

# CURRENT AND FUTURE IP JUDICIAL SPECIALISATION

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# MALAYSIA



# Introduction

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- ❑ Effective and efficient enforcement is vital to protect All IP initiatives
- ❑ Effective and efficient judicial systems is equally important



# Background

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- Pre 2002, IP industry was supervised and monitored by a division in MDTCA
  
- Post 2002, MyIPO was established
  - Malaysia Intellectual Property Organization Act 2000



# Functions of MyIPO *inter alia*

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- ❑ Ensure the provisions of the MyIPO Act and IP Legislations are administered, enforced, given effect to, carried out and complied with
- ❑ Regulate and supervise issues ad matters relation to IP in relation to IP Legislations
- ❑ Advise on the review and updating of the IP Legislations



# IP Legislations

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- Trade Marks Act 1976
- Patent Act 1983
- Copyright Act 1987
- Industrial Design Act 1996
- Layout Designs of Integrated Circuits Act 2000
- Geographical Indications Act 2000
- Any subsidiary legislations made under all the above Acts



# IP related legislations

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- ❑ Trade Descriptions Act 1972
- ❑ Optical Discs Act 2000



# Enforcement of IP Legislations

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- ❑ Enforcement of IP legislations is not done by MyIPO
- ❑ But by the Enforcement Unit of MDTCA
  - supervised and monitored by the Deputy Public Prosecutor
  - taking directions from the Deputy Public Prosecutor
- ❑ Complicated cases being handled by Deputy Public Prosecutor



# Attorney General Chambers

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- ❑ issued a directive to MDTCA for all copyright cases to be prosecuted 7 days after being investigated
- ❑ Commercial Crime Unit, Prosecution Division to supervise and monitor all IP and IP related cases



# Criminal actions

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- ❑ Copyright Act 1972 : infringing copies
- ❑ Trade Description Act 1972 : trade mark & passing off



# Civil actions

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- Not many cases registered in court
- Higher % on trade marks cases



# Current position: 1<sup>st</sup> Instance Court

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- Criminal actions are heard and determine by the subordinate courts : Sessions and Magistrate Court
- Civil actions are actionable in the High Court



# Specialization?

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- ❑ No specialization in the subordinate court
- ❑ However, directive was issued by the Chief Justice of the Supreme Court to the Subordinate Courts
  - To give priority to a few categories of cases which included piracy cases
- ❑ High Court is divided into Civil, Commercial Crime and Criminal
- ❑ No specialization in the Appeal and Supreme Court



# Appeals

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- Appeal from subordinates court will be heard by the High Court
  - Criminal action : High Court (Criminal)
  - Civil action : High Court (Civil)
  
- Appeal from the High Court will be heard by the Appeal and Supreme Court



# Specialised Tribunal?

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- Under the Copyright Act 1987, a Copyright Tribunal may be established
- Jurisdiction: hearing cases pertaining to licensing scheme
- Not utilised to resolve issues



# Future IP Judiciary Specialization

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- ❑ Possibility of having an IP Court was looked into due to backlog of criminal copyright cases
- ❑ A task force was formed comprising of MDTCA, AGC, Judiciary
- ❑ Form of IP Court not yet determine
- ❑ Visits to other countries made to study the IP Court System
  - Thailand, Japan, Korea,
- ❑ Dateline: mid June 2006



# Matters of concerned

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- Justifications
- Structure
- Procedures
- Human capacity
- Training
- Career pathway
- Finance/Costs
- Legislations
  - New legislations
  - Amendment to current legislations



# Immediate action

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- ❑ To tackle backlog of criminal copyright cases
- ❑ Dedicated Sessions Court may be proposed
  - Pilot project in Kuala Lumpur
  - If viable /successful, extend to other jurisdictions



# Capacity Building Programme

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- Attorney General Chambers & MyIPO is having a joint effort on capacity building programme for legal and judicial officers
  - To create a pool of legal expert in the public service
  - To ensure continuous legal education for legal and judicial officers in IP issues and matters



# Conclusion

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- The establishment of an IP Court is still under consideration
- Offers of assistance received
- IP Court, if established, will be molded to suit local environment



# THANK YOU

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# Q & A

