UKSC/2025/0058

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL OF ENGLAND AND WALES
(CIVIL DIVISION)

B E T W E E N:

(1) TESLA, INC.
(2) TESLA MOTORS LIMITED **Appellants/Claimants**

and

(1) INTERDIGITAL PATENT HOLDINGS, INC.
(2) INTERDIGITAL HOLDINGS, INC.
(3) AVANCI, LLC **Respondents/Defendants**

and

THE MOTION PICTURE ASSOCIATION, INC
Rule 24 Intervener

SUBMISSIONS OF THE MOTION PICTURE ASSOCIATION

I. Introduction

1. The Motion Picture Association, Inc. (MPA) is a not-for-profit trade association founded in 1922 to address issues of concern to the motion picture industry. Its members include Amazon Studios LLC; Netflix Studios LLC; Paramount Pictures Corporation; Universal City Studios LLC; Walt Disney Studios Motion Pictures; and Warner Bros. Entertainment Inc. These companies and their affiliates are the leading producers and distributors of filmed entertainment in the theatrical, television, and streaming sectors.

2. MPA's members invest in, produce, distribute, stream and market content across the globe, including making substantial investments in the UK, which is the largest motion picture and television sector in Europe.

3. MPA is making this written intervention in relation to Ground 1 of the Appellants' Grounds of Appeal (whether pool licences are arguably required to be Fair Reasonable **[22/456]**

and Non-Discriminatory (F/RAND)) because standard essential patent (SEP) pools are an important means through which its members can obtain fair licences to SEPs purported to be required in the film, television, and streaming industries.

4. MPA submits that (1) pools are important for licensing SEPs, in particular audio-video codecs, (2) the long-standing practice has been to license nearly all alleged audio-video codec SEPs through pools, and (3) if F/RAND obligations are not enforceable in respect of pool offers, pools would not serve their procompetitive purposes. Without enforceable F/RAND commitments, pools would become instruments for imposing supra-F/RAND, anticompetitive terms. This is an especially acute concern given recent attempts to use pools to license SEPs at above market terms. For example, Access Advance has recently attempted to start a licensing program for video streaming activities (the Video Distribution Platform Program or "VDPP") at what MPA and its members consider to be obviously exorbitant royalty levels and contrary to the earlier promise it made in 2018 to "*no longer license nor seek royalty fees for non-physical HEVC content distribution including Internet streaming, cable, over-the-air broadcast, and satellite*".[1] In addition to the foregoing, when pools refuse to negotiate terms outside their published rate cards, MPA's experience is that pool licensors often attempt to coerce prospective licensees into signing up to those high pool rates by threatening litigation. Pool licensors claim their F/RAND obligations have been discharged through the pool licence offers thus it is acceptable for them to bring suit without engaging in reasonable and non-discriminatory licensing negotiations. This creates a conundrum where SEP owners can engage in conduct contrary to F/RAND obligations, while using pools as a mechanism to shield their conduct from scrutiny.

II. F/RAND obligations in the film, television, and streaming industries

5. Digitisation and streaming have altered the way in which audiences can access audiovisual content. Many standardised technologies underpin the ability to stream content, including those standards relating to connectivity and the transmission of data

[1] "*HEVC Advance Eliminates Content Distribution Royalty Fees and Reduces Certain Royalty Rates and Caps*", Access Advance, 13 March 2018, accessible at: https://accessadvance.com/2018/03/13/hevc-advance-eliminates-content-distribution-royalty-fees-and-reduces-certain-royalty-rates-and-caps/.

(whether wired or wirelessly), and standards enabling the encoding and decoding of audiovisual data (i.e. audio-video codecs).

