

**Title:**

Mr

**Forename:**

Andrew

**Surname:**

Chowns

**Representing:**

Organisation

**Organisation (if applicable):**

Directors UK

**Email:**

**What do you want Ofcom to keep confidential?**

Keep nothing confidential

**If you want part of your response kept confidential, which parts?**

**Ofcom may publish a response summary:**

Yes

**I confirm that I have read the declaration:**

Yes

**Ofcom should only publish this response after the consultation has ended:**

You may publish my response on receipt

**Additional comments:**

Directors UK welcomes the opportunity to respond to the Ofcom Broadcasting Code Review: Commercial references in television programming consultation.

Directors UK is the single voice for UK screen directors, representing the creative, contractual and economic rights of its 4,000 members - almost all working directors in the UK - across all genres of film and television.

Directors UK also promotes excellence in the craft of direction both nationally and internationally. It works closely with fellow campaigning organisations and collecting societies in the UK and Europe to represent and lobby for greater protection of directors rights, and has links with directors organisations across the globe.

In response to this consultation, directors have expressed concern that the introduction of product placement is inevitably bound to compromise the director's creative leadership on a production, as they are asked to meet the commercial demands of product placement agreements. As outlined in our responses, Directors UK expects that the introduction of product placement is likely to bring into question the exact meaning and interpretation of 'undue prominence' on screen, and this may be something which Ofcom will need to issue further guidelines on if it presents problems. Furthermore, Directors UK anticipates that since most directors' contracts require them to indemnify the producer from any claims arising from 'inter alia' a breach of the Ofcom Codes, directors are likely to be increasingly nervous if they feel they are being put under pressure to include material that they consider will offend the undue prominence rules.

**Question 1.1: Do you agree that it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose? If not, please explain why.**

Yes.

**Question 1.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 1.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

**Question 2.1: Are there any impacts we have not identified above that you think would result from our proposal to clarify that single dramas are a form of film made for television? (See proposed Rule 9.8). If so, please provide evidence wherever possible.**

No.

**Question 2.2: Please identify any areas of this clarification which you consider Ofcom should issue guidance on.**

**Question 3.1: Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a)).**

None.

**Question 3.2: Please identify any areas of this rule which you consider Ofcom should issue guidance on.**

**Question 4.1: Do you agree that clarification that thematic placement is prohibited is appropriate? (See proposed Rule 9.10). If not, please explain why.**

Yes.

**Question 4.2: Do you agree with Ofcom's proposed description of thematic placement? (See proposed Rule 9.10). If not, please explain why, and suggest drafting changes, if appropriate.**

Yes.

**Question 4.3: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 4.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

**Question 5.1: Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.**

Yes.

**Question 5.2: Do you agree with the meaning for "specialist factual programmes" (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.**

We believe that Ofcom needs to define tighter definitions for 'Specialist Factual programmes'. Genre definitions tend to vary between broadcasters and Ofcom needs to be more prescriptive.

**Question 5.3: Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.**

We believe product placement in specialist factual programming has the potential to impact viewer trust in the veracity of the programme. Therefore a clear distinction between permitting product placement in serious factual programming (where the burden of truth is high) compared to some specialist and entertainment factual programming where product placement will not damage the trust relationship with the audience, needs to be firmly delineated.

**Question 5.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

We agree that product placement should be prohibited in serious factual programming. However, this has the potential to impact negatively on funding sources for this valuable genre. We would therefore either urge Ofcom to restate the statutory duties placed upon broadcasters to protect the quality and volume of their serious factual output, or to consider offering broadcasters some other form of assistance or incentive to maintain funding for this genre in order to balance the loss of opportunity for product placement.

**Question 6.1: Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.**

Yes.

**Question 6.2: Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.**

Yes.

**Question 6.3: Do you agree that it is unnecessary to apply advertising scheduling restrictions to product placement? If not, please explain why.**

Yes.

**Question 6.4: Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 6.5: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

**Question 7.1: Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.**

We feel that overly intrusive signalling is more likely to exaggerate and draw attention to product placement and affect the viewing of the programme. We would recommend that if any signalling (visual or audio) is to be used it should appear outside the main body of the programme and be part of the broadcaster's responsibility in continuity announcements.

**Question 7.2: Please provide comments on the proposed criteria for determining how any universal neutral logo looks, and any additional or**

**alternative criteria which you consider should define the visual signal, including views on the nature, size and duration of the signal.**

The logo should be unobtrusive and outside of the main body of the programme.

