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IN THE COMPETITION
APPEAL
TRIBUNAL

Case No: 1731/7/7/25

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Tuesday 15th September 2026

Before:

Justin Turner KC

(Sitting as a Tribunal in England and Wales)

BETWEEN:

Proposed Class Representative

Alexander Wolfson

V

Proposed Defendants

Microsoft Corporation and Others

A P P E A R A N C E S

Rob Williams KC (Instructed by Stewarts Law) on behalf of Alexander Wolfson

Tony Singla KC, Hugo Leith & Nikolaus Grubeck (Instructed by Willkie Farr & Gallagher (UK) LLP) on behalf of Microsoft Corporation and Others.

Matthew Lavy KC (Instructed by Charles Fussell LLP) on behalf of JJH Enterprises Limited

Digital Transcription by Epiq Europe Ltd
Lower Ground, 46 Chancery Lane, London, WC2A 1JE
Tel No: 020 7404 1400
Email: ukclient@epiqglobal.co.uk

Tuesday, 15 September 2026

1 (10.30 am)

2 THE CHAIR: Some of you are joining us via live stream on our website. I'm going to
3 start with a warning: an official recording is being made and an authorised transcript
4 will be produced. It is strictly prohibited for anyone else to make an unauthorised
5 recording, whether audio or visual, of these proceedings, and breach of that provision
6 is punishable as contempt of court.

7 MR WILLIAMS: Good morning, sir.

8 THE CHAIR: Good morning, Mr Williams.

9
10 Submissions by MR WILLIAMS

11 MR WILLIAMS: Sir, this is the first case management conference in these proposed
12 collective proceedings in which Mr Wolfson seeks to act as the class representative.
13 I appear for Mr Wolfson. Mr Singla appears for Microsoft, together with Mr Leith and
14 Mr Grubeck. And Mr Lavy is here for JJH.

15 THE CHAIR: Keeping an eye on us, yes.

16 MR WILLIAMS: Yes. You've got the agenda at page 3, tab 1 of bundle A, and you've
17 seen that there are, broadly speaking, three sets of issues. The first concerns whether
18 there ought to be a stay in the proceedings.

19 THE CHAIR: Hold on, just give me a second. I haven't got ... (Pause)

20 Yes.

21 MR WILLIAMS: So you'll have seen from the submissions there were three sets of
22 issues: the first is whether there ought to be a stay in the proceedings, a general stay.

23 THE CHAIR: Yes.

24 MR WILLIAMS: And if there's not a stay, we then move on to the question of
25 directions, in particular in relation to the contractual jurisdiction issue. Then there is,
26 more generally, the question of the interaction with the JJH proceedings, which is why

1 Mr Lavy is with us.

2 THE CHAIR: Right.

3 MR WILLIAMS: Given that it's Mr Singla's application for a stay, I was going to let him
4 make that application.

5 THE CHAIR: Yes, yes. Can I just ask you a couple of questions? To what extent is
6 it your position, or is it agreed between the parties, that the copyright dispute is
7 determinative of the proceedings in this case?

8 MR WILLIAMS: We don't say today that it's determinative. We clearly recognise that
9 it's an important threshold issue.

10 THE CHAIR: Right, okay. We'll need to, at some stage, but it may be helpful just to
11 give me an indication now -- to what extent do the proceedings overlap with the JJH
12 proceedings?

13 MR WILLIAMS: These proceedings?

14 THE CHAIR: Yes.

15 MR WILLIAMS: Well, it's essentially -- it's the same allegation of abuse, which you're
16 familiar with. I wasn't going to make submissions about that.

17 THE CHAIR: Yes.

18 MR WILLIAMS: Essentially it's the same allegation of abuse.

19 THE CHAIR: So it's broader in the sense it's not just JJH?

20 MR WILLIAMS: No, sorry --

21 THE CHAIR: The licensing, no --

22 MR WILLIAMS: The conduct, I beg your ...

23 THE CHAIR: The conduct is the same. Yes, I understand.

24 MR WILLIAMS: The allegation of abuse is based on the same conduct.

25 THE CHAIR: Yes.

26 MR WILLIAMS: Then there's obviously the question of effects. We say, as we've said

1 in the skeleton, that the effects which we allege on prices are compatible with the
2 effects which JJH alleges, because JJH alleges an impact on them as a participant in
3 the pre-owned licensing market. We say that the impact on the class, effectively
4 downstream of them -- one is relying on the same chain of effects.

5 THE CHAIR: Yes.

6 MR WILLIAMS: So this isn't a case -- the Tribunal sometimes has cases where you've
7 got parallel claims in relation to the same conduct, but the claims are directly
8 competing with one another because for example, there's pass on from one level or
9 another. These are broadly complementary.

10 THE CHAIR: If JJH fails, ValueLicensing fails on the substantive grounds, as opposed
11 to grounds that are peculiar to their corporate activity -- on substantive grounds, then
12 this claim is unlikely to be successful.

13 MR WILLIAMS: You say if they fail, I mean --

14 THE CHAIR: If Microsoft's conduct is not abusive.

15 MR WILLIAMS: Yes. I mean, if it is the case that the conduct is not abusive --

16 THE CHAIR: As against JJH, then you would be in some difficulty, obviously, you'd
17 need to (overspeaking).

18 MR WILLIAMS: Yes, so we make the same allegations, but in a sense that's partly
19 why when we get on to agenda item 3, we --

20 THE CHAIR: I understand.

21 MR WILLIAMS: -- say that there's a case for dealing with the cases together. Because
22 what the Tribunal doesn't want is the case to be litigated between JJH and Microsoft,
23 and let's say the case fails and we say, "Well, we think we can do better than that", for
24 whatever reason.

25 THE CHAIR: Yes.

26 MR WILLIAMS: Because it is the same case, and an adverse finding against JJH

1 wouldn't be dispositive of our claim for obvious reasons. That's the third agenda item.

2 THE CHAIR: Fine, thank you.

3 Mr Singla.

4
5 Submissions by MR SINGLA

6 MR SINGLA: I won't take up a huge amount of time on the background because
7 I know you're very familiar, both with the background to these proceedings and also
8 the ValueLicensing proceedings, but we originally filed our subject matter jurisdiction
9 challenge, which is how we've been referring to it -- so the argument that the CAT
10 doesn't have jurisdiction to deal with copyright issues. That application was originally
11 filed last year, and we applied for a stay of these proceedings in September 2025.

12 THE CHAIR: Sorry, just backing up. JJH's proceedings were initiated when?

13 MR SINGLA: Back in 2021.

14 THE CHAIR: Right.

15 MR SINGLA: But as you know, there were various interlocutory hearings and so on.

16 THE CHAIR: I'm well aware of that.

17 MR SINGLA: Yes, exactly.

18 THE CHAIR: Seared into my brain in certain respects, the trauma of the -- the
19 arguments.

20 MR SINGLA: These proceedings were filed in 2025.

21 THE CHAIR: Yes, I've got that. You were just telling me the strike out on the copyright
22 was relatively recent?

23 MR SINGLA: I was explaining that in September 2025, the issue of whether the CAT
24 had jurisdiction to deal with copyright issues arose originally in the ValueLicensing
25 proceedings. You'll recall that.

26 THE CHAIR: Yes, that's right.

1 MR SINGLA: But what we did in these proceedings was essentially --

2 THE CHAIR: Sorry to interrupt, Mr Singla, but then there was the other issue: there

3 was whether the CAT had jurisdiction to deal with copyright issues, but also what the

4 result of those copyright issues --

5 MR SINGLA: Preliminary issues.

6 THE CHAIR: Preliminary issues.

7 MR SINGLA: Exactly.

8 THE CHAIR: And that was at the same time, was it?

9 MR SINGLA: It was, September 2025. The way this arose in the ValueLicensing

10 proceedings was there was a CMC at which Microsoft said, "We would like to take the

11 jurisdiction point", and you also directed the preliminary issue hearing to take place.

12 THE CHAIR: Right.

13 MR SINGLA: In the meantime --

14 THE CHAIR: The application for that preliminary issue was made when?

15 MR SINGLA: Exactly, so that CMC, as I recall, was, I think, April in the summer of last

16 year -- maybe July. The preliminary issues then came before you in September 2025.

