



## Comments of Dolby Laboratories, Inc. Concerning

### TRAI Consultation Paper on Encouraging R&D in ICT Sectors

Dolby Laboratories, Inc. (“Dolby”) respectfully submits these comments in response to the Consultation Paper on Encouraging R&D in Telecom, Broadcasting, and IT (ICT) Sectors issued by the Telecom Regulatory Authority of India. In particular, Dolby provides a response to Q.20:

*Q.20. (a) Is the Fair, Reasonable, and Non-Discriminatory (FRAND) mechanism for licensing of Standard Essential Patents (SEPs) functioning satisfactorily and effectively? Is there a need for any reforms in this aspect? (b) How can small innovators be protected from the predatory practices?*

In short, FRAND licensing has historically been a successful mechanism for licensing SEPs, and remains so today. Existing contract and private mechanisms related to FRAND, as well as the law in many jurisdictions, continues to protect against anticompetitive and predatory practices involving SEPs.

#### **Background to Dolby**

Dolby is a leading innovator of sound and image technologies, and has led the way in inventing, developing, and making available industry-wide innovative audio and imaging technologies. Dolby was founded in 1965, when Ray Dolby introduced his revolutionary audio noise suppression technology to recording studios and engineers. Demand for that technology was so intense, Dolby quickly adopted its strategy of making its solutions widely available to consumer through varied licensing programs, partnering with manufacturers to bring its products to market. In recent years, Dolby contributes approximately 20% of annual revenue to R&D aimed at creating innovative technologies for ever-evolving audio and video use cases.

Through such efforts Dolby has become recognized worldwide as a key contributor to the robust ecosystems of content creators, content distributors, and consumers that support broadly available interoperable entertainment experiences. Dolby’s success and reputation was hard earned and is dependent on its continued investment in new technologies, making those technologies available for incorporation into third party products, supporting the availability and success of those products incorporating Dolby audio and video formats, which in turn stimulates the creation and availability of content produced in those formats, and ensuring the successful interoperability of those feature throughout the content ecosystem. Dolby’s ability to create new technologies, consequently, depends on its industry relationships to continuously expand the products and consumer devices that incorporate its technologies and that implement standards based on such technologies.

Dolby’s participation in global standards development is a critical piece in furthering Dolby’s industry relationships, and as an engine allowing Dolby to grow from a small startup company to one that is now recognized globally as a technology leader. Dolby voluntarily participates in standards development organizations throughout the world, and regularly contributes its technologies to leading audio and video standards.

## **FRAND Licensing is Working in the Audio and Video Sector**

The private sector has for decades relied on the licensing of standard essential patents (“SEPs”) on fair, reasonable, and non-discriminatory (“FRAND”) terms to ensure that investment incentives and rewards underlying successful standards development are properly aligned. This approach to SEP licensing has historically been flexible, allowing for different licensing models and business strategies, taking into account the specific technologies, industries, and circumstances involved in each instance, all the while supported by a strong intellectual property enforcement regime. As has often been said when it comes to FRAND licensing – “one-size-does-not-fit-all.”

Current FRAND licensing practices have served the standards ecosystem well. In Dolby’s experience, there is continued multi-generational innovation in the audio and video sector. This has been fueled – in part – by the successful dissemination of technology through licensing on FRAND terms. This has enabled Dolby to continuously invest and re-invest in developing new audio and video technologies, which have been broadly adopted by downstream implementers. This is evidenced by decades of technological development. Sound in cinemas was originally single-channel, or mono, and then evolved to stereo, then to 5.1 channel surround sound, and then to improved experiences such as 7.1 channel surround sound. Today, sound has evolved to use an object-based approach that is not tied to a specific channel or speaker and which creates a fully immersive experience for listeners. Likewise, video coding has continuously improved over successive generations of codec standards, each with increasing compression efficiency and quality. Further, the applications of these technologies have multiplied; surround sound technologies developed originally for the cinema are now available from leading streaming services, makers of home audio systems, mobile device manufacturers, and gaming console makers, allowing consumers to experience their benefits not only in cinemas, but also at home or just walking down the street, whether through speakers or headphones, from a television, a laptop, a mobile device, or a gaming console.

