

Annex 2

**Initial guidance to the revised Section
Nine of the Broadcasting Code (2011)**



Initial Guidance Notes

Section Nine (2011):

Commercial references in television programming

The rules in Section Nine (2011) of the Ofcom Broadcasting Code come into force on 28 February 2011. Until that date, the rules in Sections Nine (Television) and Ten (Television) of the December 2010 Code remain in force.

This initial guidance was issued on 20 December 2010 to assist broadcasters during the implementation period before the 2011 Code comes into force, and may be subject to change before 28 February 2011.

Section Nine (2011)

Commercial references in television programming

- 1.1 This guidance is non-binding. It is provided to assist broadcasters in interpreting and applying Section Nine (2011) of the Broadcasting Code (“the Code”). This Section of the Code applies to all references in television programming to products, services or trade marks (“commercial references”). “Television programming” is all broadcast content apart from spot advertising and teleshopping.
- 1.2 The guidance sets out:
- a general explanation of the purpose and principles of Section Nine;
 - information and guidance on individual rules;
 - where relevant, weblinks to illustrative and precedent cases (already published in the Ofcom Broadcast Bulletin)¹ relating to particular rules which broadcasters may find helpful when considering how to interpret and apply a particular Code rule;
 - where appropriate, a set of questions and answers (‘Q&As’) intended to anticipate the more common or fundamental questions that might arise;
 - in relation to product placement, details of the legislation upon which each rule is based; and relevant details of legislation in relation to other rules in Section Nine, where appropriate; and
 - a full glossary of terms used in Section Nine.
- 1.3 When Ofcom assesses programming against the requirements of Section Nine, every complaint or case will be dealt with on its own merits.
- 1.4 We draw broadcasters’ attention to what is said in the Code about its legislative background. The Code explains that:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text.”

What is the purpose of Section Nine?

- 1.5 The rules in this section have been drafted to ensure that editorial content remains distinct from advertising. They require broadcasters to retain editorial

¹ From time to time, Ofcom will add and update the weblinks to precedent cases within this guidance document. Broadcasters should refer regularly to the Ofcom Broadcast Bulletin (available at: <http://stakeholders.ofcom.org.uk/enforcement/broadcast-bulletins/>) for the most up-to-date information about Ofcom’s decisions under the Code.

control over the programmes they transmit. The rules serve to protect viewers from both excessive commercial references in programming and from surreptitious advertising by:

- limiting the extent to which references to products, services and trade marks can feature in programming;
- requiring that viewers are made aware when a reference to a product, service or trade mark features in programming as a result of a commercial arrangement between the broadcaster or producer and a third party funder; and
- helping to ensure that broadcasters do not exceed the limits placed on the amount of advertising they can transmit.

1.6 When interpreting and applying any of the rules in this section, the purpose of the rules, as set out above, should be borne in mind at all times.

The principles underpinning Section Nine

1.7 The principles that underpin the rules in Section Nine are stated in the Code as:

- **To ensure that broadcasters maintain editorial independence and control over programming (editorial independence).**
- **To ensure that there is distinction between editorial content and advertising (distinction).**
- **To protect audiences from surreptitious advertising (transparency).**
- **To ensure that audiences are protected from the risk of financial harm (consumer protection).**
- **To ensure that unsuitable sponsorship is prevented (unsuitable sponsorship).**

1.8 The purposes and principles will guide interpretation of the rules. Informed by editorial context in each case, Ofcom's decisions will always reflect the purposes and principles.

1.9 Further, broadcasters should note that the rules in Section Nine are largely based on (and in some cases directly derived from) the requirements of European legislation, the Audiovisual Media Services (AVMS) Directive, which are implemented into UK law through the Communications Act.

General rules

1.10 Rules 9.1 to 9.5 apply to all commercial references that appear within all programming. They apply irrespective of whether a reference is featured solely for an editorial reason or as a result of a commercial consideration. These rules help maintain a clear distinction between editorial and advertising content by limiting the impact commercial arrangements can have on editorial content.

Rule 9.1

Broadcasters must maintain independent editorial control over programming.