17 That was the hearing of the preliminary issues.

18 THE CHAIR: Yes.

19 MR SINGLA: Because you'll recall the way this was dealt with was the preliminary

20 issues would go ahead without prejudice --

21 THE CHAIR: I remember that, it was just the dates I needed.

22 MR SINGLA: That was all going on in the ValueLicensing proceedings. The Wolfson

23 collective proceedings were also commenced in 2025, and Microsoft issued

24 essentially the same subject matter jurisdiction challenge as was going ahead in

25 ValueLicensing, so the argument that the CAT can't deal with copyright points. We

26 issued an application to that effect in the Wolfson proceedings in 2025.

1 THE CHAIR: Right.

2 MR SINGLA: And we said that's all going on in ValueLicensing.

3 THE CHAIR: But obviously no preliminary issue (overspeaking).

4 MR SINGLA: Exactly, exactly. In conjunction with that subject matter jurisdiction

5 challenge in Wolfson, we issued a stay application essentially saying, the "Wolfson

6 collective proceedings shouldn't proceed until we've had judgment from the

7 Court of Appeal on subject matter jurisdiction".

8 That's the background; that was September 2025. The application -- I'm not going to

9 take you to it -- but it's in bundle A3. We issued a stay application, effectively making

10 the point that it would be a waste of time if, in fact, the Court of Appeal tells us the CAT

11 can't determine copyright issues. That was the background.

12 Now, since that time, these collective proceedings have effectively been stayed;

13 nothing has happened in these collective proceedings. The question is today: what

14 should happen to the collective proceedings? Our starting point is that there should

15 be a stay. It's a very simple point. We say the question of subject matter jurisdiction

16 is currently the subject of an application for permission to appeal to the Supreme Court.

17 We've applied to the Court of Appeal; we're awaiting --

18 THE CHAIR: Sorry, just to be clear, what do we mean by subject matter jurisdiction?

19 MR SINGLA: Yes, I'm using that to refer to the argument that the CAT can't deal with

20 copyright issues.

21 THE CHAIR: Right.

22 MR SINGLA: And I'm using that phrase because there's also separately a contractual

23 jurisdiction challenge which we're bringing.

24 THE CHAIR: Yes, and then there's the third point, which is the preliminary issue point?

25 MR SINGLA: Yes, I haven't said anything about that. Not yet.

26 THE CHAIR: But assuming you succeed on the subject matter jurisdiction, then these

1 | proceedings -- it's not as if these proceedings go away; that isolated point gets
2 | transferred to the High Court, doesn't it?

3 | MR SINGLA: Well, with respect, no. Our position is: if it is the case that the CAT
4 | cannot deal with copyright issues -- and again, I'm using that as shorthand, it's
5 | obviously a bit more nuanced than that, but if we're right about the point that you've
6 | determined, it's --

7 | THE CHAIR: It's not a lot more nuanced.

8 | MR SINGLA: Well ...

9 | THE CHAIR: As I recall ...

10 | MR SINGLA: But if we're right in the point that you determined and the Court of Appeal
11 | has determined against us --

12 | THE CHAIR: Yes.

13 | MR SINGLA: -- if the Supreme Court were to say that we are right, we would say that
14 | does bring these proceedings to an end. There's going to be a big argument about
15 | that. They have said in correspondence -- again, I don't need to take up time today
16 | about this -- they have said there may be ways around, including a potential Part 8
17 | claim; some issues should be transferred to the High Court and so on. All of that would
18 | need to be argued out. But there is clearly, as we've put it in writing, there's clearly
19 | a very substantial question mark.

20 | THE CHAIR: I'd have to check the transcripts. I'm not sure that that was a position
21 | that was taken back in September 2025 -- narrow point (inaudible) Tribunal had
22 | jurisdiction.

23 | MR SINGLA: Well, that was in ValueLicensing.

24 | THE CHAIR: ValueLicensing.

25 | MR SINGLA: Exactly, so you wouldn't have had to grapple with questions about the
26 | future of the collective proceedings in September 2025.

1 THE CHAIR: Right. So you say because it's collective proceedings, they can only be
2 heard in this Tribunal?

3 MR SINGLA: Exactly. Just to be clear, that's not accepted.

4 THE CHAIR: No.

5 MR SINGLA: But my basic point is there's going to be a very substantial argument
6 about that.

7 THE CHAIR: The JJH proceedings? The same logic wouldn't apply to the JJH
8 proceedings?

9 MR SINGLA: Exactly. Exactly. It may well not apply because there's a whole
10 collective dimension to this, and one has to then look at the statute and the rules which
11 apply to collective proceedings, none of which you've been troubled with to date.

12 THE CHAIR: Yes.

13 MR SINGLA: I'm not suggesting you'd be troubled with it today. No one's suggesting
14 that we get into that debate. The question is what should happen to the collective
15 proceedings whilst that point remains live? That's actually a very short point, in my
16 respectful submission.

17 We say these proceedings have been stayed effectively since the outset, and they
18 should continue to be stayed pending a determination by the Supreme Court or
19 a refusal of permission.

20 Now that's the starting point. There's then overlaid upon that the question of
21 preliminary issues.

22 THE CHAIR: But it's quite important to your application for a stay that you were saying
23 the Supreme Court will bring an end to these proceedings?

24 MR SINGLA: It may well do.

25 THE CHAIR: You're saying you're not going to trouble me with that in detail, but that's
26 an essential element of your application for a stay, isn't it?

1 MR SINGLA: Well, yes.

2 THE CHAIR: Because if you're wrong about that then there'll be no -- the arguments
3 for a stay are very nuanced.

4 MR SINGLA: I'm happy to take you to the materials, but I'm hoping to persuade you
5 that there's actually a short way through this.

6 THE CHAIR: Okay.

7 MR SINGLA: If you just bear with me --

8 THE CHAIR: I'd be delighted to be persuaded.

9 MR SINGLA: Well, let me just continue with the flow.

10 THE CHAIR: Yes.

11 MR SINGLA: So there's the subject matter jurisdiction point, Supreme Court, the
12 Court of Appeal. We've already applied for permission to appeal to the
13 Supreme Court. We expect to hear relatively soon. That may or may not --

14 THE CHAIR: You applied to the Court of Appeal (overspeaking)?

15 MR SINGLA: Exactly, exactly. So we expect to hear relatively soon. If we're refused
16 permission, we'll renew permission before the Supreme Court. Again, one would
17 expect to hear back on the permission from the Supreme Court in short order, a matter
18 of months. So that's one aspect to what's going on.

19 The other aspect is the preliminary issues. Now, Mr Williams has just answered some
20 questions about the overlap, the extent to which those preliminary issues effectively
21 carry across to these proceedings. I mean, what's important to understand is their
22 own case on this. If I just quickly show you paragraph 150. If you have bundle A,
23 tab 2.

24 THE CHAIR: Give me a page number.

25 MR SINGLA: Page 58.

26 THE CHAIR: Page 58 of the bundle?

1 MR SINGLA: I hope so.

2 THE CHAIR: "Procedural issues and litigation timetable"?

3 MR SINGLA: Exactly. Really, I just wanted to show you -- and I don't think
4 Mr Williams really departed from this, but it's within their own claim form in the
5 collective proceedings, they describe their allegations as materially very similar. So
6 again, one can proceed on the basis today that there is a high degree of overlap in
7 terms of substantive issues.

8 THE CHAIR: Yes, Mr Williams was (overspeaking) --

9 MR SINGLA: Exactly, which is why I'm not sure this is controversial. So, in my
10 respectful submission, if one's taking stock of where we are, one has subject matter
11 jurisdiction and the preliminary issues points, all the subject of an application for
12 permission to the Supreme Court. All of that overlaps with the current proceedings.
13 The jurisdiction point obviously has a bearing, because we would say that has
14 ramifications for the viability of the collective action. The preliminary issues, if they go
15 up to the Supreme Court again, they would have a bearing on these proceedings.
16 So we say in those circumstances, and this is why I say there is a short way through
17 for you today, on the collective proceedings, which is what you're concerned with
18 today, you have actually given a reasoned order in ValueLicensing in July this year.
19 You said there should be a stay whilst we wait for the outcome of the application for
20 permission to appeal to the Supreme Court. You'll recall -- perhaps I can take you
21 back to --

22 THE CHAIR: Well, there are certain steps proceeding in --

23 MR SINGLA: Yes, there's disclosure.

24 THE CHAIR: It's not a complete stay of the proceedings.

25 MR SINGLA: No. But your reasoned order in ValueLicensing in July, you said --

26 THE CHAIR: Where do I find that?

1 MR SINGLA: It's in the authorities bundle behind tab 2.

2 THE CHAIR: One second. (Pause)

3 This was (inaudible). Right. Okay. Yes.

4 MR SINGLA: And this is ValueLicensing. And you'll see it is ordered that:

5 "The proceedings shall be stayed pending final determination of an application for

6 permission to appeal the Court of Appeal judgment to the Supreme Court and in the

7 event permission to appeal is granted determination of the appeal, save for" [as read]

8 which is what I think you were just referring to, there's a disclosure application and

9 a confidentiality application.

