

Transcript of remarks by SJ at media session

Following is the transcript of remarks by the Secretary for Justice, Mr Paul Lam, SC, at a media session regarding the interim injunction relating to a song granted by the Court of Appeal of the High Court today (May 8):

Reporter: First, is this court ruling in effect a take-down order targeting internet companies such as Google and Meta, and what concrete steps do they need to take in order to satisfy the Government? Second, in paragraph 74, the appeal judges actually agreed that there is a possibility of chilling effect. How does the Hong Kong government plan to minimise the chilling effect for the public? And third, is the government concerned that this ruling might spook foreign international tech companies in Hong Kong and affect Hong Kong's ambition to be a tech and innovation hub?

Secretary for Justice: As to your first question, we have to remember that, no internet service provider was ever named as a defendant or respondent in this legal proceedings. So the injunctions by themselves are not targeting any internet service provider. But as stated in the judgment, one of the purposes of the injunction is to persuade internet service providers not to facilitate the commission of unlawful act by these specific persons, who are actually the defendants in this proceedings. So the effect is to persuade internet service providers not to provide convenience and not to facilitate the permission of unlawful act. So I think this point is very clear.

And let's also make it crystal clear that the injunction is not aiming at restricting the normal operation of any internet service provider, so I think that takes me actually to your third question. As I said on previous occasions, free flow of information is of crucial importance to Hong Kong. This is a core value that we will do our best to maintain and preserve. The scope of the injunction is extremely narrow, we are concerned with very specific unlawful behaviour and I think there are company policies issued by internet service providers, making clear that they are willing to abide by the local law, in particular court order. So I would expect that they will honour the promise, they will act in accordance with the policy. On that basis, I do not see any reason why there should be any concern that this injunction will discourage or cause an internet service provider to have any concern about operating in Hong Kong and what they are doing as usual.

Now your second question. You referred to paragraph 74 of the judgment where the Court of Appeal mentioned chilling effect. I think you have to read that part of the judgment in context. The Court of Appeal said firstly that freedom of expression, strictly speaking, is not engaged, because we are talking about unlawful act. No one has the right to commit unlawful act in the name of exercising any freedom of expression. But notwithstanding that, the Court of Appeal accepted that there might be practical concern that the injunction might cause some so-to-speak chilling effect. And it is for this reason, the Court of Appeal actually conducted the well-known proportionality test to consider whether the grant of injunction would in fact lead to any disproportional or unreasonable restriction on the freedom of expression. But after conducting that proportionality

analysis, the Court came to the conclusion that in all the circumstance, the injunction would not cause any unreasonable restriction on freedom of expression. So in effect, the court has taken into account any possible concern about chilling effect but disagreed that this provided a reason for concluding there would be any unreasonable restriction on the freedom of expression.

(Please also refer to the Chinese portion of the transcript.)

Ends/Wednesday, May 8, 2024