conduct spot checks on optical disc factories in accordance with the risk levels of individual factories.**

Response from the Administration

2.28 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that the IPIB will examine the frequency and methodology of its current spot checking regime. Due to a dwindling number of licensed optical disc manufacturers, manpower in the IPIB's Optical Disc Licence Division has been deployed to undertake other jobs related to intellectual property rights protection on a need basis.

PART 3: MANAGEMENT OF SEIZED ARTICLES

3.1 This PART examines the management of seized articles. The following issues are discussed:

- (a) storage of seized articles (paras. 3.4 to 3.11);
- (b) store inspections (paras. 3.12 to 3.16); and
- (c) forfeiture and destruction of seized articles (paras. 3.17 to 3.24).

Procedures for handling seized articles

3.2 In conducting an enforcement operation, IPIB staff have the power to seize articles suspected to be related to intellectual property rights infringement. The Customs and Excise Service Standing Orders and the IPIB Work Manual have promulgated procedures for handling seized articles. In seizing articles at the scene of operation, IPIB staff will record details of the seizures. The seized articles will be packed into boxes, which will then be labelled and sealed. The sealed boxes will be deposited into IPIB stores for further action. A flowchart showing the key procedures is at Appendix B.

3.3 Audit examination of the IPIB's management of seized articles revealed areas for improvement. Details are in paragraphs 3.4 to 3.24.

Storage of seized articles

3.4 According to the IPIB Work Manual, seized articles should be stored in one of the three IPIB exhibit stores (Note 4 — see Photograph 1). However, they may also be stored initially in one of the 16 temporary stores (Note 5), so as to facilitate case processing and examination by the trademark or copyright owner to identify the infringing articles.

Note 4: *The three exhibit stores occupy a total floor area of 7,500 square feet.*

Note 5: *The 16 temporary stores occupy a total floor area of 7,700 square feet.*

Photograph 1

The largest IPIB exhibit store



Source: IPIB records

- 3.5 The IPIB Work Manual has laid down the following requirements:
- (a) details of seized articles including their locations should be recorded in the CAPS database, which should be updated to record the movements of the articles; and
 - (b) articles in a temporary store should be transferred to an exhibit store within two months from the date of seizure or within one week after the trademark or copyright owner has examined and identified them, whichever period is shorter.

Maintaining proper store records

3.6 Audit found that, according to the CAPS database, a vessel of over 100 tonnes seized by the IPIB in 1998 was still being kept in the Government Dockyard in Stonecutters Island as at 1 April 2012. Upon enquiry, the IPIB informed Audit that:

Management of seized articles

- (a) the vessel had been returned to the owner, after the conclusion of the case in 1998;
- (b) in 2001 when CAPS was implemented, the case officer recorded in the CAPS database that the vessel was being kept by the IPIB. The record had not been revised since; and
- (c) in April 2012, approval to close the case was sought and given.

3.7 As mentioned in paragraph 2.4, Audit examination revealed that the IPIB did not properly maintain the CAPS database for effective monitoring and control of investigation cases. The above case suggested that there might also be room for improvement in the use of CAPS for managing seized articles. In late September 2012, the C&ED informed Audit that the case was an isolated incident that did not carry any systemic implications. All relevant personnel had been reminded to update store records promptly, while CAPS had been enhanced to tighten up control.

Proper use of temporary stores

3.8 According to the IPIB Work Manual, IPIB staff can only store seized articles in temporary stores for two months or less (see para. 3.5(b)). However, this requirement had not always been complied with, as revealed by analysing the duration of storage of seized articles in temporary stores for the year ended 31 May 2012. Table 4 shows the details.

Table 4

**Storage of seized articles in temporary stores
in the year ended 31 May 2012**

Duration of storage (Note) (Month)	Number of cases
2 or less	532 (86%)
Over 2 to 4	55 (9%)
Over 4 to 6	18 (3%)
Over 6	14 (2%)
Total	619 (100%)

} 87 (14%)

Source: Audit analysis of IPIB records

Note: The duration is counted from the date of seizure to the date the seized articles were transferred to an exhibit store, or to 31 May 2012 for cases with seized articles still stored in temporary stores as at that date.

3.9 As shown in Table 4, in 87 (14%) of the total 619 cases, the seized articles had been stored in temporary stores for over two months, contrary to the requirements of the IPIB Work Manual (see para. 3.5(b)). In Audit's view, the IPIB needs to ensure the proper use of temporary stores.

Audit recommendations

3.10 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **ensure that IPIB staff make effective use of CAPS for managing seized articles;**

Management of seized articles

- (b) **remind IPIB staff to comply with the requirements of the IPIB Work Manual on the use of temporary stores for storing seized articles; and**
- (c) **put in place procedures to monitor the IPIB's use of temporary stores, such as requiring IPIB staff to identify and report, on a regular basis, cases of seized articles overdue for transfer to exhibit stores.**

Response from the Administration

3.11 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) all relevant personnel have been asked to strictly comply with the requirements on the use and management of temporary stores; and
- (b) a monthly report will be generated to allow supervisors to keep a closer watch on the duration of articles stored in temporary stores and their usage pattern.

