Broadcasting Code Review: Commercial references in television programming
Response from MTVNE, Comedy Central and Nickelodeon
17th September 2010

MTV Networks Europe (MTVNE), Comedy Central and Nickelodeon appreciate the opportunity to respond to this consultation.

We are multi-platform distributors of high quality content and our channels are distributed variously on cable, satellite and DTT networks. We also have a significant presence online and via mobile telephony. Our channels are available to 26.8million homes in the UK and over 129million homes across Europe. MTVNE, Nickelodeon and Comedy Central are market leaders in music, entertainment and children's programming genres.

MTVNE, Comedy Central and Nickelodeon channels account for 31 Ofcom licences. 19 of these licences are for channels distributed in the UK, and 12 are for channels targeted at non-UK audiences.

In a highly competitive UK marketplace it is critical that regulators and policy makers recognise the economic benefits derived from commercial broadcasters and seek to implement a regulatory regime that encourages competition and innovation. We broadly welcome the introduction of product placement and the proposed changes to the sponsorship rules which will bring additional revenue streams.

We feel that Ofcom should not be inclined to introduce rules on children's programming and genre prohibition that impose greater restrictions on the UK than other countries in the EU. We are specifically concerned by proposals to prohibit sponsorship credits within children's programming as this puts the kids TV sector at even greater competitive disadvantage.

We ask that Ofcom be mindful of the international environment within which broadcasters work. Restrictions greater than those set out in the existing legislation and in the EU territories will hamper the ability of UK broadcasters to create international co-production deals with companies wishing to place their products.

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As outlined, the following response represents the collective view of the Viacom affiliated Ofcom licensed channels. Our response should be read in conjunction with the views submitted by the Satellite and Cable Broadcasting Group, of which MTVNE, Comedy Central and Nickelodeon are all members. We would welcome the opportunity to meet with Ofcom to discuss the issues raised within this document further.

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

We support this proposal.

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

We note this clarification.

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

We note this clarification.

Proposal 4: Thematic placement

We agree that thematic placement is prohibited by the AVMS Directive. However, we believe that thematic placement is likely to be covered by the undue prominence rules and we therefore question whether a specific rule prohibiting thematic placement is necessary. A programme that centres entirely, or to a large degree, on the advantages and disadvantages of a company's products and services is highly likely to breach undue prominence rules even if they are not identified by name.

Proposal 5: Specialist factual programming

We do not agree with this proposal. The proposed programme category is not contained in the AVMS Directive. We believe it is unnecessary to extend the prohibition of product placement to this new category. It will further inhibit a possible revenue stream for local content and will hamper international deals, putting UK licensed channels at a competitive disadvantage.

The introduction of product placement is intended to afford broadcasters a valuable new source of revenue whilst balancing the need to protect consumers; a trade-off that has been struck in the AVMS Directive through the identified genres in which product placement is permitted.

As we state in other parts of our response, there are already sufficient safeguards against programmes being distorted for commercial purposes and to protect their editorial integrity.

Proposal 6: Additional prohibited categories

We do not agree that the list of products and services that may not be placed should be extended to those not allowed to advertise on television.

Given the undue prominence rule and the requirement to protect editorial integrity, we do not believe that product placement is advertising and as such there may well be circumstances in which a product may placed without detriment to the viewer, even though it is not permitted to be advertised.

It is also important that the UK does not have any more restrictions than other countries. The legislation for product placement has already prohibited products in addition to those required by the AVMS Directive. Any further extension to the list will inevitably inhibit our ability to create content for other European territories.

Proposal 7: Signalling

We agree that it is sensible to identify product placement to viewers with a universal logo. We would urge Ofcom to consider the identifiers used in other countries to examine whether there are any opportunities to harmonise the identification methods across the EU.

We believe that it will be sufficient for the Code to state that product placement must be identified in accordance with the AVMS Directive. The details can be further set out in a Guidance Note. These details should contain a minimum duration of hold and a minimum size requirement.

Whilst the logo should remain universal, we believe that broadcasters should be allowed to make a choice between incorporating it within the body of the programme (as suggested by the consultation) and a separate announcement at the moments identified by the AVMS Directive. The announcement could be in the form of the universal logo on a plain background for a duration long enough for it to be registered by viewers. The advantage of this additional method is that the announcement could be scheduled by broadcasters as a separate event with content remaining clean. Broadcasters could then distribute the content to its channels in other territories and other broadcasters without incurring additional edit and consumable costs by needing to create different versions of each programme.

If broadcasters decide to put the logo within the programme it should be held for a duration long enough for it to be registered by viewers but the position on the screen should remain in the broadcasters' hands. The broadcaster needs this freedom to decide where to put the logo so as not to conflict with other on screen elements that might be contained in the content.

We welcome the proposal for broadcasters to be able to identify the companies who have placed their products in the end credits or on a website. We believe that broadcasters should be afforded the flexibility to choose between the two methods of identification on an individual programme.