6. The standards relating to the audio-video codecs used in streaming are important to MPA's members. Their importance generally is illustrated by the increasing amount of litigation in the UK and other jurisdictions involving such standards e.g. *Acer v Nokia*,[2] **f.n. 2 [94/1143]**

[2] Parties involved in litigation in the UK, Case No. HP-2025-000030; the UPC, Case No. ACT_15096/2025 (Local Division, Munich); Germany, Case Nos. 7 O 4100/25 (Munich), 7 O 4101/25 (Munich), the US, Case Nos. 1:25-cv-01106 (Delaware District Court), 1:25-cv-00523 (Texas Western District Court); Brazil, Case No. 1052350-65.2025.8.26.0100; India, Case No. CS(COMM) 644/2025 (Delhi High Court).

f.n. 3 [94/1143]

ASUS v Nokia,[3] *Hisense v Nokia*,[4] *InterDigital v Amazon*,[5] *Dolby v Roku*,[6] *Paramount v Nokia*,[7] *Warner Bros. v Nokia,* [8] *InterDigital v. Disney,*[9] and *Huawei v. Disney*.[10]

f.n. 5 [102/1352]

f.n. 8 [176/3136]

7. The SEPs relating to these standardised technologies are subject to F/RAND obligations. Although as Mellor J recently observed in *Acer and ors v Nokia* [2025] EWHC 3331 (Pat) (*Acer*) at [39] each F/RAND regime must be analysed on its own merits, the critical

[94/1154]

[3] Parties involved in litigation in the UK, Case No. HP-2025-000039; the UPC, Case Nos. CC_CFI_384/2026 (Local Division, Munich), ACT_15048/2025 (Local Division, Munich); Germany, Case Nos. 7 O 4102/25 (Munich), 7 O 4103/25 (Munich), the US, Case No. 2:25-cv-03053 (California Central District Court); India, Case No. CS(COMM) 643/2025 (Delhi High Court).

[4] Parties involved in litigation in the UK, Case No. HP-2025-000032; the UPC, Case No. ACT_15109/2025 (Local Division, Munich); Germany, Case Nos.7 O 4104/25 (Munich), 7 O 4105/25 (Munich); the US, Case Nos.1:25-cv-01871 (Georgia Northern District Court), 2:25-cv-01091 (Texas Western District Court); Brazil, Case Nos. 5071632-55.2025.4.02.5101, 1049035-29.2025.8.26.0100; India, Case No. CS(COMM) 645/2025 (Delhi High Court).

[5] Parties involved in litigation in the UK, Case No. HP-2025-000043; the UPC, Case Nos. CFI_1376/2025 (Local Division, Mannheim), COA_12/2026 (Court of Appeal, Luxembourg), CFI_2045/2025 (Local Division, Mannheim), CFI_1481/2025 (Local Division, Mannheim), CFI_1482/2025 (Local Division, Mannheim); Germany, Case No. 21 O 12112/25 (Munich); the US, Case Nos. 7:26-cv-00064 (Texas Western District Court), 1:25-cv-02390 (Virginia Eastern District Court), 2:25-cv-00822 (Virginia Eastern District Court), 1:25-cv-01365 (Delaware District Court); Brazil, Case Nos. 3021485-26.2025.8.19.0001, 1109939-15.2025.8.26.0100.

[6] Parties involved in litigation in the UPC, Case No. APL_15039/2025 (Court of Appeal, Luxembourg); Germany, Case No. 21 O 8296/25; the US, Case Nos. 2025-02015 (USCA Federal Circuit), 5:24-cv-04660 (California Northern District Court First instance); Brazil, Case No. 3016299-22.2025.8.19.0001.

[7] Parties involved in litigation in the UK, Case No. HP-2025-000055; the UPC, Case Nos. CC_CFI_739/2026 (Local Division, Mannheim), CFI_975/2025 (Local Division, Mannheim); Germany, Case Nos. 21 O 12377/25 (Munich), 21 O 12378/25 (Munich); the US, Case No. 1:25-cv-01054 (Delaware District Court); Brazil, Case No. 5005161-23.2026.4.02.5101.

