Video Streaming: The New Frontier of SEP Disputes

Kirti Gupta, Georgios Effraimidis, and Elias Ilin

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A. Introduction

The rapid global expansion of video streaming has opened a new chapter in standard essential patent (SEP) disputes, resembling earlier smartphone wars. Video compression technologies, which allow video files to be stored, transmitted, and played efficiently, now sit at the intersection of intellectual property and antitrust disputes, drawing increasing attention from courts and regulators. Because these standards underpin hundreds of billions of dollars in annual revenues across streaming platforms, consumer electronics, telecommunications, and cloud infrastructure, the stakes of SEP licensing disputes are high. As platforms such as Netflix and YouTube become increasingly popular and new applications from remote healthcare to industrial monitoring depend on high-quality video transmission, video codecs have become critically important.

These developments have intensified competition over the standards that enable efficient video compression and decompression and the underlying patents. Fragmented licensing practices, divergent interpretations of Fair, Reasonable and Non-Discriminatory (FRAND) licensing terms, and growing regulatory attention have made video-codec SEPs a focal point of global litigation and policy debate. Much like the previous era of the smartphone wars for cellular patents, a reliable FRAND framework and valuation methodology is required to help resolve these disputes, enable widespread implementation, and future innovation and standards development.

This article reviews the evolving litigation landscape, recent antitrust developments, and the growing importance of coherent FRAND valuation frameworks.

B. Background: Video Coding Standards and SEPs

Digital video has advanced through successive compression standards designed to improve efficiency and quality. Early video standards like MPEG-4 made it practical to watch digital video on computers and early mobile devices by offering efficient video compression and decompression. In 2003, H.264 (also called AVC) greatly improved video quality while keeping file sizes small, which is why it became the backbone of HD video on DVDs, Blu-ray, YouTube, and streaming services for many years.

As consumer displays evolved toward higher resolutions, most notably "4K," which refers to video with roughly four times as many pixels as traditional high-definition (HD) video, [1] more advanced compression became essential. H.265 (HEVC), introduced in 2013, made videos even more efficient, allowing 4K movies and TV shows to stream smoothly using less internet data —important for faster loading, lower data usage, and better quality on modern TVs and phones. The newest standard, H.266 (VVC), finalized in 2020, is designed for the future: it makes very high-resolution video (4K and 8K), and immersive experiences like virtual and augmented reality more practical, especially for cloud streaming and next-generation devices.

The use of video has expanded rapidly due to widespread high-speed internet, pandemic-era consumption patterns, growth in digital video advertising and the influencer economy. Emerging industrial and medical applications further increase demand for efficient compression. This expansion is reflected in the patent landscape. According to LexisNexis, VVC-related patent families grew from fewer than 1,000 in 2013 to more than 13,000 by 2023, while HEVC-related patents nearly doubled during the same period. [2] Patent ownership is geographically diverse, with major contributors across the United States, Europe, and Asia, underscoring the global nature of video-codec innovation.

C. The Licensing Landscape of Video Coding Standards

The licensing framework for video-codec SEPs has evolved in recent years. Traditionally, these technologies have been licensed through patent pools, which aggregate patents from multiple companies and allow licensees to obtain rights to the pooled SEPs under a single agreement. Earlier standards benefited from the success of MPEG-LA's AVC/H.264 patent pool, which focused on licensing the relevant patents to device manufacturers. Today's environment multiple pools, independent licensors, and competing royalty models. [3]

More specifically, newer licensing structures increasingly extend beyond device manufacturers to include streaming platforms, content distributors, and cloud-based encoding services. Pools such as Access Advance, Via Licensing Alliance, Sisvel, and Avanci operate in parallel, often licensing different SEPs for the same technology standards with different rate structures. Implementers have expressed the concern of facing royalty demands from multiple sources for the same standard, increasing transaction costs and the likelihood of breakdown in negotiation. [4]

Patent pools were originally designed to mitigate potential royalty stacking concerns and streamline licensing, but they are difficult to form and sustain. The success of earlier pools depended on broad participation and transparent governance—conditions that have proven difficult to replicate for newer standards. Adding further complexity, newer royalty-free alternatives such as AV1, developed by the Alliance for Open Media (AOM) and backed by major technology companies, compete directly with royalty-bearing codecs, placing economic pressure on traditional licensors and raising new antitrust questions.

D. Global SEP Litigation and Rate-Setting

The growing importance of video coding standards and changes in the licensing landscape have contributed to a surge in global SEP litigation around these technologies. Courts such as those in the UK are asserting jurisdiction to determine global FRAND terms even as other jurisdictions question the legitimacy of such expansive rulings. At the same time, SEP owners continue to rely on multi-jurisdictional enforcement pressure, and procedural tools such as anti-suit, anti-anti-suit, and interim licenses have become central features in these global battles.

