

**Speech by the Hon Wong Yan Lung, SC, JP
Secretary for Justice
at the 15th General Assembly,
56th & 57th Council Meeting of the
Asian Patent Attorneys Association (APAA)
at the Hong Kong Convention and Exhibition Centre
on Wednesday, 18 November 2009**

Mr (Alonzo Q) Ancheta, Mrs (Peggy) Cheung, Ms (Anne) Choi,
Distinguished Guests, Ladies and Gentlemen,

Introduction

Be our guest. It's wonderful to welcome you with the uplifting voice of our children's choir. It is my privilege to stand here to welcome such a galaxy of legal experts on intellectual property. It has been 14 years since Hong Kong last hosted the Council Meeting of the Asian Patent Attorneys Association in 1995. We have witnessed momentous changes during that 14 years and yet, one thing is clear, we have been holding steadfast to the fundamental values which underpin Hong Kong's success.

Rule of law after reunification

2. Since Hong Kong's reunification with China in 1997, a new constitutional order has been put in place. Under the principle of "One Country, Two Systems", Hong Kong is the most international city in China, with a high degree of autonomy and practicing an entirely different legal system.

3. The common law in Hong Kong is not only preserved but in many ways is actually enriched by the Basic Law, our constitution. Since 1997, we have moved on from a predominantly English basis to embrace a more international jurisprudential repertoire. As guaranteed by the Basic Law, precedents from other common law jurisdictions can be referred to in our courts (which unavoidably makes lawyers' life tougher).

4. Judicial independence is guaranteed under our constitution and is one of the pillars of Hong Kong's success. Hong Kong's Court of Final Appeal is of international acclaim and is much trusted by the people of Hong Kong including its international business community.

Eminent judges from other common law jurisdictions such as former Chief Justices of Australia and New Zealand as well as serving members of what has recently become the UK Supreme Court sit on our Court of Final Appeal. Judgments delivered that Court are of high jurisprudential value and have been cited in the Supreme Court of Canada, the House of Lords in the UK, as well as the Federal Court of Australia.

5. Our legal profession remains strong and independent. There are now about 6,400 solicitors and 1,100 barristers practicing in Hong Kong. In addition, we have over 1,100 registered foreign lawyers from 27 jurisdictions, including Mainland China, practicing foreign law in Hong Kong. The profession provides a wide spectrum of services such as valuable expertise in intellectual property protection to a varied private and corporate clientele.

Robust intellectual property rights regime

6. As we continue to develop into a knowledge-based economy and nurture creative industries to become an important powerhouse for the sustainable development of our economy, we have put in place an effective and robust system for protecting intellectual property rights.

Updated legal framework

7. Our IPR legal framework complies fully with the requirements of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. We have comprehensive legislation protecting copyright, patents, trade marks and registered designs and it is kept under review to ensure that it is up-to-date. For instance, we have just released a package of refined proposals to strengthen copyright protection in the digital environment amidst the convergence of digital technology. The migration of most forms of cultural expression to digital technology and the Internet has posed a major challenge for the institution of copyright. How to strike an appropriate balance between the interests of copyright owners, investors, Online Service Providers on the one hand and the society on the other is of great importance to jurisdictions around the world and certainly of interest to copyright experts in APAA.

Rigorous investigator and enforcement action

8. Apart from an updated legal framework, we attach great importance to rigorous investigation and enforcement action.

Hong Kong Customs has one of the strongest teams in the region. Their sustained enforcement action has effectively suppressed counterfeiting and piracy activities. They have been building up their capacity to combat new modes of infringement that may emerge in the digital age. Our recent success in nailing an international piracy syndicate using high-speed Internet servers to distribute copyright-infringing items bears testimony to our commitment to protecting the legitimate interests of creative industries both local and overseas. The Customs has also set up tactical teams to monitor and investigate online illicit activities involving counterfeit goods.

Promote a culture of respect for intellectual property

9. Going back to the basic, our Intellectual Property Department has reached out to different sectors of the community and launched various programmes, such as the “No Fakes Pledge” campaign, to raise public awareness of, and nurture respect for, intellectual property rights.

10. In recognition of Hong Kong’s achievements in protecting intellectual property, the Business Software Alliance presented us with the “Government Best Practices: Asia Pacific” award in September 2008, making Hong Kong the first economy in the region to receive this award. But there is no room for complacency – we will continue to co-operate closely with copyright and trade mark owners through the Intellectual Property Rights Protection Alliance and with IP authorities in the Mainland and other jurisdictions to promote experience sharing and collaboration in protecting intellectual property rights.

ADR for resolving IP disputes

11. I note with interest your Workshop on ADR for resolving IP disputes, which is most timely. These turbulent times call for more honest and anxious reflection on the best way to resolve commercial disputes. Speed, costs, flexibility, finality, enforceability, confidentiality and business relationship are all factors in the formula. The development and promotion of ADR is particularly important and relevant for a fast growing and dynamic region like the Asia Pacific. Instead of becoming more litigious, there is a chance for economies in the region to foster among their population a culture for a more harmonious and less confrontational means of settling disputes amid economic growth.

International arbitration

12. We are developing Hong Kong into a leading international dispute resolution centre, in particular, a hub of international arbitration. We are seeing quite a number of cases involving intellectual property issues such as disputes on licensing and technology transfer being referred to arbitration in Hong Kong in recent years.

13. The Hong Kong International Arbitration Centre, our own home-grown arbitration body, handled over 600 international arbitration cases in 2008, which puts it, in terms of caseload, No 2 in Asia. The Centre is also rapidly expanding into a forum for the resolution of new areas of international disputes such as those over domain names.

14. As large international arbitration cases involving Chinese parties are on the rise, some international arbitration bodies are already looking eastward at the Asia Pacific region. Last November, the International Court of Arbitration (ICA) of the International Chamber of Commerce (ICC), which is based in Paris, opened the first overseas branch of its Secretariat in Hong Kong. This is a significant move by an international arbitration institution of high repute and a show of confidence in Hong Kong's position as a dispute resolution centre. We will continue our dialogue with international arbitration institutions to explore other opportunities for closer cooperation.

15. We are also actively reforming our arbitration law to align our domestic arbitration regime with that governing international arbitration under the UNCITRAL Model Law. Under that Law, the court should only intervene in an arbitration to support, but not to interfere with, the arbitration. We are confident that with these changes, the attractiveness of conducting international arbitrations, including those involving intellectual property issues, in Hong Kong will be further enhanced.

Mediation

16. I should also mention that Hong Kong is actively promoting the use of mediation. In April this year, a major reform in civil proceedings was introduced in Hong Kong. One of the focuses is to encourage greater use of mediation within the judicial system. Short of making mediation mandatory, parties who unreasonably refuse to mediate may, even if they win the court case, be penalized in costs.

Conclusion

17. Mr Francis Gurry, Director General of the World Intellectual Property Organization, mentioned that in looking to strategies for overcoming the economic crisis and for ensuring a sustainable expansion following the crisis, both investment in knowledge creation and the maintenance of a robust intellectual property system that strikes an appropriate balance between the needs and interests of various stakeholders should feature prominently. APAA provides a valuable regional platform to deliberate solutions to challenges arising from the economic turmoil and to bring about new directions for this important balancing act.

18. On that note, it only remains for me to wish you all an informative and fruitful conference and a very memorable stay in Hong Kong. Many of you must be shocked to learn that Hong Kong can be so cold. Well we do have four seasons here. In addition to the usual four seasons, Hong Kong has a fifth season all year round, which is the shopping season, of course, with the “No Fakes Pledge”. I hope you will enjoy it. Thank you.