This history of multi-generational innovation is bolstered by the success of the industry in licensing SEPs through patent pools in the audio and video sector. Dolby contributes a number of its technologies to collaboratively set standards and in many instances offers the resulting SEPs for license through patent pools where the market has established pool licensing as the predominant means for providing access to standardized technologies and facilitating the development of downstream products based on such technologies. Patent pools are a private sector means that support balanced FRAND licensing. Patent pools aggregate SEPs and make them available in a one-stop shop. This dramatically reduces transaction costs by reducing the number of agreements required to get rights where they need to go. Patent pools support industries by enabling the widespread adoption of standards, while reducing costs and bringing efficiency to the marketplace. This, in turn, sets the stage for effective downstream competition among users of the standard on an even playing field.

In Dolby’s experience in the audio and video sector, pools have proven to be an efficient means of licensing patents on fair and transparent terms to large numbers of licensees – including many small innovators. Leading patent pools of audio and video standards have licensed hundreds – if not over a thousand – of licensees during their operation. Some pools combine the rights of dozens of SEP holders – providing a mechanism for universities, research institutes, and small enterprises to license their valuable intellectual property. This is normally done with relatively little litigation.

In sum, successful FRAND licensing through patent pools is a prime example where market-based factors in specific circumstances establish a particular licensing approach that is most efficient and effective to

achieve the procompetitive effects inherent in standards development, and accepted by the market participants – both licensees and licensors. Policies should continue to promote – and certainly not to impede – this flexibility, including by adopting rules that fail to account for the particulars of each circumstance. This is not to suggest that pool licensing is superior to bilateral FRAND licensing, or vice versa. It is simply to illustrate the necessity of recognizing, and endorsing an approach to standards development that accommodates a diversity of FRAND licensing, which can only occur when firms are able to react to market-based influences and adopt practices and strategies that best achieve positive results depending on each situation. This approach itself reflects innovation that overreaching and prescriptive government regulation would adversely chill.

### **There is No Need for Further Regulation of FRAND Licensing**

Support for industry-led standards development, together with strong protection for intellectual property rights to encourage widespread licensing of SEPs on FRAND terms, are critical to increased investment and participation in standards development. Such support should actively embrace policies that aggressively protect those necessary incentives underpinning successful standards development, which lead to continuing and repeat investment in innovation contributed to standards and the market-driven licensing of SEPs on FRAND terms.

This is a complex task because standardization is complex. There are thousands of standards, addressing a multiplicity of technologies relevant to a diversity of industries, and involving stakeholders with oftentimes diverging roles, interests, and views. Government strategy must take account of all these complexities and recognize that underlying incentives may require different approaches in different circumstances, especially for FRAND licensing, depending on the technology and industry involved. Again, "one size does not fit all." Applying prescriptive overarching rules without variation due to specific circumstances, whether by government or private actors, will threaten the overall success of standards development as we know it.

For example, in the United States, the USPTO and NIST, along with the Department of Justice Antitrust Division, recently withdrew their 2019 Policy Statement on Remedies for Standards-Essential Patents Subject to Voluntary F/RAND Commitments, and, in so doing, reaffirmed that "the widespread and efficient licensing of SEPs on [FRAND] terms help to promote technological innovation, further consumer choice, and enable industry competitiveness, including in emerging technologies and by new and small-to medium-sized market entrants." Accordingly, Assistant Attorney General for Antitrust Kanter said that the Department would take a "case-by-case" enforcement approach to determine if SEP holders or standards implementers are "engaging in practices that result in the anticompetitive use of market power or other abusive process that harm competition."

In accordance with this approach, we offer several suggestions for government policymakers to promote innovation and development of standards. First, standards development and FRAND licensing should be market-driven, and not the result of regulatory directive. Second, firms must be afforded the freedom to license SEPs consistent with business models and strategies that fit specific circumstances. Third, successful standardization based on FRAND licensing depends on a strong intellectual property regime that ensures that firms investing in researching and developing SEPs can recoup their investments. Fourthly, disputes, if any, arising during licensing negotiations could be best settled by Courts, which are well equipped with global jurisprudence that is evolving towards appropriately balancing the rights of the

SEP holders and implementers, and any intervention by the Government agencies/regulatory authorities in such disputes may not be conducive for the business environment in the country.

**Conclusion**

Dolby appreciates this opportunity to provide these comments to the Telecom Regulatory Authority of India on these important issues.