- 1.11 There may be circumstances in which it is acceptable for a person or organisation other than the broadcaster or programme-maker to provide input into the editorial of a programme. For example, in the case of an advertiser-funded programme. However, in all cases broadcasters are responsible for the programmes they transmit. Therefore, while other parties may contribute to programme content, broadcasters must retain ultimate editorial control over the programmes they transmit.
- 1.12 It should be stressed that permissible commercial arrangements made in respect of programming – i.e. programme sponsorship or product or prop placement – do not affect the licensee’s responsibility for ultimate editorial control. Therefore it is the licensee that remains wholly accountable to Ofcom for ensuring that such arrangements meet the rules in this section.
- 1.13 See also rules on product placement (9.6 to 9.14) and sponsorship (9.15 to 9.25).

Rule 9.2

Broadcasters must ensure that editorial content is distinct from advertising.

- 1.14 Advertising² involves the promotion of products and services. Such promotions may be paid for, or transmitted by the broadcaster for self-promotional purposes.
- 1.15 Ofcom’s Code on the scheduling of television advertising (“COSTA”) limits the amount of advertising that a broadcaster can show (known as “advertising minutage”). It also requires that broadcasters ensure that “television advertising and teleshopping is readily recognisable and distinguishable from editorial content and kept distinct from other parts of the programme service”.
- 1.16 While COSTA applies to the content of advertisements, Rule 9.2 applies to the content of programming. The rule’s purpose is to prevent editorial content being distorted for advertising purposes, so ensuring that editorial control is reserved to the licensee and that programming is understood by viewers as not being subject to the control of advertisers. Rule 9.2 therefore seeks to ensure that viewers are easily able to differentiate between editorial material and advertising, protecting them from surreptitious advertising (see Rule 9.3).
- 1.17 There are certain, limited situations in which programme time may be used to promote the availability of products and services. These situations concern products and services linked to the television channel. For example, announcements made in relation to the broadcaster’s own programmes (e.g. trailers) and products and services derived from programmes (“programme-

² The Code on the Scheduling of Television Advertising (“COSTA”) defines ‘television advertising’ as “any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment”.

related material”), related channels or to programming carried on these channels.

- 1.18 The limit on the amount of advertising a broadcaster can transmit is based on Article 23 of the AVMS Directive. The Directive exempts announcements made by the broadcaster in connection with its own programmes from this limit. Promotions for programmes and related products and services therefore do not count as advertising for the purposes of calculating advertising minutage. In such cases, broadcasters should note the requirements of Rule 9.2 and ensure that any promotion of products and services that meets the definition of advertising is distinct from editorial. Further guidance on how distinction can be achieved in respect of these different types of promotions can be found in the guidance related to: programme-related material (Rule 9.31); sponsorship (Rules 9.15 to 9.25); the Cross-promotion Code (attached as an appendix to the Broadcasting Code); use of premium rate services (Rules 9.26 to 9.30); and appeals for funds (Rules 9.36 to 9.39).
- 1.19 Use of advertisements in programmes: There may be editorial justification for featuring advertisements, or extracts of advertisements, in programming. For example, in the context of an entertainment programme looking at humorous advertising from around the world. In such circumstances, the material is unlikely to meet the definition of advertising as it is broadcast for the editorial purpose of entertainment and not in order to promote the supply of goods or services. To ensure that such content is not treated as advertising, it should not be featured in a programme as a result of payment or other valuable consideration to the broadcaster or programme-maker. Further, the rules on editorial justification and undue prominence will apply (see Rules 9.1 and 9.5).

Rule 9.3

Surreptitious advertising is prohibited.

