

52nd Asia Pacific Privacy Authorities Forum

Investigation and Enforcement Updates from Hong Kong, China

Closed session
2 December 2019, Cebu, Philippines

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PCPD



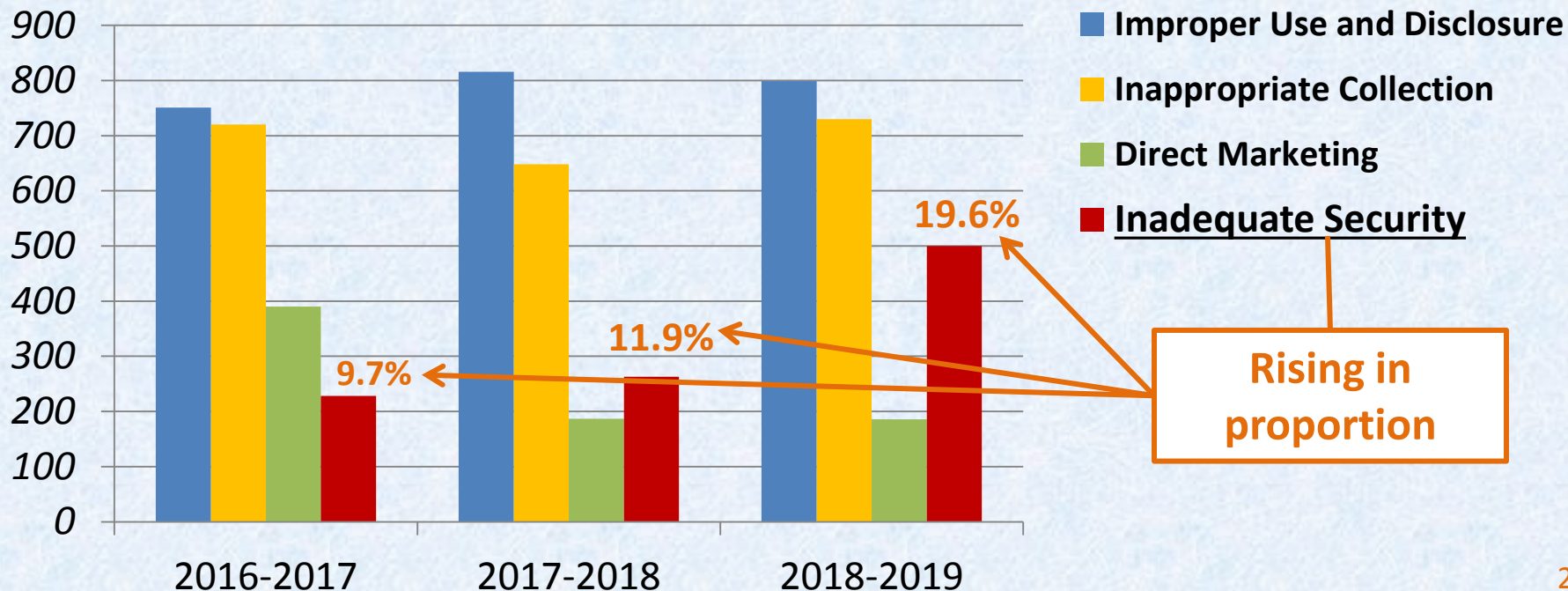
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PCPD.org.hk

香港個人資料私隱專員公署
Privacy Commissioner
for Personal Data, Hong Kong

Major nature of violations of the Personal Data (Privacy) Ordinance alleged in complaints



Data breaches reported to PCPD, Hong Kong



Year	Affected Data Subjects
2018	9.8M+
2017	3.9M
2016	104K
2015	871K
2014	47K
2013	90K

Investigations and Enforcement



Case study:

Data breach of an airline based in HK affecting 9.4m passengers

Background

- Data breach notification lodged to PCPD on 24 Oct 2018
- Unauthorised access to airlines information systems
- 9.4 million passengers from over 260 countries / jurisdictions / locations affected
- Personal data involved consisted mainly of name, flight number and date, email address, membership number, address, phone number

Case study:

Data breach of an airline based in HK affecting 9.4m passengers

PCPD's investigation and findings

Investigation focuses

Data security

Data retention period

Contraventions

Various data security failures (see next slides)

Not taking all reasonably practicable steps to erase unnecessary HK Identity Card No. of passengers

Case study:

Data breach of an airline based in HK affecting 9.4m passengers

Date security failures include:

- Risk alertness being low
- Vulnerability scanning exercise at a yearly interval (too lax)
- Failure to identify and address the commonly known exploitable vulnerability
- Failure to have an effective personal data inventory
- Failure to apply effective multi-factor authentication to all remote access users