**Question 7.3: Please provide comments on the proposed criteria for determining how any universal audio signal sounds, and any additional or alternative criteria which you consider should define the audio signal, including views on the nature and duration of the signal.**

We are strongly against an audio signal or announcement within the body of the programme as this would be detrimental to the creation and viewing of programmes. If an audio signal is to be used it should be by way of a verbal announcement as part of continuity.

**Question 7.4: Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom's guidance. If you consider that the criteria should not be specified in either, please explain why.**

We believe that Ofcom should specify the criteria in the code.

**Question 7.5: Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster's website? (See Rule 9.17(a) and (b)). If not, please explain why.**

Programme end credits are already being squeezed in size and speeded up. Production credits at the end of programmes play a key role in identifying and acknowledging the significant contribution of the authors and creatives involved in the work, and are particularly important for identifying authors for collecting society purposes. Directors UK would have real concerns over more credit space being lost to sponsors and product placement information.

**Question 7.6: Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.**

The wording to rule 9.17 should read b (website).

**Question 7.7: Do you agree that broadcasters should include additional description text alongside the visual and audio signal for the first month that they are transmitted? If not, please explain why.**

Yes, providing this appears outside of the main body of the programme - i.e. within continuity announcements.

**Question 7.8: Do you agree that broadcasters should transmit an audience awareness message if they show programmes that must be signalled during the first six months of the rules being in force? If not, please explain why.**

Yes.

**Question 7.9: Please provide your comments on the proposals we have set out on the key messages, timing and duration of the audience awareness campaign.**

None.

**Question 7.10: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.**

We believe that visual and audio signalling has the potential to negatively impact the integrity of the programme and to spoil the viewer experience, particularly as screens could become cluttered with logos, station idents etc. We would therefore caution that, whilst remaining transparent to viewers, any signals are sensitively introduced and preferably outside the body of the programme. Audio signals in particular, if used, should be verbal and outside the body of the programme.

**Question 7.11: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.**

**Question 8.1: Do you consider that it is appropriate to allow sponsors to product place in programmes they are sponsoring? If not, please explain why.**

If sponsors are not allowed to product place in a programme it carries the risk that competing brands will target a sponsor's show, with the potential to affect important sponsorship revenue. However, we are concerned that allowing programme sponsors to also product place within programmes has the potential to give undue prominence to the placed product. If a sponsor is identified in a sponsorship bumper, the product will inevitably receive disproportionate audience recognition when also viewed within the body of the programme.

We are also concerned that a sponsor who also product places must not be allowed to exert any additional influence on the editorial and creative control of the programme, which Ofcom is rightly expressly seeking to prohibit in this code.

**Question 8.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.:**

We would suggest that the impact of allowing sponsors to also product place will vary between genres. Allowing this arrangement in single or continuing dramas for example will undoubtedly result in undue prominence and will separate the viewer from the story. However, such arrangements in light entertainment or live shows, if handled within the rules,

are less likely to significantly impact the viewer experience or compromise the creative or editorial integrity of the show.

**Question 8.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

Directors UK expects that the introduction of product placement in sponsored programmes is likely to throw the spotlight on the exact meaning and interpretation of 'undue prominence'. Ofcom may need to be ready to issue further guidelines on this if the use of product placement in sponsored programmes creates problems.

**Question 9.1: Do you consider it is appropriate to replace the rule requiring sponsorship arrangements to be transparent with a requirement that all sponsorship credits include a clear statement informing the audience of the sponsorship arrangement? (See proposed Rule 9.22). If not, please explain why.**

**Question 9.2: Do you consider it is appropriate to amend those rules requiring sponsorship credits to be separated from editorial and advertising, to rules requiring that credits must be distinct from editorial and advertising? (See proposed Rules 9.23 and 9.24). If not, please explain why.**

We do not consider this to be appropriate. We believe that any rules relating to sponsorship credits should impose an unambiguous separation between editorial and advertising. 'Distinct from' leaves the door open to interpretation and a blurring between programme content and sponsorship which will ultimately result in undue prominence.

**Question 9.3: Do you consider the drafting of proposed Rules 9.22, 9.23 and 9.24 is appropriate? If not, please explain why, and suggest drafting changes were appropriate.**

No. As set out above 'distinct from' is not sufficient. This rule should read 'separate from'.

**Question 9.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.**

Including sponsorship credits within, but 'distinct from' programme content has the potential to clutter the screen and to give undue prominence to sponsors. We believe that this needs to be handled sensitively, with the viewer experience paramount.

