

OFCOM

Broadcasting Code Review: Commercial References in Television Programming: Consultation

A response by the Advertising Association.

September 2010

1. About the Advertising Association

1.1 The Advertising Association represents the entirety of the advertising and promotional marketing industries, including advertisers, agencies, media and support services in the UK. In 2009, advertising expenditure was £14.5bn.

1.2 Advertising is crucial to a competitive market in products and services and is vital to the funding of culture and sporting events. We are one of the UK's most important creative industries, employing nearly 250,000 people, and providing £6.2bn gross added value to the UK economy each year. Further information about the organisation is available at: <http://www.adassoc.org.uk/>

2. Commercial references in television.

2.1 The Advertising Association supports the principle of commercial references in television to the fullest extent and believes that the additional freedom in product placement will benefit broadcasters, advertisers, agencies and consumers.

2.2 The additional revenues that product placement will generate could help to make provide additional funds for the innovative programming that consumers enjoy if it not stifled by too many additional regulatory burdens. A light touch approach from Ofcom will help broadcasters, advertisers and viewers who will benefit from better funded content.

Part 2.

Response to specific consultation 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.*

While some Advertising Association members have requested more clarity from Ofcom on exactly how this will operate, the AA strongly believes it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose. We believe it is appropriate that the rules are consistent regardless of whether the advertiser is a commercial or non-commercial body.

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

See above

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

N/A

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.

The Advertising Association strongly supports the inclusion of product placement in single dramas. Product placement could provide an important new revenue stream for broadcasters and an attractive format for advertisers.

However, the Advertising Association strongly opposes classifying single dramas as “films made for television” as this would result in fewer advertising breaks around these single dramas which, in turn, will result in a significant loss of revenue, far outweighing any benefits arising from product placement. This would lead to fewer single dramas being commissioned by commercial broadcasters. This is ironic as drama is one of the genres the introduction of product placement was intended to protect.

Ofcom’s consultation document states that “In assessing the possible impact on broadcasters of this clarification ...we found that, in transmitting programmes that would fall within the definition described above, these channels had scheduled the number of breaks appropriate for films.” At least one broadcaster member of the Advertising Association inform us that with only a very few exceptions, they do **not** follow film break patterns for single dramas.

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

N/A

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)).

The Advertising Association does not believe there is an appetite for product placement in news programmes originating in the UK and the AA does not support the idea of product placement in these programmes.

We are concerned however that the proposed new rules could actually increase the regulatory burden on live news broadcasters who use foreign news feeds when covering events.

The Advertising Association believe that there should be some dispensation if a feed taken from a foreign broadcaster inadvertently contains product placement. Not allowing this dispensation would either discourage broadcasters from using foreign news feeds (depriving the viewer of an important source of information as news breaks abroad) or would mean that broadcasters would have to contact foreign news agencies and pre-clear their feeds before use – not practical in a situation where a news story in a foreign country is developing quickly.

The principle guiding the move towards product placement is one of liberalisation, freeing broadcasters from rules which restrict potential revenue streams. The AA is concerned that this rule, as it stands, may inadvertently increase the regulatory burden on our news providers.

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

Please see above.

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.

The Advertising Association believes that this important principle is understood by practitioners and that Ofcom's guidance should be drawn up after conversation with broadcasters and other stakeholders. We also believe that the guidance should make clear that a placement which is 'editorially justified' within a storyline or narrative is allowed, providing it complies with other guidance on undue prominence et cetera.

Among the Advertising Association's membership there is agreement that the editorial independence of broadcasters must not be threatened by product placement.

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 would like Ofcom's definition to be refined with the help of stakeholder and industry partners, but believe that it's vital no further restrictions are added in this process.

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

N/A

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

See above.

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.

We believe that the incentives, accepted best-practice and rules which already safeguard specialist factual programming from unwarranted bias or influence are robust enough to continue protecting broadcasters and viewers as product placement is introduced.

