



**The Copyright
Tribunal**

IN THE COPYRIGHT TRIBUNAL
IN THE MATTER OF A REFERENCE UNDER SECTION 119
OF THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988

HH Judge Hacon (Chair)

Mary Halton

Ian Whitlock

8 October 2026

B E T W E E N :-

UK CINEMA ASSOCIATION LTD

Applicant

- and -

PERFORMING RIGHT SOCIETY, LIMITED

Respondent

DECISION

Introduction

1. This is a reference to the Copyright Tribunal in respect of Tariff C operated by the Respondent ('PRS'). PRS is a collecting society that licenses the public performance of songs and other musical works protected by copyright. The members of PRS are composers of music, authors of lyrics, publishers of music and lyrics, together with successors in title to their copyrights. The members

assign the copyrights they own to PRS, which administers the copyrights on their behalf by granting licences and passing back the royalties generated to the members, subject to administration costs. Licences are granted under alternative tariffs operated by PRS, each tariff being tailored to the relevant type of licensee.

2. Tariff C is used to grant licences for the performance of musical works featured in the soundtrack of films when films are shown in cinemas. The licences also cover the playing of music other than in the soundtrack of the film being screened, such as in trailers, intermissions and in public places in the cinema including the foyer.
3. The reference is made under s.119 of the Copyright, Designs and Patents Act 1988 ('the 1988 Act') by the Applicant ('UKCA'), which represents circa 230 cinema operators in the UK, which amounts to over 90% of the total by cinema numbers and market share. The reference is in response to PRS's proposal to introduce an amended version of Tariff C ('the Proposed Tariff').
4. Lindsay Lane KC and Jonathan Hill instructed by CMS Cameron McKenna Nabarro Olswang LLP appeared for UKCA, Robert Howe KC and Dominic Howells instructed by Simkins LLP for PRS.

Background

5. Tariff C dates from 1 August 1915 when films were silent but accompanied by live music, usually a piano played in a style and tempo appropriate to the events on screen, sometimes with added mechanical sound effects. Tariff C was amended in April 1918 and has been changed many times since. The last major revision was agreed between the parties in 2005 ('the 2005 Tariff'). There were further minor amendments in 2010 and 2012.
6. In July 2023 PRS launched a consultation with cinema operators with regard to significant changes it wished to make to Tariff C. Negotiations followed, without resolution save that an interim tariff was agreed to apply for the time being (the 'Interim Tariff'). Following the consultation, on 5 June 2024 PRS announced that the Proposed Tariff would come into force on 1 July 2024. UKCA referred the Interim Tariff to the Tribunal, the effect of which, pursuant to s.119(2) of the 1988 Act, was that the Interim Tariff remains in force until the conclusion of the reference. PRS responded, seeking the Tribunal's approval of the Proposed Tariff.
7. Strictly, the changes in dispute in this reference are as between the Interim Tariff and the Proposed Tariff but because the Interim Tariff is in all respects material to this dispute the same as the 2005 Tariff, argument was directed to a comparison between the 2005 Tariff and the Proposed Tariff.

The Issues

8. The following aspects of the Proposed Tariff are in issue.

A single or dual metric for calculating payment

9. Before 2005 cinema operators paid royalties calculated as a percentage of receipts from ticket sales, referred to at the hearing as the 'POR metric' (percentage of receipts). By 1999 this was fixed at 1% of total ticket receipts for the films over the relevant period. It was maintained in the 2005 Tariff but operators were given the option of basing royalties on an agreed sum per ticket sold, a set price in pence per admission or 'PPA' (the 'PPA metric').
10. If cinema operators wish to select the PPA metric under the Interim Tariff they must do so in advance of each bi-annual period for payment (and formerly on an annual basis under the 2005 Tariff). This may be done for each cinema individually, so chains such as the Odeon chain can nominate one basis for some cinemas and the other basis for the rest. In 2005, the POR metric was agreed between UKCA and PRS for cinemas with a lower average ticket price ('ATP'). Those with higher ATPs tend to opt for the PPA metric.
11. Under the Proposed Tariff there would only be one option: the PPA metric. UKCA resists this proposed change, seeking to maintain the right of its members to select from either of the two metrics.

Change in royalty rates

12. The current payment under the PPA option is 7.33 pence per admission, under the POR metric cinemas pay 1% of total receipts.
13. In the joint view of the experts who gave evidence the Proposed Tariff if adopted in full would increase the aggregate Tariff C royalties by 43-44%.
14. UKCA says that payment on the POR metric should be reduced to 0.9%, a reduction of 10%, and the PPA rate should be reduced to 5.8 pence per admission, a reduction of around 21%.
15. Part of the increase in aggregate royalties proposed by PRS would be accounted for by a change from the dual metric to using solely the PPA metric. Otherwise the parties' respective arguments for an increase or decrease in royalties raise sub-issues which we will next summarise.

The intended relationship between the POR and PPA metrics

16. It is common ground that in 2005 the parties intended a link in royalties payable under the two metrics, POR and PPA, but there is disagreement as to what exactly was intended, a matter we will return to. The parties discussed how the PPA rate should be protected from erosion by inflation. The solution adopted in 2005 was a flat rate 3.25% annual increase.
17. UKCA says that the 3.25% annual PPA adjustment has caused royalty payments according to that metric to rise faster than on the POR metric. It argues that the PPA rate should be reduced by about 10% to bring the two metrics back into line.
18. PRS contends that on a correct analysis they remain in line so no reduction is appropriate.

Premiumisation

19. UKCA's second argument is that since 2005 a significant proportion of the increase in the takings at cinemas has nothing to do with the music performed in their premises, whether in film soundtracks or otherwise. Over the relevant period cinemas have undergone what UKCA calls 'premiumisation', a term used to refer to (i) the expansion of 'boutique' cinemas that have fewer, more comfortable seats and facilities such as bars (the Everyman chain is given as an example), (ii) the advent of 'event cinema' meaning the cinematic presentation of events such as music concerts, theatre performances (National Theatre Live is an example) or sporting events and (iii) the expansion in the installation of premium large format screens ('PLFs') on the IMAX model. UKCA says that since part of the increase in receipts and admissions has been driven by premiumisation there should be a corresponding reduction in royalties due under both metrics.
20. PRS rejects this analysis.

Economic conditions

21. UKCA says that royalties should be reduced because of the adverse economic conditions that have affected its members' profits. PRS submits that adverse economic conditions are irrelevant in law to the setting of royalties.

Music density

22. PRS's first argument is that there has been a 17% increase in what has been called 'music density' since 2005, meaning the proportion of a film soundtrack in which music is heard. PRS says that the length of films has also increased in that time but elects to assume in UKCA's favour that film length is the same, so the 17% increase means 17% more music. It estimates that of music played in a cinema, 85% is performed in the films with the other 15% played in trailers, in the foyer and elsewhere. A 17% increase for the relevant 85% of music amounts to an increase of 14.5% in the PPA rate.
23. UKCA says that there should be no increase in the royalty due to any change in music density because there is no evidence that such a change has increased the economic value of the music licensed to cinema operators.

Booking fees

24. PRS points to booking fees associated with the advent and now dominance of buying cinema tickets online. PRS argues that since 2005 booking fees have in practice become an extra source of income for cinemas so they should be included as part of the ticket price when calculating royalties under Tariff C. The appropriate increase in royalties is a further increase of 0.73 pence under the PPA metric (or an increase of 0.63 pence if the Tribunal does not accept PRS's proposed 14.5% increase in royalties due to the change in music density). PRS says that if the POR metric is maintained, it should increase by a corresponding amount.

25. UKCA contends that booking fees represent a fee for the booking service unrelated to music performance and should not be taken into account. If they are, a more modest increase is called for.

CPLMEs

26. This is an issue independent of the main dispute on royalties. There is a type of event cinema called 'Cinematic Presentations of Live Music Events' ('CPLMEs'). They are musical performances that are either relayed live to the cinema or that are recordings of the event presented substantially as performed, as opposed to being cut or reshaped in their presentation on film. CPLMEs had a distinct status under the 2005 Tariff, attracting royalties only on the POR metric at 3% of CPLME receipts.
27. The Proposed Tariff would move royalties to a PPA metric to be charged at five times the rate that is to be set for the main type of films, with an uplift for booking fees. UKCA presses for no change in either the royalty basis or the rate.
28. There is also a dispute as to whether booking fees should be treated as part of the receipts for CPLME tickets.

Prompt payment discount

29. The 2005 Tariff gave the cinema operators a discount for prompt payment. PRS considers this to be outdated and anomalous, UKCA wishes to retain it.

Inflation Index

30. It is agreed that the PPA metric, if applied, should be index-linked for inflation. PRS proposes the Consumer Prices Index ('CPI') as the appropriate link, UKCA prefers the CPIH index, which includes owner occupiers' housing costs as an element. Neither side suggested that it will make a great deal of difference.

The witnesses

31. There was evidence of fact from Philip Clapp given on behalf of UKCA. Mr Clapp is the Chief Executive of UKCA on behalf of which he has conducted negotiations with PRS. Mr Clapp was cross-examined. He gave clear answers, addressing the questions put to him.
32. There was unchallenged evidence for UKCA from John Hewitt, the co-owner and operator of Wetherby Cinema in West Yorkshire, Mark Williams who is Managing Director and a shareholder of WTW Cinemas Limited, a family-run cinema chain that operates mainly in South West England, from Neil Williams, Director of Odeon Cinemas Limited and Finance Director for Odeon UK and Ireland and from Narinder Shergill who is General Manager of Vue Entertainment Limited, a leading operator of multiplex cinemas in the UK.
33. PRS had a single witness of fact, Gavin Larkins who is Director of Commercial Development and Sales at PRS. He was cross-examined and like Mr Clapp he was a good witness giving clear answers.

34. UKCA's expert witness was Daniel Ryan. He is Managing Director of Berkeley Research Group, a firm specialising in providing economic and financial expert evidence to parties involved in disputes. He is a Fellow of the Institute of Chartered Accountants in England and Wales and has had 35 years of experience in the field of accountancy. He has considerable experience in the giving of expert evidence in disputes, having done so on several occasions including references before the Copyright Tribunal.
35. The expert on behalf of PRS was Andrew Wynn. Mr Wynn is Senior Managing Director of FTI Consulting LLP, from which he provides expert services to clients in his work as an economist and financial analyst. Like Mr Ryan he has given evidence as an expert in many disputes before different tribunals including this Tribunal.
36. In closing, each side submitted that both experts were doing their best to assist the Tribunal. We agree. In the nature of things they both took positions consistent with the case being advanced by the party instructing them but both made concessions in cross-examination where it was clearly appropriate to do so.

