

Clarification on the guidance from UK Hospitality and BBPA

Executive Summary

UK Hospitality (“UKH”) and BBPA have issued written guidance regarding the MPLC and AVLA licences, the most recent version being that of 18 November 2024 (the “Guidance”). AVLA considers that the Guidance contains inaccurate information regarding the AVLA Licence, which we would like to address, namely about the:

- ***Alleged overlap of rightsholders with MPLC:*** both licensors represent different rightsholders
- ***Legal basis for licensing:*** it is not based on the clause referred by the trade associations
- ***Negotiations between AVLA and trade bodies:*** in reality there have been discussions for years

Introduction - Important information

AVLA has repeatedly requested both trade associations to correct their Guidance, without success. Contrary to any indication otherwise in the Guidance, AVLA has responded to all the concerns and questions the associations have raised with them.

This clarification is provided so that businesses can take an informed decision and are aware of the risks they face if they do not comply with legal requirements.

Businesses should be aware that failure to take the AVLA Licence where required within reasonable time, could lead to legal and financial consequences for them. It is the individual responsibility of any premises showing audiovisual content on televisions in common areas and guest bedrooms to ensure they have the necessary licences to show that content. For the avoidance of doubt, the Guidance is not considered by AVLA -to be a valid justification for delaying or avoiding compliance with the requirements of copyright law. AVLA is determined to protect the rights of the rightsholders it represents, including initiating court proceedings, where necessary.

This document should be read in conjunction with AVLA’s Information Sheet¹. Further information is also available at our website: www.avla.uk

Part 1 of this document aims to address the statements in the Guidance which we consider to be inaccurate. Part 2 provides an answer to the questions which UK Hospitality and BBPA have suggested in the Guidance that their members ask of AVLA.

In case of doubt, operators are invited to contact AVLA directly (at licensing@avla.uk) and to obtain independent legal advice.

¹ Available at: <https://avla.uk/wp-content/uploads/2024/06/Guidance.pdf>

Part 1: Inaccurate statements in the Guidance

In this section, AVLA seeks to clarify specific statements in the Guidance which it considers to be inaccurate.

1. 1. *Alleged overlap of rightsholders with MPLC*

The Guidance asserts that there is an overlap in relation to the works covered by the AVLA Licence and an MPLC licence. It states:-

“AVLA listed rightsholders include a different subset than that of MPLC, however in our view it seems likely there will be crossover between the two bodies. Our current view is that its approach mirrors that of MPLC (with a potentially overlapping set of rightsholders, leading to more confusion for operators).”

This assertion is incorrect. There is no such overlap of rightsholders. AVLA and MPLC represent different producers, yet in some instances works are co-produced. There could be for instance a film co-produced by a producer represented by AVLA and by another producer represented by MPLC. Additionally, while MPLC represents producers only, AVLA represents other categories of rightsholders. Accordingly, some works may fall under both licences for this reason. For example, a programme for which MPLC represents the producer and AVLA the scriptwriter and actors would require both licences. See further explanation in AVLA’s Information Sheet.

AVLA is not in a position to comment on MPLC’s licensing approach.

1. 2. *Legal basis of AVLA Licence*

The Guidance seeks to query and cast doubt over the legal basis for the AVLA Licence, stating:-

“The crux of the difference of opinion lies around whether a hotel is a public or private place for the purposes of the specific element of broadcast, as MPLC claims, for (section 19 of the Copyright Act – ‘performance of the copyrighted work in public’).”

“We sought legal opinion but as this is still relatively new in UK copyright law, with no case precedent in the UK to which to refer, it shed no further clarity on the matter”

“There has been to date no UK legal precedent to definitely settle the matter”

“We continue to seek resolution on this issue, and we are in active discussions with the Intellectual Property Office on this subject”

AVLA does not consider the interpretation of section 19 of the Copyright, Designs and Patents Act 1988 (“CDPA”) to be the relevant legal issue in dispute. AVLA licenses hotel / guest bedrooms mainly on the basis of section 20 CDPA, among others. This legal basis is summarized in AVLA’s

Information Sheet (see section Legal Framework). This provides references to various court decisions which have clarified the application of section 20 in this context, including recent UK cases.

The Intellectual Property Office has also issued guidance on how section 72 CDPA, which is also relevant to showing of audiovisual content in hotel common areas and guest bedrooms, should be interpreted. This can be found [here](#). In particular, the IPO guidance states:-

“In hotels and guesthouses, are additional licences required for the use of televisions in individual guest bedrooms?”

It is likely that additional licences will be required for this use. There is case law which indicates that the use of television sets in individual guest bedrooms will require individual licences.” [emphasis added].

Despite repeated requests by AVLA, UK Hospitality and BBPA have never provided any supporting legal authority to suggest that s.20 would not apply.

In fact, the licensing of hotel / guest bedrooms is nothing new. Other licensors - such as the UK music licensing bodies - have been licensing guest bedrooms for years. We are not aware of any comparative UK Hospitality or BBPA guidance in relation to such licensing regimes. UK Hospitality and BBPA have to explain why a different approach should be taken to audiovisual works, despite AVLA’s repeated requests.

1. 3. *Negotiation with UK Hospitality and BBPA*

In their guidance, UK Hospitality and BBPA state: *“When MPLC came to market, differing views on their absolute rights aside, they spent time negotiating with the UKH and BBPA on what fair and reasonable tariffs could be, based on the situation at the time. Whilst ALVA [sic] approached UKH, and subsequently BBPA, to notify their intent to launch a licence, a satisfactory position was not reached ahead of them deciding to go ahead launch at the beginning of 2024.”*

AVLA do not consider this statement to be a fair representation of the negotiations which have taken place between the parties, nor AVLA’s good faith efforts to answer queries raised by UK Hospitality and BBPA. AVLA has provided ample information to both trade associations for years in relation to both the legal basis for the AVLA Licence and how their tariffs have been calculated.