Recent disputes illustrate these dynamics. In late 2023, Nokia initiated a broad global enforcement campaign against Amazon over alleged infringement of H.264/AVC and H.265/HEVC SEPs. Amazon contested the fairness and validity of Nokia's FRAND offers, but the litigation quickly spread across multiple venues, including the U.S. ITC, Germany, India, the UK High Court, and the UPC. After several rulings favorable to Nokia, the parties ultimately reached a global settlement and cross-license agreement in March 2025. A similar global strategy is evident in Nokia's ongoing litigation against the Chinese electronics manufacturer Hisense, filed in April 2025. *Nokia v. Hisense* spans the United States, Germany, the UPC, and the UK. These cases demonstrate how coordinated multi-jurisdictional enforcement has become increasingly necessary towards worldwide licensing resolutions.

Amazon v. InterDigital further highlights the intensifying "forum race" in SEP litigation. When Amazon sought a UK High Court determination of global FRAND terms in August 2025, InterDigital responded by seeking anti-interim-license injunctions in Germany and before the UPC. The UK court, in turn, issued an anti-anti-suit injunction to preserve its jurisdiction. This sequence of defensive and counter-defensive procedural maneuvers exemplifies the jurisdictional tension between rate-setting and enforcement courts.

Beyond these high-profile cases, numerous actions brought by operating companies and non-practicing entities span the United States, Europe, Brazil, and Asia. Collectively, they underscore that video-codec SEPs have become a sustained and global enforcement battleground.

E. The IP-Antitrust Intersection

The DOJ approach to SEPs has evolved significantly over the past decade. Earlier policy emphasized limiting injunctions to address concerns about potential "patent hold-up" by SEP holders, while later guidance also highlighted the risk of potential implementer "hold-out." More recently, the DOJ and the United States Patent and Trademark Office ("USPTO") have withdrawn prior policy statements and adopted a more neutral, case-specific framework that treats patent and antitrust law as complementary.

This shift was reinforced in a November 2025 joint statement by the USPTO and DOJ, which emphasized that strong and predictable patent enforcement

—including injunctive relief where appropriate—supports innovation and competition. [5] The agencies cautioned against an overly broad use of "public interest" considerations that could weaken patent rights or treat SEPs differently from other patents. [6]

Consistent with this position, recent DOJ Statements of Interest in cases such as *Radian v. Samsung* [7] and *Disney v. InterDigital* [8] emphasize that SEPs do not necessarily confer market power and that seeking higher royalties is not itself anticompetitive, mirroring the Circuit's decision in *FTC v. Qualcomm*, where the court expressed caution for using antitrust laws to remedy FRAND contractual disputes. [9] The recent DOJ statement in *Disney v. InterDigital* further clarified that requesting a court to grant an injunction against an alleged infringer—including one accused of infringing SEPs—is not an antitrust violation, except in narrow circumstances.

At the same time, the DOJ's statement in *Disney v. InterDigital* reaffirmed that antitrust liability may arise where deceptive conduct distorts the standard-setting process, relying on the Circuit's decision in *Broadcom Corp. v. Qualcomm Inc.*, which held that "a patent holder's intentionally false promise to license essential proprietary technology on FRAND terms, coupled with an SDO's reliance on that promise when including the technology in a standard," may constitute exclusionary conduct under Section 2. [10] More recently, the AOM, formed by several large technology giants, and its AV1 video-codec standards have been under regulatory scrutiny. [11] European authorities have examined and are continuing to monitor whether AOMs royalty-free, cross-licensing obligations could discourage participation by patent holders whose technologies become essential after standard adoption. Recent remarks by US DOJ's Dina Kallay also cautioned that royalty-free licensing structures, particularly when driven by proprietary consortia, can raise antitrust concerns. [12]

Finally, in December 2025, the USPTO announced the formation of an SEP Working Group, signaling sustained agency focus on SEP licensing, remedies, and coordination with antitrust enforcement. [13] The announcement expressly referenced ongoing collaboration with the DOJ on patent remedies and public interest considerations, underscoring the agencies' shared view that SEP policy must balance competition concerns with the need to preserve effective patent enforcement incentives. [14]

F. The Central Role of FRAND Valuation

The rapid proliferation of standardized video technologies reflects fundamental changes in how video is delivered and consumed. Video compression is no longer a background technical feature; it directly affects user experience, bandwidth consumption, latency, and reliability across networks. Higher-resolution content, real-time streaming, and cloud-based processing have made efficient compression critical to controlling data costs, enabling consistent quality of service, and supporting large-scale deployment across devices, platforms, and networks. As a result, video-codec standards—and the patents essential to them—have become increasingly central to the economics of digital video delivery.