The law

The 1988 Act

37. PRS is a licensing body and Tariff C is a licensing scheme within the meaning given to those terms in s.116 of the 1988 Act. Tariff C provides a licence for the public performance of works protected by copyright according to s.117(c) of the 1988 Act. Licensing schemes that fall within s.117 are subject to the jurisdiction of the Copyright Tribunal as provided by that section. The jurisdiction is governed by ss.118 to 123.
38. Section 119 of the 1988 Act provides:

119 Reference of licensing scheme to tribunal.

(1) If while a licensing scheme is in operation a dispute arises between the operator of the scheme and –

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies, or

(b) an organisation claiming to be representative of such persons, that person or organisation may refer the scheme to the Copyright Tribunal in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to

cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

39. As appears from s.119(3), when a scheme is referred to the Tribunal the overall principle to be applied to the Tribunal's consideration of whether to confirm or vary the terms of the scheme is that the Tribunal should determine what is reasonable in the circumstances.
40. Further guidance that applies to Tariff C is to be found, such as it is, in ss.129 and 135:

129 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.

...

135 Mention of specific matters not to exclude other relevant considerations.

The mention in sections 129 to 134 of specific matters to which the Copyright Tribunal is to have regard in certain classes of case does not affect the Tribunal's general obligation in any case to have regard to all relevant considerations.

41. Thus, under s.129 the Tribunal must ensure that there is no unreasonable discrimination. Here that means no discrimination between licensees under Tariff C. Section 135 clarifies this by imposing a general obligation to have regard to all relevant considerations.

The 2016 Regulations and Directive 2014/26/EU

42. The Collective Management of Copyright (EU Directive) Regulations 2016 ('the 2016 Regulations') implemented Directive 2014/26/EU of 26 February 2014 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').

43. The CRM Directive has a particular concern with the multi-territorial licensing by collective management organisations ('CMOs') for authors' rights in musical works but as appears from art.2 the bulk of its provisions apply to all CMOs. It was not in dispute that PRS is a CMO.
44. We agree with UKCA that the 2016 Regulations and the CRM Directive are potentially relevant (see *Dairy UK Ltd v Oatly AB* [2026] UKSC 4 at [10]) but also agree with PRS that neither the Regulations, the Directive nor judgments of the Court of Justice of the European Union to which we were referred add anything of significance to the 1988 Act or to the many cases that have applied its provisions insofar as they apply to the Copyright Tribunal. UKCA pointed to parts of the Regulations and the Directive which, it was said, clarified a point in relation to the economic value of the rights being licensed. We did not find either the 2016 Regulations or the CRM Directive sufficiently unambiguous to add anything.

Agreed points of legal principle

45. Some issues of principle were agreed between the parties.
46. The Tribunal's discretion is wide and there is no presumption either in favour of a referred scheme or that the scheme should be varied. This is reflected in *Phonographic Performance Limited v British Hospitality Association* [2009] EWHC 209 (Ch):

'[60] ... As Harman J said in *Association of Independent Radio Companies Ltd v Phonographic Performance Ltd* (unreported, 16 January 16, 1986), "the discretion created is thus in the widest and most general of terms". The statute requires the Tribunal to take certain specific matters into account in particular types of cases, but section 135 makes it clear that the Tribunal is under a general obligation to have regard to all relevant considerations. There is no presumption in favour of a referred scheme and there is no presumption that the referred scheme should be varied: *British Phonographic Industry v Mechanical-Copyright Protection Society Ltd* [1993] EMLR 86 at 99.'

47. The wide discretion given to the Tribunal and the duty to determine terms that are reasonable in all the relevant circumstances means that the Tribunal is not confined to the proposals advanced by either side, see *British Sky Broadcasting Limited v PRS* [1998] EMLR 193, at [5.6] ('*BSkyB v PRS*').
48. Three approaches have been commonly adopted by the Tribunal. They are related but distinct. First, a potential guide to the terms that are reasonable in all the relevant circumstances are those that would have been settled by the parties following hypothetical negotiations as willing licensor and willing licensee. Secondly, a sound indication of the terms that would emerge from such negotiations may be the terms of comparable licences freely negotiated between other parties on one or both sides, subject to adjustment to take into

account differences or changes in relevant circumstances. The statutory requirement under s.129 of the 1988 Act to ensure that there is no unreasonable discrimination reinforces the relevance of comparables. Thirdly, the terms of a licence previously agreed between the parties to the reference will often provide a useful starting point in resolving the outcome of the hypothetical negotiations, again subject to a proviso, this time taking into account relevant changes in circumstances since the earlier licence was agreed. See *Phonographic Performance Limited v The British Hospitality Association* [2010] EWHC 209 (Ch), at [61]-[62].

49. With regard to the third approach, we note that it is agreed between the parties that the mechanism used to adjust for inflation should not be the same as that under the 2005 Tariff. It implies a view, which we endorse, that the 2005 Tariff must be assessed as a guide to reasonableness on an issue-by-issue basis.

Simplicity and workability of the licence

50. It is better to settle a licence that is simple and workable than one that is less so, provided that in the result the licence satisfies the overriding test that it is fair and reasonable, see *British Airways plc v The Performing Right Society Ltd* (CT) [1998] RPC 581, at 593.

Points of principle in dispute

51. There were several points of principle on which the parties did not agree. Two are of particular significance. They were referred to by the experts in their helpful Joint Statement:

‘The Experts agree that there are two primary methods for determining a reasonable licence fee: (i) the economic benefits approach; and (ii) the comparable licences approach.

The economic benefits approach attempts to assess the incremental value attributable to the IP; that value is then shared between the parties. An approach based on the value of music represents a form of the economic benefits approach.

The comparable licences approach seeks to identify a licence fee by reference to other, similar, licences, which are implicitly based on the licensor’s share of the same or similar economic benefits. It is often used where previous agreements for the use of the same (or similar) IP exist as they provide evidence of what parties have been prepared to agree in similar situations. Where the relevant parties have previously agreed a licence for the same IP this may provide the best starting point.’

52. Although there was agreement about determining a reasonable licence fee by reference to its economic benefits or by reference to a comparable licence, the parties did not agree on either the law or the facts relevant to either approach. The two are not necessarily mutually exclusive; one could in principle be used as a cross-check for the other.

53. Below we discuss those two principles and others on which the parties disagreed.

The economic value of the licensed music

The Law

54. The parties are agreed that the royalties charged in the tariff should bear a relationship with the economic value of the music licensed. The Tribunal noted during argument that it raises the question: the value to whom?
55. There are three candidates: (i) the composers and songwriters represented by PRS, (ii) the cinema operators represented by UKCA and (iii) members of the public who go to cinemas. The respective values to the three are related but not perforce the same. Neither expert was always clear which value he had in mind and the second and third seemed sometimes to be elided.
56. UKCA submitted that the relevant value is solely the value of the music to the licensees, the cinema operators, who are the paying parties. In its closing written submissions UKCA said that this follows from *BPI v MCPS*. Unfortunately, no passage in that decision was identified but we assume that UKCA had in mind paragraph 48. The decision was about licences issued by two collecting societies collectively referred to as ‘the Alliance’:

‘[48] *Fairness* In the exercise of its discretion and in the light of the evidence, the Tribunal must determine whether the legitimate financial expectations of (in this case) the Alliance, acting on behalf of its rightholders, are reasonable in all the relevant circumstances. The Tribunal performs a discretionary, balancing exercise wherein the result must be:

“... both fair to the licens[or] in terms of the value to the licensee of having access to the copyright sound recordings, and also fair to the licensee in giving him a proper reward for the effort put into the exploitation of the licens[or]s’ intellectual property rights.”

57. The quotation comes from *AEI Rediffusion Music Limited v Phonographic Performance Limited* (CT) [1998] RPC 335 (*‘AEI v PPL’*), at 343. It is true that the Tribunal referred to the value to the licensee but the paragraph needs a little unpacking. On the one hand, the licensor has to be fairly compensated in terms of the value to the licensee of the right being made available to it. On the other, the licensee must secure a fair profit from exploiting the licence. It could be said that this profit *is* the value to the licensee of the right being made available. It may just have been a way of saying that the royalty should be set at a level that allows the licensee to retain a fair proportion of the profit derived from exploiting the licence while leaving a fair proportion to be paid to the licensor. Or to put it another way, the profit made by the licensee from exploiting the licence should be allocated as between the licensee and licensor in proportions that are fair. We do not dissent from that.

58. PRS contended that since the Tribunal must consider a hypothetical agreement between willing licensor and willing licensee, the value to the licensor must also be taken into account.
59. There was quite a lot from the experts and in argument about the value of the music licensed and how it relates to royalty rate and the basis for assessing it. UKCA emphasised that royalties must reasonably reflect the economic value of the music licensed, relying on the 2016 Regulations and the CRM Directive. We therefore discuss this further.
60. It is sometimes said that the value of anything is the most that someone else is willing to pay for it (the 'subjective value theory'). Other things being equal, bottles of water are likely to attract a higher value in a desert town where water is in short supply than in Fetter Lane on a wet afternoon. But music licensed under Tariff C is not a commodity of that kind. The music will be licensed come what may, both in reality and in the hypothetical negotiation. PRS cannot tout for the highest bidder and UKCA must agree a licence to ensure that cinema operators may continue to show films. There are clearly some constraints. Despite being respectively willing licensors and willing licensees, PRS's members cannot be taken to sanction licences with a negligible royalty charge and UKCA's members could not afford to pay any price no matter how high. However, identifying the economic value of the music licensed under Tariff C is more elusive than establishing the value of a bottle of water. The usefulness of considering a hypothetical negotiation between licensor and licensee has limits when applied to a reference to this Tribunal.
61. The value per annum to PRS's members of the music licensed to a particular cinema is the sum paid by that cinema under Tariff C. This is not of great assistance when it comes to assessing what that payment should be.
62. With regard to cinema operators, it is equally difficult to find a principle for arriving at a value of the licensed music to them. It does not help to consider the effect on their profits if the music could not be performed in their cinemas. *PRS v The British Entertainment and Dancing Association Limited* [1993] EMLR 325 ('*PRS v BEDA*') was an appeal from the Tribunal (*PRS v BEDA* (CT, 1989)) which concerned the payment of royalties for the use of copyright music in dance halls, by the 1990s better described as discos. The Tribunal had rejected PRS's proposal of royalties based on admission receipts due to a lack of causal connection between the musical works and the gross receipts. The Tribunal referred (at page 6) to what seems to have been an argument that there must be a strong causal connection because there could be no discos without music. On appeal Hoffmann J said (at p.329):

'The PRS scheme was rejected on the ground that there was an insufficient causal relationship between the musical works and the gross receipts. It was true that one could not very well operate a disco without music, but then one could not operate it without electricity and many other things either. It could not be suggested that it could be fair for the suppliers of such utilities to have a percentage of the gross receipts.'
63. This was commented on by the Tribunal in *BSkyB v PRS* at 217:

‘The analogy with electricity is, with respect, not entirely fair. Music, unlike electricity, is undoubtedly a part of what the Sky subscriber is buying.’