10 Do you see that?

11 THE CHAIR: Yes.

12 MR SINGLA: That's the order. Then in the reasons you say, paragraph 1, you note

13 that:

14 "The Tribunal had regard to the parties' agreed position that a judgment on the first

15 preliminary issue may be dispositive and the judgment on the second preliminary issue

16 may render the Claimant's losses de minimis." [as read]

17 Then you talk about the work streams and so on. Then there's a reference,

18 paragraph 2, to the application to the Supreme Court.

19 Then 3:

20 "It is necessary for me to balance the potential for a waste of costs in the event

21 permission is granted and an appeal is successful against the undesirability of delay

22 in these proceedings. I intend to adopt a middle ground and order that these

23 proceedings shall generally be stayed, save that the Outstanding Applications may

24 proceed. These steps are proportionate at this stage." [as read]

25 You don't need me to tell you this, that's the current status of the ValueLicensing

26 proceedings. The general stay, because there are these matters which may or may

1 not go to the Supreme Court. And, of course, there's now a consent order following
2 the vacated CMC yesterday in which the general stay continues.

3 THE CHAIR: But there's no -- one took the view that there's no particular reason to
4 suspect a jurisdiction ruling to go to the Supreme Court, but the preliminary issue
5 being a complex legal matter might or might not. There's no preliminary issue, no
6 application has been made for a determination of preliminary issue in these
7 proceedings.

8 MR SINGLA: No.

9 THE CHAIR: So why should that be relevant to whether or not I stay these
10 proceedings, given that you haven't issued an application in these proceedings?

11 MR SINGLA: No. In my respectful submission, the logic is the same. So the
12 logic -- there are two points. There's a direct overlap insofar as the preliminary issue.

13 THE CHAIR: But I'd be staying on an application you might or might not make in the
14 future?

15 MR SINGLA: Well, no, but you're staying -- there are two separate points. You'd be
16 staying on two grounds: one is that we are pursuing the subject matter jurisdiction
17 point, and if we're right about that, there's at the very least a substantial question about
18 the viability of these proceedings. That's point 1.

19 Point 2 is it's true that we've not issued a preliminary issues application in these
20 proceedings, but it's common ground -- you've just heard from Mr Williams, and I've
21 just shown you the claim form -- that the determination of those preliminary issues in
22 ValueLicensing will have implications for this case. So, as a matter of case
23 management, in my respectful submission, the logic is the same, which is one has to
24 balance --

25 THE CHAIR: No, I understand --

26 MR SINGLA: Yes.

1 THE CHAIR: We're at quite an early stage.

2 MR SINGLA: Yes.

3 THE CHAIR: So why can't these proceedings progress on the basis that the issues
4 are -- contractual jurisdiction issues are determined in January and certification is
5 heard at an appropriate time thereafter. Then we revisit the question of the stay at
6 that point, when and if we know whether the Supreme Court are hearing these.

7 MR SINGLA: Yes. So let me come to that point, because what I've been outlining is
8 what I say is the starting point. As I say, in my submission, there is a short way through
9 as regards the starting point, which is the logic of what has happened in
10 ValueLicensing applies equally here. Indeed, a fortiori, because we're at such an early
11 stage. So we say if you're approaching this as a matter of case management, looking
12 at everything in the round, the starting point is that there should effectively be
13 a continuation of the stay that has already been in place in Wolfson.

14 There then is a question as to whether any progress should be made in these
15 proceedings, pending the resolution of those issues, as to which the first point is it's
16 common ground that if one's going to progress these proceedings, the only issue that
17 should be progressed is the contractual jurisdiction challenge. So Mr Williams is not
18 asking you to take these proceedings any further than the contractual jurisdiction
19 challenge.

20 We have said that we would be content for that aspect to be progressed, and the
21 parties have liaised, as you've seen, in relation to directions. But we've made a point
22 which, in my submission, is an entirely reasonable point, which is if they want the
23 contractual jurisdiction challenge to proceed, then they should confirm two things.

24 We've referred you to the Gupta case, which I can show you in a moment, the
25 Court of Appeal decision. But it's a very simple proposition. If a party wants to
26 proceed, notwithstanding that we are saying the CAT actually cannot hear these

1 | proceedings, we don't resist that per se, but they should confirm two things: one, that
2 | they won't take a point later that we've somehow waived our objection, and they say
3 | they're not --

4 | THE CHAIR: Waive your objection to what?

5 | MR SINGLA: To the fact that the Tribunal doesn't have jurisdiction to hear these
6 | proceedings. So if we're right about that threshold point -- if we're right, and you have
7 | to proceed on the basis that we might be right. We might be wrong. But if we're right,
8 | then the CAT shouldn't actually be doing anything to progress these proceedings. So
9 | that's why we say, if you nonetheless want to try and make some progress and
10 | proceed to a contractual jurisdiction challenge, they should confirm that they won't
11 | later say, "Ah, well, you've gone through this contractual jurisdiction challenge
12 | process, you can't now turn around and say the CAT doesn't have --"

13 | THE CHAIR: What's their position on that?

14 | MR SINGLA: Their position is --

15 | THE CHAIR: That it's not necessary?

16 | MR SINGLA: Well, they've taken a rather curious position, if I may respectfully
17 | describe it as that. What they've said is they're not prepared to give the undertaking.

18 | MR WILLIAMS: Sorry, we've not given an undertaking as to costs.

19 | THE CHAIR: Yes.

20 | MR SINGLA: Yes, there's actually two points: there's the Gupta case and the court --

21 | THE CHAIR: But you're not going to be taking the point that (inaudible) gave the right
22 | to challenge?

23 | MR WILLIAMS: No, we positively made the point: we said this concern doesn't arise
24 | because --

25 | THE CHAIR: I have to say I'm absolutely perplexed as to what we're talking about.

26 | MR SINGLA: Right.

1 THE CHAIR: You're taking a jurisdiction point, and your concern is if you take
2 a jurisdiction point, you might be told you can't take a jurisdiction point?

3 MR SINGLA: No, there are two separate and distinct jurisdiction points. Our primary
4 position --

5 THE CHAIR: You might be told you can't take the copyright jurisdiction point.

6 MR SINGLA: Our primary position, if I can call it the subject matter -- the point that's
7 gone to the Court of Appeal and you've ruled on, which is the scope of the CAT's
8 jurisdiction to determine copyright issues.

9 THE CHAIR: Right.

10 MR SINGLA: We say, as you know, we say that the CAT doesn't have jurisdiction.

11 THE CHAIR: Right.

12 MR SINGLA: And what we have said in correspondence is we've asked the PCR, the
13 proposed class representative, to confirm, because if we're right about that, then there
14 shouldn't even be progress to the extent of a contractual jurisdiction challenge. The
15 contractual jurisdiction challenge is completely distinct, what we say is --

16 THE CHAIR: Well, it's not the position you've taken in the ValueLicensing
17 proceedings. You went on for years and years before you took the copyright point;
18 why do you have to take the copyright point now in these proceedings?

19 MR SINGLA: No, I understand that, but the point arose midway through the
20 ValueLicensing proceedings --

21 THE CHAIR: No, it didn't arise. It didn't arise; you just decided to take it.

22 MR SINGLA: No, it was raised.

23 THE CHAIR: By you, yes, voluntarily.

24 MR SINGLA: Yes, but it arose --

25 THE CHAIR: It was never suggested that you were or you weren't entitled to take it
26 because of some technicality.

1 MR SINGLA: No. To be clear, ValueLicensing is different because it started, as you
2 recall, in the High court and it was transferred to the CAT. There was a question about
3 whether, if we, Microsoft, were right in our contention, whether the copyright issues
4 could have been transferred under the transfer order.