Store inspections

3.12 In November 2009, the IPIB promulgated a set of guidelines on the inspections of stores, as summarised below:

- (a) *Exhibit stores.* A full inspection should be conducted every 18 months. Quarterly and annual inspections (covering at least 3% of store items) should also be conducted by supervisory officers; and
- (b) *Temporary stores.* Monthly inspections should be conducted. Quarterly and annual inspections should also be conducted by supervisory officers.

Number of inspections fell short of the requirements

3.13 According to IPIB records, no discrepancy was found in all the inspections of the three exhibit stores and the 16 temporary stores conducted during the 31-month period from November 2009 to May 2012. However, Audit found that the number of inspections of the 16 temporary stores fell short of the requirements stipulated in the IPIB's store inspection guidelines (see Table 5).

Management of seized articles

Table 5

Inspections of temporary stores (November 2009 to May 2012)

Store	Number of inspections conducted (Note)			
	Monthly inspections	Quarterly inspections	Annual inspections	Total
A	30	3	—	33
B	13	3	1	17
C	7	3	1	11
D	2	1	1	4
E	1	10	1	12
F	1	3	—	4
G	1	3	—	4
H	1	1	—	2
I	—	10	1	11
J	—	10	1	11
K	—	10	1	11
L	—	10	—	10
M	—	10	—	10
N	—	10	—	10
O	—	10	—	10
P	—	4	—	4
Total	56	101	7	164

 No inspection conducted or the number of inspections fell short of the requirements

Source: Audit analysis of IPIB records

Note: Over the 31-month period, 31 monthly inspections, 10 quarterly inspections and 2 annual inspections should have been conducted for each store in accordance with the IPIB's store inspection guidelines (see para. 3.12(b)).

Inadequate documentation of inspections

3.14 Audit also found that the documentation of the inspections of the temporary stores was inadequate, as follows:

- (a) for 146 of the total 164 inspections, the items checked were not recorded; and
- (b) for 80 of the 101 quarterly inspections, the inspection dates were not recorded.

Audit notes that, for temporary stores, the IPIB's store inspection guidelines do not specify the extent of checks or documentation required. In Audit's view, such additional guidance will help ensure that the inspections are conducted properly.

Audit recommendations

3.15 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **remind the IPIB staff concerned of the need to conduct inspections of temporary stores in compliance with the IPIB's store inspection guidelines and establish procedures to monitor their compliance; and**
- (b) **improve the IPIB's store inspection guidelines by specifying the required extent of checks of temporary stores and the documentation requirements (e.g. the items checked and the inspection dates).**

Response from the Administration

3.16 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) all relevant personnel have been asked to strictly comply with the requirements on temporary store inspection, and procedures will be drawn up to ensure on-going compliance in this respect; and
- (b) the IPIB will review the inspection guidelines and make improvement thereon where appropriate.

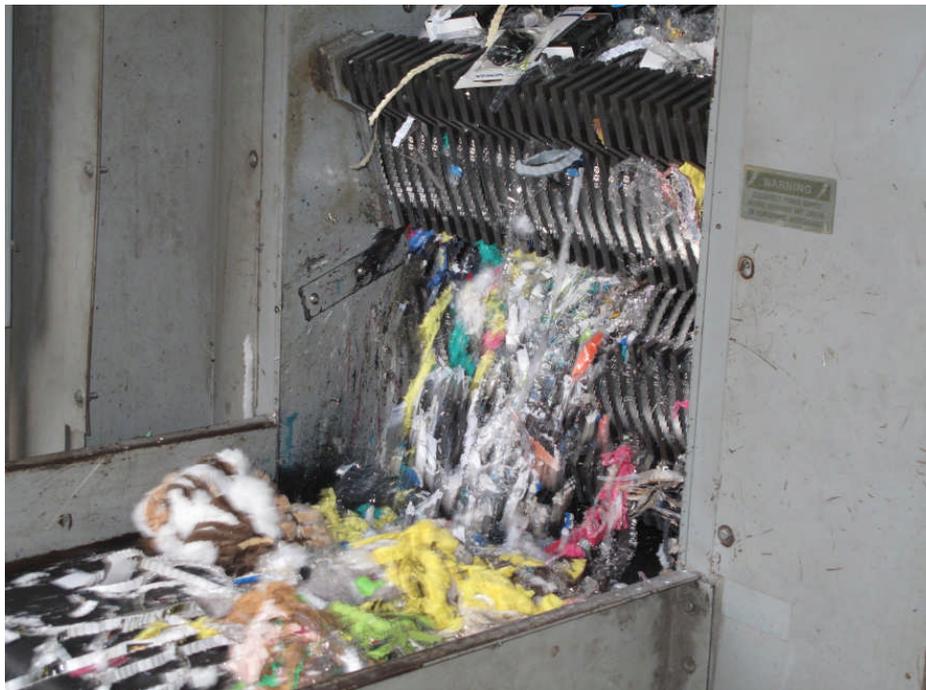
Forfeiture and destruction of seized articles