64. We think that Hoffmann J was simply warning against a false ‘but for’ argument: but for a licence to use the music in PRS’s portfolio the discos would have no business at all and therefore the value of the licence to the discos was considerable. If that were true, it would be equally true of the value of the electricity necessary for the discos to conduct their business. It would make no sense in economic principle for the electricity bill to require payment of all the discos’ profits or any percentage of them.
65. Likewise, when considering the value of the licensed music to cinema operators, it cannot be assessed by taking that licence in isolation and calculating the consequence of its absence.
66. It was common ground that the value of the licensed music to cinema operators is informed by its value to those who attend the cinema. They are likely to be attracted by films in part because there is music in the soundtrack, more attracted anyway than if there were none. The value of the music to cinemagoers, whatever it may be, is likely to affect their behaviour, in particular how many of them will buy a ticket. It feeds into the monetary value of the licence under Tariff C to cinemas.
67. Summarising the position on economic value: we think that PRS is correct in principle to say that the economic value of the music being licensed must be considered from the point of view of the members of PRS as well as from the perspective of UKCA’s members. However, aside from knowing with confidence that in the hypothetical negotiation PRS would not agree to a zero royalty, considering the value to PRS tends to lead to circular reasoning.
68. UKCA’s members undoubtedly enjoy a monetary benefit from the licences granted under Tariff C although, subject to the evidence, all that can be said with confidence is that the benefit, whatever it is, should not be wiped out by a royalty rate that is set too high. UKCA members are entitled to retain a fair proportion of the benefit.
69. UKCA made the point that the right licensed under Tariff C is the right to perform the music in public and this could be to one person sitting alone. We agree but do not think that this advances the issue.

The evidence on economic value

70. In their Joint Report the experts said:

‘The economic value of music is likely to be a relatively small proportion of the economic value of a film ticket.

Neither Expert has seen direct evidence as to the value of music either at an overall level, or on a film-by-film, or cinema-by-cinema, basis.’

...

‘The Experts agree that there are a range of factors that influence film ticket prices that are unlikely to reflect any significant variation in the economic value of music, including: (i) the cinema quality (for example, the type of seating, the screen in the auditorium, and the non-auditorium facilities); (ii) the cinema’s brand; (iii) the cinema’s location (to the extent it does not alter customer demographics); and (iv) and [sic] the time of day (to the extent it does not alter customer demographics).

The Experts also agree that the economic value of music will vary to some extent with the demographics of customers in [a] cinema’s local market. However, the Experts disagree as to the extent that variation in tickets prices arising from customer demographics suggests corresponding variation in the economic value of music.

Neither Expert has seen any direct evidence as to the actual economic value of music and the extent to which it varies as a result of any of the factors listed above. Therefore, both experts rely on indirect inference, based on different approaches.’

71. Their joint opinion on this topic reflects the experts’ respective reports. Their views on the economic value of music in films were not based on any evidence and did not emerge from their economic expertise. The views apparently came from the experts’ subjective impressions, we assume drawn from their own experiences of watching films and possibly from speaking to others about the value of music in films.
72. During argument it was put to PRS’s counsel that the experts have no greater expertise about this than anyone else in the hearing room. Counsel agreed. The same point was not put to UKCA’s counsel but she had every opportunity in reply to say that her client did not share that view and to explain why. She did not, we think understandably. Our view is that the experts were running with their personal views on the economic value of music. We should make it clear that this is in no way a criticism of the experts.

Conclusion on the economic value of the licensed music

73. In assessing the economic value of the music licensed under Tariff C there is very limited guidance from previous decisions of the Tribunal and we doubt that it could be otherwise. We have the experts’ impressionistic views but since this is a matter outside their area of expertise it is better for the Tribunal to rely on its own collective view.
74. Our own view on the connection between ticket prices and economic value is consistent with what is stated in the experts’ Joint Statement: ticket prices are likely to be influenced by (i) cinema quality (as they have described it), (ii) the cinema’s brand, (iii) the cinema’s location, (iv) the time at which the film is shown and (v) variation in willingness to pay according to demographics, and that these will have no connection with the licensed music. There was also some evidence from the cinema operators that the presence or absence of competition has a significant local effect on ticket prices.

75. We take the foregoing to mean, and we agree, that the music in films probably has no material impact on ticket price. We think it is likely that if members of the public were to decide that because of the absence of music in the soundtrack they will not enjoy a film, then they will not buy a ticket, as opposed to buying a lower priced ticket to see that film. Another way of looking at it is to consider cinemas with ticket prices that vary according to the quality of the seat. We doubt that members of the public would select a less expensive seat solely because the soundtrack does not incorporate licensed music.
76. There was a suggestion in cross-examination from Mr Ryan, UKCA's expert, that music contributes significantly to ticket prices up to ATP but above that level it does not. There was no numerical evidence in support of this and we do not accept it.
77. Our view is that the economic value of the music licensed under Tariff C depends significantly only on the degree to which the music increases ticket sales.
78. Music clearly matters because its absence would very likely detract from the enjoyment of films by those who attend cinemas and so discourage them from attending. This is about whether there is any music in the soundtrack at all that forms part of PRS's portfolio, not about the perception of cinemagoers whether the music in this or that film is of high or low quality. However, the music is likely to have far less effect on ticket sales than the cumulative effect of a long list of other aspects of a film: the cast, the quality of the performances, the screenplay, the quality of direction, cinematography, sound and other matters. This is consistent with the evidence from the cinema operators.
79. In summary, we believe that the music in a film soundtrack is relevant to ticket sales and therefore it has an economic value to cinema operators. But it is small relative to the economic value generated by all the other elements of the films shown. We think that music is likely to have no material effect on ticket prices.
80. That leaves music performed other than in the soundtrack of the featured films. The experts were agreed that it amounts to about 15% of the total. We accept that figure. To the extent that this music is in trailers, we think that the economic value is probably similar to that in the featured film, i.e. not much. The value is likely to be less still for music in the foyer and other public areas of the cinema.
81. In the hypothetical negotiation between PRS and UKCA it is the economic value of the music licensed under Tariff C to UKCA's members that would drive agreement on royalties. If they were starting from scratch the parties would estimate that value, conclude that it is small and decide on what they believed to be a fair cut to go to PRS in royalties while leaving UKCA's members with an adequate economic benefit derived from their licences.

The 2005 Tariff

82. As will be apparent from what we have said, trying to assess the appropriate quantum of royalties by reference to economic value is liable to be

overinfluenced by subjective impression and highly vulnerable to inaccuracy. However, the 2005 Tariff provides a sound starting point in deciding reasonable terms for the new tariff.

83. There were no comparables in the case involving other parties. We note in passing that there was no evidence about tariffs equivalent to Tariff C operating in other jurisdictions. Foreign comparables have been used in references decided in the past. There is of course a limit to the resources to be devoted to any litigation, although few stones seem to have been left unturned in this reference and presenting foreign decisions is not necessarily expensive. But neither side thought it worthwhile and we assume there was a good reason.
84. UKCA submitted that the 2005 Tariff should be maintained as is unless the Tribunal is satisfied that there has been a material change in relevant circumstances warranting modification of its terms. The burden rests on PRS to prove any such material change. UKCA also gave the impression that PRS's wish to abandon parts of the 2005 Tariff, such as the dual metric, is akin to a contracting party trying to persuade a court that it should be entitled to renegotiate a bad bargain.
85. UKCA put this part of its case too high. Taking the second point first, the statutory duty that the Tribunal must observe in accordance with the 1988 Act is not the same as the law that a court must apply if a contracting party seeks to resile from a bad contractual bargain.
86. As to the first contention, if UKCA were correct it would mean that no matter how unreasonable an existing Tariff may be, its terms should not be changed unless the Tribunal is satisfied that there has been a material change in circumstances. Even then, only those terms affected by the change would be up for amendment.
87. In *CSC Media Group Ltd v Video Performance Ltd* [2011] EWCA Civ 650, Etherton LJ, with whom Longmore and Wilson LJJ agreed, warned against the adoption of terms in a comparable licence at the expense of the statutory duty to settle terms that are reasonable:

‘[73] Furthermore, I do not accept the proposition, if the Judge intended to advance it in [52] of his judgment, that the only legally valid way of dealing with such a dispute as the present one, is by “starting with the most relevant comparable and adapting it to the circumstances of the ... case”. Plainly, that is a logical approach and probably the one most likely to ensure a correct answer. As Lloyd LJ said in *Smith Kline & French Laboratories Ltd's (Cimetidine) Patents* at page 236;

“where close comparables exist, they provide by far the best and surest approach. There is no better guide to what a willing licensor and a willing licensee would agree than what other licensors and licensees have in fact agreed in comparable cases”.

[74] The law is not, however, so prescriptive as to impose on the Tribunal a particular analytical structure and methodology. The statutory

duty of the Tribunal is to determine such terms of the licence as are reasonable in the circumstances (s.126(4)) and, for that purpose, to “have regard to” comparable schemes and licences (s.129) and all other relevant considerations (s.135). The Act gives no further directions or guidance. Provided that the Tribunal discharges that duty, the precise way in which it carries out its analysis and the order in which it addresses the material issues in its decision cannot undermine the validity of its conclusions.’

88. The same applies to earlier agreements between parties to this reference. The overriding consideration must be to ensure that the terms of the new tariff are reasonable in the circumstances. If the Tribunal were to decide that a term in the 2005 Tariff is unreasonable, it would be bound to depart from the 2005 Tariff even where there has been no change in circumstances. That said, it would be irrelevant to the assessment of reasonableness whether the term was in 2005, or has since turned out to be, disadvantageous from either side’s point of view. In *Universities UK Ltd v Copyright Licensing Agency Ltd* (CT) [2002] RPC 36, the Tribunal put it this way (at [110]):

‘... our ability to vary a licensing scheme is circumscribed only by what is reasonable. The parties may have overlooked factors which we regard as relevant. If so it is our duty to take them into account and, to the extent that it may be reasonable to do so, vary the scheme accordingly.’

89. The value of the 2005 Tariff when considering the new tariff is that it may provide an indication as to what is reasonable by inference from what the parties thought was reasonable when agreeing the 2005 Tariff. In the *Universities* case the Tribunal stated (at [110], original italics):

‘The current licence is good evidence of what the parties themselves regarded as reasonable, or perhaps we should say, what the parties themselves regarded as *insufficiently unreasonable* to refer to the Copyright Tribunal. But its relevance to the proceedings is no more than that.’