5 So the context in which the point arose is slightly different. This is a very simple point.
6 Maybe I can make it simpler by showing you the authority.

7 THE CHAIR: I'm not sure the authorities are going to help. I mean, we can come to
8 it in a moment, but what's the order that strikes fear into your heart? What are you
9 trying to avoid happening?

10 MR SINGLA: We are saying this: our overarching point in the Wolfson proceedings is
11 that the CAT cannot deal with the copyright issues that arise.

12 THE CHAIR: I understand that.

13 MR SINGLA: If we're right about that, we say that may bring to an end these collective
14 proceedings. If we're right about that --

15 THE CHAIR: Very contentious proposition, but yes.

16 MR SINGLA: If we're right about that, then effectively the proceedings shouldn't
17 proceed to a certification hearing --

18 THE CHAIR: Right.

19 MR SINGLA: -- or even the contractual jurisdiction challenge -- the contractual
20 jurisdiction challenge being some of the members of the class have signed
21 agreements which say that this dispute falls within the scope of the clause.

22 THE CHAIR: Yes.

23 MR SINGLA: That's an entirely distinct type of jurisdiction argument. What we're
24 saying is: if we're right on the overarching point, then no progress should be made.

25 If, however, the Wolfson team and the Tribunal want to make progress, two things
26 should be made clear: one, it is all without prejudice to our primary and overarching

1 | contention about the jurisdiction of the Tribunal.

2 | THE CHAIR: Are you saying you'd be estopped from running a copyright point?

3 | MR SINGLA: We've asked them to confirm that they would --

4 | THE CHAIR: No, they're not your -- it's not for them to guide you through these

5 | proceedings. What's the concern you have, that you may be estopped from raising

6 | a copyright issue?

7 | MR SINGLA: Yes, a waiver. The reason we raised it with the other side is because --

8 | THE CHAIR: Why that issue and not all the other issues in the case? Why are you

9 | waiving every other issue in the case? The preliminary issue, whatever your defence

10 | is going to be, why is it going to be a waiver of the jurisdiction issue?

11 | MR SINGLA: Well, I think it's really the way in which jurisdiction challenges --

12 | THE CHAIR: It's not a copyright, it's not a -- as I understand, the jurisdiction

13 | application in January does not raise a copyright issue.

14 | MR SINGLA: Correct.

15 | THE CHAIR: Okay. And I also understand -- and in due course, I'd be interested in

16 | your submissions on it -- you're not disputing that the CAT has jurisdiction to resolve

17 | a contractual dispute of this scope?

18 | MR SINGLA: That's right.

19 | THE CHAIR: Which is of course one of the points put against you by this Tribunal and

20 | confirmed by the Court of Appeal, on your construing of that jurisdiction.

21 | MR SINGLA: I understand.

22 | THE CHAIR: But you're saying we've got jurisdiction to hear -- it's common ground

23 | we have jurisdiction at least to determine the contractual position, at the moment I'm

24 | unclear what your concern is that, insofar as a copyright issue is raised in the future,

25 | you will be estopped from saying the Supreme Court has determined that this Tribunal

26 | does not have jurisdiction to hear it, particularly as the Supreme Court hasn't yet heard

1 | that case.

2 | MR SINGLA: No, but with respect, it's a broader point, which is effectively: we are
3 | content to proceed to the January hearing --

4 | THE CHAIR: Yes.

5 | MR SINGLA: -- which concerns whether some class members are bound by
6 | jurisdiction clauses which require them to sue elsewhere. But we do not want that to
7 | take place if -- and we say it would be inappropriate for that to take place -- it's later
8 | said, "You are then precluded from an argument that the Wolfson proceedings cannot
9 | continue".

10 | THE CHAIR: Right, but let's assume -- I'm just trying to see what the thing you're
11 | concerned about. Let's assume the Supreme Court rule that this Tribunal does not
12 | have jurisdiction to determine copyright issues.

13 | MR SINGLA: Yes.

14 | THE CHAIR: Your concern, as I understand it, is that this Tribunal may be entitled to
15 | ignore that decision because somebody didn't say something in a courtroom?

16 | MR SINGLA: Yes, it's a non-point, but my position is that they should just confirm.

17 | THE CHAIR: It is a non-point.

18 | MR SINGLA: Yes.

19 | MR WILLIAMS: Shall I tell you what our position about this is? Because I think it's
20 | not -- it's really not very complicated.

21 | THE CHAIR: Yes.

22 | MR WILLIAMS: What happened is that Mr Singla's clients wrote to us and said, "Well,
23 | if you want to proceed with the contractual jurisdiction arguments, you should give us
24 | an undertaking as to the costs to be wasted".

25 | THE CHAIR: Yes, the costs.

26 | MR WILLIAMS: They said that and they referred to a case called Sucden. We said,

1 "We don't need to give you that undertaking". One of the issues in this case, one of
2 the concerns in this context -- and the context for the Sucden case is that it's an
3 appeal -- there's a challenge to territorial jurisdiction, which is dismissed, and then the
4 defendant wants to take those proceedings on appeal. The question arises as to
5 whether the claim can proceed in the meantime, notwithstanding the fact that the
6 territorial jurisdiction issue remains on appeal.

7 One of the issues that arises in that context is obviously whether, if the case proceeds,
8 the defendant might be treated as submitting to the jurisdiction. We said as a starting
9 point, this is not the same case, because in our situation we're talking about statutory
10 jurisdiction. You can't create a statutory jurisdiction by submitting -- this was what we
11 said in correspondence when the Sucden case was cited to us -- you can't create
12 statutory jurisdiction through a submission. You can't do it. It's a statutory question.
13 So this line of authority isn't in play, and then we've also got a position on the costs
14 undertaking.

15 Microsoft said, "Thank you for acknowledging that the conduct of the litigation can't
16 create statutory jurisdiction". But their position now in their skeleton is that if there's
17 going to be progress with the contractual jurisdiction argument, we need to give some
18 sort of undertaking.

19 But we've already said that the conduct of the parties in the litigation can't create
20 statutory jurisdiction; that was a point that we made to them. It wasn't sort of elicited
21 from us as a concession; it was our positive position in terms of the conduct of
22 litigation. So we really don't understand why Mr Singla is sort of whipping this up into
23 an issue; it's not contentious. Obviously, whatever the Supreme Court rules or doesn't
24 rule on statutory jurisdiction will establish the law and we'll proceed on that basis. We
25 just don't see what giving undertakings or us confirming our position has to do with
26 anything.

1 MR SINGLA: Well, that's helpful, because that does go much further than what they've
2 gone in correspondence. So I can leave that point there that they will not take a waiver
3 type argument, because they try to distinguish this Court of Appeal authority which I'm
4 about to show you on the basis that we're not taking a territorial point. That was a false
5 point. Anyway, I think that's clear from Mr Williams.

6 The second point is costs. Let me just show you this Court of Appeal authority,
7 because it just starts off --

8 THE CHAIR: Right, but if you take this contractual point and it's a bad point --

9 MR SINGLA: Yes.

10 THE CHAIR: -- there's an argument that you should pay the costs of it.

11 MR SINGLA: Yes. We would say: if it then turned out that we were right, and these
12 collective proceedings should never have got off first base, as it were, then we should
13 be indemnified.

14 THE CHAIR: But that's the nature of litigation, isn't it? One often wins at the end, but
15 has had adverse costs orders on interlocutory points?

16 MR SINGLA: The issue here, though, is our point about why the proceedings shouldn't
17 continue is effectively an anterior point. So if we're right -- sorry.

18 THE CHAIR: I understand the contractual point may be seen as an anterior point.
19 I understand that. Why is the copyright jurisdiction point anterior, given, as I say, you
20 took it in the middle of some proceedings --

21 MR SINGLA: Yes.

22 THE CHAIR: -- in the ValueLicensing case.

23 MR SINGLA: But one has to approach the Wolfson proceedings now afresh, as it
24 were. So in the Wolfson proceedings we have immediately, back in 2025, the first
25 thing that we, Microsoft did in the Wolfson proceedings was issue an application to the
26 effect that the CAT doesn't have jurisdiction to deal with copyright issues. Obviously,

1 we then cross referred to what was going on in ValueLicensing. But the first step taken
2 in these proceedings was to challenge whether the CAT can determine copyright
3 issues, and, in conjunction with that application, to bring a stay application.