[8] Parties involved in litigation in the UK, Case No. HP-2025-000053; the UPC, Case No. CFI_1390/2025 (Local Division, Mannheim); Germany, case number unknown (Munich); the US, Case No. 1:25-cv-01337 (Delaware District Court).

[9] Parties involved in litigation in the UPC, Case Nos. CFI_86/2025 (Local Division, Mannheim), CFI_297/2025 (Local Division, Dusseldorf), CFI_651/2025 (Local Division, Dusseldorf), CFI_292/2025 (Mannheim); Germany, Case Nos. 7 O 4335/25 (Munich), 7 O 1297/25 (Munich), 7 O 1311/25 (Munich), 7 O 5087/25 (Munich), 6 U 3677/25 e (Munich Court of Appeal); the US, Case Nos. 2:25-cv-00895-WLH-RAO (California Central District Court), 25-cv-996-MN (Delaware District Court); Brazil, Case Nos. 0811901-50.2025.8.19.0001, 3017870-28.2025.8.19.0001.

[10] Parties involved in litigation in the UPC, Case No. CFI_352/2026 (Local Division, Mannheim); Brazil Case No. 3019978-93.2026.8.19.0001; Germany, Case Nos. 7 O 15364/25 (Munich), 7 O 15365/25 (Munich).

point from the perspective of this case is that the key aims and practical effect of the RAND obligations applicable to audio-video codecs are effectively the same as the F/RAND obligations applied by ETSI.

8. This is illustrated by the findings of Mellor J in *Acer* which concerned the H.265 High Efficiency Video Coding (HEVC) Standard promulgated by the International Telecommunication Union (ITU). This is an audio-video codec standard of particular importance to current streaming services.

9. At [111] of *Acer* the judge adopted the characterisation of the claimants in that case, which he had earlier summarised at [45](i): **[94/1155]**

> *"…it is a contract for the benefit of third party beneficiaries which requires Nokia to make RAND offers which are capable of acceptance and, when accepted, require Nokia to enter into the resulting RAND licence. In effect, it is an obligation to grant RAND licences with the same meaning as ETSI FRAND."*

10. The wording of the ITU RAND commitment is set out at [88] – [90] of *Acer*: **[94/1161]**

> *88. The relevant text from the Licensing Declarations at [B3/6-9], which are identical in all material respects, is as follows (emphasis added):*
>
> > *"The Patent Holder is prepared to grant a license to an unrestricted number of applicants **on a worldwide, non-discriminatory basis, and on reasonable terms and conditions to make, use and sell implementations** of the above document."*
>
> *89. In those Licensing Declarations, the box is ticked stating that the Patent Holder's willingness to license is conditioned on "reciprocity for the above document"; with reciprocity being defined as meaning that (emphasis added):*
>
> > *"the Patent Holder shall only be required to license any prospective licensee if such prospective licensee will commit to license its essential patent(s) or essential patent claim(s) for implementation of the same above document free of charge or under reasonable terms and conditions."*
>
> *90. The Declarations also include notes about assignment/transfer of Patent rights. The notes explain that the Declarations "shall be interpreted as*

encumbrances that bind all successors-in-interest as to the transferred Patents". [Emphasis in bold added].

11. As with the ETSI FRAND commitment, it is notable that there is no language within the ITU commitment providing any exception to the RAND obligation when licensing in a pool context. Clearly, no such exclusion was intended. Further support that pool licensing does not insulate a SEP owner from the F/RAND obligation can also be seen in other parts of *Acer:*

    11.1. Mellor J's conclusion at [123] that *"…the obligation is not a personal duty of conduct but a transferrable encumbrance on the property right."*; and **[94/1168]**

    11.2. The section of the ITU's Common Patent Policy Mellor J discusses at [118]: **[94/1167]**

    > *The CPP 'code of practice' states that it has a 'sole objective' – that a patent embodied fully or partly in a Recommendation … must be accessible to everybody without undue constraints.' It is in this context that it goes on to say '**The detailed arrangements arising from patents (licensing, royalties, etc.) are left to the parties concerned, as these arrangements might differ from case to case.**'* [Emphasis added].