Corporate
governance failure

Risk assessment
failure

Operational
measure failure

Technical measure
failure

Case study:

Data breach of an airline based in HK affecting 9.4m passengers

PCPD's enforcement action

Enforcement Notice

Engage independent data security expert to overhaul systems

Implement effective multi-factor authentication for remote access

Conduct effective vulnerability scans

Engage independent data security expert to review / tests system security

Devise clear data retention policy, specify retention period(s) and ensure effective execution

Completely obliterate all unnecessary HKID Card numbers

Recent “Doxxing” in Hong Kong



Meddling in the wedding ceremony of a police officer

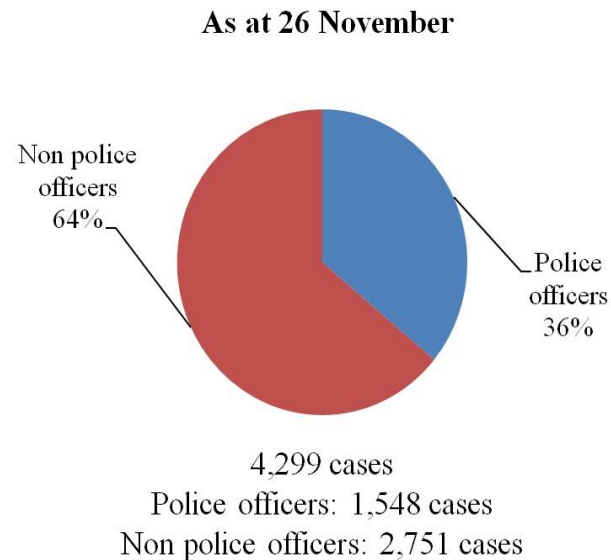
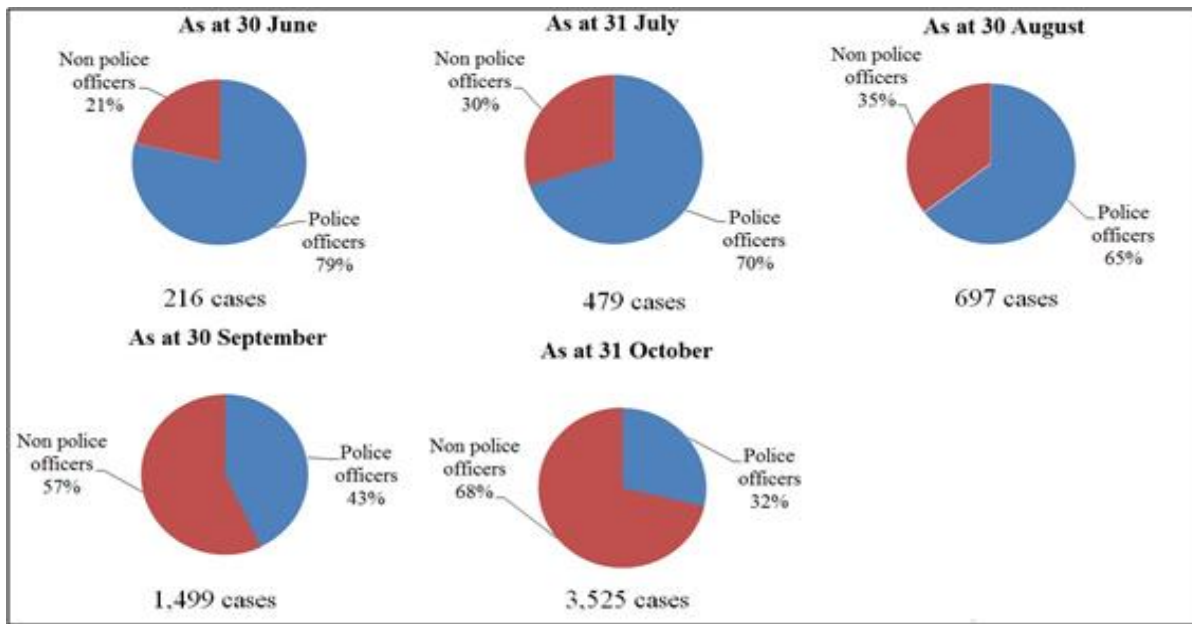


Intimidating message online:
“Get prepared to pick up with a linen bag after school”

What is Doxxing

- Malicious exposure of personal data without the data users' consent to the effect of psychological threat, intimidation and even organising nuisance and harassment in the real world
- **Weaponization** of personal data
- Prima facie case of contravention of a criminal offence under section 64(2) of the PDPO (i.e. disclosing personal data without the consent of a data user causing psychological harm to the data subject), subject to a maximum fine of HK\$1,000,000 and imprisonment for 5 years