90. We agree but add a qualification. By itself, the fact of the parties having agreed the terms of an earlier licence only indicates what the parties at that time regarded as insufficiently unreasonable to refer to the Copyright Tribunal. There may, however, be surrounding evidence that indicates something further. Contemporary documents reflecting clear satisfaction on both sides at the outcome of negotiations would be strong evidence of a shared view that the licence was reasonable. Alternatively, documents may demonstrate the extent to which, if it was the case, either side was merely reconciled to the deal because it avoided a reference.

Nexus

91. Tribunals in the past have considered whether it is reasonable to assess royalties based on the revenue earned by the licensee. That approach has been rejected several times because the view has been taken that there is insufficient connection, or nexus, between the benefit to the licensees of the right licensed

and the revenues generated by their businesses; the income the licensees are able to earn has little to do with the rights they have licensed. The way that this has sometimes been put is that tying the royalties payable to the profits made by the licensee would make the licensors ‘co-adventurers’ in the licensees’ businesses, not a reasonable consequence if the licensed rights have no significant influence on how much money those businesses make. See *The Independent Television Companies Association Limited v The Performing Right Society Limited* (CT, 1983) PRT No.38/1; *PRS v The British Entertainment and Dancing Association Limited* (CT, 1989) and on appeal [1993] EMLR 325; *News Group Newspapers Limited v Independent Television Publications Limited* (CT, 1992) and *BSkyB v PRS* [1998] EMLR 193.

92. UKCA submitted that despite the foregoing cases there is no hard and fast rule about the relevant nexus, relying on a long passage from the decision in *British Phonographic Industry v Mechanical-Copyright Protection Society Ltd* [2008] EMLR 5 (*BPI v MCPS*) which we will quote in part. It begins with the Tribunal noting the attitude taken in earlier decisions (just referred to). The italics in all sections of the decision set out below are original:

‘[64] In the past, the Tribunal and its predecessor have undoubtedly rejected as unreasonable a royalty based on a percentage of revenue. The several authorities cited under this head demonstrate the requirement that there must indeed be a *sufficiency of connection* between the licensee’s revenue and the use of the Alliance’s repertoire so as to make that revenue source “commissionable”. Put another way, the Tribunal must always look for a “sufficient connection” or “close, direct relationship” between revenue and repertoire so as to make it *reasonable* to relate the royalty for use of the repertoire directly to that revenue. In the recent past, the Tribunal’s attitude to revenue-based royalty has been palpably hostile.’

93. The Tribunal in *BPI* found *BSkyB v PRS* to be helpful:

‘[66] The Tribunal’s decision in *BSkyB v PRS* affords particular assistance on this point even though in that case the Tribunal again *rejected* the submission of PRS that the royalty should be calculated as a percentage of BSkyB’s net revenue receipts.

“What offends one’s common sense is that a single component of a complex final product such as a television programme should be remunerated on a basis which rises and falls with the revenues obtained from the final product, when that component may have had nothing at all to do with those changes in revenue.”

Nonetheless, the *possibility* of excise on revenue was, perhaps for the first time, positively acknowledged:

“What the decided cases show is that, before one can ever use revenue as a measure of the value of the music to a broadcaster, one must be satisfied that there is an adequate nexus between the use of the music and revenues earned.”

and:

“We do not consider it correct to approach the issue before us as one of whether the revenue basis . . . is correct ‘in principle’: if one adopted that approach one would be in danger of losing sight of the overall objective. What we are to endeavour to do is to determine what approach is most ‘reasonable in the circumstances’ i.e. the circumstances of this case.”

“The role music plays in a company’s output can vary widely. At one extreme was an example discussed in argument of the music played in the lift of the offices of a bank. . . At the other extreme might be the sale of records or sheet music, where the music is the whole or at least a vast proportion of what the consumer pays for. At some point on this ‘spectrum’ it could become appropriate to adopt a revenue-based approach: the question we have to decide is whether it is appropriate to do so in the present case.”

94. The Tribunal in *BPI v MCPS* then turned to the facts of that case. In fact a revenue-based royalty had been agreed subject to qualification:

‘[68] As noted, in this case it has been agreed that, with appropriate qualification, a revenue-based royalty is appropriate, the qualification being a matter of degree over which there is a dispute. This consensus was reached, it seems, on the basis that it has an established precedent in relation to offline music (physical product and radio – see above) which, we were told, has worked well enough over many years. So much for the principle. What the authorities warn against however is the illegitimacy of over-broadening that revenue base; in the “spectrum” referred to in *BSkyB v PRS*, there must be a defined *ne plus ultra*. If there were not, one runs the risk of undermining the legal justification for the “royalty to revenue link” altogether.’

95. UKCA pointed out that all the foregoing authorities pre-date the 2016 Regulations and suggested that when the CJEU has ruled on the CRM Directive it has taken a less sceptical approach to revenue sharing. UKCA referred to *Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Weareone.World BVBA* (C-372/19) EU:C:2020:959. The case concerned the Belgian tariff for the use of music in music festivals and whether use of a revenue-based tariff was an abuse of a dominant position contrary to art.102 TFEU. The Court ruled that such a charging scheme did not, in itself, constitute abusive conduct.
96. We find the judgment of the CJEU of little assistance. We cannot say that the threshold and criteria for a revenue-based royalty are the same in the context of both art.102 TFEU and a licence settled by this Tribunal. Even if they are, we think that a tariff for the use of music in music festivals probably lends itself to a revenue-based royalty in accordance with the Tribunal authorities we have discussed because music festivals are all about the music licensed.

97. We agree with UKCA that there is no hard and fast rule about nexus in the sense that it must always be a question of fact and degree whether there is sufficient connection between the use of the licensed right and the profit generated by the licensee's business to justify a royalty based on revenue. Or, as it was put in *BSkyB v PRS*, there is a spectrum that can be illustrated by placing music played in a lift at one end and the sale of records or sheet music at the other.
98. UKCA sought to add a qualification to the spectrum. The upper end of the spectrum identified by the Tribunal in *BSkyB* is represented by the sale of records or sheet music. UKCA submitted that the profitability of a store selling records and sheet music would not just be governed by music but also by factors such as the marketing skills of the proprietor. We understand the point being made is that even at that end of the spectrum there is a danger of over-stating the extent to which the exploitation of the music must be in lockstep with profitability.
99. We think that UKCA is relying too much on analysing the realities of the example and not enough on what the Tribunal said. The Tribunal expressly assumed that at the upper end of its spectrum music would constitute 'the whole or at least a vast proportion of what the consumer pays for' – in contrast to the music in a lift at the offices of a bank, which the consumer will disregard entirely when considering a financial transaction. The spectrum the Tribunal had in mind represented the extent to which the music licensed is central to the purchasing decision of consumers. The Tribunal was apparently assuming for the purpose of its example that the likelihood of purchases by consumers is proportionate to the revenue generated by the business. At the top end of the spectrum the licensed music is overwhelmingly the driving force of purchases and is (on the assumption made) the driving force of the store's revenues.
100. UKCA had further arguments. The first was that where all the available bases for royalties provide a tenuous connection between the value of the rights licensed and the amount paid, one should consider other possible advantages that any basis may have. An advantage of revenue-based royalties is that the licensees' self-interest in maximising profit will benefit the licensors. UKCA also submitted that in a free negotiation PRS's members may choose to tie their royalties to the profitability of the licensees' business, which may offer a better return.
101. We agree that licensors will benefit more if the licensee runs a profitable business. The converse is also true. This takes one back to the question whether the licensees' profits are a sound basis for assessing royalties in the present case. As to speculation regarding what PRS members might want, the hypothetical negotiation is between PRS and UKCA not between their respective members. The issue is whether in that negotiation it would be reasonable for the parties to agree that the royalties paid to each of PRS's members will be proportionate to the revenues of an unknown basket of UKCA's members.
102. Secondly, UKCA referred to two overseas cases cited in both *BSkyB v PRS* and *BPI v MCPS* which, UKCA argue, show that use of a revenue-based approach is 'common in other jurisdictions'. We fail to see how two cases could establish what is common in other jurisdictions. The overseas cases themselves were not

in the material provided to us. To the extent that they were considered relevant by the Tribunal in either of the two decisions mentioned, they will have been taken into account in the reasoning and conclusions that we have been able to consider.

103. Thirdly, UKCA reviewed the cases in which a revenue-based approach was rejected and concluded that each case turns on its facts. We agree.
104. We take the view that although discussed at some length in earlier judgments and decisions, the principle to be applied can be simply stated. Basing royalties on the revenue of licensees' businesses is reasonable if their exercise of the rights licensed sufficiently influences the quantum of their revenue. It will not be reasonable if their revenue depends predominantly on other factors. What constitutes a sufficient influence is to be assessed by the Tribunal on the facts.

Whether licensees should pay in proportion to the quantity of licensed IP used

105. PRS submitted that there should be a connection between how much a licensee pays and the quantity of music performed in its cinema. UKCA resisted such a link. There is support for PRS's submission. In *ITV Network Limited v PRS* (CT 127/14, 2016) one of the issues was whether the amount paid by ITV for broadcasting music should be proportional to the quantity of music broadcast, although it was a peripheral issue to which limited evidence and argument had been devoted. The Tribunal said:

'[94] We think it is self-evident that *prima facie* it makes good sense for the licence to contain an adjustment linked to ITV's use of the rights licensed. The more they are used, the greater must be the benefit to ITV and so the more it ought to pay PRSfM's rightholders.'

106. The principle stated in *ITV v PRS* is intuitively obvious where there is a link between the quantity of licensed material used and the benefit to the licensee that is likely to be linear or at least approximately so. PRS argued that even where there is no evidence of that, increased usage will still justify a higher payment, citing *ITV v PRS* as authority.
107. We note that in the *ITV* case the Tribunal stated its assumption on the facts that the more ITV used the rights licensed, the more it would benefit. The Tribunal made no finding of a linear relationship but was prepared to take a broad-brush approach on the evidence in that reference. We therefore think the *ITV* case indicates that where the Tribunal is satisfied that the licensee is likely to benefit more from a greater use of the copyright works being licensed, it may be appropriate to reach the view, without clear evidence of a linear relationship, that it is fair for the licensee to pay in proportion to the extent of the use it makes of the licensed works. The '*prima facie*' qualification suggests that other matters may affect the conclusion.