12. As with the ETSI FRAND obligation, the ITU RAND obligation is not accompanied by a mandatory dispute resolution mechanism. This point has already been noted by this Court in *Unwired Planet SC* at [90] as an issue relating to the enforcement of F/RAND commitments generally. **[173/3024]**

13. For completeness, the other main royalty-bearing standard relevant to streaming is the ITU's H.266 Versatile Video Coding (VVC) Standard. Because it is subject to the same RAND obligation as the HEVC Standard, the relevant considerations concerning RAND apply equally to both standards and so the VVC Standard is not considered in detail further.

III. Commercial practices regarding pool licences in the industry

14. The use of patent pools has historically been the predominant model for the licensing of the majority of SEPs relevant to audio-video codecs, such as HEVC. This is longstanding industry practice stemming back to the MPEG-LA administered patent pool launched on 17 November 2003 for SEPs relevant to HEVC's precursor standard, Advanced Video

Coding (AVC or H.264).[11] That single pool was estimated to offer a licence to over 91% of all AVC SEPs, and was widely adopted by industry, as demonstrated in *Microsoft v Motorola*.[12] Industry licensees of audio-video codecs relied upon the MPEG-LA pool as a non-discriminatory licensing model that ensured fairness in SEP licensing terms which helped solidify the adoption of standardised technology in the marketplace. Motorola owned 63 H.264 SEPs accounting for ~3.6% of the worldwide total and other independent licensors outside of the MPEG-LA pool held 89 H.264 SEPs. It logically follows that these 89 SEPs accounted for approximately 5.2% of the total, and hence the MPEG-LA pool comprised ~91.2% of all H.264 SEPs.

15. The MPEG-LA AVC pool licence has been relied upon by licensors in litigation as fulfilling their RAND obligations. An example of this is case 4a O 63/17 (*Tagivan v Huawei*) before the Düsseldorf Regional Court in Germany. Furthermore, in its judgment of 9 November 2018,[13] that court concluded at paragraph 429 that the MPEG-LA AVC pool licence was in fact RAND. This decision of the German court demonstrates that other courts not only consider they do have the jurisdiction to determine whether a SEP pool licence is F/RAND, but have concluded that SEP pool licences are F/RAND and are sufficient to discharge a licensor's F/RAND obligations.

16. Unlike for AVC, following the approval of the HEVC standard in 2013, a single SEP pool was not established. Instead, three separate pools were launched in the following years, respectively administered by MPEG-LA, Access Advance and Velos Media. The Velos Media pool was not a success, and it took several years before the market settled around the MPEG-LA and Access Advance Pools for HEVC. The SEP coverage of these pools was not the same, but did overlap, as observed by the Court of Appeal in *Vestel v Access Advance* at [5]: **[174/3048]**

[11] "*MPEG LA Announces Terms of Joint H.264/MPEG-4 AVC Patent License",* MPEG LA, 17 November 2003, accessible at: https://web.archive.org/web/20070123163607/https://www.mpegla.com/news/n_03-11-17_avc.html.

[12] *Microsoft Corp. v Motorola Inc.*, Findings of Fact and Conclusions of Law, April 25, 2013, accessible at: https://law.justia.com/cases/federal/district-courts/washington/wawdce/2:2010cv01823/171570/931/.

[13] *Tagivan (MPEG-LA) v Huawei*, District Court of Düsseldorf, 9 November 2018, accessible at: https://nrwe.justiz.nrw.de/lgs/duesseldorf/lg_duesseldorf/j2018/4a_O_17_17_Urteil_20181109.html.

"Access Advance is a company which administers a patent pool for the standard (the HEVC Advanced pool). Patent pools allow different organisations to pool their patents together for the purposes of licensing those patents to third parties. This particular pool includes Philips' SEPs. The HEVC Advance pool is not the only patent pool holding SEPs for the H.265 standard. There is another pool operated by MPEG LA. Although there are currently some SEPs in both pools, there are many SEPs which are only in one pool or the other one. Access Advance operates as a representative for the holder of the relevant patents and offers a licence on that basis. It does not own any patents."

