

Ofcom's Product Placement Consultation Submission

Ofcom's Consultation Proposals

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

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

We are unclear how this will impact on our service, given the number of acquired programmes we take that may well have had a product placement arrangement in the original production but have no material bearing on our acquisition and broadcast of the programme on our UK service. We would therefore consider such placements to be non-commercial and would check that the references are not unduly prominent.

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.

We would welcome clarification on the treatment of non-UK produced content in the context of product placement (PP). We would also seek clarification of the grey paragraph in rule 9.21 as it presently seem to treat any incidental reference to a programme sponsor's product as PP. This seem unreasonable and potentially damaging to any products that are caught by rule 9.15 e.g. HFSS products, alcohol or even infant formula.

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

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.

We do not support the classification of single dramas made for TV as "films". These would be disadvantaged by the ad break rules applied to films and will create confusion for schedulers and potentially hinder the editorial flow of the drama if breaks have to be pre-determined. Single dramas should be treated the same as drama series and given the same opportunity to product place.

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

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

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).

We agree with the proposal to prohibit PP in UK-produced news but would seek clarification on how this will affect news acquired from abroad.

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

As the existing rule 10.5 is to be abolished, the dispensation for PP in programmes acquired from abroad will no longer exist. How are licensees expected to enforce a prohibition of PP in a live news feed from abroad where it has no control over the production and possible commercial arrangements?

Proposal 4: Thematic placement

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

We agree that PP should not influence the content and scheduling of a programme in a way that affects the editorial independence of a story but we do not think “thematic placement” correctly explains this. How is this expected to apply to editorial themes that do not promote a product but have an editorial justification in the story?

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.

We think the definition of “thematic placement” is open to subjective interpretation and does not provide clarity for licensees. The rule is presumably intended to prevent commercial interests from undermining editorial independence. We suggest this issue be addressed in non-binding guidance to rule 9.10.

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.

Please refer to our comments above.

Proposal 5: Specialist factual programming

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.

We are concerned about the breadth of programming this prohibition could affect when it has not been identified in the EU Directive as a prohibited genre.

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 do not agree with the meaning of specialist factual and suggest the prohibition be restricted to consumer advice programmes.

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.

It seems disproportionate to prevent arts and other programmes often considered important public service programmes from attracting funding via placing products.

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

Proposal 6: Additional prohibited categories

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.

Only if the products cannot legally advertise in the broadcast media.

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.

We would appreciate having a definition of "all medicinal products" to understand if it is likely to be extended to vitamins, functional food, cosmetics and diet products.

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

We agree.

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.

Please would Ofcom undertake to provide a clear list of prohibited categories in guidance as this may well change over time.

Proposal 7: Signalling

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 support the use of a universal visual signal but are not convinced that an audio signal is appropriate. If an audio signal were to appear at the start of each programme part we and Ofcom would probably receive numerous complaints about viewer irritation.

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.

We accept the proportions set out in the criteria but think it appropriate that each broadcaster should be able to design its own logo without having to seek regulatory approval.

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 suggest audio-description could be a more proportionate means of communicating PP to the visually impaired community.

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 suggest that PP be listed on Electronic Programme Guides and that the logo only need be shown at the beginning and end of the relevant programme.

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.

We are unsure if this draws more attention to the products placed and whether it is an issue of concern to viewers.

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.

We think there is a risk of hyping PP to the viewer and don't think it is necessary to list the products on the website with an explicit broadcast "reference to this given at the end of the programme" as currently proposed.

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.

We think 1 month is more than adequate as viewers are already aware of PP in films.

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.

Six months appears too protracted given viewers are already aware of PP in films. Ofcom's qualitative research on product placement in 2005 indicated that viewers understand product placement and sponsorships on TV and we are now five years on, serving an even more media-literate society.

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.

We suggest Ofcom's website is presented as the location for more information for viewers.

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.

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

Proposal 8: Sponsor references (product placement) within programmes

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.

We believe it is appropriate to allow sponsors to PP in programmes they sponsor.

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.

