

## About Discovery

Discovery Networks in the UK has 13 media brands which it sends out via 22 network feeds to more than 130 million cumulative subscribers, received in 85% of UK homes. The Discovery Channel has been the number one factual channel throughout its 21 year history in the UK. It has a 47 percent share of the pay-tv factual market and is funded by a combination of carriage fee and advertising revenue.

## Executive Summary

Discovery welcomes the chance to respond to this consultation on potential code changes which could encourage more production in the UK. We believe the proposed changes are positive in the main but we are concerned that some of the ideas put forward in the paper seek to restrict further the regulations put in place by the Department of Culture, Media and Sport.

Discovery's experience in other EU Member States where the rules on product placement have already been enacted is that the more flexibility there is in the implementation of the rules and the more involvement of the relevant stakeholders in that implementation, the better. Discovery is keen for Ofcom to follow this model.

We have included a full exposition of our position in this paper. In summary, the Discovery position is as follows:

- Discovery agrees that for the sake of consistency it would be appropriate to apply product placement rules to references included in programmes for non-commercial purposes.
- Discovery welcomes Ofcom's aim to include single dramas in the list of permitted genres for product placement.
- The parameters of the nature of the prohibition on product placement in news programming should be clear in order that non-news programming is not inadvertently included in that prohibition.
- Discovery agrees with the ban on thematic placement as per the Directive but believes that any guidelines should be developed in conjunction with the industry as necessary rather than imposing strict guidelines before either the regulator or the industry has genuine experience of the issue.
- Discovery does not believe it is appropriate to prohibit the use of product placement in specialist factual programming. To create an additional genre of programming from which product placement should be banned is to gold-plate the legislation.
- Discovery does not support the addition of further prohibited product categories to the list already included in the regulations.
- Discovery supports a flexible approach to implementing rules on signalling. It disagrees with the Ofcom assumption that there should be both audio *and* visual signalling. The legislation does not require it and Discovery believes that this double requirement would be detrimental to the viewing experience.
- An audience awareness campaign of 2-3 months is sufficient to ensure viewers understand product placement. Additional onscreen text warnings are unnecessary and could result in viewer frustration.
- Discovery supports strongly the proposal to allow sponsors to place products in programmes that they are sponsoring.

- Discovery supports the proposal to include a clear sponsorship statement in sponsorship credits, providing the rules retain some flexibility on the wording used to inform the audience of the sponsorship arrangement.
- Discovery supports the inclusion of sponsorship credits during programmes, and would seek to place credits at the most appropriate time from an editorial and technical perspective.
- Discovery does not agree with the proposal to apply the product placement restrictions to sponsorship credits broadcast during programmes.

### **Applying the rules to placement for a non commercial purpose**

Discovery agrees that for the sake of consistency it would be appropriate to apply product placement rules to references included in programmes for non-commercial purposes. Any other approach to this issue could result in a lack of consistency in the enforcement of the rules. Furthermore it would be complicated to differentiate between what was and what was not a reference included for a non-commercial purpose. Discovery does not believe there is any need for further guidance in this area and does not envisage any wider impact.

### **Product placement and single dramas**

Discovery welcomes Ofcom's aim to include single dramas in the list of permitted genres for product placement. We believe that the wider the list of genres in which product placement may appear, the more likely it is that more high-quality programming will be made. However, we are concerned that by labelling a single drama as a 'film for television' the number of advertising breaks permitted within it could be compromised, which would negate the benefit of allowing product placement within it.

### **Clarification of the prohibition of product placement in the news**

There is a clear prohibition on the inclusion of product placement in news programming in the Directive and it is therefore appropriate that this prohibition should exist in the revised code. However, the parameters of the nature of the prohibition should be clear in order that non-news programming is not inadvertently included in the prohibition.

As a member of the Satellite and Cable Broadcasters' Group, Discovery is also concerned that there could be issues for broadcasters using live feeds in news reporting. This will require a pragmatic approach from the regulator.

### **Thematic placement**

Discovery agrees with the ban on thematic placement as per the Directive but believes that there should be a period of reflection after the changes to the code are in place during which Ofcom and the industry take time to analyse together what exactly constitutes 'thematic placement', as it is a complicated issue. It should become clearer, as the industry gains more experience of product placement, what sort of guidance it will be necessary to put in place.

### **Specialist factual programming**

Discovery does not believe it is appropriate to prohibit the use of product placement in specialist factual programming. To create an additional genre of programming

from which product placement should be banned is to gold-plate the legislation, particularly when broadcasters are unlikely to wish to alienate their audiences in this area by introducing product placement in a way which is intrusive to the viewer experience. The UK Government has already gone considerably further than other member states in the restrictions it has put on product placement. Imposing additional restrictions to those stipulated in the regulations is contrary to the spirit of opening up the possibility of product placement to the industry, which is what the regulations are supposed to do. The possibility of creating additional revenue streams in programming is likely to encourage the production of more originated programming here in the UK. Put simply, product placement may provide funding for programmes which might not otherwise be made. To limit the genres in which it can be used beyond that which is absolutely necessary is to limit the chances of more originated programming coming to UK screens. Furthermore it is Discovery's belief that creating a scale of what constitutes 'specialist factual programming' will be very difficult and could lead to confusion for broadcasters and audiences alike. Indeed, it could even be the case that programmes contained within the same series could fall into different categories, with some being allowed to contain product placement and others not.