17. Recently, there have been various changes of ownership of the MPEG-LA HEVC pool, and most recently, on 15 December 2025, Access Advance announced its acquisition of the MPEG-LA Pool. According to Access Advance, as of January 2026, the MPEG-LA HEVC pool and the HEVC Advance pool collectively accounted for almost 90% of HEVC SEPs, with the HEVC Advance Pool alone accounting for almost 79% of all HEVC SEPs.[14] Fewer than 4,000 self-declared SEPs out of a population of circa 36,700 are not offered for licence by one of these two pools owned by Access Advance. [15]

18. Whilst there are a few entities such as Nokia, Ericsson and InterDigital, who monetise their HEVC SEPs outside of the pool framework, the vast majority of licensors offer their HEVC SEPs though the Access Advance or MPEG-LA pools. As at March 2026, the Access Advance HEVC pool has 46 licensors, the majority of whom are significant undertakings, e.g. Dolby, Microsoft and Samsung.[16] Similarly the MPEG-LA pool lists 49 licensors, including significant undertakings such as Apple, the BBC and Siemens.[17]

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[14] "*HEVC Worldwide Essential Patents Landscape*", Access Advance, January 2026, accessible at: https://accessadvance.com/hevc-worldwide-patent-landscape/.

[15] Ibid.

[16] "*HEVC Advance Patent Pool*", Access Advance, accessible at: https://accessadvance.com/hevc-advance-patent-pool-licensors/.

[17] "*HEVC/VVC*", Via Licensing Alliance, accessible at: https://via-la.com/licensing-programs/hevc-vvc/#licensors.

19. Access Advance claims that it is open to licensees to seek bilateral licences with the pool licensors.[18] However, the reality is that the high percentage of SEPs estimated to be covered by the pool, the sheer number of licensors who contribute those patents to the pool, and the many licensors who are not in practice prepared to engage in bilateral negotiations mean it is neither practical nor commercially viable for licensees to attempt bilateral licensing with each licensor. This is true even for licensees of the size and sophistication of MPA's members. Thus SEP pool licences can be *de facto* the only way to secure the necessary licence to the SEPs they contain.

20. Access Advance holds out that its pools are F/RAND[19] and the licensors within the pool rely on this fact, including in litigation, as fulfilling their F/RAND obligations. An example of this is given in *Vestel v Access Advance* at [26]: **[174/3050]**

> *"Although at the time this action began there were no other relevant proceedings in other European states relating to Vestel, in July 2020* ***patentees holding SEPs in the HEVC Advance pool (including Philips) started patent infringement proceedings against Vestel in Germany. Amongst other things they contended that the [Access Advance HEVC Pool] terms are FRAND*** *and so the requirements of Huawei v ZTE (Case C-170/13) EU:C:2015:477 are satisfied."* [Emphasis added].

21. More recent examples include the multi-jurisdiction litigation between Access Advance pool licensor Dolby and Roku, and the US litigation between Avanci Video pool member Velos Media and TikTok and its parent ByteDance. The former concerned Roku's alleged infringement of Dolby's HEVC SEPs, and involved proceedings in the UPC, Germany and Brazil, culminating in a reported settlement whereby Roku entered into an Access

[18] "*Access Advance Comments in Response to the European Commission's Public Consultation on the "Draft Revised Technology Transfer Block Exemption Regulation and Technology Transfer Guidelines"*", Access Advance, 21 October 2025, accessible at: https://accessadvance.com/policy-advocacy/executive-summary-access-advance-llc-comments-in-response-to-the-european-commissions-public-consultation-on-the-draft-ttber-and-ttgl/#:~:text=Access%20Advance's%20Duplicate%20Royalty%20Policy,dealing%20with%20Procompetitive%20Patent%20Pools.