The Advertising Association believes that retaining the option for product placement in specialist factual programmes is sensible and that stringent existing

safeguards will ensure that broadcasters and programme makers retain the trust of viewers.

In lighter factual programmes which don't focus on, for example, consumer affairs, product placement could be a vital revenue source. Why shouldn't a car that a presenter drives between locations be product placed? As long as this placement is not unduly prominent and does not threaten editorial independence it should be for broadcasters to decide the appropriateness or otherwise of placement. Outside of consumer affairs and specialist news programming we believe that product placement should be allowed in factual programming.

Product placement may not be appropriate in consumer affairs programmes or indeed in programmes where the editorial or investigative integrity of the journalist, presenter, producer or broadcaster could be called into question but this does not mean that Ofcom need to 'gold-plate' this restriction.

If Ofcom does decide to prohibit product placement in specialist factual programmes it would be helpful to have more detailed guidance on the meaning of "specialist factual programmes". Ofcom should interpret the legislation as narrowly as possible.

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.

See above.

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 that prohibiting placement in specialist factual programmes may make broadcasters less likely to commission this type of programme.

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

Ofcom's guidance should take into account the points made in our answer to 5.1

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.

The Advertising Association strongly believes in the freedom to advertise (and by extension to communicate commercially in TV programmes), but where the advertising of certain products is already banned the Advertising Association understands the logic of preventing them from being commercially placed.

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.*

N/A

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

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.*

The Advertising Association believes that a small logo, black and white or neutral in colour, which is not unduly prominent and not on screen for an excessively long amount of time would be an appropriate and clear signal to viewers that a programme contains product placement. Broadcasters should have the freedom to choose their own logo to alert viewers to product placement.

We completely reject the need for an audio signal of product placement on several grounds.

An audio signal before programmes containing product placement would be distracting and irritating to the overwhelming majority of television viewers with no positive effect. Given that product placement has the potential to be very widespread on commercial television, an audio signal before every programme could potentially be absorbed thousands of times in a viewer's lifetime. As well as being unnecessarily intrusive we believe that viewers would find the signal irritating, with this far outweighing the 'protection' the measure would provide.

We also believe that it would be possible to alert the visually impaired to product placement via audio description,. Using audio description to alert visually impaired viewers would be more targeted and proportionate than a blanket audio signal before every programme containing placement. Therefore, if an audio signal is seen as desirable for visually impaired viewers, Ofcom could encourage broadcasters to provide it via audio description.

The Advertising Association is also concerned that by alerting viewers to product placement with a sound as well as a logo undue emphasis is placed its existence. It implicitly equates product placement with something negative that needs be 'warned' against and could have the effect of making placed products *more* prominent that they might otherwise have been.

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 Advertising Association believes that the logo should be as small as possible, and on screen for the minimum amount of time required. This will ensure that there is transparency within the product placement system and the viewer is kept informed, without distracting or irritating viewers.

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.

Please see above – the AA rejects the need for an audio signal completely and believe that a universal logo should be as small as possible.

The Advertising Association believes that Ofcom, if they are to impose a logo, should consult with broadcasters and other key stakeholders to ensure universality.

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 if criteria do have to be specified then they should be in Ofcom’s guidance, not the Broadcasting Code.

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 think it is appropriate that broadcasters should be free to decide whether to use credits or a specific section of their website to list products used in product placement.

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.

Members to advise AA if there is specific guidance they wish us to ask for.

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.

No, see below.

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.

The Advertising Association is supportive of audience awareness messages as product placement begins in the UK – but we feel that 6 months of messages is too long. AA members suggested that such a long period would be disproportionate and might make product placement seem like a more intrusive and threatening reform than it is.

The AA believes that broadcasters and Ofcom should reach an agreement on the length and content of any additional audience awareness messages and believe that a month of these messages would provide sufficient information to viewers without over-emphasising the role 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.