3.17 The IPIB Work Manual has laid down the following requirements on the forfeiture and destruction of seized articles:

- (a) ***Obtaining a confiscation order.*** After obtaining the court judgement that a case involves intellectual property rights infringement, an application to the court for a confiscation order should be made to forfeit the seized articles;
- (b) ***Obtaining a destruction certificate.*** After a confiscation order has been obtained, an application to the C&ED Supplies Section for a destruction certificate should be made to destroy the seized articles, in order to create an effective deterrent to infringement; and
- (c) ***Destruction.*** Physical destruction of the seized articles (see Photograph 2) and updating of the records in the CAPS database should be completed within two months from the date of the destruction certificate.

Photograph 2

Destruction of infringing articles seized by the IPIB



Source: IPIB records

3.18 As at 1 April 2012, there were 625 concluded court cases pending the IPIB follow-up action on the seized infringing articles. They comprised:

- (a) 349 (56%) cases with confiscation orders not yet obtained; and
- (b) 276 (44%) cases with confiscation orders obtained.

Audit examination of the progress of the 625 cases as at 1 April 2012 revealed delays in obtaining confiscation orders and destruction certificates. Details are in paragraphs 3.19 to 3.21.

Delays in obtaining confiscation orders

3.19 Table 6 shows an analysis of the 349 cases pending confiscation orders. For 144 (41%) cases, confiscation orders had not been obtained from the court after a lapse of more than one year since obtaining the court judgement on infringement.

Table 6
Infringement cases with confiscation orders not yet obtained
(1 April 2012)

Time elapsed since obtaining the court judgement on infringement	Number of cases	
3 months or less	69 (20%)	
Over 3 to 6 months	63 (18%)	
Over 6 months to 1 year	73 (21%)	
Over 1 to 2 years	111 (32%)	} 144 (41%)
Over 2 years	33 (9%)	
Total	349 (100%)	

Source: Audit analysis of IPIB records

Management of seized articles

Delays in obtaining destruction certificates

3.20 For the 276 cases with confiscation orders obtained, Audit found delays in obtaining destruction certificates from the C&ED Supplies Section, as follows:

- (a) for 226 (82%) cases, destruction certificates had been obtained. However, on average it took 13 months to obtain the destruction certificates, counting from the dates of confiscation orders; and
- (b) for the other 50 (18%) cases, the destruction certificates had not been obtained as at 1 April 2012. They included 28 cases with confiscation orders obtained in 2010 or earlier.

3.21 In July 2012, upon enquiry, the IPIB informed Audit that the Supplies Section had recently adopted a target of issuing a destruction certificate within two months from the date of the confiscation order.

3.22 Audit is concerned about the delays in obtaining confiscation orders from the court and destruction certificates from the C&ED Supplies Section. The resultant prolonged storage of seized articles increases storage space requirement and administrative work. In Audit's view, the C&ED needs to ensure that the officers concerned take prompt actions. Regarding the two-month response time target recently adopted by the Supplies Section for issuing destruction certificates to the IPIB, the C&ED needs to monitor its achievement.

Audit recommendations

3.23 **Audit has *recommended* that the Commissioner of Customs and Excise should:**

- (a) **review the cases of delays in obtaining confiscation orders and destruction certificates found by Audit to identify areas requiring improvement;**
- (b) **based on the review results in (a) above, implement measures (e.g. setting performance targets and establishing controls to monitor their achievement) to ensure that the officers concerned take prompt actions to obtain confiscation orders and destruction certificates; and**

- (c) **monitor the achievement of the two-month response time target adopted by the Supplies Section for issuing destruction certificates to the IPIB.**

Response from the Administration

3.24 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that a study initiated earlier by the C&ED on the disposal of seized articles has successfully resolved most cases in question, and CAPS has been enhanced to tighten up control.

PART 4: COMBATING INTERNET PIRACY

4.1 This PART examines the efforts in combating Internet crimes relating to the infringement of intellectual property rights.

Internet piracy

4.2 Internet intellectual property crimes include the illegal exchange and distribution of software, films, songs and other intellectual products, and the sale of counterfeit goods over the Internet.