[19] "*About Access Advance*", Access Advance, accessible at: https://accessadvance.com/about/.

Advance HEVC pool licence[20]. In the latter example, Velos has accepted in its complaint that it is required to license its HEVC SEPs on F/RAND terms, and at paragraphs 149 – 151 of the complaint observes that TikTok remains unlicensed to its SEPs despite being offered a licence by the Avanci Video pool that would have covered those patents on F/RAND terms.[21]

22. In addition to the above, more recently pools have been purchased or used by known monetising entities as a vehicle for capitalising on licensing royalties. Dolby, for example, obtains substantial annual revenues from patent licensing.[22] Dolby purchased MPEG LA in 2023,[23] and then in around 2024, Dolby took a minority ownership interest in Access Advance.[24] Shortly after these developments, Access Advance decided to break with long standing historical practice and launched its VDPP, with royalty rates far higher than those charged in the past.[25] When Access Advance entered into a binding agreement to purchase MPEG LA's HEVC program (see paragraph 17 above) with the aim to consolidate MPEG LA and Access Advance HEVC pools,[26] it did so without

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[20] "*Dolby, Roku settle global litigation as the streamer takes pool licence*", IAM, 8 January 2026, accessible at: https://www.iam-media.com/article/dolby-roku-settle-global-litigation-the-streamer-takes-pool-licence.

[21] *Velos Media, LLC v. ByteDance Ltd et al*, Texas Western District Court, 24 June 2025, accessible at: gov.uscourts.txwd.1172851970.1.0.pdf.

[22] Dolby Laboratories Reports First Quarter 2026 Financial Results, Dolby, 29 January 2026, accessible at: https://investor.dolby.com/news-events/financial-news/news-details/2026/Dolby-Laboratories-Reports-First-Quarter-2026-Financial-Results/default.aspx (total revenue for the first quarter of 2026 is estimated to be around $400 million with upwards of $380 million from licensing).

[23] "*The numbers behind Via Licensing's $160.6 million acquisition of MPEG LA*", IAM, 8 August 2023, accessible at: https://www.iam-media.com/article/the-numbers-behind-licensings-1606-million-acquisition-of-mpeg-la

[24] Dolby 10-K 2024, accessible at: https://d18rn0p25nwr6d.cloudfront.net/CIK-0001308547/25a6dae1-c8eb-45a2-a0f7-e302039fd377.pdf, p.8 ("*We hold a minority ownership interest in Access Advance*").

[25] "*Access Advance Announces Video Distribution Patent Pool in Response to Market Demand*", Access Advance, 16 January 2025, accessible at: https://accessadvance.com/2025/01/16/access-advance-announces-video-distribution-patent-pool-in-response-to-market-demand/.

[26] "*Access Advance buys Via's HEVC, VVC pools*", IAM, 15 December 2025, accessible at: https://www.iam-media.com/article/access-advance-buys-vias-hevc-vvc-pools (contending that acquisition is "*a move that will simplify the video licensing landscape and provide greater clarity and efficiency for licensors and licensees worldwide*").

telling the MPEG LA licensors.[27] Similarly, Avanci is attempting to start a video coding licensing program, backed by known monetisers Ericsson, Philips, and others.[28] This recent activity further highlights the importance of F/RAND obligations in the film, television, and streaming industries.

IV. Why the F/RAND obligations in the industry must apply to pools and be scrutinised by the courts

23. The prevalence of pool licensing for audio-video codec SEPs, the fact that such pool licences are held out as F/RAND, and the reliance of licensors on the pools as satisfying their F/RAND obligations, are all factors that underscore why it is vital that F/RAND obligations be equally applied to pools that include SEPs.