It is important that a common understanding is reached by broadcasters and Ofcom but as stated in previous answers we do not believe that the audience awareness campaign needs to be as long as six months, and we are keen that Ofcom does not impose additional burdens on broadcasters when agreeing how this audience information campaign will operate.

A link to a broadcaster's website could be provided on screen, for example:

Further information about product placement is available at www.broadcasterxyz.co.uk/pp

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

N/A

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

N/A

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.

N/A

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

N/A

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.

We agree that transparency around sponsorship is important, so do not oppose this requirement outright – but some broadcaster members have suggested that where sponsorship arrangements are already obvious to their viewers there may not be a need for an additional requirement to inform the audience that a programme is sponsored.

More importantly the proposed rule change 9.21, ensuring that sponsorship credits will be subject to product placement arrangements could have a significant and detrimental impact on broadcasters and advertisers.

The prohibition of the product placement of alcohol and HFSS food (among other categories) would mean that alcohol sponsors of major sporting events, from

Heineken and Amstel's involvement in the Champions League to Johnnie Walker's association with golf could be put in jeopardy, should these companies wish to sponsor both the event and the broadcast. Aside from Sporting Events we would also ask Ofcom for clarity regarding whether a current permitted Broadcast Sponsorship for Alcohol, HFSS and Gambling products would now be jeopardised if these products were either prop placed in commissioned content and/or product placed in acquired content.

We suggest that Ofcom urgently clarify their guidance to take this into account. The current rule change adds a (perhaps unintended but) significant regulatory burden which runs counter to the objectives of this liberalisation, in addition to the new rule's potentially material negative impact.

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.

N/A

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.

N/A

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.

N/A

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

N/A

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.

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.

Yes.

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.

N/A

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

N/A

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.

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.

Some Advertising Association members believe Ofcom's decision to include the proposed Rule 9.28 which bans sponsors from showing credits during a sponsored programme if it is not allowed to product place in that programme, to be disproportionate. This specifically targets children's programming with a restriction that does not feature in the AVMS Directive.

In light of the various admissions by Ofcom that the proposed treatments are based on proportionality and appropriate levels of protection some members believe this to be an unjustified departure from that reasoning.

Furthermore, they argue that the proposal to ban sponsorship credits during programmes is not in accordance with the AVMS Directive. They believe that the suggestion in point 5.47 that preventing sponsorship credits in children's programmes would stop credits circumventing the product placement rules is not supported by anything contained within the AVMS Directive. AVMS does not consider that this is an issue as it does not specifically ban credits within children's programming. Article 10 (1)(c) of the Directive allows credits during a programme and 10(4) offers the option to Member States to prohibit such credits. It does not impose the restriction on Member States and it therefore does not envision that there will necessarily be a confusion with or circumvention of the product placement rules as a result.

Some AA members also argue that the consultation document clearly states in point 5.46 that "sponsorship is distinct from product placement". For Ofcom to then say that it considers it appropriate for the rules on appearance of internal credits to mirror the product placement rules is confusing and inconsistent.

Further, some members remain unclear of the regulatory or policy goals of this restriction. The ban on credits within children's programmes would not totally restrict children's exposure to commercial references. Children will still be exposed to internal credits in family programmes. The proposed rule discriminates heavily against an already beleaguered kids TV industry, on top of existing cumulative regulatory burdens.

The Advertising Association rejects the need for unnecessary additional restriction, in excess of the AVMS rules. Some AA members who broadcast to children are concerned that in this case these restrictions will cut off a potentially very valuable revenue stream that all other broadcasters will have access to. Whilst others will benefit from both the liberalisation in product placement as well as the sponsorship rules, the children's broadcasting industry will continue to struggle to raise additional revenue.

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.*

N/A

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

N/A

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.*

N/A

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.*

N/A

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

N/A

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 – the Advertising Association does not support surreptitious advertising.

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.*

N/A

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

N/A

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.*

N/A

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.*

N/A

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?*

No.

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.

N/A

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.

N/A

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.

See above.