We also agree with the proposal to run a campaign to introduce viewers to the logo and its meaning as we recognise the need to educate viewers. However, we also believe that there will be a large amount of media publicity given to the logo and its meaning prior to and during the first months of its introduction that should be acknowledged by Ofcom. We would have no objection to adding a line of text to the logo for the separate announcement we have proposed. However, we do not agree with the proposal to include it within the body of the programme because it will create unnecessary on-screen clutter that could be off putting to viewers and possibly draw attention to the product placement in a way that conflicts with the undue prominence rules.

Further, by including a line of text within the body of a programme it would mean that broadcasters will incur costs for creating additional versions for distribution. Costs that would devalue the benefit product placement is intended to provide.

We do not agree with the proposal to introduce a compulsory audio signal. We believe that a noise or voiceover would interfere with the viewing pleasure and be difficult to place within the audio of programmes without conflicting with dialogue or other audio elements. Again, this would mean that broadcasters would inevitably incur additional costs by needing to create different versions of the content for transmission on channels in other countries.

We note that a similar audio identification of sponsorship arrangements within programmes was deemed unnecessary and overly intrusive. We suggest that the same consideration should be applied to audio signalling of product placement.

Proposal 8: Sponsor references (product placement) within programmes

We agree with this proposal. Our conversations with existing sponsors have made it clear that this type of deal would be one of the main sources of revenue.

We do not believe that it would result in viewer detriment or compromise the editorial independence of the broadcaster. The proposed rule 9.10 and the Sponsorship Principles will be sufficient to protect viewers and ensure that programmes remain trustworthy.

Proposal 9: Identifying sponsorship arrangements (sponsorship credits)

See response to Proposal 11.

Proposal 10: Allowing sponsorship credits during programmes

See response to Proposal 11.

Proposal 11: Content of sponsorship credits during programmes

We agree that the current rules concerning where sponsorship references can be broadcast needs revision in light of the additional freedom being proposed around product placement. This is a sensible approach and one that will afford broadcasters an opportunity to maximise the benefit that sponsors can gain, without needing to product place within programmes.

We are pleased to see the proposal by Ofcom, set out in point 5.17 of its consultation paper, that whilst sponsor references within programmes will be treated as product placement, Ofcom does not intend to treat sponsor credits the same way. It is helpful that Ofcom has identified in point 5.29 the clear distinction between sponsorship, product placement and advertising.

We whole heartedly agree with point 5.32 and the proposal that credits should be distinct rather than separate from editorial content.

By allowing sponsorship arrangements to be identified by simple credits within programmes we absolutely agree with the statement in point 5.36 that by holding any other position Ofcom would be "*maintaining unnecessary regulation*" and that the proposals would allow broadcasters "*greater scope to place credits at the most appropriate point during sponsored output*".

As Ofcom points out, there is a need to ensure an appropriate level of protection from excessive or unsuitable promotional material during programmes. In order to limit any likelihood of undue prominence it is suggested not to allow sponsor credits to appear on screen at the same time as a sponsor's products, a restriction that would seem to be sensible and proportionate.

We disagree entirely with the proposed Rule 9.28 and, in particular, its effective ban on sponsorship credits in children's programming. This appears to us to be a restriction that does not feature in the AVMS Directive and Ofcom should not seek to exceed the requirements of AVMS with proposed rule changes of this nature. The proposed rules 9.23 and 9.24 will ensure that sponsorship credits are distinct from editorial. The fact that product placement, which is not distinct from editorial, is prohibited in children's programmes should not be used to prohibit sponsor credits.

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

The proposal to ban sponsorship credits during children's programmes is not in accordance with the AVMS Directive. 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.

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, we 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.

This unnecessary additional restriction, in excess of the AVMS rules, 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.

Proposal 12: Principles

We agree with the new principles.

Proposal 13: Rule on distinction between editorial content and advertising

We agree with this proposal (See answer to Proposal 11).

Proposal 14: Rules prohibiting surreptitious advertising

We agree with the proposed rule.

Proposal 15: Removal of the virtual advertising rule

We agree that this rule can be removed.

Relevant requirements of the AVMS Directive and the Act

We believe that the AVMS Directive has been represented in the proposed rules but it has been exceeded in the following respects:

1) The introduction of a new category of specialist factual programmes.
2) The proposed prohibition on product placement extending to products and services that cannot be advertised on television
3) The prohibition on sponsor credits appearing within children's programmes

We are hopeful that on reviewing the feedback to its consultation Ofcom will acknowledge these proposals as additional restrictions on the broadcasting industry that run contrary to the AVMS

Directive and to the purpose of introducing product placement.

New Code rules in force

We believe that there should be a period of three months after publication before the new rules fully take effect. Many schedules are finalised three months in advance of transmission and the programmes have already been complied. Broadcasters will incur additional expense if all the complied content has to be revisited and edited afresh with a new set of rules in place. This three month period will ensure that all future content is dealt with under the new rules.

We suggest that broadcasters should start their awareness campaigns about product placement signalling as soon as practical after publication of the rules in order that viewers are fully aware of the system before programmes contain product placement on their channels.