

**Annex 5**

# Equality Impact Assessment

Name of project:	<b>Broadcasting Code Review: Commercial references in television programming</b>							
Name of policy:	<b>Broadcasting Code rules on product placement signalling requirements (television)</b>							
Group: Content & Standards	Team: Commercial and Consumer Protection Team (Standards)							
<b>1 In relation to what groups are there concerns that the policy <u>could</u> have a negative impact?</b>	Disability	BME	Gender (incl. trans)	* Gender re-assignment	* Age	* Pregnancy & Maternity	* Religion or belief	* Sexual orientation
	Yes	N/A	N/A	N/A	N/A	N/A	N/A	N/A
<b>2 In relation to what areas of the equality duties are there concerns that the policy <u>could</u> have a negative impact?</b>	Eliminating unlawful discrimination		Promoting equality		Eliminating harassment		Promoting good relations/positive attitudes	Encouraging participation in public life
	N/A		Yes		N/A		N/A	N/A
<b>3 What are the concerns that the policy <u>could</u> have a negative impact on relevant groups?</b>	<p>The Communications Act 2003 (as amended by the Audiovisual Media Services (Product Placement) Regulations 2010) requires that where a television programme produced or commissioned by the broadcaster (or a connected person) contains product placement, this must be made clear via appropriate signalling at the beginning and end of the programme and after any advertising breaks broadcast during the programme.</p> <p>We conducted an initial equality impact assessment (which was published as part of the consultation document). As a result of that initial assessment, we noted that visually impaired individuals would not be able to benefit from a signalling regime for product placement which only involved a visual on-screen signal. In the absence of an audio signal, a visual signal would therefore carry a risk that product placement was not appropriately identified to this audience group. In reaching this view, we took account of the fact that a product placed reference could be in audio as well as in vision.</p>							

<p><b>4 In relation to what groups are there opportunities to make improvements to ensure the policy better promotes equality?</b></p>	<p>Disability</p> <p><b>Yes</b></p>	<p>BME</p> <p>N/A</p>	<p>Gender (incl. trans)</p> <p>N/A</p>	<p>* Gender re-assignment</p> <p>N/A</p>	<p>* Age</p> <p>N/A</p>	<p>* Pregnancy &amp; Maternity</p> <p>N/A</p>	<p>* Religion or belief</p> <p>N/A</p>	<p>* Sexual orientation</p> <p>N/A</p>
<p><b>5 In relation to what areas of the equality duties are there opportunities to make improvements to ensure the policy better promotes equality?</b></p>	<p>Eliminating unlawful discrimination</p> <p>N/A</p>		<p>Promoting equality</p> <p><b>Yes</b></p>		<p>Eliminating harassment</p> <p>N/A</p>		<p>Promoting good relations/positive attitudes</p> <p>N/A</p>	<p>Encouraging participation in public life</p> <p>N/A</p>
<p><b>6 What are the opportunities to make improvements to ensure the policy better promotes equality?</b></p>	<p>One of the proposed Broadcasting Code rules in our consultation required television broadcasters to transmit an audio signal alongside a universal visual logo. The purpose of this proposed rule was to ensure that all members of the audience, including those who are visually impaired, are made aware of product placement. Possible types of audio signal proposed included a specified sound, or an announcement at the same time as the visual logo, (e.g. “This programme contains product placement”).</p> <p>However, of the 25 stakeholders who responded to the questions set out in our consultation on the proposed signalling requirements, the overwhelming majority (24) strongly disagreed with the proposed audio signal, considering any potential benefits were heavily outweighed by disadvantages (see further below). The only respondent who agreed with the proposed audio signal was the Campaign for Press and Broadcasting Freedom (which opposes the introduction of product placement generally).</p> <p>Several respondents did nevertheless acknowledge the important need for all audience members to be considered, and many suggested that if an audio signal was seen as desirable, this could be best delivered in a targeted way to visually impaired audience members via Audio Description (“AD”)<sup>1</sup> services [further detail in section 9, below].</p>							

<sup>1</sup> AD comprises a separate audio track in which a narrator uses gaps in the original sound track to describe what is happening for the benefit of people with visual impairments; like subtitling, the service can be turned on or off.