4.3 According to the IPIB, there have been no signs of any significant pirated optical disc manufacturing taking place locally in recent years (see para. 2.24). On the other hand, with the rapid advancement in the Internet technology, different software/technologies and websites are available for Internet intellectual property rights infringers to share/distribute or trade infringing materials over the Internet. Given that the Internet is a globally distributed network, Internet intellectual property rights infringements can go beyond the country boundary. For example, an infringer may upload the copyrighted materials to servers in overseas countries for sharing or distribution. He may also sell counterfeit goods over the Internet to overseas buyers. This kind of ever-changing environment represents a challenge to the IPIB in protecting Internet intellectual property rights.

4.4 The IPIB has established two Anti-Internet Piracy Teams, each comprising seven staff, to tackle specifically Internet and other computer crimes relating to the infringement of intellectual property rights. One team is responsible for investigating copyright infringing activities on the Internet. The other team is responsible for investigating activities of selling counterfeit articles over the Internet. According to the IPIB, subject to operational exigencies, personnel would be deployed from other work streams to tackle cases involving Internet piracy.

4.5 Audit examination of the work of the two Anti-Internet Piracy Teams revealed room for improvement in the IPIB's investigation of copyright infringing file sharing activities on the Internet. Details are in paragraphs 4.6 to 4.16.

Combating illegal file sharing activities

4.6 File sharing is the practice of distributing or providing access to digitally stored information, such as computer programmes, multimedia (audio, images and video), documents or electronic books. File sharing itself is not illegal. However, it is often used illegally to exchange copyrighted materials on the Internet.

4.7 File sharing can be done through a variety of ways. One of the more popular ways is the use of peer-to-peer networks. A peer-to-peer network is a system that enables Internet users, through the exchange of digital files among individual computers or peers, to:

- (a) make files stored on their computers available for copying by other users;
- (b) search for files stored on other users' computers; and
- (c) transfer exact copies of files from one computer to another.

4.8 Apart from peer-to-peer networks, there are other commonly-used software/technologies for file sharing on the Internet, including:

- (a) streaming, which allows users to view motion pictures and television content on demand, without downloading the files; and
- (b) cyberlocker, which is an Internet hosting service designed to host user files. It allows users to upload files that could then be accessed on the Internet from a different computer or other networked device, by the same user or possibly by other users, after a password or other authentication is provided.

Combating Internet piracy

4.9 In April 2007, the IPIB developed a tailor-made Internet monitoring system to combat illegal file sharing activities on the Internet, with focus being placed on the predominant file sharing software being used at the time (i.e. BitTorrent — Note 6). The system has since been used to detect infringing activities on peer-to-peer file sharing networks created using BitTorrent. Up to June 2012, the IPIB had detected 87 suspected infringement cases, and made arrests in 3 of the 87 cases.

Enhancing Internet monitoring system

4.10 Audit notes that, apart from BitTorrent, there are other software/technologies (e.g. streaming and cyberlocker) commonly used for file sharing. However, the IPIB Internet monitoring system can only monitor BitTorrent networks at present. In Audit's view, the IPIB needs to explore the feasibility of enhancing the system or developing appropriate technologies to also monitor suspected Internet infringing activities using other software/technologies.

Soliciting copyright owners' cooperation

4.11 In 18 of the 87 suspected infringement cases, the copyright owners of the shared files were outside Hong Kong. In July 2012, upon enquiry, the IPIB informed Audit that it had not taken further action in these 18 cases because the copyright owners concerned would be unlikely to respond to the IPIB's requests for providing evidence to prove that the shared files had infringed their copyright.

4.12 Audit found that in a previous infringement case (not involving the Internet), the copyright owner in the United Kingdom initially did not respond to the IPIB's requests for providing evidence. The IPIB sought assistance from the British Consulate-General Hong Kong. Eventually, the IPIB obtained the copyright owner's cooperation and made an arrest. In Audit's view, the IPIB needs to explore whether it may use similar approaches to solicit copyright owners' cooperation for combating Internet piracy.

Note 6: *BitTorrent is a commonly-used peer-to-peer file sharing software program. A user wishing to distribute a file first creates a BitTorrent file, then uploads the file to any file sharing websites for others to download. Apart from BitTorrent, there are other commonly-used peer-to-peer file sharing software programs.*

Keeping adequate documentation

4.13 For the 84 suspected infringement cases with no arrest made, the case officers only documented the justifications for not taking further action. No record was kept for the investigation work carried out and the supervisory officers' acknowledgement/endorsement of the progress and the decision for taking no further action (see similar observations in para. 2.18). In Audit's view, adequate documentation provides accountability and facilitates review and references.

International cooperation

4.14 As mentioned in paragraph 4.3, Internet intellectual property rights infringements can go beyond the country boundary. In this regard, Audit notes that the IPIB has:

- (a) regularly organised/attended international conferences/seminars on Internet intellectual property rights protection; and
- (b) participated in joint enforcement operations with overseas intellectual property rights protection agencies.

In Audit's view, such efforts are useful for combating Internet piracy effectively and, therefore, should be continued.