Against this backdrop, FRAND rate determination has once again become a central economic and legal issue. Unlike cellular SEPs, which benefit from decades of licensing history, video-codec SEPs operate in a more dynamic and evolving environment. Pools are still forming or reorganizing, licensing practices vary widely, and agreements increasingly span across devices, platforms, and services. However, the existence of long-standing patent pools such as MPEG-LA and their licensing rates, as well as established data sets for patent declarations for various relevant standards, may provide some beneficial benchmarks for careful analysis.

Common valuation approaches, including comparisons to existing licenses remains the gold standard, and if necessary, carefully conducted top-down assessments of aggregate royalties, and bottom-up analyses of incremental value, remain essential but are harder to apply consistently given limited historical benchmarks. Nonetheless, these frameworks provide structure for assessing whether proposed rates are fair, reasonable, and non-discriminatory.

Sound FRAND valuation plays a critical coordinating role. It enables patent holders to earn returns on innovation while ensuring implementers can access standardized technologies without prohibitive costs. As video codecs support an expanding range of applications, coherent and economically grounded valuation approaches will be increasingly important to sustaining innovation, competition, and the broad diffusion of standardized technologies.

The views expressed herein are solely those of the authors and do not necessarily represent the views of Cornerstone Research.

Endnotes

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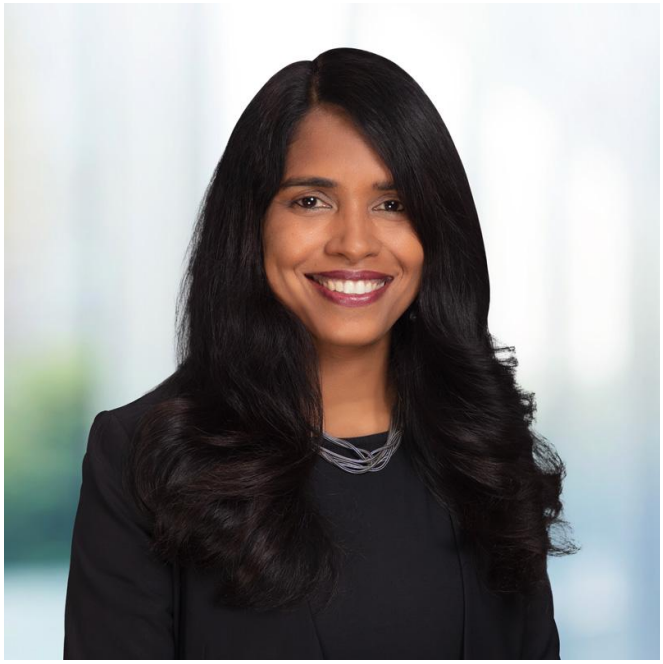
Authors



Kirti Gupta

Cornerstone Research

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Georgios Effraimidis
Cornerstone Research

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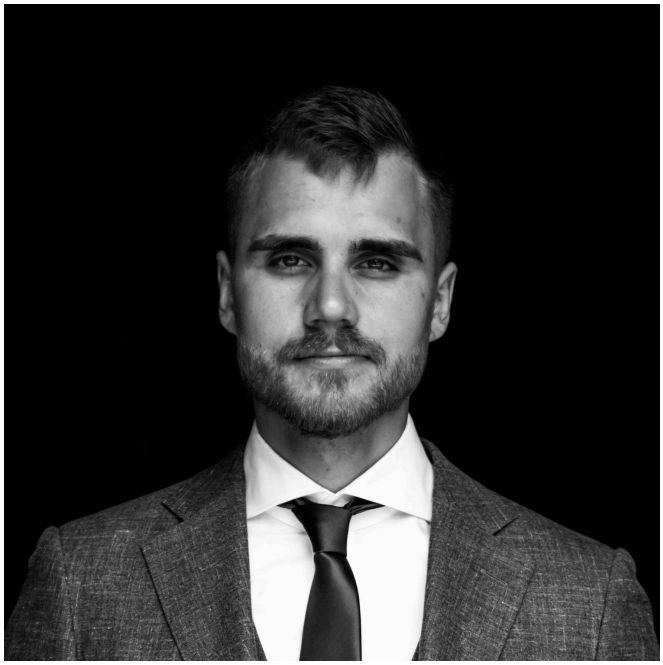

Elias Ilin
Cornerstone Research

I am Manager at Cornerstone Research San Francisco office and work on matters related to Antitrust and Competition and Intellectual Property. I hold a Ph.D. in Economics from Boston University and a dual B.S. degree in...

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