**7 What existing evidence do you have in relation to the answers set out above?**

In assessing the potential impacts relating to this issue, we have considered the following existing sources of evidence:

- **Prior to the consultation**, we took into account that Action for Blind People estimates that there are nearly 2 million blind and partially sighted people in the UK<sup>2</sup>.
- **During the consultation**, further evidence was provided to us by stakeholders in their responses, in particular:
  1. Five referred to an estimate of 2 million blind or partially sighted people in the UK<sup>3</sup>, but also pointed to 2009 UK population figures from the Office of National Statistics (61,792,000) to illustrate that only 3.24% of the total population is blind or partially sighted) [see further detail in section 8, below]; and
  2. The consumer organisation Which? quoted research it had conducted on a group of 1,005 respondents in relation to the signalling of product placement [see further detail in section 8, below].
- **After the consultation period**, while considering these (and related) consultation responses on this issue, we also sought expert advice from the RNIB. It should be noted that the RNIB does not hold evidence about its members' views on this matter, but was able to provide us with an expert view [see further detail in section 8, below].
- We also undertook an informal survey of product placement signalling requirements and practices in other European Member States (via correspondence with a product placement Working Group of the European Platform of Regulatory Authorities (EPRA)) [see further detail in section 8, below].

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<sup>2</sup> <http://www.actionforblindpeople.org.uk/news/media-centre/facts-and-figures,893,SA.html>

<sup>3</sup> "The economic impact of partial sight and blindness in the UK adult population". Report by Access Economics Pty Limited, July 2009, available at: [http://www.rnib.org.uk/aboutus/Research/reports/eyehealth/Documents/FSUK\\_Report.pdf](http://www.rnib.org.uk/aboutus/Research/reports/eyehealth/Documents/FSUK_Report.pdf)

<p><b>8 Can any negative impacts be justified?</b></p>	<p>In considering whether or not to proceed with our proposed requirement for an audio signal, we have taken into account the following impact information:</p> <p><b><u>Concerns cited by respondents who opposed our proposal</u></b></p> <p>The following concerns were raised in consultation responses:</p> <ol style="list-style-type: none"><li>1. <u>Audience irritation</u>: all stakeholders who voiced concern about an audio signal believed that the audience would be likely to find it annoying and intrusive. Further, they thought that audience irritation would be increased as a result of the repetitive nature of signalling. The consumer organisation Which? quoted the research it had conducted on a group of 1,005 respondents. This showed that 51% of all respondents wanted some form of product placement signalling. However, of those respondents, only 17% thought the signal should be in audio, while 41% stated that they would prefer an image or logo that appeared on screen. [The remainder favoured text appearing on screen (24%), or did not know (17%)].</li><li>2. <u>Undue prominence</u>: stakeholders considered that an audio signal would draw a disproportionate amount of attention to product placement. Many were concerned that this would act as a deterrent to potential placers.</li><li>3. <u>Proportionality</u>: some respondents commented that the majority of instances of product placement are likely to be visual and therefore not always evident to visually impaired members of the audience. It was also noted that people with a visual-impairment make up a small percentage of the television audience (Five referred to an estimate of 2 million blind or partially sighted people in the UK<sup>4</sup>, and also pointed to 2009 UK population figures from the Office of National Statistics (61,792,000) to illustrate that only 3.24% of the total population is blind or partially sighted). Therefore Five and a number of other stakeholders considered that the transmission of an audio signal at all the times required by the Act would be disproportionate.</li></ol>
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<sup>4</sup> See footnote 3.

4. Unnecessary regulation: stakeholders noted that, while the Directive (and as a result, the Act) requires the signalling of product placement, there is no requirement for this to be in audio. Some respondents argued that it would be wrong for Ofcom to introduce such a requirement: doing so would put Ofcom-regulated broadcasters at a disadvantage compared to their European counterparts.
5. Technical difficulties, impacts on editorial (e.g. clashes with programme music) and non-English language issues were also raised.

#### **Requirements in other European Member States**

To assess the argument that the proposed requirement for an audio signal would put Ofcom-regulated broadcasters at a disadvantage compared to their European counterparts, we conducted an informal survey of EPRA members. The results indicated that, to date, no other European Member State has required (or intends to require) an audio signal for product placement on television services.

#### **Alternative options**

In light of this, and in view of the strength of the opposition to our proposal for a requirement for audio signalling, we have considered alternative means of promoting equality in this area. In particular, we have sought a solution that would enable us to mitigate the possible negative impacts on visually impaired audience members of not being made aware of the presence of the product placement in a programme.

Several broadcasters suggested that the most appropriate alternative would be for visually impaired audience members to be made aware of product placement in a programme via Audio Description (AD) services.

We sought expert advice from the RNIB. It should be noted that the RNIB does not hold evidence about its members' views on this matter. However, it provided us with an expert view, in which it raised concerns about certain aspects of the proposed audio signal. It was suggested that the use of a 'beep' or any similar sound would be meaningless to visually impaired audience members without further education. In addition, it was of the view that audio signals may be best reserved for other purposes, such as alerting visually impaired audience members to the presence of AD on a particular programme.