Audit recommendations

4.15 **Audit has recommended that the Commissioner of Customs and Excise should:**

- (a) **periodically review and explore the feasibility of enhancing the IPIB Internet monitoring system or developing appropriate technologies and countermeasures to combat piracy activities on the Internet using up-to-date software/technologies;**
- (b) **for suspected Internet piracy cases involving copyright owners outside Hong Kong, consider soliciting their cooperation to provide the required evidence through relevant authorities (e.g. Consulate Generals in Hong Kong); and**

Combating Internet piracy

- (c) **for all suspected Internet piracy cases, require IPIB staff to keep adequate documentation for the investigation work carried out and the supervisory officer's acknowledgement/endorsement of the progress/results.**

Response from the Administration

4.16 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) preparations are in full steam for the establishment of the Electronic Crime Investigation Centre in early 2013, whose main tasks include research into intellectual property rights infringement on the Internet and development of corresponding countermeasures;
- (b) the IPIB will continue to seek assistance from relevant authorities and appeal for the cooperation of parties outside Hong Kong in order to tackle copyright/trademark infringement cases; and
- (c) all relevant personnel have been asked to adopt the recommended practice of keeping adequate documentation, and the IPIB Work Manual will be revised accordingly.

PART 5: STRATEGIC PLANNING AND PERFORMANCE MEASUREMENT

5.1 This PART examines the following issues relating to strategic planning and performance measurement:

- (a) strategic planning (paras. 5.2 to 5.7); and
- (b) performance measurement (paras. 5.8 to 5.15).

Strategic planning

5.2 Effective strategic management is vital to an organisation in meeting the challenges of a changing environment and new demands. An organisation needs to review its position and direction regularly, and develop a strategic plan for establishing what it intends to achieve over a period of time. To ensure that it remains responsive to changing environment, the plan should be periodically reviewed and rolled forward prior to the commencement of the annual planning cycle.

5.3 Audit examination, however, revealed that the C&ED did not prepare any formal strategic plan for protecting intellectual property rights. It has prepared only annual estimates and action plans, as follows:

- (a) *Annual estimates.* In October each year, as part of the Government's budgetary exercise, the C&ED is required to prepare estimates of its revenue and expenditure for the ensuing financial year in accordance with the Financial Services and the Treasury Bureau's guidelines. The expenditure estimates are required to be supported by a Controlling Officer's Report setting out the C&ED's programmes. The estimates are usually laid before the Legislative Council in February (before the end of each financial year); and
- (b) *Action plans.* According to an arrangement agreed between the C&ED and its pertinent policy bureaux, each year the C&ED submits an action plan to the bureaux setting out how it will use its resources in the financial year concerned.

Preparation of strategic plan

5.4 Audit notes that the C&ED has not prepared a formal strategic plan for protecting intellectual property rights. Its action plans have not included information about the IPIB's intended achievements over a period of time. In Audit's view, preparing a formal strategic plan will help the pertinent policy bureaux effectively review the IPIB's longer term strategic objectives and direction, and monitor the use of resources for achieving them. In addition, having gone through a structured strategic planning process will help the IPIB take full account of the changing environment (e.g. the decrease in the number of optical disc factories and the rapid advancement in the Internet technology — see paras. 2.23 and 4.3) in preparing cost-effective action plans for protecting intellectual property rights.

Submission and agreement of action plans in good time

5.5 Audit noted that the action plans for 2010-11 to 2012-13 were all submitted by the C&ED in June/July. Because of the time required by the pertinent policy bureaux to process and agree the plans, the plans for 2010-11 to 2012-13 were agreed by the bureaux in August (see Table 7). In Audit's view, the C&ED should take action to ensure that its action plan is agreed before the commencement of the year concerned.

Table 7

**Submission and agreement dates of C&ED action plans
(2010-11 to 2012-13)**

Action plan	Submission date	Agreement date
2010-11	7 July 2010	5 August 2010
2011-12	20 June 2011	3 August 2011
2012-13	13 June 2012	17 August 2012

Source: C&ED records

Audit recommendations

5.6 **Audit has *recommended* that the Commissioner of Customs and Excise should:**

- (a) **formalise the IPIB's strategic planning process and prepare a strategic plan as appropriate setting out the longer term objectives and direction for protecting intellectual property rights;**
- (b) **periodically review and roll forward the strategic plan in (a) above to ensure that it remains responsive to changing environment; and**
- (c) **take action to ensure that the C&ED's action plan is submitted and agreed before the commencement of the year concerned.**

Response from the Administration

5.7 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that:

- (a) although a strategic planning process is in place to devise and fine-tune the IPIB enforcement tactics to cope with evolving risk and modality of criminal activities, the IPIB will work out a feasible way to formalise this process; and
- (b) the C&ED will liaise with the pertinent policy bureaux to ensure that its action plan could be agreed before commencement of the year concerned in future as far as practicable.