In line with our answer at 8.2, we believe that the impact of introducing these rules will vary according to programme format and genre and that Ofcom should therefore assess the likely impact according to programme-type.

**Question 9.5: Please identify any areas of these proposals which, if it is accepted, you consider Ofcom should issue guidance on.**

Ofcom to offer clear guidance as to specific genres.

**Question 10.1: Do you consider that it is appropriate for sponsorship credits to be broadcast during programmes? (See proposed Rule 9.25). If not, please explain why.**

No. We believe the general practice should be to prohibit the broadcast of sponsorship credits during programmes in order to reduce the risk of programmes becoming cluttered, credits becoming disruptive to viewers or products becoming unduly prominent. However, we also believe that in limited genres, such as some entertainment shows and in sport, broadcasting sponsorship credits may have less impact.

**Question 10.2: Do you agree that sponsorship credits shown during programmes should not coincide with sponsor references (product placement) within the programme? (See proposed Rule 9.29). If not, please explain why.**

We oppose the inclusion of sponsorship credits during programmes.

**Question 10.3: Do you consider the drafting of proposed Rules 9.25 and 9.29 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.**

**Question 10.4: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence to support these, wherever possible.**

**Question 10.5: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.**

**Question 11.1: Do you consider that it is appropriate to limit the content of sponsorship credits broadcast during programmes? (See proposed Rule 9.27). If not, please explain why.**

We oppose the inclusion of sponsorship credits during programmes.

**Question 11.2: Do you agree that sponsorship credits broadcast during programmes should not conflict with product placement restrictions? (See proposed Rule 9.28). If not, please explain why.**

**Question 11.3: Do you consider the drafting of proposed Rules 9.27 and 9.28 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.**

**Question 11.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.**



**Question 11.5: Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on.**

**Question 12.1: Do you agree with the proposed revisions to the principles? If not, please explain why, and suggest drafting changes, where appropriate.**

We agree with the proposal to change to 'editorial independence'.

We do not agree with the proposal to change 'separation' to 'distinction' as specified above.

**Question 12.2: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 13.1: Do you consider that the proposed Rule 9.2 requiring that there is distinction between editorial content and advertising is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.**

We do not agree with the proposal to change 'separate' to 'distinct from'.

**Question 13.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.:**

We believe this is confusing and needs further clarification.

**Question 13.3: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

**Question 14.1: Do you consider it is appropriate to include a rule prohibiting surreptitious advertising? If not, please explain why.**

Yes.

**Question 14.2: Do you consider that the wording of the proposed rule and meaning is appropriate? (see proposed Rule 9.3). If not, please explain why, and suggest drafting changes, where appropriate.**

Yes.

**Question 14.3: Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 14.4: Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on.**

**Question 15.1: Do you consider that it is appropriate to remove the virtual advertising rule? If not, please explain why.**

Yes.

**Question 15.2: Please identify any potential impacts of the proposed removal of the virtual advertising rule that you consider should be taken into account, and provide evidence, wherever possible.**

**Question 16.1: Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.**

Yes.

**Question 16.2: Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible.**

**Question 16.3: Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code? If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.**

The director plays a critical role in delivering/realising product placement on screen, yet may not be party to the original commercial agreements made by the product placer and the production company/broadcaster. This places the director in a uniquely vulnerable position.

Directors UK believes that there will need to be rules which clarify and recognise the responsibility of the director in delivering programmes with product placement and which set out the director's relationship with producers and commercial providers, as this may lead to tensions in delivery. This is something we expect to have to work with producers and broadcasters to address.

These should include specific rules which state that the director should understand at the point of hire if a production has agreed any product placement, and have access to the conditions of that agreement. After the point of hire directors should be meaningfully consulted in any decisions about product placement and have an opportunity to fully discuss the creative consequences of such a decision. Where possible, the director should have direct contact with the product placer/sponsor.

Directors UK expects that the introduction of product placement is likely to throw the

spotlight on the exact meaning and interpretation of 'undue prominence'. Ofcom may need to be ready to issue further guidelines on this if the use of product placement creates problems.

**Question 16.4: Do you agree that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom? If not, please explain why.**

Yes.

**Question 16.5: If you would prefer that the revised Section Nine of the Code does not come into force at the time it is published, to allow a period of preparation/ implementation, how long would you prefer this period to be? Please give reasoning.**