Victims of Doxxing Come from All Walks of Life



* Non-police officers include Government officials, Legco members, teacher, university students etc. 11

Actions taken by PCPD

- Refer *prima facie* cases (1,300 cases) of contravention of section 64(2) of the PDPO to the Hong Kong Police Force for further investigation and prosecution.
- As at 26 November 2019, a total of 5 persons (including the one prosecuted on 25 September) were arrested for offences related to section 64 of the PDPO.
- Written 131 times to 15 websites/ online social media platforms/ discussion fora to urge them (1) immediately delete and stop uploading the doxxing posts; (2) post warnings of the possible contravention of section 64 of PDPO on the platforms; (3) provide registration information and IP data of the doxxers concerned.
- As at 26 November 2019, a total of 1,632 web links have already been removed. 12

Enforcement Difficulties

- No express powers to carry out criminal investigations and bring prosecution of criminal offence in PCPD's own name
- Identity of the offenders (i.e. the individuals who post the doxxing materials) cannot be ascertained [no real-name registration requirement for social media accounts)
- No extra-territorial effect under the PDPO – the concerned social media platforms or websites do not have entities in Hong Kong to control data management or do not have presence in any form in Hong Kong
- No *locus standi* to apply to the court for an injunction

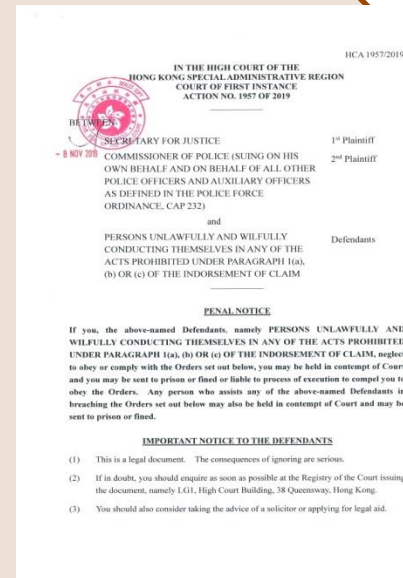
Possible regulatory reform to tackle doxxing

- ❖ Give the PCPD powers to conduct **criminal investigation** and **prosecution of criminal offences**
- ❖ Allow PCPD to **apply to court for injunction** stopping doxxing
- ❖ Amending the scope of protection to include platforms and webpages that have **close connection to Hong Kong** (the “**Hong Kong Link**”)
- ❖ Give the PCPD powers to **directly issue prohibitive orders by way of interim enforcement notices** to relevant social media platforms and website (e.g. take down doxxing posts, provide personal data of those posting doxxing messages)

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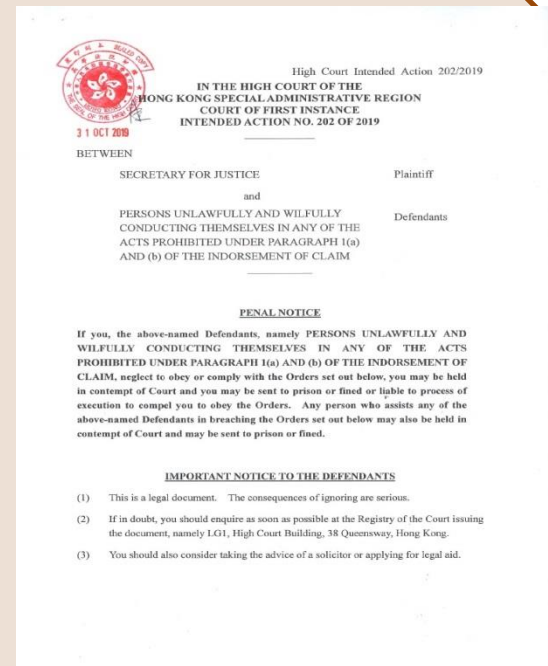
Interim Injunction orders granted by the Courts to curb doxxing

- ❖ **High Court Action No. 1957 of 2019** - commenced by the Secretary for Justice (as guardian of public interest)) and the Commissioner of Police as representative on behalf of all Police Officers)
- ❖ The Interim Injunction restrains, *inter alia*, the acts of using, publishing, communicating or disclosing to any other person the **personal data of police officers and their family members**, intended or likely to intimidate, molest, harass, threaten, or pester or any of them, without the consent of the data subjects. It also restrains persons from assisting, **aiding, abetting** or authorizing others to commit any of the aforesaid acts or participating in any of the aforesaid acts.
- ❖ Exception applies only for any lawful acts done solely for the purpose of a **news activity** as defined in section 61 of the PDPO.