- 1.20 The prohibition on surreptitious advertising supports the requirement that advertising must be distinct from programming. It ensures that viewers are made aware when a commercial reference is made in programming in return for payment or other valuable consideration. It should be read in conjunction with Rule 9.2 and the rules that require the signalling of commercial arrangements (i.e. those for product placement and sponsorship).
- 1.21 When determining whether a programme contains surreptitious advertising, Ofcom will apply the AVMS Directive’s definition of a "surreptitious audiovisual commercial communication", which is:
- 1.22 “the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration” (Article 1(1)(j)).
- 1.23 A programme is likely to be judged to contain surreptitious advertising where it features a reference to a product, service or trade mark and this reference:
- a) is included as a result of a commercial arrangement;

- b) is intended by the broadcaster to serve as advertising; and
 - c) might mislead the public as to its nature.
- 1.24 In determining whether it is the broadcaster's intention that a reference is included for the purpose of advertising, we will take into account whether the broadcaster has received any direct benefit for including the reference in a programme (e.g. a payment or other valuable consideration in return for agreement that the reference will be broadcast)³. Broadcasters should note, however, that there may be some circumstances in which Ofcom judges surreptitious advertising to have occurred where the broadcaster has not received payment or other valuable consideration to include the reference.
- 1.25 Product placement in acquired programmes: Rule 9.14 sets specific signalling requirements in relation to product placement included in programmes that have been commissioned or produced by the broadcaster that transmits the programme or by any person connected with that broadcaster.
- 1.26 Where a broadcaster acquires a programme that contains product placement (but does not produce or commission it) Rule 9.14 does not apply. However, any such acquisitions agreed on the basis that references to placed products or services remain within the programme when it is transmitted (subject to compliance with the applicable product placement rules) are likely to conflict with the requirements of Rule 9.3, unless the broadcaster ensures that audiences are made aware that the programme includes product placement. In such circumstances, broadcasters may wish to adopt the universal signalling requirements (see Rule 9.14).
- 1.27 Where a broadcaster acquires a programme but does not directly benefit from any product placement arrangements, references to products, services or trade marks that appear within the programme are unlikely to be treated as surreptitious advertising. This is because such references are not intended by the broadcaster to serve as advertising. However, as always, broadcasters are expected to ensure that any commercial references are not promotional or unduly prominent and are justified by the editorial requirements of the programme. Where appropriate, broadcasters should edit or obscure commercial references that do not meet these tests.

Rule 9.4

Products, services and trade marks must not be promoted in programming.

- 1.28 For specific, limited, exemptions to this rule see rules on premium rate services (Rules 9.26 to 9.30), rules on programme-related material (Rules 9.31 and 9.32) and the Cross-promotion Code (attached as an appendix to the Code).
- 1.29 This rule applies to all references to products and services featured in programming, regardless of whether their appearance is a result of a commercial arrangement between the broadcaster or producer and a third party funder or not. Where a reference is made as a commercial arrangement (i.e. it

³ Licensees should note that Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008 lists "Commercial practices which are in all circumstances considered unfair". Paragraph 11 of Schedule 1 describes "Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial)".

has been included in the programming in return for payment or other valuable consideration by a third party), broadcasters should note the guidance associated with the specific circumstances in which such a reference may be permitted (see guidance on product placement, sponsorship, premium rate services, programme-related material, and appeals for funds).

1.30 Where a reference to a product or service features in a programme for purely editorial reasons, the extent to which a reference will be considered promotional will be judged by the context in which it appears. In general, products or services should not be referred to using favourable or superlative language and prices and availability should not be discussed. However, there may be circumstances that justify a greater degree of information about products or services within programmes. For example:

- Consumer advice programmes – such programmes are likely to refer to the price, availability or attributes of specific products or services, often in a comparative context. A positive review or product recommendation in a consumer advice programme is unlikely to be treated as a promotional reference. However, reviews of products or services must not be subject to product placement arrangements (see Rule 9.12(b) below).
- Competitions – descriptions of prizes can help audiences decide whether or not to enter a competition. Therefore, references to the brand of a prize or its main features are likely to be justified editorially. Prize descriptions should not sound or look like advertisements. References to the attributes of a prize should be limited to those major features likely to influence a prospective entrant's decision to take part. Competitions should never be, or appear to be, created for the purpose of promoting a product or service. Broadcasters, programme producers or associates of either party should not provide prize donors with any guarantees in relation to the level of exposure a prize will receive in a programme or the manner in which it will be described. See also guidance on Rule 9.9 on competition prizes and product placement.
- Guests' 'plugs' – it is common for celebrity guests on chat shows and magazine-style programmes to refer to their latest venture. This is often an autobiography or an artistic endeavour directly linked to the guest's profession, e.g. an actor discussing their latest film or play. In most cases such references will be justified editorially. In all circumstances broadcasters should ensure that any references to products, services or trade marks are appropriately limited so as not to become unduly prominent.
- References to social networking sites – see guidance on programme-related material (Rules 9.31 and 9.32).