Performance measurement

5.8 Like other departments, in its annual Controlling Officer's Reports, the C&ED is required to set performance measures and report its actual performance. According to the Financial Services and the Treasury Bureau's guidelines, departments should:

- (a) when developing their performance measures, focus on targets measured preferably in terms of intended outcome (versus output or input) and apply the most relevant indicators that measure economy, efficiency and cost-effectiveness of the resources deployed; and
- (b) indicate the extent to which their operational objectives are being achieved. In general, outcome measures/indicators are preferred.

5.9 In the Controlling Officer's Report for 2012-13, the C&ED reported seven performance measures on protecting intellectual property rights, comprising two targets and five indicators. Table 8 shows the details.

Table 8
Performance measures in Controlling Officer's Report
(2012-13)

Performance measure	Type of measure
<i>Targets:</i>	
1. Issuing licences for import and export of optical disc mastering and replication equipment within two working days upon receipt of applications	Response time
2. Issuing licences for manufacturing of optical discs within 14 working days upon receipt of applications	Response time
<i>Indicators:</i>	
1. Number of intellectual property rights investigations	Output
2. Number of seizure cases	Output
3. Value of seizures	Output
4. Number of spot checks on optical disc factories	Output
5. Number of verifications on import/export of optical disc mastering and replication equipment	Output

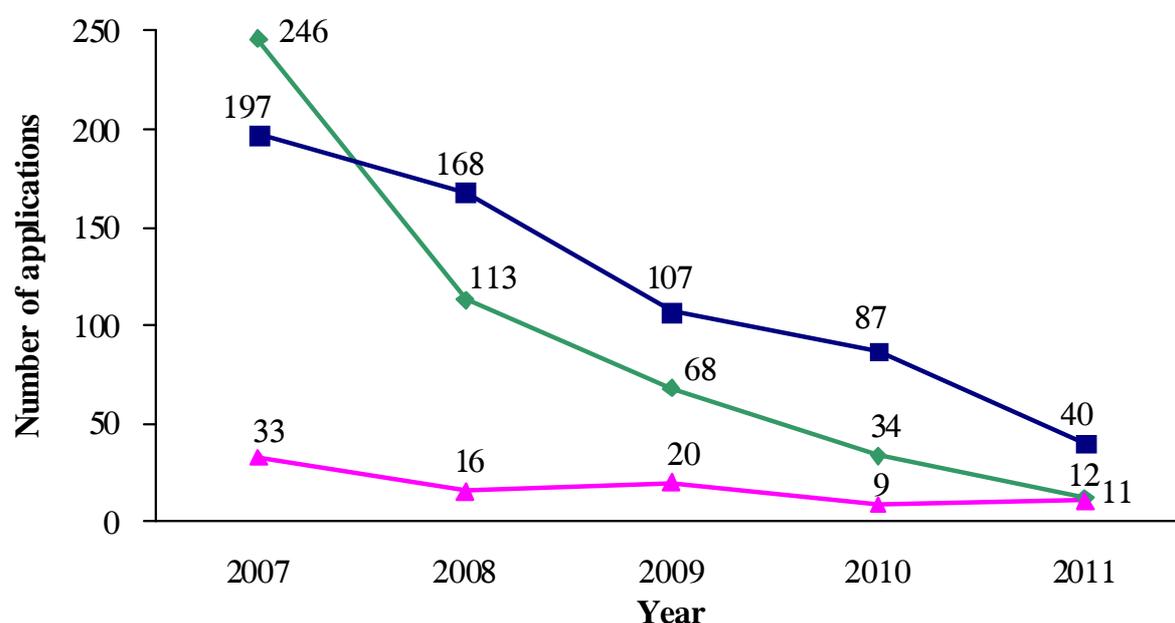
Source: Audit analysis of the C&ED's 2012-13 Controlling Officer's Report

5.10 According to the Financial Services and the Treasury Bureau's guidelines, departments should focus on outcome-based targets that indicate the extent to which their operational objectives are being achieved. Table 8 shows that in the 2012-13 Controlling Officer's Report, the C&ED set only two targets, concerning the time for issuing import/export licences for optical discs manufacturing equipment and licences for manufacturing of optical discs. Audit considers that they, not being outcome-based measures, are not useful for indicating whether the IPIB effectively

achieved its operational objectives of protecting intellectual property rights. Besides, licensing service had become a less significant activity of the IPIB due to a substantial reduction in the number of licence applications in recent years (see Figure 3).

Figure 3

Number of licence applications relating to optical discs (2007 to 2011)



Legend:
◆ Licence for import of optical disc mastering and replication equipment
■ Licence for export of optical disc mastering and replication equipment
▲ Licence for manufacturing of optical discs (valid for three years)

Source: IPIB records

5.11 Table 8 also shows that in the 2012-13 Controlling Officer's Report, the C&ED set five performance indicators on protecting intellectual property rights. However, they were all output measures rather than the preferred outcome measures. For example, the number of spot checks on optical disc factories cannot adequately reflect the cost-effectiveness of the resources deployed in guarding against manufacturing of pirated optical discs and stampers (see para. 2.22).

