



OFCOM

**Broadcasting Code Review:
Commercial References in Television
Programming: Consultation**

An IPA response

September 2010

Consultation on revising the current Broadcasting Code

The IPA welcomes this opportunity to submit views on the above.

About the IPA

The Institute of Practitioners in Advertising (the “IPA”) is the trade association and professional institute for UK advertising agencies. Our 265 corporate members are primarily concerned with providing strategic advice on marketing communications, including creating and/or placing advertising. Based throughout the country, they are responsible for over 85%¹ of the UK’s advertising agency business and play a pivotal role in advising the nation’s companies on how they should deploy their total marketing communications spend of £42 billion².

General comments

The IPA has consistently supported the introduction of (paid-for) product placement in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes.

While we are aware that reservations have been expressed elsewhere that such a move might pose a threat to programme integrity, we have pointed out in the past that we consider these risks to be minimal, highlighting the careful consideration given in the European legislative process to a regulatory framework to ensure that viewers will be protected.

Not only this, we have indicated:

- that the UK population has already become well acquainted with paid-for product placement through sport and overseas programming, without any discernible adverse consequences;
- that Ofcom research commissioned on viewer attitudes has shown that viewers accept controlled placement as a means of continuing to fund television - and, indeed, see this as preferable to additional conventional advertising (- see “The Future Of Television Funding” Ofcom, 2005)
- that revenues from considered responsible placement would assist commercial broadcasters’ ability to continue to invest large amounts in original UK produced

¹ Nielsen MMR 2005

² Bellwether Report 2010

content and to compete with other advertising media in a rapidly changing media landscape;

- That while it might pose little risk to the integrity of UK programming, product placement would be of considerable benefit in enabling the nation's creative industries to operate on a more level playing field with their counterparts in both the USA and those European states which do liberalise in this area.

Specific questions

Proposal 1: Applying the rules to placement for a non-commercial purpose

- 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.*

We agree.

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

We are not aware of any specific potential impacts that need to be taken into consideration.

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

While generally satisfied with what is proposed, we believe that Ofcom should take steps to ensure a clear definition of the term "commercial purpose".

Proposal 2: Clarification that product placement is permitted in single dramas

- 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.*

We are unaware of any impacts that have not been identified, however, we should draw attention to the need to include "one-off" commissions in permitted genres in this context.

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

We do not believe it is necessary to issue further guidance.

Proposal 3: Clarification of the prohibition of product placement in news

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)).

Although this is not strictly within our remit, we should query the ability of UK broadcasters always to identify product placement in material acquired in a news context from overseas. While they may request details of any placement ahead of going to air, the nature of live/rolling news may not always make this practicable. Equally, such a prohibition could place significant demands on broadcasters' ability to be able to edit/pixel out placements of which they are made aware in the time available.

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

In the light of the above, Ofcom may feel it necessary to indicate how identification of placement and editing might take place.

Proposal 4: Thematic placement

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

We believe that where thematic placement does not exert unjustified editorial influence over the integrity of the script, there is a sound case that it should be permitted.

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.

Having discussed this area with the film production industry, we should concur with its suggestion that clause 9.10, be amended to clarify "a condition of thematic placement be where the funder has exerted unjustified editorial influence"

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

Provided funders do not exert influence such that they undermine the independence of the broadcaster, we believe they should be permitted to pay fully or in part for the

creation of programming (e.g. as in the Home Office funding of *Beat: Life on the Street*).

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

If Ofcom agrees with a condition of thematic placement being where there has been unjustified editorial influence, we leave to the Regulator whether this is best accommodated within the Code or via guidance.

Proposal 5: Specialist factual programming

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.

While recognizing that product placement is prohibited in current affairs programmes at an EU level, we nevertheless believe that elsewhere it might be possible to permit product placement if this were not central to the subject matter of the factual programming and had exerted no editorial influence. Peripheral product placement in this context might feature - say - discreet branding on the kit of archaeologists digging on a site of historical interest.

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.

Yes

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.

(See 5.1 above)

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

(See 5.1 above)

Proposal 6: Additional prohibited categories

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, otherwise anomalies would be created within the medium - and open advertisers and the industry up to criticism that they were cynically seeking to "get round the rules".

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

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

Yes

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

We are not aware of any potential impacts.

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

We do not believe that it is necessary for Ofcom to issue any special guidance.

Proposal 7: Signalling

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.

Personally, we believe the proposed level of signalling to be excessive, but, in as far as this has already been laid down by the AVMS Directive, we accept the concept of a universal neutral logo to be appropriate solution. Having said this, we have deep reservations about both the need and desirability of an audio signal - which is not required by EU law - and which, we believe, will not only attract undue attention to the placement, but also adversely affect viewer enjoyment of programming.

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.

We note the requirements of the AVMS Directive, but believe the degree of flagging should be minimal, lest it a) detract from the programme and b) draw undue attention to the placed product.