4 Just to work through the logic of that position, if we're right that the CAT cannot
5 determine copyright issues, and if we're right that the effect of that is that these
6 collective proceedings cannot proceed, then, in my submission, effectively nothing
7 should happen in the Wolfson case. What we're saying is we understand the
8 Tribunal's desire and Mr Wolfson's desire to make some progress in the meantime.
9 We obviously understand that, and we're not looking to delay things unnecessarily.

10 But if it turns out that we were right all along, then if we incur any costs in trying to
11 progress the proceedings without prejudice to all of that, then there should be an
12 indemnity. In other words, the price of the Wolfson team pushing these proceedings
13 on, notwithstanding that there's a big question mark about their viability, the price of
14 that is that they indemnify us if it turns out we shouldn't have incurred costs which in
15 the event were wasted.

16 It's precisely, sir, the balancing exercise that you conducted in your reasoned order in
17 ValueLicensing. What one's concerned about when considering the stay is if I allow
18 things to continue, it could turn out there's lots of wasted costs. Now, it's the same
19 principle. If you decide the appropriate thing as a matter of case management, is to
20 direct that these proceedings make some progress then we say, well, fine. But it could
21 turn out that some costs will have been wasted, and in that event.

22 THE CHAIR: Then you can make that submission on costs at the hearing.

23 MR SINGLA: Well, we can do, but we submit that --

24 THE CHAIR: At a hearing at an appropriate point. Yes. Obviously, if you succeed on
25 your contractual jurisdiction case, you will have, no doubt, a good argument that you're
26 entitled to your costs. If you fail on that and at some subsequent date -- I mean, costs

1 can be reserved at that point --

2 MR SINGLA: I follow.

3 THE CHAIR: -- to a subsequent hearing and when the Supreme Court has ruled that
4 these proceedings have to come to an end, which, I have to say, seems extremely
5 unlikely on this point, then you can make your submission at that point, that those
6 reserved costs should be yours.

7 MR SINGLA: At a minimum, we would say obviously costs do need to be reserved --

8 THE CHAIR: But we haven't had the hearing yet. I'm not going to determine that
9 today. You can make that submission at the hearing in January. You can make that
10 submission that costs should be reserved for that reason.

11 MR SINGLA: I do understand that's one way of dealing with it. But the reason we've
12 advanced this position -- let me now turn to the Court of Appeal authority -- is the
13 decision of the Court of Appeal earlier this year. It's tab 3 of the authorities bundle.

14 THE CHAIR: Just give me a second. Yes.

15 Sorry, I've not had a chance to look at this for various reasons, so --

16 MR SINGLA: It's a short judgment. It essentially deals with a situation in which an
17 individual defendant was seeking to challenge jurisdiction. I think it was set aside,
18 paragraph 1, setting aside the order granting permission to serve out. He was
19 unsuccessful both at first instance and before the Court of Appeal, and the question
20 arose -- you'll see the heading above paragraph 5 -- as to the progression of the
21 proceedings whilst he sought leave to appeal to the Supreme Court. That's the
22 context.

23 What the claimants were arguing was essentially he should acknowledge service, file
24 a defence and so on to keep things moving. And you'll see at paragraph 22, the
25 Court of Appeal says:

26 "There are a number of reasons why it's highly desirable these proceedings are not

1 put into stasis pending the final determination of any application to challenge this
2 court's decision before the Supreme Court." [as read]

3 And there are reasons why the court says it's appropriate for progress to be made.

4 23 --

5 THE CHAIR: So there was no stay at all?

6 MR SINGLA: Well, just --

7 THE CHAIR: They just progressed at risk of costs?

8 MR SINGLA: Well, let me just -- 23:

9 "However, any order for directions made by the court must ensure that his proposed
10 appeal shouldn't be rendered nugatory by a submission." [as read]

11 On that basis they extend time for filing an acknowledgment of service. And you'll see
12 at 25:

13 "Subject to the matters considered in the following paragraphs, I can see no reason
14 why an order should not be made at this stage requiring him to serve his defence nor
15 why it would not be appropriate to make further directions." [as read]

16 So the case is not being stayed. Progress is being made, but it's subject to the matters
17 considered in the following paragraphs. And 27:

18 "To ensure that his position is properly protected whilst any attempt to appeal is
19 pending, it would be necessary for the claimant to offer undertakings to the court."

20 [as read]

21 The first is the one we've debated, that they won't later say that he's submitted to the
22 jurisdiction by acknowledging service and filing a defence. But secondly, and we're
23 on the second point, (ii):

24 "To indemnify him against any costs reasonably and proportionately incurred in
25 complying with the court's directions in the event that his jurisdiction challenge
26 succeeds before the Supreme Court." [as read]

1 And so the Court of Appeal in this case effectively says the price of progressing these
2 proceedings whilst there's an application for permission to appeal pending is these
3 undertakings. The reason for that, we say, effectively applies here, because if he's
4 right, that the permission to serve out should be set aside, then he should be taking
5 no steps in the proceedings. So what the court says is, well, we agree with that, to
6 ensure his position is properly protected, the claimant, if they want to push these
7 proceedings forward, they need to give these two undertakings.

8 On the second point we say, yes, of course, sir, we could come back and argue about
9 costs in due course, but there is Court of Appeal authority from this year, really dealing
10 with a very closely analogous situation. That's why we say it should be made clear
11 now that the price of listing the jurisdiction challenge in January and taking any other
12 steps that might be required, all of the costs should be subject to a future indemnity if
13 it turns out, ultimately, that we're correct.

14 I've heard, sir, what you've said about whether that eventuality will materialise. But at
15 the moment one has to have regard to our overarching position. So we're not looking
16 to delay things. We're not looking to be difficult. We've, in fact, agreed directions, as
17 you will have seen. We've agreed directions leading up to the hearing of this
18 jurisdiction challenge in January. So this is not, in any sense, Microsoft being
19 obstructive or looking to delay. It's actually looking, as the Court of Appeal put it,
20 properly to protect our position in the meantime.

21 It's quite difficult, in my respectful submission, to understand what Mr Wolfson's
22 position is on this. They've just blankly said, we're not prepared to give indemnity, but
23 they're not engaging with the concern which was recognised by the Court of Appeal.
24 So that's really all I wanted to say at this stage.

25 We say the starting point is that, given the backdrop, there should be a stay of
26 proceedings. But we're content to move as far as the contractual jurisdiction challenge

1 on the basis that I've outlined.

2 THE CHAIR: Right. I'm not going to order a stay. The suggestion that the
3 Supreme Court will hear this jurisdiction application is, at the moment, speculative. It
4 has been dealt with by this Tribunal and the Court of Appeal robustly. If I'm wrong
5 about that, and they do give permission and find in your favour, I mean it's extremely
6 unlikely we will arrive at a position that these proceedings must be terminated for that
7 reason and that reason alone. Consequently, this is very different to the Gupta case,
8 where if the Supreme Court were to allow the appeal the proceedings would have
9 ended.

10 I also think the sensitivity that you have with respect to wasted costs need to be seen
11 in the context, that in the JJH proceedings, which admittedly are separate
12 proceedings, but which everybody recognises are closely related to these
13 proceedings, that in those proceedings you didn't even take this jurisdictional point for
14 some years. So when it comes to sensitivity over a stay and wasted costs, that's,
15 I consider a relevant factor. So I'm not prepared to order a stay.

16 I am going to -- and I understand if I don't order a general stay, it's common ground
17 that this contractual jurisdiction matter will be heard in December or January. This
18 Tribunal can't do December, so we (overspeaking).

19 MR SINGLA: We have alighted upon some dates in January.

20 THE CHAIR: We'll come back to dates.

21 At the moment, although I don't think we need to make any further orders today,
22 I contemplate at least proceeding as far as certification in these proceedings.
23 Obviously, there may be intervening events. So the Supreme Court might say they're
24 going to hear the jurisdictional application and we might then have a date. Of course,
25 we can revisit questions of stay at that (overspeaking) --

26 MR SINGLA: I'm grateful --

1 THE CHAIR: My provisional view is that this should proceed to certification before
2 there is any answer, any stay, unless the parties agree otherwise --

3 MR SINGLA: I understand. Just to be clear, as regards certification, it's not being
4 suggested, we say rightly, that the CAT lists a certification hearing at this stage,
5 because we say the scope and shape of the certification hearing may depend on the
6 outcome of the jurisdiction challenge. So that's why both parties agreed what the next
7 step should be, the hearing in January, I think it's between the 18 and 22 the Tribunal
8 can do. And then a CMC.

