

Speech by DSJ at Business of IP Asia Forum 2024 Breakout Session (English only) (with photo)

Following are the welcome remarks by the Deputy Secretary for Justice, Dr Cheung Kwok-kwan, at the Business of IP (Intellectual Property) Asia Forum 2024 Breakout Session "IP and Dispute Resolution in the Digital Era: Embracing Challenges and Seizing Opportunities in E-commerce" today (December 6):

Distinguished guests, ladies and gentlemen,

Good afternoon. It gives me great pleasure to welcome you all to this thematic Breakout Session co-organised by the Department of Justice and the Hong Kong Trade Development Council.

The exponential growth of e-commerce in recent years has brought revolutionary changes to the global retail landscape by shifting physical retail stores to online platforms and operations and bringing shopping experiences to consumers' fingertips via computers and mobile devices. Whilst e-commerce offers unparalleled convenience to customers, the rise of online shopping platforms and digital marketplaces has brought about numerous challenges in the realm of intellectual property. Later this afternoon, our distinguished speakers will take us through the common pitfalls and potential IP infringement issues arising from the use of e-commerce platforms, and address how these issues can be tackled and resolved.

Artificial intelligence technologies are also increasingly being deployed in e-commerce platforms these days. Creative works and innovations generated by AI applications often challenge the traditional notions of authorship and inventorship, thereby posing new perspectives in identifying, tracking down infringers and enforcing IP rights against such AI-generated infringing content. These all could add another layer of complexity to resolving IP disputes.

In this regard, the Government has made every effort to ensure that our local IP protection regime remains robust and up-to-date. For instance, recognising the critical role of copyright protection in innovation and creativity, the Intellectual Property Department has launched a two-month public consultation on the enhancement of the

Copyright Ordinance (Cap. 528) regarding the protection of AI technology development and copyright infringement liability for AI-generated works. The Chief Executive's 2024 Policy Address also stresses that the Government will set out the way forward for further enhancement to the Copyright Ordinance in the coming year.

International and Mainland co-operation

Apart from ensuring that our domestic IP laws align with the ever-evolving international norms and technological developments, Hong Kong also maintains close co-operation with the international community in this respect. Up to date, 10 main international IP conventions have been applied to Hong Kong by Mainland China, providing international IP protection to creators.

As we all know, e-commerce platforms generally operate across different continents, enabling vendors to merchandise their products to customers worldwide. The global nature of these platforms makes it notably difficult to identify and locate infringing sellers and enforce IP laws consistently, particularly when they are based in jurisdictions with weak IP enforcement mechanisms. International IP conventions that aim at harmonising the global copyright protection practice, such as the Berne Convention and the World Intellectual Property Organization, WIPO, Copyright Treaty, apply to Hong Kong. These provide effective solutions to the cross-border IP issues and dispute resolution in the digital era.

In addition, being a member of the World Trade Organization (WTO), Hong Kong is a signatory to the WTO TRIPS Agreement. Our IP protection regime is fully compatible with our international obligations and conforms to international standards on the protection of IP rights.

On the Mainland front, the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) fully supports Hong Kong to develop into a regional IP trading centre. In this respect, Hong Kong is enhancing collaboration with the Mainland authorities and actively implementing measures to promote IP trading and professional services in the GBA.

For example, the Commerce and Economic Development Bureau and the Qianhai Authority jointly promulgated 16 Co-operation Measures for the Development of the

Qianhai Shenzhen-Hong Kong Intellectual Property and Innovation Hub in February last year. These Co-operation Measures aptly cover IP protection and IP training, which aim at jointly promoting IP development in Hong Kong and Shenzhen, and fostering cross-boundary innovation, exchanges and co-operation.

Dispute resolution

Turning to dispute resolution, Hong Kong is well positioned to provide first-class IP dispute resolution services. It is immensely encouraging that in the latest World Competitiveness Yearbook 2024, Hong Kong is ranked eighth globally on the criterion of "IP rights". Furthermore, in the recent World Bank Group Business Ready 2024 Report, Hong Kong ranks eighth in the topic of "Dispute Resolution" among the 50 economies covered. It is evident that both our IP protection regime and dispute resolution services are well recognised and celebrated among the international legal community.

In terms of litigation, since May 2019, the High Court's Court of First Instance has had an IP Specialist List to hear IP cases, including interlocutory applications and trials.

Another significant recent development that I wish to highlight is the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the HKSAR concluded in 2019, which has come into operation in both places in January this year. This arrangement goes beyond the Hague Judgments Convention by not only covering a wide range of judgments on contractual and tort disputes, but also expressly covering judgments given in respect of certain types of disputes over IP rights. This Arrangement effectively reduces the need for re-litigation of the same disputes in both places and provides a more cost-effective and streamlined process for cross-border enforcement of Mainland judgments.

Arbitration is a popular method for resolving international IP disputes. In 2017, we amended our Arbitration Ordinance (Cap. 609) to clarify that all IP disputes, whether within or outside Hong Kong, may be resolved by arbitration, and that IP arbitral awards are enforceable in Hong Kong. In light of the rapid development of innovation and technology around the globe, which inevitably gives rise to IP disputes, these timely amendments have given Hong Kong a competitive edge over other jurisdictions in resolving IP disputes.

In cross-border disputes involving violation of IP rights, urgent interim measures in the form of property and evidence preservation are usually called for. The groundbreaking Interim Measures Arrangement, implemented in October 2019, allows parties to arbitration seated in Hong Kong and administered by designated arbitral institutions to apply to the Mainland courts for interim measures. This arrangement provides an effective means to prevent a disputing party from deliberately destroying evidence or dissipating assets on the Mainland, ensuring that the legitimate interest of the claimant are well protected. Our panel speakers will later enlighten you further on the benefits of resolving IP disputes through arbitration.

As evidenced by various initiatives in recent years, our department (Department of Justice) has spared no efforts in strengthening Hong Kong's status as a leading regional centre for international legal and dispute resolution services. I am confident that, backed by our excellent legal infrastructure, our legal and dispute resolution experts can leverage the advantages of our robust IP regime and continue to excel in the new frontier of e-commerce.

On this note, I wish this Forum and today's Session every success. Thank you very much.

Ends/Friday, December 6, 2024