	<p>The advice indicated that we could consider an audible indication of product placement within AD services. For example at the point when the visual signal appears, the audio description could state “This programme contains product placement”.</p> <p>However, the RNIB advice made clear that this information should not intrude upon existing audio description; it is paramount that the AD first and foremost fulfils its prime function of making the programme itself accessible to visually impaired audience members.</p>
<p><b>9 Summarise the proposed actions to take forward the identified improvements so that the policy may better promote equality.</b></p>	<p><b><u>Proposed actions</u></b></p> <p>Having considered the arguments raised in the consultation process and other evidence available to us, we are of the view that it would be inappropriate to require broadcasters to signal product placement when required in a programme via an audio signal.</p> <p>Instead, we are providing guidance to those broadcasters which are required to provide AD services that they should - where practicable and not detrimental to needs of visually impaired audience - indicate where product placement is present in a programme, by stating “This programme contains product placement”.</p> <p>We consider that providing this as guidance as opposed to a requirement in, for example, the Access Services Code is the most appropriate option. This is in light of the RNIB’s expert advice that it could be possible in some cases for the audio signal to impact negatively on the audio description itself, and therefore affect the quality and effectiveness of the Audio Description service. Therefore we consider that it is appropriate for broadcasters to determine wherever it is practicable to include the audio signal in AD services.</p> <p>We have therefore amended the guidance to the Code on Television Access Services to explain to broadcasters how to incorporate the audio signal in an AD service.</p>

**Requirements for the provision of AD services**

The Television Access Services Code provides that:

- a) any channel with an audience share of lower than 0.05% of UK viewers is excluded from the requirement to provide access services on the basis that it is not sufficiently popular for the provision of access services to significantly benefit access service users; and
- b) channels are excluded from the requirement to provide access services if the assessed cost of provision exceeds 1% of their relevant turnover on the grounds that this would be disproportionately expensive.

Ofcom may exclude programmes and services having regard, in particular, to:

- a) the extent of the benefit which would be conferred by the provision of the assistance for disabled people in relation to the programmes;
- b) the size of the intended audience for the programmes;
- c) the number of persons who would be likely to benefit from the assistance and the extent of the likely benefit in each case;
- d) the extent to which members of the intended audience for the programmes are resident in places outside the United Kingdom ;
- e) the technical difficulty of providing the assistance; and
- f) the cost, in the context of the matters mentioned in paragraphs (a) to (e), of providing the assistance.

The quarterly report for Q1/ 2010 suggests that most broadcasters are continuing to match or exceed the levels of provision in 2009 as a proportion of transmission hours (see [http://www.ofcom.org.uk/tv/ifi/guidance/tv\\_access\\_serv/tvaccessrep/q110/](http://www.ofcom.org.uk/tv/ifi/guidance/tv_access_serv/tvaccessrep/q110/)).

	<p>In its response to our consultation, Channel 4 stated that it had recently announced some significant new voluntary commitments to improve access services across its channels, including a commitment to more than double provision of audio description to 20% of programmes on Channel 4, E4, Film4 and +1 channels. In addition, another broadcaster stated that it had recently committed to voluntarily increasing its audio description targets from 10% to 20% of its programming in line with other broadcasters.</p> <p><b><u>How the policy may better promote equality</u></b></p> <p>We are aware that not all television programmes are audio described. However, considering:</p> <ul style="list-style-type: none"> <li>• the strength of the stakeholder opposition to, and of arguments put forward against, our original proposed audio signal;</li> <li>• that several respondents acknowledged the important need for all audience members to be made aware of product placement, and many suggested that if an audio signal was seen as desirable, this could be best delivered in a targeted way to visually impaired audience members via AD services;</li> <li>• the expert RNIB opinion that where available, AD would be a sufficient signal to alert visually impaired audience members to the presence of product placement within a programme; and</li> <li>• that majority of instances of product placement are likely to be visual and therefore not always evident to visually impaired audience members;</li> </ul> <p>we consider that providing guidance to broadcasters suggesting that where AD services are available, that they indicate to the audience the presence of product placement, is the most appropriate way to better promote equality in this area.</p>
<p><b>10 What evaluation/review process has been set up to monitor the impact of the implementation of this policy on the different diversity groups over time?</b></p>	<p>As the introduction of rules for product placement in television programming is in itself a substantial policy change in terms of broadcasting regulation, we are likely to review its implementation and enforcement within the first two years of its introduction.</p> <p>As part of this wider review, we intend to re-consider our current evaluation of any impacts of our policy in relation to product placement signalling on visually impaired audience members.</p>