9 THE CHAIR: I'll hear from Mr Williams. I thought Mr Williams mentioned July in his --

10 MR SINGLA: He did. As I understand it, he does accept in his -- I think his skeleton
11 was suggesting that that may make sense in around July, but they've subsequently
12 agreed that there should be a CMC in April, which we submit is actually the
13 appropriate -- he's shaking his head.

14 THE CHAIR: We'll come back to that.

15 MR SINGLA: Let me just put this marker down. We do respectfully suggest it would
16 be inappropriate now to list a certification hearing. What we suggest is the appropriate
17 way forward beyond the January hearing is a CMC. We said this in our skeleton. We
18 didn't think this was controversial, but we suggest the CAT should have a CMC
19 in -- April seems to be the date that's been -- that I've been provided with.

20 But we said in our skeleton the Hilary term, by which time we will know the outcome
21 of the jurisdiction challenge. We may know more in terms of the Supreme Court
22 process, if I can call it that, whether permission has been granted and so on. Also,
23 there may have been developments on the disclosure side in ValueLicensing. So
24 when we come to the next or final point on the agenda about joint case management
25 and so on, we say all of that can be looked at in the round, by which time there'll be
26 clarity --

1 THE CHAIR: Trouble is, if you don't pencil a date in shortly, then you'll discover you
2 (audio distortion) available or you can't get a date for this Tribunal until much later. So
3 there's no harm in pencilling something in July and keeping it under review, first review
4 being January.

5 MR SINGLA: Yes. Well, I can take instructions, but we would certainly suggest --

6 THE CHAIR: Let me hear from Mr -- sorry, I'm getting ahead of myself, I think.

7 MR SINGLA: No, but we would certainly suggest a case management conference is
8 going to be required post the jurisdiction.

9 THE CHAIR: I'm not sure whether a case management conference would be
10 necessary. If you're (audio distortion) in January --

11 MR SINGLA: We won't know the outcome.

12 THE CHAIR: In that case, what will that case management conference be dealing
13 with?

14 MR SINGLA: It will be dealing with next steps. By that point we envisage we'll have
15 a judgment, so it's a matter for the Tribunal. But assuming one has a judgment, let's
16 say by April, one can then -- on our side, we see the jurisdiction --

17 THE CHAIR: I think you'll have a judgment much, much quicker than April.

18 MR SINGLA: Yes. Well, I'm grateful for that indication. But in the light of the outcome
19 in the jurisdiction challenge, that may well shape the nature of the arguments for the
20 CPO here.

21 THE CHAIR: Pretty binary, the outcome? Either this Tribunal has jurisdiction or it
22 doesn't?

23 MR SINGLA: Yes. But there's a question as to what impact that has on the class, and
24 they will then need to amend their claim form to -- let's assume we win, they would
25 need to remove the relevant class members from the claim. They would need to
26 reduce the damages paid as such.

1 THE CHAIR: I can see if you win then --

2 MR SINGLA: Well, obviously --

3 THE CHAIR: -- July would be in peril, or we'd need a further directions hearing or --

4 MR SINGLA: Yes, I do stress --

5 THE CHAIR: Assuming you're unsuccessful, please don't take that as an indication,

6 I haven't thought about it at all. But assuming you are unsuccessful, then there'd be

7 no reason why certification couldn't proceed.

8 MR SINGLA: Obviously, I understand that, but we're sitting here in September. It's

9 quite difficult to know what the outcome of that's going to be. The additional benefit of

10 pencilling in or actually listing a CMC --

11 THE CHAIR: I understand.

12 MR SINGLA: -- is that you'll be able to have regard to the other developments as well.

13 THE CHAIR: Just in terms of the shape of the hearing in January, I'm surprised that

14 it's three days. I'm not convinced there's a need for expert evidence. As I understand

15 the expert evidence is from Ireland, and I've only looked at it superficially, it says, well,

16 it's very like the UK, and even if there were differences, I don't really see why we'd

17 need experts in court being cross-examined on nuances of Irish law.

18 MR SINGLA: We've posed that very question to the class representative, but they've

19 just not engaged with it.

20 THE CHAIR: Okay. But.

21 MR SINGLA: Three days on the basis, the worst case scenario is that they insist that

22 there has to be (overspeaking) --

23 THE CHAIR: But if there's no evidence and no expert evidence and no witness

24 evidence, why would this take longer than a day?

25 MR SINGLA: Well, it may be longer than a day, but it certainly wouldn't be three days.

26 It might be prudent to list it for --

1 THE CHAIR: One to two days. Yes.

2

3 Reply submissions by MR WILLIAMS

4 MR WILLIAMS: Sir, I don't know where you want me to start. Well, just.

5 THE CHAIR: Can we start with, do you anticipate a need for expert evidence in

6 January?

7 MR WILLIAMS: The difficulty with this is, sir, is that we have been subject to a de facto

8 stay until now. Obviously, Microsoft criticises us --

9 THE CHAIR: So you need to think about it?

10 MR WILLIAMS: -- for not having the answers. I'm not saying we're coming from

11 a standing start. Obviously, we've been gearing up to this hearing, but the question

12 as to whether we ought to be incurring costs in relation to these proceedings is for

13 determination today.

14 THE CHAIR: Understood.

15 MR WILLIAMS: The position as things stand is that obviously Microsoft have put in

16 evidence of Irish law. We will obviously only need to respond to that to the extent that

17 it's contentious. We're not going to generate satellite issues, but we need the right to

18 do so as of today.

19 THE CHAIR: So my understanding -- I'm sure you've been through many, many cases

20 like this where you're dealing with overseas contracts. It's often an issue if you're

21 applying different laws to the extent to which you look at pre-contractual materials. But

22 other than that, whatever the law says, people just read the contract and interpret it in

23 a very similar way to the UK. In this particular case, you've got an expert saying, "Well,

24 they follow UK law anyway". So, at the moment there's going to be no permission for

25 expert evidence.

26 I expect the parties to liaise with one another as to what the position is. If there are

1 any points that require expert evidence, even in writing, then you'll need to seek further
2 directions from the Tribunal. But I'd expect you to have a common position on the
3 legal principles that are being applied.

4 MR WILLIAMS: Can I raise another issue in that context so that you have visibility of
5 it, sir, which is the question of Washington state law? Because, obviously, the
6 argument is that the effect of the clause is that the jurisdiction is in favour of the
7 Washington state courts, and --

8 THE CHAIR: For some of the parties; is that right?

9 MR WILLIAMS: Yes. The question then arises as to how the Washington state court
10 might respond to the claims and whether it would take jurisdiction over them. So we've
11 identified, at least in principle, a question as to whether evidence of Washington state
12 law ought to be relevant for those purposes, or may be relevant for those purposes.
13 That's different from the Irish position, where it's a question of --

14 THE CHAIR: Sorry, just explain that a bit more. So if you --

15 MR WILLIAMS: The Microsoft argument is that the contractual clause establishes
16 jurisdiction in favour of Washington state courts.

17 THE CHAIR: Yes.

18 MR WILLIAMS: But, obviously, we're dealing here with collective proceedings in
19 favour of a class of UK-based businesses, so there's a question in principle, at least,
20 as to what the Washington state court would do when faced with a claim like this, even
21 in a context where there is a contractual clause.

22 THE CHAIR: Does that inform the construction of the contract?

23 MR WILLIAMS: Well, the point I was making wasn't that it informs the construction of
24 the contract, but it may inform the question as to whether there ought to be a stay of
25 these proceedings in favour of the jurisdiction of the Washington courts, because it's
26 a relevant consideration whether the Washington state court would take jurisdiction

1 over the case. I'm not saying today we will want to put in evidence --

2 THE CHAIR: Well, again, having witnesses -- I mean, a common position -- if the law

3 isn't clear enough that a common position cannot be assumed between the parties.