5.12 Setting and reporting performance measures effectively help enhance performance, transparency and accountability. In Audit's view, the C&ED needs to review its performance measures used for intellectual property rights protection work in the Controlling Officer's Report and make improvement as appropriate.

Audit recommendations

5.13 **Audit has *recommended* that the Commissioner of Customs and Excise should:**

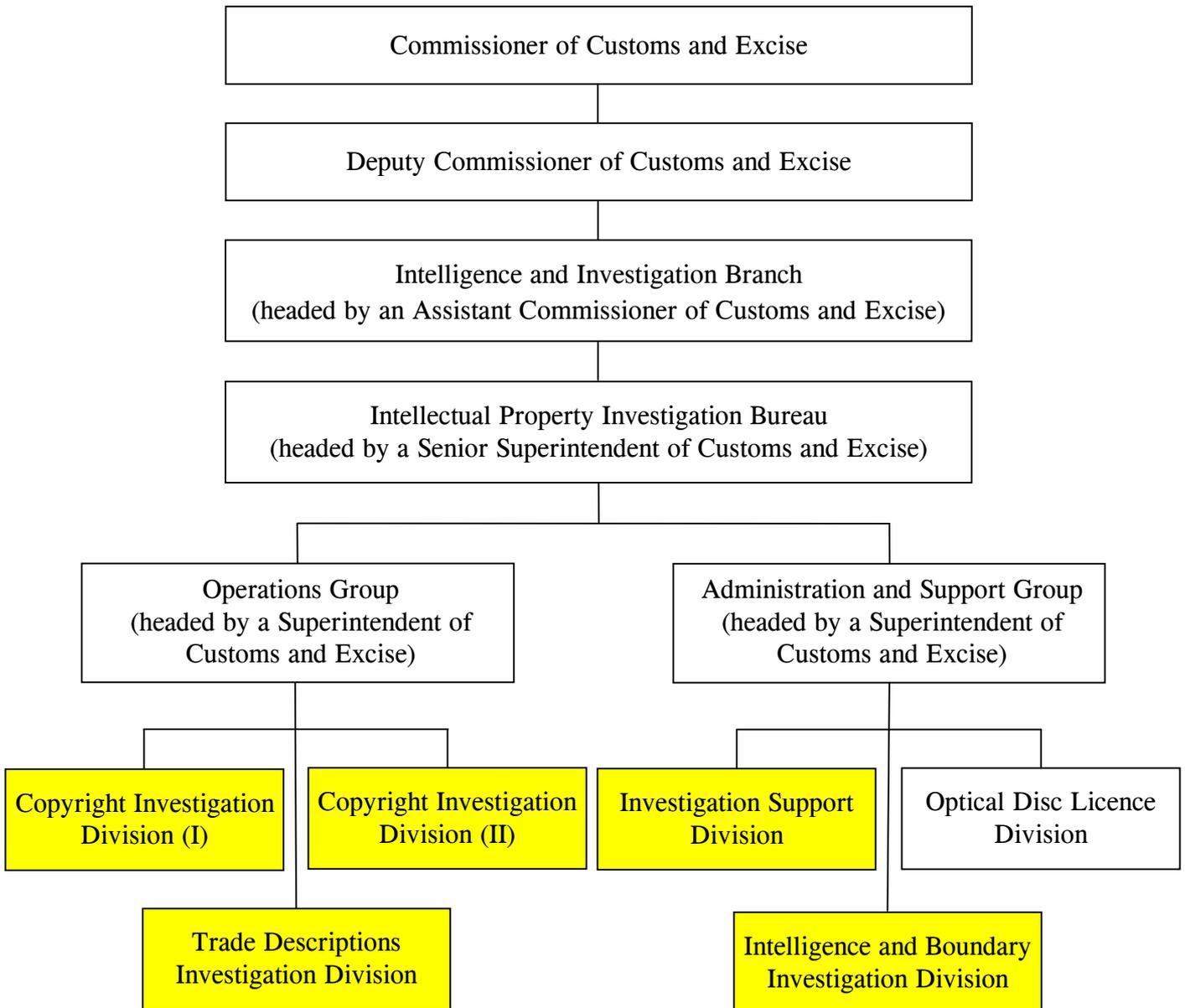
- (a) **review the performance measures for intellectual property rights protection work in the Controlling Officer's Report; and**
- (b) **based on the review results in (a) above, consider setting specific outcome-based performance measures, focusing on targets and applying the most relevant indicators for significant intellectual property rights protection activities.**

Response from the Administration

5.14 The Commissioner of Customs and Excise agrees with the audit recommendations. He has said that the C&ED will take a close look at the existing performance targets on intellectual property rights protection contained in the Controlling Officer's Report and consider introducing outcome-based measures in consultation with the pertinent policy bureaux.