Rule 9.5

No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

- **the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or**
- **the manner in which a product, service or trade mark appears or is referred to in programming.**

- 1.31 Whether a product, service or trade mark appears in a programme for solely editorial reasons (e.g. in the case of a prop in a drama) or as a result of a commercial arrangement between the broadcaster or producer and a third party funder (e.g. product placement), there must be editorial justification for its inclusion. The level of prominence given to a product, service or trade mark will be judged against the editorial context in which the reference appears. A product that is integral to a scene may justify a greater degree of product exposure, for example shots of a car during a chase scene. However, where a product is used as a set prop, care should be taken to avoid close-up or lingering shots. Spoken references to a product or service will generally assume a greater degree of prominence than will purely visual references, although this is a very rough rule of thumb.
- 1.32 The degree of prominence it may be acceptable to afford a brand will also depend on the context in which a brand reference appears. For example, when filming coverage of events (e.g. sports and music), it is accepted that a programme is likely to reflect the higher level of branding that is present at venues.
- 1.33 The National Lottery – Ofcom recognises the national and statutory status of the National Lottery and will apply an appropriate degree of flexibility in interpreting and applying this rule in the context of references to the National Lottery in programming.
- 1.34 There are specific “undue prominence” rules that apply to different types of commercial references. See also rules and guidance on: Rule 9.10 (product placement); Rule 9.22(b) (sponsorship credits); Rules 9.27 and 9.28 (PRS); Rule 9.31 (programme-related material); 9.34 (charity appeals) and 9.39 (appeals for funds).

The use of message boards and social networking sites in programmes for audience comment

- 1.35 Encouraging comment from audiences is something that viewers are used to and expect. Traditionally, non-proprietary forms of communication like post, email, telephone calls and texts, have been used as means to facilitate such comment.
- 1.36 We accept that broadcasters may wish to utilise proprietary communication platforms in programming as a means for viewers to make contact with the programme or broadcaster. By proprietary communication platforms we mean services such as Twitter, Facebook, Bebo, MySpace and the like.
- 1.37 Unlike the more traditional methods of contact, proprietary communication platforms are exclusive, branded commercial services. Broadcasters may refer to such services in programming to allow communication between broadcasters and audiences, subject to certain considerations.
- 1.38 The points that follow all derive from the Code rules and Ofcom policy and apply only to methods of communication that are themselves cost-free for viewers.
- 1.39 Licensees should bear in mind that the Code contains particular provision for premium rated services (see Rules 9.26 to 9.30, and paragraphs 1.201 to 1.239 below) – whether telephone or internet based – and these are generally to be

regarded as commercial products, whoever the beneficiary of the premium rate charges may be.

- Where only non-proprietary, unbranded means of communication are used – such as email and (“ordinary” rate: i.e. not premium rated) telephone calls and texts – no particular considerations of undue prominence attach to their use and Rules 9.4 and 9.5 are most unlikely to be engaged.
- Proprietary means of communication must attract no charge to viewers to use (this does not preclude registration requirements);
- References to proprietary platforms that include invitations to viewers to use such platforms should not result from product placement arrangements (see definition of product placement in the glossary);
- Where proprietary means of communication are used care should be taken to avoid them being featured unduly prominently;
- Undue prominence is much more likely where proprietary platforms are used without also supplying details of general means of communication such as email;
- Logos, typefaces and the like owned by proprietary platforms or associated with them should generally be avoided in programmes. No more than a platform name and the other minimum necessary contact details should be given and should be presented in a regular font;
- The frequency with which the proprietary platforms are mentioned should be justifiable editorially. Programming that relies on audience comment heavily might justifiably make more frequent reference – but if it does so, the absence of alternative, non-proprietary platforms is likely to assume greater significance in deciding whether undue prominence is present;
- Discussion of proprietary communication platforms beyond simple information about how to use them to contact the broadcaster may lead to undue prominence in cases where there is inadequate, broader editorial justification.