Interim Injunction Orders granted by the Courts to curb doxxing (2)

- ❖ **High Court Action No. 2007 of 2019** - commenced by the Secretary for Justice (as guardian of public interest)
- ❖ Restrain persons from unlawfully and willfully conducting themselves in acts, among others, willfully disseminating, circulating, publishing or re-publishing on any internet-based platform or medium (including but not limited to **LIHKG and Telegram**) any material or information that promotes, encourages or incites the use or threat of violence, intended or likely to cause bodily injury to any person unlawfully within Hong Kong or damage to any property unlawfully within Hong Kong.
- ❖ Aiding and abetting such acts is also prohibited.



What did the Judges say about Doxxing

“There is at least a serious issue to be tried that widespread doxxing activities have created a state of affairs in society which endangers the lives, safety, health, property or comfort of the public as a whole.”

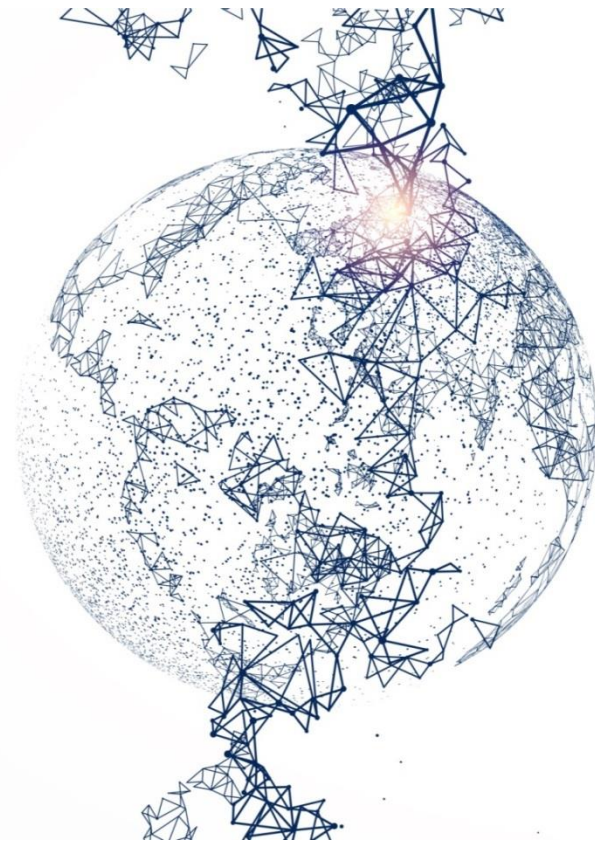
“If doxxing practices are not curtailed, the fire of distrust, fear and hatred ignited by them will soon consume the public confidence in the law and order of the community, leading to disintegration of our society.”

Responsibilities of the Social Media Platforms

Per the Court of Final Appeal of Hong Kong in *Oriental Press Group Ltd v Fevaworks Solutions Ltd* (2013) 16HKCFAR 336

- A platform provider must genuinely recognise and take all reasonable steps to protect the rights and reputations of persons from being unlawfully damaged by postings published on the forum.
- While an Internet intermediary may not be expected to police or filter the many-to-many discussions hosted, it is appropriate to require prompt action to take down the offending postings upon receiving a complaint or otherwise becoming aware of them.

International Connection and Collaboration is **PIVOTAL**



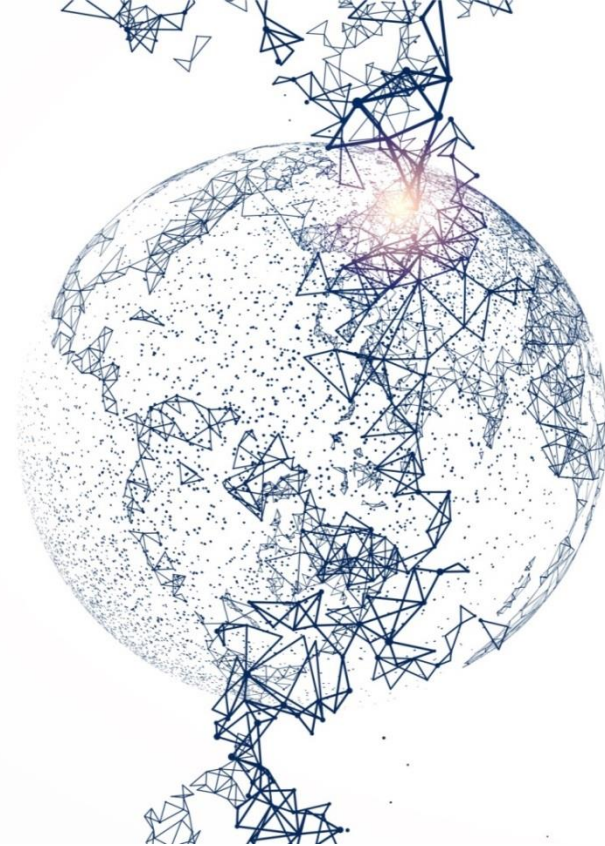
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41st International Conference of Data Protection and Privacy Commissioners (ICDPPC)