### **Additional Prohibited Categories**

Discovery does not support the addition of further prohibited categories to the list already included in the regulations. Whilst we can understand the concerns voiced by Ofcom on the categories in question, there are already some significant restrictions on what products can be placed. Adding further restrictions undermines the de-regulatory nature of the move to allow product placement in the first place.

Furthermore, we have some fundamental concerns related to the effect this move might have to 'blur the lines' between the regulation of advertising and of editorial content. To apply an advertising code to an editorial issue seems counter intuitive and could cause confusion going forward. For this reason we also agree with Ofcom's assertion that it is unnecessary to apply scheduling restrictions applicable to advertising to product placement.

### **Signalling**

Discovery supports a flexible approach to implementing this rule. However it disagrees with the Ofcom assumption that there should be both audio *and* visual signalling. The legislation does not require it and Discovery believes that this double requirement would be detrimental to the viewing experience and problematic for the broadcaster when distributing content to other territories. We would support a requirement for *either* a visual *or* audio means of identification, or for an audio signal to be required where there is audio description.

Discovery believes there should be some degree of flexibility in the way this rule is implemented to ensure a more aesthetic viewing experience and the ability to adapt the logo for different channel brands. Additionally, we would question whether it is necessary for a logo to remain on screen for 'between 3 and 7 seconds' and propose that 2 or 3 seconds would be sufficient for viewers to be made clearly aware of any product placement arrangement.

We believe broadcasters should be given the flexibility to provide the list of products sponsored either in the end credits or on a website, as there may be occasions where one or the other is not practical.

Discovery supports an audience awareness campaign, but considers that 6 months is too long for such a campaign to transmit as it is likely to irritate viewers and cost broadcasters significantly more than is proportionate. It is Discovery's opinion that 2 months is a sufficient period of time for any awareness campaign to transmit. Discovery also supports the idea of using other media than broadcast to support the awareness campaign and suggests that it should be possible to use broadcaster websites to inform viewers.

The addition of text alongside on-screen signalling to inform consumers when product placement is allowed seems to Discovery to be surplus to the needs of viewers. There will be an awareness campaign in advance of and at the beginning of the use of product placement in UK broadcasts. There will be adequate signalling of the presence of product placement. It is unlikely that any member of the public will need further signalling to this effect. Additional 'clutter' on screen is likely to deter the viewer from watching. Broadcasters could be accused of creating a similar situation to local councils accused of placing too many signs on the streets. In Discovery's opinion it would be wise not to allow sensible information provision to be replaced with excessive signalling which could alienate viewers.

### **Sponsor references (product placement) within programmes**

Discovery supports strongly the proposal to allow sponsors to place products in programmes that they are sponsoring. This is likely to create new revenue streams, allowing more programmes to be made. It will also prevent scenarios whereby a sponsor will pull out of existing deals because it prefers to use product placement and is aware that it cannot do both.

Discovery is concerned that sponsors could be put off continuing with existing arrangements or from beginning new ones if there is a possibility that their competitors will be able to place products in the programme they are sponsoring. In short, it would be counter-productive to limit the possibilities in this area if it meant that whilst product placement deals may increase, there would be a curtailment of sponsorship arrangements.

### **Identifying sponsorship arrangements (sponsorship credits)**

Discovery supports the proposal to include a clear sponsorship statement in sponsorship credits, providing the rules retain some flexibility on the wording used to inform the audience of the sponsorship arrangement.

We also support the reflection of the wording used in the AVMS requiring sponsorship credits be *distinct*, rather than *separated* from editorial and advertising.

### **Allowing sponsorship credits during programmes**

Discovery supports the inclusion of sponsorship credits during programmes, and would seek to place credits at the most appropriate time from an editorial and technical perspective, rather than being restricted by a prohibition on credits coinciding with sponsor references.

### **Content of sponsorship credits during programmes**

Discovery does not agree with the proposal to apply the product placement restrictions to sponsorship credits broadcast during programmes. The definitions of sponsorship and product placement are clear. Since it is accepted that the time and

audience is such that a gambling sponsorship credit is appropriate, then it should also be acceptable to make a reference to that same sponsorship relationship within the programme. This is quite different to a product placement where the reference is embedded within the editorial content of the programme and should therefore be viewed in a different way.

## **Conclusion**

Discovery is confident that product placement will provide valuable funding for the creation of content but that in order for this to be the case there must be a regime in place which allows for the development of viable business models.

Whilst we agree that it is entirely appropriate to have rules in place, those rules must be proportionate and must consider the cost incurred in order to be in compliance with them. In our position we have flagged up some areas which cause us concern. Discovery believes that it would be wise to put in place a relatively broad framework at the beginning of the process and then work with stakeholders to ensure that as practice develops, the appropriate level of regulation is in place so that all stakeholders understand what is expected of them and can follow the rules without incurring unreasonable costs.

Discovery is available for further comment on all of the points mentioned in this position paper should Ofcom need clarification in any area.

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