1.40 Please note that if a proprietary communication platform paid the broadcaster, programme maker or a connected person for a programme to direct viewers to make contact via that proprietary platform, such an arrangement would be likely to raise issues under Rule 9.9 (references to placed products, services or trade marks must not be promotional).

Product placement (and prop placement)

1.41 Rules 9.6 to 9.14 apply to programmes produced after 19 December 2009⁴ that contain product placement.

1.42 Any acquired programmes originally produced before 19 December 2009 that contain product placement must comply with all other relevant Code rules, in particular Rules 9.1 to 9.5.

⁴ This is the date that the relevant requirements set out in the AVMS Directive came into force.

Introduction

What are product and prop placement?

- 1.43 Section Nine of the Code sets out a number of statutory definitions relating to product and prop placement, as required by the Communications Act 2003⁵ (as amended). Below are summaries of the key meanings:
- 1.44 “**Product placement**” is the inclusion of a reference (in vision or audio) to a product, service or trade mark within a programme as a result of payment or other valuable consideration made to the broadcaster, programme producer or a person connected to either.
- 1.45 “**Prop placement**” involves the supply of production props free of charge (or at a reduced cost) where the provision of the prop does not involve payment or other valuable consideration to the broadcaster, programme producer or a connected person and the prop does not represent a “significant value” to any of these parties.
- 1.46 “**Significant value**” is when the value of a prop to the broadcaster, programme producer or a connected person is more than a trivial “residual value”.
- 1.47 “**Residual value**” is a value that is greater than the cost saving a broadcaster, programme producer or connected person has made as a result of acquiring the prop for use in the programme. For example, if a valuable prop was kept by a producer for personal use or re-sale it would have a “residual value” that was more than trivial. If a consumable low-value prop, like a food product, was retained, for instance, its “residual value” would be likely to be trivial.
- 1.48 **Prop placement involving no “significant value”** (i.e. a trivial or no residual value) is not required to comply with the product placement rules, but must comply with all other relevant Code rules (see in particular, Rules 9.1 to 9.5). However, in such circumstances, broadcasters, programme producers or connected persons should not enter into agreements guaranteeing that placed props will receive exposure in a programme.
- 1.49 **Prop placement involving “significant value”** (i.e. a more than trivial residual value) is treated as product placement and must comply with the relevant rules.
- 1.50 “**Connected person**” has a specific legal meaning and its definition cannot easily be put in simple terms. In brief, it relates to situations where one company or entity controls or is associated with another.
- 1.51 Broadcasters should ensure that they are fully aware of, and understand, the statutory definitions (set out in the introduction to Section Nine).

What do the product placement rules cover?

- 1.52 The rules cover the product placement of all products, services and trade marks, whether branded or generic, and whether a placement is included in a programme for a commercial purpose, or for any other reason. For instance, the

⁵ All references to the Communications Act 2003 or “the Act” in this guidance relate to the version of the Act as amended by The Audiovisual Media Services (Product Placement) Regulations 2010.

rules apply to circumstances in which a non-commercial organisation that does not provide products or services may place a reference to its trade mark in a programme, e.g. some charities paying for a programme to include a reference to their name or logo.

- 1.53 It should be noted that the rules permit the paid-for placement of references in programmes to products, services and trade marks only (subject to various restrictions). They do not permit the paid-for placement of references in programmes to the aims, objectives, beliefs etc. of third party funders.
- 1.54 The rules implement various requirements of the EU AVMS Directive and the Communications Act. They cover:
- the programme genres in which product placement is permitted;
 - the types of products, services and trade marks that can be subject to product placement arrangements;
 - the treatment of placed products, services and trade marks within programmes; and
 - circumstances in which product placement must be signalled to the audience.

What is the purpose of the rules?

- 1.55 The rules seek to ensure that product placement does not undermine broadcasters' editorial independence by requiring that placements fit the editorial context in which they appear and do not promote or give undue prominence to placed products, services or trade marks. The rules protect viewers from the product placement of certain products, services and trade marks. In addition, they help protect viewers from surreptitious advertising by requiring the signalling of programmes containing product placement that are produced or commissioned by the broadcaster or a connected person.