An incentive to disguise true revenues

108. PRS said that there can be a second reason for rejecting a revenue-based licence. The revenue specified in the licence will be limited to relevant products or

services. In Tariff C it would be the revenue derived from ticket sales as opposed to sales of drinks and food for instance. PRS argued that a revenue-based licence provides the opportunity to adjust pricing to boost revenue on income for products and services not covered by the licence and thereby to artificially reduce income relevant to the licence. PPA-based royalties would be unaffected by revenue shifting of that nature.

109. The dispute on this point was not so much about the principle as the probability of revenue shifting happening in practice. In oral submissions PRS did not say that there was any evidence of revenue shifting in the present case. UKCA did not dispute that if it were to happen it would work an unfairness to PRS's members. UKCA's point was that the likelihood was too low for this to be a factor in favour of PPA-based royalties.
110. The biggest concern PRS expressed was the transfer of revenue to booking fees. We consider booking fees separately below. Otherwise we do not take speculation about revenue shifting into account. We also note that the evidence from the cinema operators indicated that, as one might expect, their primary objective was to maximise revenue from ticket sales. They did not say that they were using tickets as loss leaders to boost other income.

Trading or other difficulties faced by the licensees and/or licensors

111. UKCA submitted that trading or other difficulties faced by the licensees is relevant to the assessment of appropriate royalties. It relied on this passage from the judgment of the Vice Chancellor in *PPL v Candy Rock Recording Limited* [1999] EMLR 806, at 821 (which, we note, suggests that it should cut both ways):

‘The health or ill-health of the dubbing business is surely relevant to be taken into account in fixing the royalty rates. If the royalty rates were uneconomic, the business would wither. If the royalty rates did not provide a reasonable return to the sound-recording companies, that part of the music industry might wither. Evidence and submissions on these matters cannot be described as irrelevant.’

112. We take the view that in the hypothetical negotiation a licensee may be constrained by the trading climate or other economic considerations with regard to the amount it would be able to pay in royalties while still remaining a viable trading entity. If there is evidence of such a constraint at the relevant time it may affect the royalty that a willing licensor and willing licensee would agree. However, where the marginal cost of the licence will on any view have no effect on the licensee's ability to trade, the trading health of the licensee one way or the other will be of no relevance to the setting of the royalty. The experts were agreed that the tariff changes proposed by PRS are not of a magnitude that would be expected to be material to cinema profitability or viability.

Discrimination

113. The one clear guideline that emerges from the 1988 Act is that the licence must not unreasonably discriminate between licensees. A difference in treatment as

between licensees will be lawful only if the relevant circumstances that apply to each of the licensees differ in a manner that justifies the difference in treatment.

114. UKCA argued that in order for there to be non-discriminatory treatment as between a cinema that is smaller with a less profitable turnover and a larger more profitable cinema, it is necessary to tailor the licence to provide for a reduced royalty payment by the former. PRS submitted that this would actively promote discrimination: it would result in cinemas being treated differently with regard to the amount charged for an identical licence.
115. We agree with PRS. It would make no sense for the provider of any product or service to be met with an allegation of discrimination because it charges paupers and billionaires the same price for the same thing. This is not to say that there is anything wrong in principle with a discount to benefit less profitable cinemas and whether or not there should be such a discount can be a matter for consideration under the heading of fairness. But it is not an issue of potential or actual discrimination.

Payment to composers of music created specifically for a film

116. It is common for film companies to commission composers to write music specifically for the soundtrack of a particular film. No doubt they are rewarded directly by the film companies. UKCA argued that this was relevant to (reducing) the royalties that should be paid under Tariff C.
117. We disagree. Irrespective of who created the music, its performance in a cinema will infringe the copyright in the work unless the cinema has a licence from PRS. Members of PRS are entitled to be compensated for the licences granted to carry out those acts of performance even if they have already received money from the film company for writing the music or, where applicable, the lyrics. The right licensed by PRS is neither more nor less of value because the composer has been paid by the film company for their composition. The scale of appropriate compensation for the licence is independent of any such payment.

A single or dual metric

118. Having discussed the principles to be applied, we turn to the issues in this reference, the first of which is whether the new Tariff C should operate using a single metric or alternative metrics.
119. Under the 2005 Tariff each cinema is entitled, at the start of the accounting year, to select between payment on a POR or PPA basis for that year. UKCA wishes to retain this alternative approach, PRS says it should be replaced by a single PPA metric.
120. Leaving aside the dual metric for a moment, we do not believe that of itself it makes any significant difference to the parties whether POR or PPA is used. We were shown correspondence between the parties at various stages since 2005 and it is apparent that both sides have swapped positions in their preferences. There is no need to set out the history of this because it was put to counsel for each side that the history indicates no firm preference on the part of

either party for one metric over the other. Neither counsel dissented. This reference is about the money, not the metric.

121. The argument is not strictly even about whether there should be one or two bases for calculating royalties. We have little doubt that if the 2005 Tariff provided that PRS could select the metric for each cinema, UKCA would strongly oppose the dual metric approach – in fact Mr Clapp agreed that the stance of UKCA in this reference depended on which method of calculating royalties resulted in a lower payment.
122. The issue is whether each cinema should have a choice between POR and PPA so that it can select the more financially beneficial of the two.

The significance of the 2005 Tariff

123. UKCA's principal argument was that the best guide to the reasonableness of the dual metric comes from the agreement to it in 2004, leading to its incorporation into the 2005 Tariff.
124. UKCA submitted that in the absence of any other comparable, the 2005 Tariff provides a compelling reason to suppose that the dual metric was reasonable in 2005; there has been no relevant change of circumstance since, so the same must be true now. UKCA pointed out that PRS did not seek to make the 2005 Tariff non-precedential. Moreover, although the tariff was amended in negotiations between 2009 and 2011, the dual metric was left untouched. The 2005 Tariff thus remained in place for 18 years until a breakdown in discussions about its replacement in 2023, which led to this reference. It proved, UKCA said, that PRS found it to be entirely workable throughout that time.
125. The 2005 Tariff was arrived at following extensive negotiations between PRS and UKCA in 2003 and 2004. It seems that members of UKCA (at that time the Cinema Exhibitors' Association (CEA)) unanimously disliked the existing POR approach to calculating royalties, preferring PPA. Following resistance to a change from PRS, CEA proposed a compromise: the dual metric. In a letter dated 2 December 2004 from the Chief Executive of CEA to the Executive Director of PRS, the former said:

‘We have a difference of commercial view between CEA members on their willingness to fund a Reference to challenge the percentage of revenue basis, unreasonable though they are united in believing that it is. In short, they believe that the just thing to do would be to bring the challenge but that if a deal can be struck with which they can live commercially, then from a purely practical point of view, then they can have no wish to line the lawyers' pockets unnecessarily. The inclusion of the above option (both elements of which have been canvassed by the PRS in previous discussions) would enable us to steer a course through the differing positions, so avoiding a Tribunal Reference.’

126. So the dual metric idea came from CEA as something its members could live with because they thought that at least it was better than a revenue-based licence which (at that stage) was favoured by PRS.

127. Minutes of a meeting between officers of PRS and CEA on 7 December 2004 record that the Executive Director of PRS expressed misgivings about the dual metric, saying:
- ‘... this would not provide sufficient PRS income over a 5 or 10-year period if the option were always in favour of the licensee (if decided in arrears) ...’
128. An amended compromise was subsequently agreed. There was to be a dual metric giving the licensees the option to select between POR- or PPA-based royalties annually but for the coming year, not retrospectively. This arrangement in the 2005 Tariff came into force on 1 January 2005.
129. It seems to us that in 2004 the dual metric was not considered by either side to be fully reasonable but they were prepared to accept it along with the rest of the terms agreed to avoid an expensive reference to this Tribunal.
130. The parties were contractually bound to live with the 2005 Tariff for a minimum of 5 years expiring on 31 December 2009. Correspondence indicates that in anticipation of the end of the period, PRS expressed some dissatisfaction with the dual metric on the ground of divergence between the royalty payable under the two metrics. (As will be explained below, in 2009 on average the more advantageous of the two was the PPA rate). Disagreement about the dual metric has continued since.
131. We think that because the dual metric was adopted by way of a compromise with probably only lukewarm approval on both sides, its presence in the 2005 Tariff does not by itself indicate what was objectively reasonable in 2005 as a means of calculating royalties. It is more an indicator that the dual metric was a reasonable means of allowing a compromise to be reached.
132. UKCA now favours it because the option has in practice led to reduced payment by cinemas. PRS does not favour it for the same reason. That is all.

Fairness

133. UKCA argues that the increased variation in ticket prices charged by its members would be more fairly accommodated by receipts-based royalties; PPA-based royalties would impose a single inflexible charge that would too often be inappropriate.
134. In their Joint Statement the experts said:
- ‘the Dual Tariff could be seen as either:
- A variable tariff with a cap on licence fees for operators with ticket prices above a certain threshold (defined by the PPA); or
 - A fixed price tariff with discounting mechanism for operators with ticket prices below a certain threshold (defined by the PPA).’

135. For the most part UKCA relied on the second, emphasising that the advantage of the dual tariff is that cinema operators with lower ticket prices, generally to be found in less prosperous areas, obtain a discount under the dual tariff arrangement. As the experts agreed, the alternative way to look at the dual tariff is that it provides a cap on royalty payments, which benefits cinemas with higher ticket prices in more prosperous regions of the country. They are two sides of the same coin.
136. The selection of the more advantageous metric is done by UKCA members on a cinema-by-cinema basis. Chains such as Odeon have cinemas with lower ticket prices in many areas and these benefit from the 'discount' just as much as do cinemas under single or small-chain ownership in the same areas.
137. It was common ground that the royalties paid under Tariff C are such a small proportion of the overall costs borne by cinemas in order to conduct their business that any of the changes to Tariff C being contemplated would have no material impact on the profitability, far less the viability, of any cinema. The experts' Joint Statement reflected this. They said that PRS's proposed changes are:

'... not of a magnitude that would be expected to be material to cinema profitability or viability. ... in isolation, the economic and financial impact of the Proposed Tariff (or the Amended Tariff) does not provide direct evidence as to whether the tariff is reasonable.'
138. It follows that the impact of a change in the tariff solely due to what UKCA sees as an inflexible PPA metric would have even less impact on cinemas. We do not think that any potential impact on fairness would be a factor significant enough to take into account.

Nexus

139. PRS's first argument on the dual metric was about nexus. For convenience we will repeat here our understanding of the principle on nexus which emerges from earlier decisions of this Tribunal. Basing royalties on the revenue of licensees' businesses is reasonable if their exercise of the rights licensed sufficiently influences the quantum of their revenue. It will not be reasonable if their revenue depends predominantly on other factors. What constitutes a sufficient influence is to be assessed by the Tribunal on the facts.
140. PRS contended that the exercise of the rights licensed under Tariff C – the right to perform licensed music in cinemas – has no detectable influence on the cinemas' revenues, so there is no nexus.
141. UKCA's position was that there is a close nexus because it is plainly important that films have good music. The importance of music can be seen from Oscars awards for best original score, best original song and so on.
142. We think that UKCA's argument falls into the 'but for' trap that Hoffmann J warned against in *PRS v BEDA*. The argument relies on taking music as a component in the success of a film, considering it in isolation and then assessing

the effect that the complete absence of licensed music would have on the film's success and on cinemas' revenue.