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

We would welcome guidance on when sponsorship and PP will and will not apply under the Code. We are unclear whether product references which are completely independent of any PP arrangement would be classed as PP once the programme was sponsored by the brand owner of the product featured. For instance, if a chat show used Skype to link to guests and the Skype logo informed viewers of how the interview was taking place (without any payment) could Skype sponsor the programme and not be classified as PP? The viewer would be aware of Skype providing the technology to facilitate the interview.

If in the case of an acquisition that had had PP when originally made but there is no PP arrangement with the Ofcom licensee, we assume no PP signal is required if the programme were sponsored by a product that featured in the programme. We would really appreciate guidance on how programmes acquired from outside the EU will be treated and how we, the Ofcom licensee, can be sure what has been placed for commercial purpose in the show. Are we expected to request copies of original contracts to ensure compliance? Does Ofcom propose to offer any dispensation where such investigations are not practicable?

Proposal 9: Identifying sponsorship arrangements (sponsorship credits)

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.

Consumers are familiar with sponsorship and know how sponsor credits work. The additional requirement to include a clear statement seems to be turning back the ‘regulatory clock’ and is likely to irritate and patronise the viewer.

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 support the proposed amendment but think rules 9.23 and 9.24 could be combined into one rule.

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.

We think the wording of the current rule 9.7 is adequate to achieve the policy objective. Viewers are well accustomed to sponsorship and do not require additional information as suggested by the proposed text “accompanied by a statement informing the audience of the sponsorship arrangement (the sponsorship credit).” This would seem to imply that in future there has to be a verbal statement about the sponsorship. We think it’s adequate to cover such details in non-binding guidance.

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.

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

Proposal 10: Allowing sponsorship credits during programmes

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.
We support this proposal and welcome its application in programme segments in magazine formats.

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 are unclear whether the term “sponsor references” is intended to always mean product placement? We find this confusing and would favour a new term in order to avoid blurring between props and product placement. We think rule 9.12 on undue prominence makes the proposed rule 9.29 unnecessary.

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.

We do not support rule 9.29 and think sponsor credits should be allowed to coincide with the appearance of placed products/services, given the other protections in place.

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.

We would welcome guidance on how programme-related material can credit its sponsors during programmes.

Proposal 11: Content of sponsorship credits during programmes

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 do not think a verbal statement identifying the sponsorship arrangement is necessary as part of the rule, given consumers’ understanding of sponsorship. The level of detail in rule 9.27 appears very prescriptive and not in line with Ofcom’s approach to have simple Code rules and more guidance.

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.

We do not think the rule is clearly explained. Does this rule mean that a beer brand sponsor could not sponsor a programme segment because of the prohibited PP

categories? This could have a major negative impact on sponsorship in sports programmes.

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.

Rule 9.27 should not set out detailed requirements on how credits during programmes should appear. We do not think 9.28 is easy for producers and editors to understand and would ask that it be re-drafted.

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.

We are concerned that rule 9.28 could prompt the cancellation of sponsorship by food brands (if considered HFSS products) on television as they are discriminated against and not able to enjoy the same opportunities as other commercial products.

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

We think rules 9.27 and 9.28 should be re-drafted and placed in guidance in place of Code rules.

Proposal 12: Principles

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

Yes

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.

Proposal 13: Rule on distinction between editorial content and advertising

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.

Yes

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.

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

Proposal 14: Rules prohibiting surreptitious advertising

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

No, as we think the protection is already provided for by rule 9.4.

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.

We think it is covered by Rule 9.4.

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.

Proposal 15: Removal of the virtual advertising rule

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

We agree.

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.

Relevant requirements of the AVMS Directive and the Act

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.

We refer you to our note below but also think the proposed rules go further than the Directive in respect of “thematic placement” and treating all in-programme sponsor product references as placed products.

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.

We note that Article 11 of the EU Directive, 3 (d) (signalling) enables member states to waive the requirements of 3 (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider. Given that a large amount of content carried by [REDACTED] is produced in India we would ask that this ‘exception’ be made explicit in the Code.

Alternative approaches

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.

No

New Code rules in force

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.

We support implementation on the date of publication of the rules.

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.

We would hope guidance would be issued at the same time as the rules.

17 September 2010