4 I cannot rule for the first time what the jurisdiction of the Washington court is.

5 MR WILLIAMS: Yes. Your point to me is not the evidence isn't necessarily relevant

6 in principle, it's the question of whether there is likely to be a dispute about that.

7 THE CHAIR: Yes. And obviously, Mr Singla will be reserving his position on whether

8 it's relevant at all.

9 MR WILLIAMS: Yes I understand what you're saying.

10 THE CHAIR: Yes.

11 MR WILLIAMS: Can I turn my back, sir?

12 THE CHAIR: Feel free. (Pause)

13 MR WILLIAMS: The point that my instructing solicitors make is that you're not giving

14 permission for expert evidence today. But obviously there is -- Microsoft has relied on

15 expert evidence. The question is, does that mean they -- in a sense, they don't have

16 permission to rely on that evidence and that the parties should instead be

17 endeavouring to establish an agreed state?

18 THE CHAIR: Yes. Some common principles. If there is a principle that's in dispute

19 which this Tribunal needs to resolve and is able to resolve, then you can apply for

20 permission to put in relevant evidence. But at the moment, just looking at Microsoft's

21 evidence, it seems to be like, why aren't we just approaching the contract on UK

22 principles which we'll probably end up doing anyway, because advocates revert to

23 what they know.

24 Is that satisfactory?

25 MR WILLIAMS: Yes. Right.

26 THE CHAIR: So one to two days.

1 MR WILLIAMS: Yes.

2 THE CHAIR: One to two days. And that'll be in January.

3 MR WILLIAMS: I'm happy for you to list it for one to two days on the basis that we've

4 just been discussing. If there were to be a material dispute of law, I think your position

5 is that should be capable of resolution within two days in any event?

6 THE CHAIR: But in any event, having an expert, having you say "I put it to you,

7 paragraph 56 of this authority says". I mean, we can just read the cases ourselves.

8 So the idea that there'll be cross-examination of experts on foreign law seems

9 extremely unlikely in this case at the moment. I'm not going to make directions at this

10 stage allowing for that.

11 Had you got anywhere on dates, Mr Singla? You seemed to indicate you want to say

12 something on dates in January.

13 MR SINGLA: Yes. If I could ask you to look at our skeleton, paragraph 24.

14 THE CHAIR: Give me a second.

15 MR WILLIAMS: I think there's common availability between 18th and the 22nd, and

16 on the 25th.

17 THE CHAIR: Yes.

18 MR SINGLA: So the first A and B were agreed dates. If you have paragraph 24,

19 A and B that's agreed, then C was hearing date.

20 THE CHAIR: Sorry, C, "There'll be two to three days --"

21 MR SINGLA: We're now looking at one to two days aren't we?

22 THE CHAIR: Yes.

23 MR SINGLA: As I understand it, the Tribunal has availability between the 18th and

24 the 22nd.

25 THE CHAIR: Sorry, I'm just not finding that 18th and 22nd.

26 MR SINGLA: No, that's not in the skeleton --

1 THE CHAIR: Right. Okay.

2 MR SINGLA: We've been communicating with the Registry, as I understand it, since

3 the skeleton was filed.

4 THE CHAIR: Yes. I need to -- well, I think we'll just have to finalise that in --

5 MR SINGLA: Of course.

6 THE CHAIR: -- correspondence. I mean, there's no need -- this is a discrete issue.

7 Whereas obviously it would be desirable if you can attend, it's not necessary for

8 existing counsel to deal with a point like this. It doesn't require any great body of

9 knowledge, as I understand it.

10 MR SINGLA: Well, I think we would --

11 THE CHAIR: Discrete points.

12 MR SINGLA: Do you have in mind dates other than the 18th and the 22nd?

13 THE CHAIR: Not at the moment, but if --

14 MR SINGLA: Right.

15 THE CHAIR: But we will have to -- if we can accommodate the 18th to 22nd, we will.

16 MR SINGLA: I'm grateful.

17 MR WILLIAMS: I think there's the 25th as well.

18 THE CHAIR: 25th.

19 MR WILLIAMS: It's not desirable to split.

20 MR SINGLA: Are you available for those dates?

21 MR WILLIAMS: I've got a list of common dates.

22 MR SINGLA: Should we see which dates the Tribunal can do, and perhaps we can

23 deal with this in correspondence. I mean it's obviously desirable for those involved

24 to --

25 THE CHAIR: 25th is no good, so we'll see if we can do something 18th to the 22nd.

26 Right.

1 MR SINGLA: I don't know if now is the right time, I don't want to interrupt, but I just
2 want to make a point about the pencilling in of the CPO hearing, if you are minded to
3 do that, if I could just say something very brief.

4 THE CHAIR: Can I just hear from Mr Williams first? I'll give you an opportunity, of
5 course.

6 Mr Williams, where are you on your application? Do you want to deal with all that in
7 January, or do you want to pencil something in now?

8 MR WILLIAMS: Our position was that we should pencil in a hearing.

9 THE CHAIR: Right.

10 MR WILLIAMS: That was our position. We recognise that it's subject to quite a lot of
11 contingencies, but the point we make is the point you've already made to Mr Singla,
12 sir, which is that diaries are only going to get more difficult.

13 THE CHAIR: Yes.

14 MR WILLIAMS: Obviously, we've suggested July, because it seemed to us that if one
15 has a contractual jurisdiction hearing in January, steps will need to be taken. It seems
16 to us it's very realistic for those -- well, there's a question as to when the Tribunal will
17 hand down its judgment, but assuming that's --

18 THE CHAIR: These are opt-out proceedings?

19 MR WILLIAMS: That's right.

20 THE CHAIR: And you are going to have to really grapple with distribution.

21 MR WILLIAMS: Yes.

22 THE CHAIR: (Inaudible) Satisfactory (inaudible) time. And then there's going to be
23 a serious question as to why you need to participate at all, given these matters have
24 been afoot for many years in ValueLicensing, you need to (inaudible) why do you need
25 to be involved at all until we've determined that that (inaudible) claim. So insofar as
26 there is a finding of liability, why can't you piggyback?

1 MR WILLIAMS: Are you saying these are questions for down the road, sir?

2 THE CHAIR: Yes, these are questions that you will need to be prepared to address.

3 Bearing in mind this is (inaudible) funds belonging to the class -- I appreciate not

4 (inaudible) public interests -- why are they spending money arguing the same points

5 as ValueLicensing.

6 MR WILLIAMS: Yes, I mean that's a question...

7 THE CHAIR: Why is it proportionate to do that?

8 MR WILLIAMS: That's a question of case management rather than a certification

9 issue.

10 THE CHAIR: No, that's going to be what the Tribunal's interested in because it goes

11 to proportionality; what you're spending is a central question when it comes to

12 proportionality; spending depends on (inaudible).

13 MR WILLIAMS: Yes, I mean the question you ask raises a whole range of

14 considerations about the interaction of the proceedings --

15 THE CHAIR: It does.

16 MR WILLIAMS: -- and the impact of one proceeding and case management, and

17 different modes of case management and so on.

18 THE CHAIR: And there have been other cases -- I'm sure this won't be one -- where

19 they won't have thought about it before the certification hearing. I am raising the issue

20 (overspeaking).

21 MR WILLIAMS: No, obviously, we're grateful.

22 THE CHAIR: In the light of that, we can decide whether the proceedings need joint

23 case management.

24 MR WILLIAMS: Yes, so --

25 THE CHAIR: I'm not making a direction or asking you to say anything on this, I just

26 raise it to --

1 MR WILLIAMS: No, no. Yes, I mean, I think the only direct implication of what you
2 say, sir, for today is this question about what steps ought to be taken between now
3 and a potential certification hearing, which we say can be listed for July. Shall I stick
4 with the provisional pencilling in of the certification hearing first, just to clear that away?
5 I mean, our position on that is it will be helpful to identify a hearing, whether it's
6 three days, you know, that sort of period of time, in July.

7 If the contractual jurisdiction issue is dealt with in January -- the Tribunal needs time
8 to hand down its judgment -- but if it goes in our favour -- and let's assume for present
9 purposes that there's no subject matter copyright jurisdiction problem -- then that does
10 clear the way for us to move forward to certification. We recognise that there are
11 a number of contingencies in relation to things that could happen between now and
12 July, but there's also a potential pathway where we move forward to that hearing. If
13 that's going to happen, it's much more helpful to have a date now so that it's in the
14 Tribunal's diary.