143. For the reasons discussed above we think that the argument is wrong in principle. The revenue of a cinema derived from showing a film drives the profit the cinema makes, which constitutes the economic value of the film to the cinema. As we have said, the correct way to assess the economic value of the music in a film is to view its contribution to the totality of the revenue that the film generates. We have found that the contribution will always be small. Jumping ahead a little, we note that when the 2005 Tariff was agreed it was thought that a royalty payment of 1% of receipts or an equivalent payment based on tickets sold was appropriate, which seems to be consistent with our view.
144. We also note that in the context of where the royalty should be set in the new tariff, UKCA backed away from emphasising the importance of the music licensed by PRS to the revenue generated by a film. (It may be that both sides were inconsistent.)
145. Given the small contribution of music to revenues earned by cinemas, we think that cinemas' POR-based royalties will vary overwhelmingly in accordance with factors that have nothing to do with music.
146. PRS's argument appeared to stop there: the nexus between the value of the rights licensed under Tariff C and the revenues earned by cinemas is small, so a POR metric should not be used in compliance with principles set out in earlier Tribunal decisions. The dual tariff must go.
147. We think that this only carries force if there is a greater nexus using a PPA only metric. Yet a PPA-based licence depends on how many tickets are sold and it follows from what we have said that music will provide only a small contribution to that result too.
148. The difference with a PPA-based licence is that at least royalties are dependent solely on ticket sales, whereas in a POR-based licence royalties depend also on ticket price. Use of the PPA metric would remove a layer of variation in royalties according to factors unconnected with music. We have found that ticket prices go up or down according to the quality of the cinema's facilities, its brand and location, the time the film is shown, local demographics and the extent of local competition. Music has no material impact on ticket price whereas it does affect ticket sales.
149. We find that the nexus between the rights licensed under Tariff C and ticket sales is greater than the nexus between those rights and a cinema's revenue.

Administrative costs

150. UKCA relies on evidence from three cinema operators. They say that reporting on a receipts basis is no more complicated than on a PPA metric. Mr Larkins of PRS thought that a PPA-based licence would be simpler to operate but agreed that PRS has not done a cost-benefit analysis. Nor, so far as we are aware, has

UKCA. The evidence from both sides about which metric was simpler and cheaper to operate came to assertion, no more.

151. Mr Larkins also believed that the cost of audits to check the accuracy of the figures reported by cinemas would be greater with a dual tariff than would be the case with a tariff solely based on PPA but again agreed that no detailed analysis had been done.

152. The experts' Joint Statement said:

'The Experts agree that a PPA-only tariff would likely have lower transaction and administrative costs than a Dual Tariff, albeit the Experts do not know the size of the costs savings. The Experts agree that the relative efficiency of competing tariffs structures with respect to transaction and administrative costs is a subsidiary consideration when assessing the most relevant structure.'

153. We think that the experts are likely to have the more objective view and we accept what they say.

Manipulation

154. This, as PRS accepted, is a very minor point. PRS did not allege that there was any evidence of cinemas raising the prices of goods or services such as the sale of food and drink to subsidise reduced ticket prices and thereby to minimise ticket revenues and royalties based on revenues. PRS just said that such a thing would be possible with a POR-based licence and it spoke in favour of a PPA-based royalty.

155. We think this is too speculative to take into account.

Conclusion on the maintenance of the dual metric

156. We take the view that neither side advanced an argument establishing that either the dual metric or a PPA-based licensed is plainly more reasonable than the other. However, nexus and administrative costs point in favour of PPA. It seems that of PRS's many other tariffs, two still offer an option between metrics, but Mr Larkins said that in respect of one of them 98.7% of licensees choose a single metric, while in the case of the other licensees invariably choose a single metric. Save for Mr Larkins' view that the licensees go for the simpler basis for royalties we were given no detailed information about why they do not find it advantageous to prefer the dual metric. But we can say that the dual metric in Tariff C appears to be anomalous. On balance we think that the dual metric served its function in helping to avoid a reference in 2005 and should now be dropped in favour of a single metric.

POR or PPA

157. As we have said, we doubt the choice between POR and PPA as a single metric makes a significant difference to the parties. It is the royalty rate to be charged that matters. For the reasons discussed in relation to the merits of the dual metric we think that PPA is on balance to be preferred.

The PPA Royalty Rate

158. The PPA rate resulting from the 2005 Tariff was 7.33p in 2024. The figures for 2025, 2026 and subsequent years for which the new Tariff C remains in force will be adjusted up from that base level according to an appropriate index for inflation. The issue with regard to royalty rate is whether a base level of 7.33p is reasonable or whether it should change and if so by how much.
159. For reasons we have discussed, any attempt to set a new rate from first principles by reference to the economic value of the licensed music is too vulnerable to guesswork to be of practical use. We have taken the view that the economic value of the music is small in proportion to other relevant factors but we have not been able to reach a conclusion more precise than that.
160. We think that the PPA rates settled in accordance with the 2005 Tariff for 2005 and the years going forward were seen as reasonable by the parties in 2005 so there is no better starting point for settling the PPA royalty in the new tariff. The issue is whether there have been changes in circumstances since 2005 that warrant an adjustment.

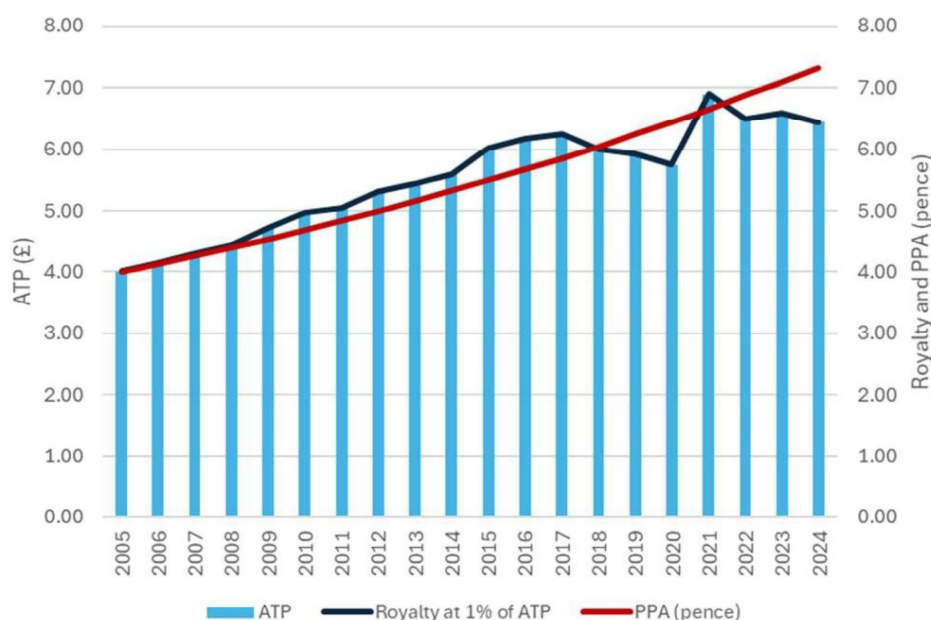
Recalibration

161. UKCA's first argument for a reduction in the royalty rate is that since 2005 the rate using the PPA metric has risen to a greater extent than was contemplated by the parties when settling the 2005 Tariff and therefore requires recalibration to bring it back into line.
162. The alternative metrics in the 2005 Tariff were set as follows. The POR rate was fixed at 1% of receipts. Mr Larkins said that the parties intended there to be a 'conceptual link' between the POR and PPA rates. That seemed to be common ground but we doubt that the parties shared a clear consensus at the time as to what it meant.
163. One point is not in doubt: the parties wanted the two metrics to provide for the same royalty in 2005. The ATP at that time was £4. Under the existing POR metric, total receipts would be £4 x ticket sales, so POR royalties worked out at 4p x ticket sales. By making the PPA rate 1% of ATP, the royalties payable under that metric were also 4p x ticket sales. It is less easy to see what each side intended for the years after 2005.
164. We imagine that the parties assumed, reasonably, that ATP would vary from year to year, so there would be a corresponding increase or decrease in POR royalties, once adjusted for the ups and downs of ticket sales. PPA royalties in the years following 2005 would have altered only according to variations in ticket sales without some further mechanism for adjustment. The parties could have agreed that the PPA rate should also vary annually according to the change in ATP, keeping the two metrics in permanent lockstep. Instead they built into the PPA metric an annual fixed rise of 3.25%. Minutes of a meeting held on 7 December 2004 indicate that this was another compromise to overcome disagreement on the appropriate inflation index to use. The minutes indicate a belief that compromising on an increase in the PPA rate of 3.25% pa would do

for the minimum 5-year period of the new tariff, after which they would have the opportunity to renegotiate.