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 believe audio signals to be unnecessary and disruptive. Visually impaired people, if unable to see the “P” product placement symbol, would equally be unable to see the product placement, thereby rendering any audio signal superfluous and, if anything, more likely to attract attention to placement by causing the individual to enquire which product is being “flagged”.

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.

Guidance may be required for the universal symbol and it may be more appropriate to specify criteria here, rather than in the more rigid confines of the Code. However, we believe the concept of the audio signal should be dropped entirely and thus feature in neither area.

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.

We believe this area should be left to the broadcasters to decide upon.

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.

Yes

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

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.

While we accept the above might be valuable, we believe that six months is excessive. TV advertising campaigns rarely go beyond three months to deliver their commercial messages - and we believe this time period should therefore be adequate to ensure good audience awareness of product placement.

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.

(See above)

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

Ofcom must beware of creating excessive awareness of product placement to the extent that a) it deters advertisers; b) detracts from programming/plots and c) over promotes the brands involved.

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

We leave this area for the production companies and broadcasters to comment on.

Proposal 8: Sponsor references (product placement) within programmes

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.

Yes

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 leave this area for the production companies and broadcasters to comment on.

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

While we believe this proposal is positive, we nevertheless, believe it important that Ofcom should issue guidance to ensure editorial integrity in this context.

Proposal 9: Identifying sponsorship arrangements (sponsorship credits)

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.*

While we fully understand Ofcom's desire to avoid the potential risk that audiences may be confused about the nature of different types of commercial messages, we believe that a requirement for clear statements on *all* sponsorship credits informing viewers of the sponsorship arrangement would not only be seriously to underestimate the intelligence of the public, but by literally increasing the "noise" surrounding programming could actually erode viewing pleasure and create the very confusion in the proposed amendment seeks to avoid. Credits, which do not refer to "sponsored by" in their creative execution (like the Aviva sponsorship of ITV Drama or HSBC's sponsorship of the British Lions Tour) create a extremely strong link with the programmes they sponsor through their creative approach. A blanket requirement for verbal references to sponsorship on *all* credits would inhibit such creativity - and run the real risk of promoting needlessly repetitive executions which fail either to engage or entertain - both of which elements are key in successfully delivering a sponsorship message.

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.*

Yes

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.*

Yes

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.*

We are not aware of any further potential impacts.

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

We do not believe that any specific guidance is required in this area.

Proposal 10: Allowing sponsorship credits during programmes

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.*

Yes. However, we believe that it is important to ensure that there are no “clashes” between rival companies between product placement and programme sponsors (e.g., product placement from Ford and programme sponsorship from Vauxhall).

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.*

Yes.

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.*

We believe that the above rules should be adjusted to address the issue of potential clashes between product placement and programme sponsorship.

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.*

We are unaware of any potential impacts, other than the risk of clashes outlined above.

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

As indicated above, we believe that guidance will be required to address potential “clashing” problems arising from separately negotiated contracts by broadcasters and programme makers on product placement and sponsorship.

Proposal 11: Content of sponsorship credits during programmes

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.*

Yes. However, all reputable broadcasters will wish to limit clutter, and, if the content of sponsorship credits is excessive, viewers will "vote" with their remote controls.

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.

Yes

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.

Yes

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.

We are unaware of any potential impacts of the above proposals that should be taken into account.

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

We do not believe that special guidance is required in this area.

Proposal 12: Principles

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

Yes

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

We are unaware of any potential impacts of the proposals that should be taken into account.

Proposal 13: Rule on distinction between editorial content and advertising

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.

Yes

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

None

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

It may be valuable to issue guidance to ensure brands do not seek to exercise excessive influence over editorial

Proposal 14: Rules prohibiting surreptitious advertising

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

Yes

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

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

We are unaware of any potential impacts.

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

We do not believe that any specific guidance is required in this area.

Proposal 15: Removal of the virtual advertising rule

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

Yes

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.*

We are unaware of any potential impacts.

Relevant requirements of the AVMS Directive and the Act

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

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.*

No

Alternative approaches

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.*

No

New Code rules in force

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.*

No. While we believe that the proposed Rule 9.22 *should not be* adopted - if this change were to go ahead - then many sponsors would need to edit their existing credits to comply with the revised Code.

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.*

While it is difficult to put an exact number on the quantity of executions involved should the proposed Rule 9.22 be adopted, it would be substantial and, in some instances, would require a complete re-recording of existing materials.

In these circumstances, we believe that it would be appropriate to have a "grace period" of at least 3 months between announcement of the changes and the new Code coming into force, to allow these adjustments to be made.

This would follow the same approach agreed both with regard to historical changes to the alcohol regulations, and, currently, to the extension of the CAP Code to client websites - and recognise the simple logistics of implementing change by the parties involved.

For further comment and information, please contact:

Geoff Russell

IPA Director for Media Affairs

~~XXXXXXXXXXXX~~