Part 2: Answers to the questions prompted by UK Hospitality and BBPA

We are aware that UK Hospitality and BBPA have provided their members with series of questions they should raise with AVLA.

Answers to these questions, as well as other recurrent queries, can be found this section.

2. 1. *Who exactly do you represent, and what share of the total rightsholders [for this tariff] for TV and Film content shown in the UK do you represent?*

As mentioned in AVLA's Information Sheet and in our website (www.avla.uk), a key feature of AVLA is the breadth of representation. AVLA represents the broadest audiovisual creative community in the UK, comprising tens of thousands of creators. AVLA represents a far larger number of producers compared to other licensors. In addition, AVLA is the only licensing body representing other categories of rightsholders: authors, directors, performers and visual artists. As a result, AVLA's repertoire of works and rights is considerably more extensive than that of other licensors, even when considering producers only. Moreover, this comprehensive representation extends across borders, thanks to AVLA's network of international representation agreements with peer organisations abroad.

AVLA is bound to respect confidentiality, protect data and commercially sensitive information. Due to these legal constraints, we cannot make public the comprehensive list of our rightsholders. However, we do share the list of producers represented by AVLA with businesses that sign a Non Disclosure Agreement (NDA). A copy of the NDA can be provided upon request.

2. 2. *Please give examples of the rights holders work and when this was last broadcast on terrestrial TV*

AVLA's Information Sheet lists numerous examples of widely recognized programmes to illustrate the relevance of the repertoire of AVLA and show that works of our rightsholders are frequently broadcast in the main TV channels in the UK. This should already suffice to demonstrate the need for our licence.

2. 3. *How have you calculated the value of these rights please, and hence the reasonableness of this tariff, and can you provide the supporting evidence?*

As explained in our website and in AVLA's Information Sheet, our tariffs were established after extensive analysis, taking into consideration numerous factors and the views of external experts to ensure they are fair, reasonable and non-discriminatory.

AVLA has considered:

- the tariffs applied by other licensors (such as MPLC, PPL, PRS), as well as those of the mandatory TV licence;
- additional benchmarks, such as the cost of the pay TV subscriptions for hotels and comparative analysis of tariffs (including their setting) applied to hotels in other European countries;
- the scope of representativity, the value of the rights, and the size of AVLA's repertoire of works and rights; and
- the value for businesses.

Special attention has been given to avoid charging rates that could appear excessive for some establishments, even where higher rates could be justified.

Furthermore, AVLA's pricing model is customer-centric:

- ✓ it is based on criteria similar to those of other UK licensors (e.g. number of rooms with TVs, size of communal areas with TVs) to ensure clarity and simplicity, avoiding market confusion.
- ✓ it offers far more flexibility for seasonality, charging only for the months during which hotels are operational, avoiding penalizing those open for limited periods.
- ✓ there are significant discounts for small independent establishments.
- ✓ no punitive surcharges are applied for late registration in the initial years.

AVLA also ran quantitative analysis. However, quantifying broadcasts is intricate and costly. For example, sometimes works are co-produced with varying participation shares, there titles that may be represented by a licensor as regards the producers and for AVLA as regards other categories of rightsholders, etc.

Offering access to TV channels in bedrooms is a key amenity for hotels that adds clear value to operators, irrespective of the actual usage by guests. Television in hotels is critical for providing entertainment options and for enhancing the overall guest experience. Hotels typically advertise the availability of TV, provide lists of available TV channels, receive better ratings and reviews as a result, build positive reputation, etc. The value of the licensed rights is based on the benefit they provide to the operator, who gains from offering access to the TV services regardless of whether guests watch TV.

The standard tariff of AVLA per hotel bedroom -before any discounts- amounts to about 3 pence per day.

In summary, AVLA's tariffs fully comply with all legal requirements. They have been carefully set in relation to the value of the rights and the scope of their use by the operators, ensuring that they are fair, reasonable and non-discriminatory. The value of the tariffs cannot be used as an excuse not to take the licence.

2. 4. *Can you guarantee that your rights holders are not represented by any other collection organisation for the UK market?*

The rightsholders represented by AVLA are not represented by other collecting organisations in the UK for the same rights AVLA is licensing. However, they could be represented by other licensors for other kind of rights. For example, a writer may be represented by AVLA for the licensing of the broadcast of his/her works on TV at hotels, and by another licensing body for copies made of his/her books at universities.

2. 5. *Did you negotiate and agree this tariff with any representative UK trade bodies, and if so when did you do so?*

There is no obligation for a collective management organisation to agree its tariffs with trade bodies. Nonetheless, AVLA has been liaising with UK Hospitality and BBPA in good faith long before it started licensing (in the case of UK Hospitality, even long before its formal incorporation). AVLA has provided ample information and demonstrated openness to dialogue and collaboration, as well as maximum good will. AVLA presented the licence and the planned tariffs already in 2022 to UK Hospitality and in early 2023 to BBPA. We cannot disclose details, but AVLA discussed in good faith with them for several months about the tariffs. We made best efforts from our side to try to accommodate to their requests, to the extent possible.

2. 6. *Is there any recent UK case law you can cite to support your right to collect money from me on this basis?*

Please see section Legal Framework in AVLA's Information Sheet.