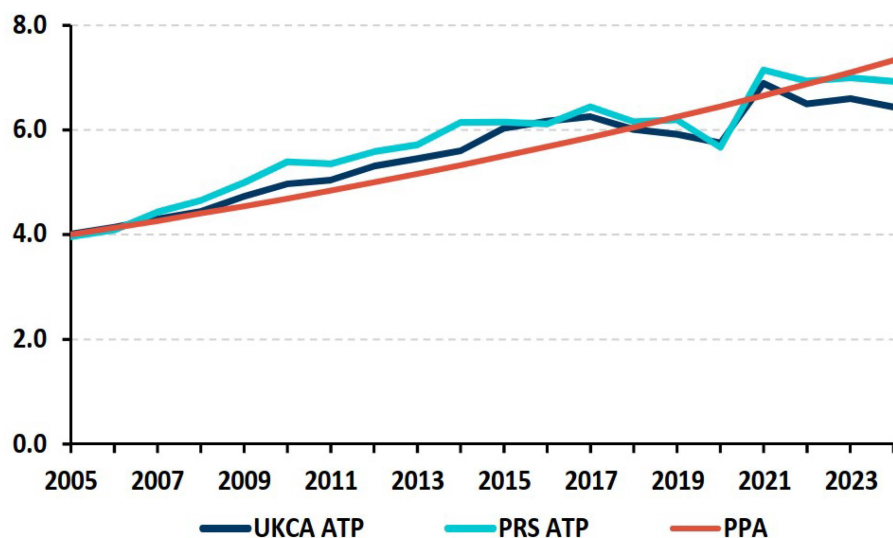
165. Mr Ryan for UKCA produced a chart to illustrate how this has worked out between 2005 and 2024:

Figure 18: Evolution of the PPA and ATP since 2005



166. The graph was criticised by Mr Wynn because the figures for ATP were taken from ComScore, an industry body. He said that payment of PPA royalties under the 2005 Tariff depended on how PRS assessed admissions. For instance, admissions of carers who accompany the individual cared for are not counted. Where there is an offer of two tickets for the price of one, PRS takes this to be two admissions. Mr Wynn thought that ComScore appeared to calculate admissions according to different criteria.
167. This is Mr Wynn's version of the chart that reproduces Mr Ryan's agreed line for PPA and Mr Ryan's curve for ATP (labelled UKCA ATP), adding his own ATP curve (labelled PRS ATP):

Figure 4-1: Comparison of PPA with 1% of Adjusted Receipts (pence)



168. Each expert was cross-examined on the basis that the ComScore or PRS figures contained errors. It seems that errors can be found in both databases but they were not shown to amount to much in either case and we think that both curves for ATP give a broadly correct impression. For the reasons given by Mr Wynn, what he calls the PRS ATP curve is probably the more reliable for the purpose of comparison with the PPA line.
169. The graphs show that ATP rose at an annual rate slightly higher than 3.25% until about 2010. The differential with PPA was then more or less maintained until about 2017. ATP seems to have risen at a rate below 3.25% after 2017, with a further downward pressure on ATP following the start of the Covid pandemic in 2020. ATP bounced back in 2021 and remained approximately constant through to 2024. According to both ATP curves, the royalties payable under PPA in 2024 were below those using the POR metric.
170. PRS said that the reason for the difference in the two rates is that booking fees have been omitted from the revenue used to calculate POR royalties, wrongly suppressing those royalties. Assuming that booking fees should be treated as part of a cinema's revenue, there was nothing in the evidence to support the contention.
171. UKCA's case reflected Mr Ryan's opinion, on which UKCA expressly relied:
- ‘In my opinion, the breakdown of the conceptual link between the PPA and the agreed Royalty Rate represents a relevant change of circumstance since 2005. I consider that it would be appropriate to recalibrate the PPA to reflect relevant changes since 2005. This would ensure that the Cinema Tariff remains economically consistent with the principles that the Parties agreed to in 2005.’
172. Mr Ryan's view appears to be based on his judgment as to what the parties intended in 2004 with regard to a link between the PPA and POR metrics. Once again, we do not think that this was a matter for the experts. But while we do

not think that UKCA can derive support from Mr Ryan about this, we accept that it is a legitimate argument for UKCA to advance. We understand that argument to be, put another way, that the parties intended the PPA rate to be adjusted annually to keep it aligned with the POR rate. The latter was the gold standard. Therefore the base line PPA rate for 2024 to be used for the new tariff should be the same as the POR rate for that year and accordingly less than the actual PPA rate charged under the Interim Tariff.

173. We do not think that in 2004 the parties intended the PPA rate to match the POR rate exactly in all the years following 2005. Given the way that the 2005 Tariff was structured it would have been an unreasonable expectation. Broad alignment for 5 years was considered good enough and it helped to achieve a compromise agreement. Broad alignment was in fact achieved over that period. In recent years the rates have diverged more but we do not accept that the parties must have viewed the POR metric as forever providing the reasonable rate for a licence under Tariff C whereas PPA was a rogue metric that would need to be brought back into line. For instance, the parties may have thought that if, in due course, the PPA line more closely matched inflation than the ATP curve then it would be the POR rate that would have been brought into line. We do not know.
174. We take the view that the PPA rate under the 2005 Tariff reflects what was thought reasonable in 2004 as closely as does the POR rate. They have diverged, although probably less than Mr Ryan's graph suggests. Since both the POR and PPA rates have equal standing as a credible base line for the new tariff we think it is practical to use the 2024 PPA rate.

Premiumisation

175. UKCA said that premiumisation by cinemas since 2005 accounted for 7% of the rise in ATP. That 7% rise has had nothing to do with what is seen or, more specifically, heard by film audiences. Consequently the base ATP rate for the new tariff should be reduced by 7%. The experts agreed that premiumisation has led to a greater rise in ATP since 2005 than would otherwise have been the case although they did not agree on the correct figure.
176. Premiumisation meant investment by cinemas to improve the film-goers' experiences. The components were said to have been (a) the advent of event cinema, made possible by digitisation, (b) the expansion of boutique cinemas and (c) the introduction of PLFs. We do not understand it to be in dispute that all three are associated with ATPs higher than those of what might be called regular cinemas showing regular films.
177. In their Joint Statement the experts said:

'The Experts agree that if the Tribunal determines that the correct interpretation of the 2005 Agreement is if the parties intended to maintain the PPA rate at the 2005 level (or higher) in real terms in the future, irrespective of changes in average ticket prices then there may be no need to adjust the PPA for Premium Features.'

178. An increase in ATP driven by premiumisation will have increased the POR rate but can have had no effect on the PPA rate since it has risen independently of ATP. We understand the experts to be saying that if we conclude that the correct base rate for the new tariff is the 2024 PPA rate according to the 2005 Tariff, which we have, no adjustment for premiumisation can be appropriate because since 2005 premiumisation has never had any impact on the PPA rate. We agree.
179. We make this further observation. As PRS pointed out, premiumisation in one form or another has been going on since 1915. In every decade since then, presumably, changes have been made to the quality of cinemas, all of which required investment by the owners. Such investment has helped to allow increases in ATP over the years while having no connection with the music licensed under Tariff C. Yet to date this has apparently been accommodated into every resettlement of Tariff C, taken as read.
180. If premiumisation had been relevant, UKCA would have been required to show that the investment since 2005 has increased by a significantly greater margin than occurred in previous relevant periods and to provide some means of calculating in financial terms what that margin is. We would not want to burden parties in the future with the need to embark on a calculation of that nature, a calculation liable to give rise to costs well out of proportion to its usefulness.
181. We make no adjustment for premiumisation.

Economic conditions

182. UKCA pointed to a variety of matters that have made trading by cinemas difficult over recent years: Covid, energy price inflation, staff costs, the cost of digitisation and the strikes by Hollywood actors and writers. UKCA acknowledged that it has made no attempt to quantify the effect of these events but says that they should be ‘put into the mix’.
183. We are unable to make anything of this. It could be suggested that in the hypothetical negotiation between UKCA and PRS, UKCA could have raised these matters and pressed for an unidentified reduction in the PPA rate. Even if that were a reasonable suggestion it would have been common ground that any reduction would make no difference at all to cinemas’ ability to trade. We think that the point would have fallen away early in the discussions.

Music density

184. We turn next to PRS’s arguments for an increase in the PPA rate. The first is that an increase in music density in films requires an increase in the royalty rate. Music density was the term used to mean the proportion of a film soundtrack that features music licensed under Tariff C.
185. Mr Wynn provided a graph showing the change in music density in films released in the UK between 2005 and 2023. He said that it demonstrates an increase of 17%. PRS claims an increase of 14.5% in the royalty rate, calculated as 17% x 85% because 15% of the music licensed is performed in foyers etc. –

other than in film soundtracks. The 17% increase was on an end-to-end analysis and we were told that using a best fit curve the increase may be less. PRS said that this makes no difference because between 2005 and 2023 the length of films has increased so on any view the amount of music licensed under Tariff C must have risen considerably. Mr Wynn calculated that the increase was greater than 25%.

186. The experts were not agreed as to the reliability of the evidence presented by PRS on music density. Mr Wynn thought that it was reliable, Mr Ryan was less sure, but he accepted there was evidence that the amount of music licensed has increased since 2005.
187. The experts did not agree whether there is any link between an increased quantity of music performed by cinemas and the economic value of the music used. On this last point we think that the experts were again straying outside their field of expertise. Their views were subjective and impressionistic. Mr Wynn thought that filmmakers would only include more music in their films if they believed it would increase the commercial success of the films. Maybe, but evidence was needed to establish that such a belief would be justified and that consequently higher music density has meant greater economic value imparted to cinemas. Such evidence would have had to do better than showing that higher music density overall has gone broadly hand in hand with more ticket sales in the UK, if that was the case, since a host of other factors will have affected ticket sales. At least as a start it would have been necessary to show a correlation between higher music density in identified films and their commercial success when compared to films with lower music density. There was no evidence of that nature.
188. PRS submitted that it would have made it difficult to show any increase in economic benefit. We have some sympathy with that, although we think that the correlation just discussed could have been shown if it is there. Either way, we do not accept that the Tribunal must make assumptions in PRS's favour.
189. As it turned out, in closing oral submissions understandably PRS did not base its argument on there having been any greater economic benefit to cinemas because of an increase in music density. Rather, PRS relied on the *ITV* case in support of the simple proposition that more material licensed must invariably require higher royalties. As discussed above, we do not think that the Tribunal in *ITV* went that far.
190. PRS also argued that higher music density and no alteration to the royalty rate would mean that the benefit of the licences granted under Tariff C would be spread more thinly among the relevant composers and songwriters and that this would be unjust.
191. We are satisfied that the amount of music licensed to each cinema under Tariff C has increased since 2005. There is no evidence that the cinemas have received any greater economic benefit as a consequence but we accept that proving that they have – in fact proving anything about economic benefit – would have been difficult.

192. We think it likely that if UKCA had evidence to show that its members were paying the same amount for, say, 17% less music licensed, they would have argued that composers were receiving an unfair bonus and that they were getting less for their money. In other words, we see some rough logic in PRS's argument. But assuming that the amount of music from which the cinemas benefit under Tariff C has increased by 17-25% as of 2024, it does not follow that the amount will remain at that level.
193. PRS are seeking an increase of 14.5%. We will increase the royalties by half that: 7.25%, to be rounded as indicated below.

Booking Fees

194. There was at one stage an issue as to whether royalties should be charged on a two-tier basis, depending on whether or not booking fees were charged by the cinema. The experts agreed that this was inappropriate and that it would be complex to administer. Two-tier charging was not pursued by either side.
195. The argument concerned whether booking fees should be treated as part of a cinema's revenue stream. UKCA submitted that they should not, broadly because they are charged for services unconnected with experiencing a film and its music or with hearing music played in the foyer.
196. Mr Larkins gave uncontested evidence that it is generally cheaper to buy cinema tickets using an online booking service, presumably because it costs the cinema more to employ someone to sell tickets in the foyer. Deducting booking fees from a cinema's revenue stream would be akin to making a deduction to take account of the cost of selling tickets on site. So far as we are aware that has never been done. We think that booking fees should in principle be treated as part of a cinema's revenue stream. How this should work out in practice is related to another issue.
197. In their Joint Statement the experts said:

‘The Experts agree that if the Tribunal determines that the correct interpretation of the 2005 Agreement is that the parties intended to maintain the PPA rate at the 2005 level (or higher) in real terms in the future, irrespective of changes in average ticket prices, then potential adjustments for booking fees may not be relevant.’