24. In the film, television, and streaming industries, if F/RAND obligations are found not to apply to pools that include SEPs then the potential for abuse of the system by pool licensors is self-evident. Without a F/RAND obligation applicable to pool offers that license alleged SEPs, the members of the MPA would be stuck between the rock of pool licensing, unrestrained by F/RAND, and the hard place of attempting to obtain individual, bilateral licences. As a matter of commercial reality, the only licence offered to MPA members for the overwhelming majority of HEVC SEPs is that offered by pools. Moreover, in seeking to obtain individual licences MPA members would simply be told by licensors that their participation in the pool licence fulfilled their F/RAND obligations.

25. It goes without saying that the existence of the F/RAND obligation on patents within pools, without court scrutiny of the rates offered by pools, would seriously undermine the effectiveness of the applicable F/RAND obligations because there would be no way in which the obligation could be enforced. Indeed, it would likely render it meaningless. This is especially so in circumstances where a single pool administrator provides purportedly almost 90% coverage of the required SEPs for one of the most widely adopted royalty-bearing streaming standards.

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[27] "*Via video licensors kept in the dark about pool sale; Access Advance seeking support for merged offering*", IAM, 10 March 2026, accessible at: https://www.iam-media.com/article/video-licensors-kept-in-the-dark-about-pool-sale-access-advance-seeking-support-merged-offering.

[28] "*Avanci Video Launched as Licensing Platform for Internet Streaming Services*", Avanci, 18 October 2023, accessible at: https://www.avanci.com/2023/10/18/avanci-video-launched-as-licensing-platform-for-internet-streaming-services/.

26. The absence of mandatory dispute resolution mechanisms in the relevant standards in this industry means that the only available mechanism for scrutiny of SEP licensing arrangements is the national courts. This emphasises the legal and policy imperative for such scrutiny to extend to SEP pools.

V. Analogous treatment of collective management organisations in the field of copyright

27. In his dissenting judgment in the court below, Arnold LJ stated at [21]: **[12/241]**

> "*In many ways, Avanci operates in a similar manner to that of collective management organisations in the field of copyright: it sets a tariff for licences granted on behalf of multiple licensors to multiple licensees in a particular sector, and it distributes licence income received from licensees to licensors using a points formula after taking a commission. Avanci deals with each licensor separately from the other licensors and with each licensee separately from the other licensees.*"

28. This analogy to collective management organisations ("CMOs") is not limited to just the Avanci pool in the instant case. It applies equally to the other pools licensing standard essential patents, including those relevant to the film, television, and streaming industries. Therefore, it is instructive to consider why and how CMOs are subject to court review of their activities.

29. The rationale for court review is to ensure that CMOs cannot act in an anti-competitive manner. As Copinger and Skone James on Copyright ("Copinger") 19th Ed explains at §31-39:

> "***Some mechanism is required to guard against the possibility that monopoly rights are abused in the conditions demanded for licensing their use, and to prevent the customer suffering from unjustifiably high prices****, since collecting societies may in some cases control worldwide repertoires over which they exercise a de facto monopoly in any given country.*" [Emphasis added].

30. The parallels between this and the underlying rationale for court review of the F/RAND commitment are clear. As has been explained by this Court in *Unwired Planet SC* at [90], **[173/3024]** the policies of the SSOs, which various industries have established:

> *"…limit the national rights of a SEP owner if an implementer agrees to take a FRAND licence. Those policies, which either expressly or by implication provide for the possibility of FRAND worldwide licences when a SEP owner has a sufficiently large and geographically diverse portfolio and the implementer is active globally,* ***do not provide for any international tribunal or forum to determine the terms of such licences. Absent such a tribunal it falls to national courts****, before which the infringement of a national patent is asserted, to determine the terms of a FRAND licence…."* [Emphasis added].

31. Just as there is a need for *"some mechanism"* to guard against monopoly rights being abused by CMOs, the same is true for SEP pools. They need to be regulated for the same reasons as CMOs, to prevent licensees (and ultimately consumers) from suffering unjustifiably high prices, and supra-F/RAND licensing terms. As with the collective licensing of copyrighted works, the risk of abuse is particularly acute when the alleged SEPs of different owners are collectively offered in a patent pool because of the large number of rights involved.