5.15 The Secretary for Financial Services and the Treasury has said that the Financial Services and the Treasury Bureau will work with the C&ED to follow up on the audit recommendations when preparing the Controlling Officer's Report of the C&ED in future.

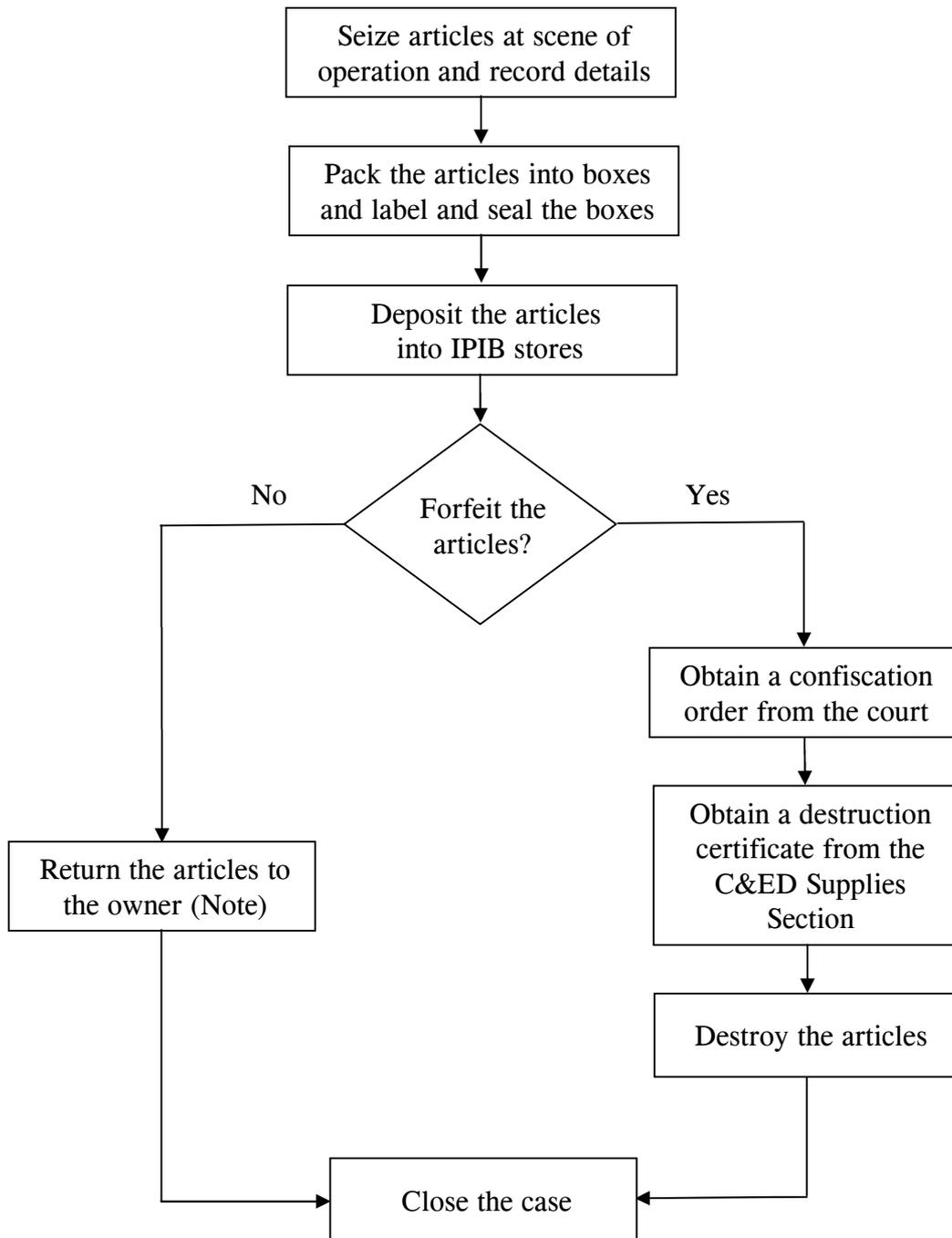
**Customs and Excise Department
Organisation chart (extract)
(31 August 2012)**



Source: *IPIB records*

Remarks: *Only the C&ED's Branch and its operating units mentioned in this Audit Report are included in the chart. The Divisions highlighted in yellow are responsible for carrying out investigation work.*

Key procedures for handling seized articles



Source: IPIB records

Note: Seized articles will be returned to the owner if no infringement is found.

Acronyms and abbreviations

Audit	Audit Commission
CAPS	Case Processing System
C&ED	Customs and Excise Department
IPIB	Intellectual Property Investigation Bureau