- renamed to Global Privacy Assembly

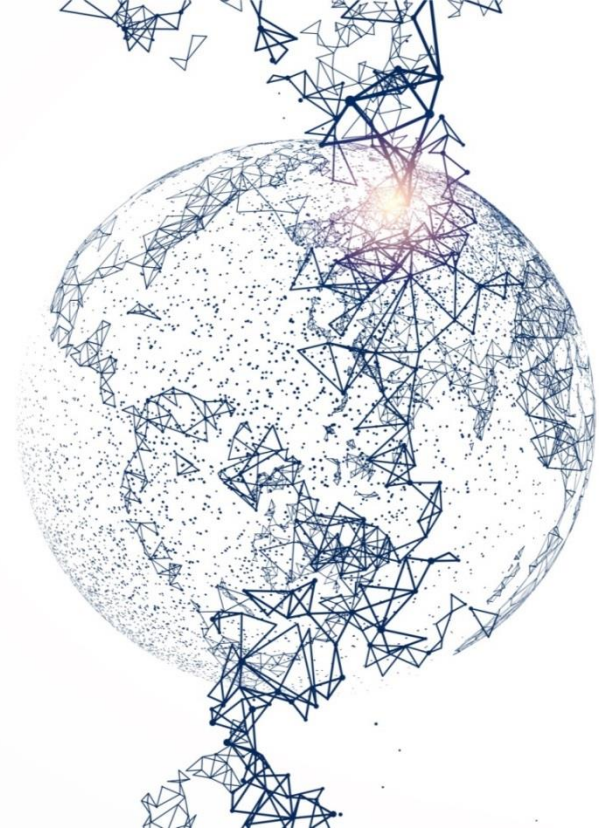
Two significant resolutions adopted at the 41st ICDPPC 2019 :

- Resolution on the Conference's strategic direction (2019-21)
- Resolution on Social Media and Violent Extremist Content Online



Resolution on the Conference's strategic direction (2019-21) identified 3 pillars:

1. Evolution towards global policy, standards and models for data protection and privacy
2. Encompassing international regulatory co-operation and sharing of good practices
3. Developing unified policy positions on shared societal risks



Resolution on Social Media and Violent Extremist Content Online:

1. DPAs resolved to urge social media providers to protect their services and users data from being misused and to stop the dissemination of terrorist and violent extremist content online while protecting the freedom of expression
2. Governments should establish a legislative framework for cross border co-operation between DPAs to take down terrorist and violent extremism online content in a timely manner



Contact Us



The screenshot shows the PCPD website interface. At the top, there is a navigation bar with links for 'About PCPD', 'Data Privacy Law', 'News & Events', 'Compliance & Enforcement', 'Complaints', 'Legal Assistance', 'Education & Training', 'Resources Centre', and 'Enquiry'. Below this is a search bar with 'Hot Search', 'Advanced Search', and 'Keyword Search' options. The main content area features a 'What's New' section with several news items, including 'Reduce Cyberbullying by Nurturing Culture of "Protect, Respect Personal Data"', 'Privacy Commissioner Prizes in Privacy and Data Protection Law 2017/18 to Recognise Student's Outstanding Performance in Study of Personal Data Privacy Protection', 'Respect Customers' Rights of Personal Data Self-determination Follow Their Opt-out Requests in Direct Marketing', 'Privacy Commissioner Completed Compliance Check on Facebook and Cambridge Analytica Incident', 'Privacy Commissioner Issues Best Practice Guide on Privacy Management Programme and Encourages Organisations to Embrace Personal Data Protection as Part of Corporate Governance Responsibilities', 'Unleashing Potential in Innovation and Technology - Promoting Data Privacy Protection Award Presentation Ceremony of Student Ambassador for Privacy Protection Programme', and 'Privacy Commissioner Expresses Concerns Over Typeform's Data Breach Incident (Chinese Version Only)'. There are also buttons for 'For Individuals' and 'For Organisations'. At the bottom, there is a 'Think Privacy! Be Smart Online' and 'EU General Data Protection' section.

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