15 THE CHAIR: Well, it won't be now.

16 MR WILLIAMS: Yes.

17 THE CHAIR: Mr Singla, yes, you wanted to ...

18 MR SINGLA: Well, just two things, if I may. I mean, if the Tribunal is minded,
19 notwithstanding the points I've made, to pencil in a CPO certification hearing.

20 THE CHAIR: Yes.

21 MR SINGLA: We would respectfully submit that just after the summer makes more
22 sense than just before the summer. The reason for that is actually, if one thinks
23 about -- if we succeed in the January challenge, there would need to be amendments
24 to the claim form and potentially the expert methodology, and perhaps notification to
25 the class if you're amending the claim form, then we need to do a CPO response, then
26 a reply, then skeletons, there is actually quite a lot that needs to go into that.

1 THE CHAIR: Well, there may be considerable force in that, but that's contingent on
2 your being partially successful. If you're wholly successful, then the certification won't
3 proceed; isn't that right?

4 MR SINGLA: No, that's not right.

5 THE CHAIR: That's not right.

6 MR SINGLA: Because the point in January --

7 THE CHAIR: Oh, it's only a subset --

8 MR SINGLA: We are not saying it applies to every single --

9 THE CHAIR: Yes, sorry. I'm with you, yes.

10 MR SINGLA: And the other: there's a question about whether it should be just after
11 the summer or just before.

12 THE CHAIR: Right.

13 MR SINGLA: Also, we would urge upon you to list a CMC around April, because even
14 Mr Williams recognises that there's going to be a lot of moving parts to these
15 proceedings and the ValueLicensing proceedings. It would, in my submission, make
16 sense, because of the diary issues that you've alluded to, to put a date in the diary
17 where we can all take stock of where we are. There are quite a few quite complicated
18 issues, as the agenda for today shows, about interaction of proceedings and so on.
19 What does the result in January do for the certification process? What happens in the
20 Supreme Court? And so on. So I'm not pushing these points --

21 THE CHAIR: It may be nothing much has happened. I mean, if you're unsuccessful
22 on your application and --

23 MR SINGLA: In which event we just vacate the date. Really, it's a matter for you, sir.

24 THE CHAIR: Right.

25 MR SINGLA: If you're minded to list a CPO hearing now, because of availability issues
26 and so on, we suggest, for this exactly the same reason we, it would make sense to

1 have a hearing where we can all take stock.

2 THE CHAIR: Yes. I'm going to pencil it in for July. I understand your position: if you're
3 successful on your application, that date may be may need to be vacated or revisited.
4 I do understand that. I'm not assuming you're not going to be successful on your
5 application, but I think just because things get so booked up and these proceedings
6 have been ongoing for a long time, I just think it would be of assistance to have
7 a potential certification hearing pencilled in July. If you're successful, it may or may
8 not go ahead but if you're unsuccessful, it will.

9 MR SINGLA: So the liaising in relation to dates for CPO responses and so on, that
10 would happen, you envisage, at the January hearing? Or are you minded to list
11 a CMC?

12 THE CHAIR: As I --

13 MR WILLIAMS: Shall I make my submissions about this? Would that help, sir?

14 THE CHAIR: What are we on now, the CMC?

15 MR WILLIAMS: Yes, exactly, the CMC. I think our position on that is: we'll get to
16 where we get to. I'm not sure -- I mean, we can't really make --

17 THE CHAIR: Let's revisit that in January, whether there should be a CMC.

18 Mr Singla, you may well be right, but we'll have a little bit more information in January,
19 first of all, even if we haven't got the result of the case, we'll have heard it. We'll also
20 know where we are with the Supreme Court, perhaps at least from the Court
21 of Appeal.

22 MR SINGLA: I'm grateful.

23 MR WILLIAMS: I think there are two different points about the CMC. One is: are we
24 going to need directions in these proceedings? The answer to that is: we are going to
25 need some directions to a certification hearing. Those directions aren't being made
26 today.

1 THE CHAIR: Yes.

2 MR WILLIAMS: We didn't think we should overengineer things and come up with all
3 sorts of contingent directions. We thought the Tribunal needed to hear the contractual
4 jurisdiction issue, reach a ruling, we'll know where we stand on timing, then we'll know
5 more about other things.

6 THE CHAIR: Yes.

7 MR WILLIAMS: At that point, we can try and agree appropriate directions to what will
8 now be a July hearing.

9 THE CHAIR: Yes.

10 MR WILLIAMS: I mean, if there are no difficult issues, maybe they can be resolved
11 on paper. If we really need a hearing to deal with those directions, then we'll know
12 that in the new year.

13 I think the proposal for a March or April CMC made by Microsoft was actually
14 a somewhat different proposal. That was a proposal to bring all of these parties back
15 together in order to consider the question of the interaction of the two sets of
16 proceedings. That was the --

17 THE CHAIR: Well, I think that the appropriate time for that is certification.

18 MR WILLIAMS: Yes.

19 THE CHAIR: We will understand the case much better. But clearly, at some level, the
20 cases should be case managed together (inaudible) reasons (inaudible) the interaction
21 between the two, whether or not the case will proceed, which parts of your case will
22 proceed, whether or not they should be heard at the same time as ValueLicensing,
23 I think is to be determined post-certification.

24 MR WILLIAMS: That was what I was going to say. I think the Microsoft proposal for
25 that CMC, I think, respectfully, has been overtaken by the points you made to me about
26 the matters that are going to be considered at certification hearing.

1 THE CHAIR: In so far -- sorry, I don't want to interrupt you taking instructions.

2 MR SINGLA: No, no, I'm just trying to -- I'm sorry, sir.

3 THE CHAIR: But in terms of joint case management going forward, that'll be formally
4 determined on certification. Clearly, between now and certification, you should keep
5 the claimants of both proceedings aware of any coming applications, and
6 ValueLicensing were welcome here today, so (inaudible) Wolfson, in the event
7 (inaudible) that there are further directions hearings in ValueLicensing.

8 MR WILLIAMS: Yes.

9 THE CHAIR: But I think how the two proceedings interact is not entirely
10 straightforward, particularly given the timings. So we'll have to have a look at that
11 once the certification hearing takes place.

12 MR SINGLA: I was just taking instructions. Just to put down a marker, there may be
13 a concern about the feasibility of the July CPO hearing, whatever the outcome in
14 January. But I suggest, in light of what you've said about this, we debate the listing of
15 the certification hearing in January.

16 THE CHAIR: Why?

17 MR SINGLA: Well, just because of the amount of work that would need to go on to
18 respond.

19 THE CHAIR: Right. Well, there shouldn't be that much work going on for the
20 certification hearing -- it can't be done by July, we are only in September.

21 MR SINGLA: That's why I say it may be best if I addressed you further on this once
22 we've come back before you in January.

23 THE CHAIR: Very good.

24 MR LAVY: Sorry, sir, I thought since we're discussing interaction, could you maybe
25 indulge me?

26 THE CHAIR: Yes, of course. Absolutely. You've not expressed a view.

1 MR LAVY: I don't have any issue really with anything that's been proposed so far,
2 save that: if there's going to be July certification -- that all makes sense, and after then
3 we can see what the interactions may be like. The slight concern from a JJH
4 perspective is that if certification doesn't happen in July and drifts off into the later part
5 of the year, then depending -- and this is all terribly hypothetical, because no one really
6 knows where they are -- on where things are with the Supreme Court and JJH, there
7 would be an anxiousness on our side to get on with things.

8 THE CHAIR: Yes. No, I understand that. That's one of the reasons for not letting it
9 drift.

10 MR LAVY: Yes. At this stage, really, just to make that point. Thank you, I'll sit down.

11 THE CHAIR: Grateful. Do we need to deal with anything else?

12 MR SINGLA: No, sir, I'm grateful.

13 THE CHAIR: What are we doing, costs today? Are we reserving them to the next
14 hearing or ...

15 MR WILLIAMS: I think I'd assumed it would be costs in the case.

16 THE CHAIR: Costs in the case?

17 MR SINGLA: Well, it may be, given what I said earlier, prudent just to say costs
18 reserved.

19 THE CHAIR: Costs reserved. Thank you.

20 (11.38 pm)

21 (The court adjourned)

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?