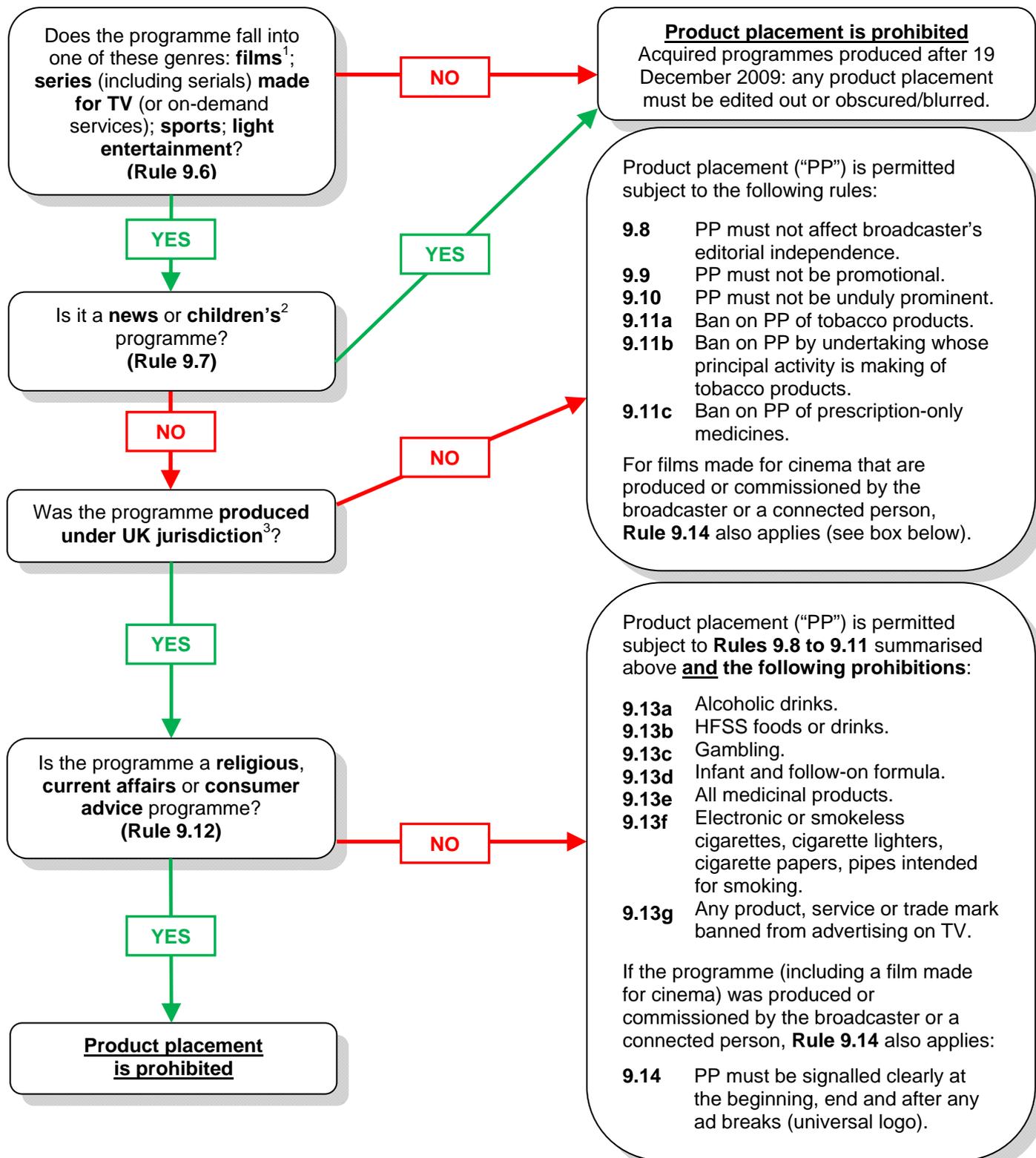
Which product placement rules apply to which programmes?