198. We agree with the experts. We have decided that the new tariff should be based on the PPA royalty for 2024 which has been determined under the 2005 Tariff independently of both cinemas' revenue streams and ATP. Had the rise in booking fees been incorporated into revenue streams, that would have had no effect on the PPA rate.
199. We therefore make no adjustment to take into account booking fees.

CPLMEs

200. CPLMEs are cinematic presentations of live music events such as concerts, theatre or opera performances, a subset of event cinema. CPLMEs are accorded

a status of their own in the 2005 Tariff. The POR metric is used, currently set at 3%. UKCA says that there should be no change.

201. PRS would like both a change in the metric to PPA and an increase in the royalty rate. PRS reasons as follows. The rate used for Tariff LP (licences for pop concerts and festivals) is 4% of receipts if booking fees are included. The rate for Tariff LC (live performances of classical music still in copyright) is 6.5%. For the new Tariff C, if the POR metric is retained a figure between those two is appropriate and PRS suggests 5%. That is five times the current POR rate for regular films. If the PPA metric is used, the new rate should be five times the rate set for regular films.
202. PRS prefers the PPA metric on the ground that it avoids the inconvenience to cinema operators and to PRS of having to report and audit revenue for CPLMEs. However, PRS acknowledged that there is a stronger nexus between the economic benefit of a licence for a CPLME and the revenue generated by the cinema.
203. Mr Wynn said that he was not clear whether the savings in costs using the PPA metric would outweigh the benefit of POR being more 'value reflective'. He thought either metric would be reasonable. Mr Ryan noted that Tariffs LP and LC relied on by PRS both use the POR metric and thought that Tariff C should do likewise for CPLMEs.
204. We agree with Mr Ryan that on balance POR is likely to be fairer. We think that there is a strong link between the value to cinemas of the music licensed in a CPLME and the revenue that it will generate. An equivalent reason probably underlies the use of POR in Tariffs LP and LC. POR will remain the metric in Tariff C for CPLMEs.
205. The experts gave evidence about the economic value of music in CPLMEs. Of itself this cannot have been evidence based on their expertise. There was some evidence from witnesses of fact along similar lines though we did not find it more reliable.
206. The experts discussed the extent to which Tariffs LP and LC are comparable. We think that their evidence was not much more helpful on the various factors raised which were said to constitute relevant differences or similarities when comparing those tariffs with Tariff C. Partly this was because they were expressing opinions about what might or might not impress audiences and partly because the points put to them were not based on evidence, they were just suggestions from counsel as to what may or may not be the case.
207. Mr Larkins said that the 3% POR rate was set in 2010 because that was the prevailing rate under Tariff LP. The Tariff LP rate was increased to 4% by a decision of this Tribunal in May 2018. PRS argued that this alone would support an increase to at least 4% for CPLMEs.
208. The Tribunal's decision in May 2018 did not consider the merits of the increase to 4% since it had been agreed between the main parties concerned. The decision dealt with an intervention by a party which argued that the proposed

new Tariff LP would not comply with The Collective Management of Copyright (EU Directive) Regulations 2016. The argument was rejected and the proposed Tariff LP approved. Nothing can be inferred from the Tribunal's approval of the tariff. But interveners aside, the parties on both sides thought that 4% was reasonable, presumably because they accepted that there had been a relevant change in circumstances or, possibly, they recognised that relevant matters had not earlier been taken into account.

209. If Tariff LP is comparable it provides a strong indicator as to what is reasonable for CPLMEs in Tariff C. In our view there are clear similarities between the licensing of music to be performed on stage and the licensing of music for the same purpose save that the presentation of the event is in a cinema, not at the site of the performance.
210. There was evidence from witnesses of fact who were not cross-examined that the risks associated with staging a concert where Tariff LP is required are greater than showing CPLMEs. We do not see that it is of much relevance. It does not imply a difference in the economic benefit derived by the licensee in each case. Greater risk may or may not be associated with a greater variance in potential profit, we do not know, but an increase of 1% in the royalty rate would have no impact on the viability of cinemas if that was UKCA's point.
211. We think that Tariff LP is a sufficiently close comparable to justify by itself an increase in the royalty to 4%.
212. Turning to Tariff LC, only music still in copyright is relevant. In many concerts there will be none. The comparison is between a licence to perform a classical concert in a hall and a licence to show the performance relayed to a cinema. In argument for the most recent increase in the Tariff LC rate to 6.5%, PRS argued that ticket prices for live classical concerts are depressed by subsidies and tax relief, meaning a mark-down in royalties due. We do not know whether this was the reason for the 6.5% figure being settled but we do know that Tariff LC was not relied on by PRS in the negotiations that led to the 2005 Tariff.
213. Because much classical music is out of copyright, licensees under Tariff LC can choose a lesser rate based on the proportion of the music to be performed that is still protected by copyright. We doubt this is relevant – it just means that those to whom royalties are due do not benefit unfairly if their music scoops the pool by being the only licensed music in the film alongside unlicensed music. We further do not accept UKCA's proposition that CPLMEs will feature more famous classical performers – André Rieu and Andrea Bocelli were pushed forward as examples – so that the values of the performances are greater. We have no way of knowing this.
214. Given the foregoing we are persuaded that Tariff LP is a more reliable comparable than Tariff LC. We will increase the royalty for CPLMEs to 4% of revenue.
215. Because the POR metric is used, for reasons we have discussed in the context of regular films, we take the view that booking fees should be included in the revenue stream. The alternative would be to estimate the value of booking fees

and to increase the rate accordingly. It would be simpler to administer but would be less accurate and would be liable to become outdated as and when booking fees vary in the future. The experts were divided on this. We think it better just to include booking fees as part of cinemas' receipts.

Prompt Payment Discount

- 216. Under the 2005 Tariff licensees receive a 4% discount if they pay royalties due on time. PRS argued that this was an anachronism. Licensees receive a benefit for doing nothing more than meeting their contractual obligations. The correct way to incentivise timely payment is to charge interest on outstanding royalties, which is what happens.
- 217. We accept PRS's point that interest on late payment should provide incentive enough. It was suggested by UKCA that PRS may not be entitled to claim this. We are not clear why they would not be.
- 218. However, self-evidently the discount provides an advantage to UKCA members which must have been priced in when the 2005 Tariff was settled and would be lost if it were now removed. We have noted above that the 2005 Tariff was a compromise, so it cannot be assumed that everything in it was reasonable. But the prompt payment discount is there, we have not been persuaded that it is unreasonable and we have decided to let it remain.

Inflation Index

- 219. PRS proposes that the PPA rate should be annually adjusted according to the Consumer Price Index ('CPI'). UKCA prefers the CPIH, which factors various costs associated with owning, maintaining and occupying one's own home.
- 220. The reason for index linking is so that the value of royalties to composers and songwriters is not eroded by inflation. We assume that some of those benefitting under Tariff C live abroad. For them one index is just as likely to match their inflationary experience as the other index. Of those living in the UK, our assumption is that many will have a house of their own. We will apply the CPIH index.

Conclusion

- 221. Royalties for films other than CPLMEs under the new Tariff C will be assessed according to a single metric: PPA. The base rate used will be 7.33 pence increased by 7.25%, which comes to 7.861 pence. We will round this up to 7.9 pence per admission.
- 222. The rate for 2025 will be the base rate of 7.9 pence increased according to the CPI-H index. The rate will increase annually in line with that index.
- 223. The rate for CPLMEs will be 4% of receipts. Receipts will include booking fees.
- 224. The existing prompt payment discount of 4% will remain.

The cost of a reference to the Copyright Tribunal

225. It became apparent from the correspondence between the parties both before and after the 2005 Tariff was settled that a factor in the parties' thinking was the cost of making a reference to this Tribunal. It was apparently seen as a major barrier to the resolution of all issues needing attention.
226. With possible rare exceptions, the high cost of making a reference is unlikely to be in the public interest.
227. One solution would be to introduce rules on costs budgets. Different tribunals have different requirements but the risk is that such rules in this Tribunal would become time-consuming to implement and liable to generate new costs of their own.
228. There may be an alternative to top-down control by costs budgets. It would be to amend The Copyright Tribunal Rules 2010 to provide for an intermediary track falling between the existing standard and small applications tracks.
229. The small applications track is almost never used. There is a presumption in favour of it if the financial value of the dispute is less than £50,000 to each party and the facts and legal issues involved are simple (rule 17(3)). Disputes in this Tribunal are seldom appropriate for that track. Generally speaking, it is the standard track or nothing.
230. An intermediary track (not necessarily by that name) need not be limited by the value of the dispute to either party. The point of it would be to *require* the Tribunal to more actively control matters such as evidence, disclosure, the length of hearings and which potential issues merit resolution and which do not. For example, we are not convinced that what is likely to have been the considerable cost of expert evidence on the economic value of music in the present reference was time and money well spent.
231. In principle the Tribunal could exercise more active control under the existing rules but it would not be helpful to do so of its own initiative since it would be unexpected and parties may become concerned about an arbitrary variation in approach depending on which panel is sitting.
232. By contrast, parties who elect to use an intermediary track would expect significantly more rigorous case management from the Tribunal – they would buy into the idea from the start – and would therefore anticipate appropriate limitations on how the reference would be conducted. It could be viewed as forgoing a widely roaming consideration of all possible issues in favour of a substantial saving in costs. In the usual way, a dispute as to which track is appropriate could be dealt with by an application, with guidelines from the rules.
233. There are parallel models in the intellectual property courts but we do not suggest a cutting and pasting of rules. Any amendment to the Tribunal's rules would be adapted to suit the requirements of this Tribunal.

234. We emphasise that the existing standard track would remain. If parties require or just prefer full fat litigation we see nothing wrong in that. The idea would be to widen the options available. In part this raises a point on access to justice, although not in the fullest sense. In the present case, for example, the parties could afford the standard track and have used it. In that sense there was always access to justice. However, we have the impression that they may have found it valuable to have the option to refer issues to the Tribunal more often at less cost for each reference, allowing Tariff C to be more frequently reviewed and more easily kept fit for purpose.
235. Another potential advantage may be to demonstrate to parties that almost as much can be done in a more focused procedure as is achieved by adopting a fuller, more costly procedure. Making that option available may usefully, albeit in a minor way, help to push back the reputation that English civil litigation sometimes has, in a competitive world, of being invariably expensive.