32. This parallel with the treatment of CMOs in the field of copyright, demonstrates the clear policy imperative for there to be a mechanism by which the licensing terms offered by SEP pools can be reviewed. This is especially so in circumstances where said pools hold themselves out to be offering terms that are F/RAND and patent owners rely on that representation in their enforcement activities.

33. In the case of CMOs, the form that the mechanism to prevent abuse takes can vary, but involves recourse to the courts or some form specialist tribunal. As Copinger observes at §31-33:

> "*Various jurisdictions have dealt differently with the reality that collecting societies, having a de facto monopoly position, may abuse that position. Some provide for settlement of disputes by the civil courts. Elsewhere, governments have opted to establish, as in the UK, some form of compulsory arbitration or specialist tribunal having jurisdiction to review the activities of collecting societies and power to determine or vary the rates charged and to order the grant of licences.*"

34. Similar to requirements for SEPs to be licensed on F/RAND terms, CMOs are required to license on terms that are reasonable based on objective, transparent metrics and non-discriminatory. In the UK, various provisions of the Copyright, Designs and Patents Act 1988 ("CDPA") govern the activities of CMOs and the terms of licences and licensing schemes operated by CMOs may be referred to the Copyright Tribunal for review, confirmation or variation by actual or potential licensees (see ss 116-152 CDPA).

35. When the terms of licences and licensing schemes are considered by the Copyright Tribunal a key principle is to prevent unreasonable discrimination. This includes ensuring there is no unreasonable discrimination between the different licences offered by a licensor, see s 129 CDPA:

> "***General considerations: unreasonable discrimination.***
> *In determining what is reasonable on a reference or application under this Chapter relating to a licensing scheme or licence, the Copyright Tribunal shall have regard to—*
> *(a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances, and*
> *(b) the terms of those schemes or licences,*
> *and shall exercise its powers so as to secure that there is no unreasonable discrimination between licensees, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.*"

36. The position is similar in the EU. Whilst the legal implementation of regulating CMOs is left to individual member states, Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market ("the CRM Directive") makes clear, in recital 31, that:

> "***Fair and non-discriminatory commercial terms in licensing are particularly important*** *to ensure that users can obtain licences for works and other subject-matter in respect of which a collective management organisation represents rights, and to ensure the appropriate remuneration of rightholders. Collective management organisations and users should therefore* ***conduct licensing negotiations in good faith and apply tariffs which should be determined on the basis of objective and non-discriminatory criteria****. It is appropriate to*

require that the licence fee or remuneration determined by collective management organisations be reasonable in relation to, inter alia, the economic value of the use of the rights in a particular context. Finally, collective management organisations should respond without undue delay to users' requests for licences."

37. The consistent framework in the UK and other jurisdictions is that CMOs, which have a monopoly in a given territory over the management of copyright related to a category of protected works must be considered to have a dominant position, and that their conduct is subject to scrutiny to ensure their activities in licensing do not abuse that position. CMOs are subject to specific regulations under copyright law and also competition law. They must license works on terms comparable to the F/RAND obligation for SEPs. That this obligation arises for IP rights that would not necessarily be individually subject to such a commitment, emphasises why legally and as a matter of policy such an obligation must apply for a pool of SEPs, where each SEP is subject to an individual F/RAND commitment.

38. Furthermore, the similarities between the risks associated with SEP pools and CMOs, also demonstrate why there exists the same legal and policy imperative for there to be a court or tribunal in place to ensure redress for a licensee. In the UK, the Copyright Tribunal serves that purpose for CMOs. For SEPs, the English Courts provide that function. The MPA invites this Court to find that the parallels with CMOs in the field of copyright discussed above emphasize why the English Court's jurisdiction to determine F/RAND terms does and must extend (at least arguably) to SEP pools.

VI. Conclusion

39. MPA respectfully requests that Ground 1 of Tesla's appeal is allowed for all the reasons above.

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