- 1.56 A flowchart is provided on page 14 to help broadcasters and producers understand how the rules work, and summarise what they cover.
- 1.57 In brief, the rules fall into three broad categories:
- those applying to all programmes (whether acquired or originated) (Rules 9.6 to 9.11);
 - additional rules that also apply to programmes “produced under UK jurisdiction” (Rules 9.12 and 9.13); and
 - a signalling rule that applies to programmes produced or commissioned by an Ofcom-regulated broadcaster or a person connected with such a broadcaster (Rule 9.14).
- 1.58 The meaning of “programmes produced under UK jurisdiction” is included under Rule 9.11 of the Code. In summary, this means programmes (but not films made for cinema) that are either:

- i) produced or commissioned by an Ofcom-regulated broadcaster or a connected person; or
 - ii) programmes made by anyone for first showing on an Ofcom-regulated television service.
- 1.59 If a broadcaster acquires programming (originally produced after 19 December 2009) from outside the UK and edits it for compliance, compilation and/or re-versioning purposes, this is unlikely to amount to the programming being “produced under UK jurisdiction” (provided it was not originally produced or commissioned by a connected person to the Ofcom-regulated broadcaster, and depending on the extent of any re-versioning).
- 1.60 Similarly, when a broadcaster produces or commissions programmes that feature elements of acquired content containing product placement (e.g. music videos, programme clips), the references to products, services or trade marks in the third party content are unlikely to meet the definition of product placement provided the broadcaster, producer or a person connected to either has not directly benefited from the product placement arrangement. (See also guidance below under Rule 9.7 and the meaning of “programmes produced under UK jurisdiction”).

Can a programme contain product placement and which rules apply?

This flowchart applies to **all programmes** (whether acquired or originated). The rules are set out **in summary only** below - please refer to the Code for the full rules.



¹ “**films**” includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services (e.g. on-demand services).

² “**children’s programme**”: a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen.

³ “**programme produced under UK jurisdiction**”: any programme produced or commissioned by either: the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive).

Guidance on individual product placement rules

What programmes can contain product placement?

Relevant legislation:

- *Article 11 (3)(a) of the AVMS Directive*
- *Schedule 11A paragraph 7(2) of the Communications Act*

Rule 9.6

Product placement is prohibited except in the following programme genres:

- a) films;**
- b) series made for television (or other audiovisual media services);**
- c) sports programmes; and**
- d) light entertainment programmes.**

- 1.61 In line with the requirements of the AVMS Directive, the Code places a general prohibition on product placement but allows the practice in the programme genres listed in Rule 9.6.
- 1.62 To comply with the product placement rules, broadcasters must first determine whether a particular programme can contain product placement. See the flowchart on page 14, above.
- 1.63 The genres listed under Rule 9.6 cover a wide range of programmes and it is not practical to identify every type of programme in this guidance and give a definitive view on whether product placement is permissible or not. However, broadcasters should note the following:
- the term **“films”** includes films made for cinema and films (including single dramas and single documentaries) made for television or other audiovisual media services (e.g. on-demand services).
 - the term **“series”** comprises a group of programmes in which the editorial content is clearly linked. For example, a series encompassing a story, theme or narrative that develops across episodes, with the appearance of regular characters/presenters. In this context **“series”** includes serials such as soaps.
 - **“sports programmes”** may include coverage of sporting events and programmes involving discussion and analysis of sports (but see below for details of the prohibition of product placement in news).
 - **“light entertainment programmes”** is a very broad term that encompasses a wide range of programmes such as game shows, chat shows, comedy, music programming, reality programmes and factual entertainment.
- 1.64 Product placement is permitted in single programmes in all genres that can carry product placement.
- 1.65 While many programmes are likely to fall within these categories, broadcasters should pay particular attention to the prohibitions set out in Rules 9.7 and 9.12 in

relation to specific types of programmes that may fall within the permitted genres, but nevertheless must not contain product placement.

- 1.66 If an Ofcom-regulated broadcaster acquires a programme that was originally produced after 19 December 2009 and it contains product placement, the programme must fall within the permitted genres set out in Rule 9.6. If it does not, it will require editing to cut out or obscure (e.g. blurring or masking) the instances of product placement before it is transmitted on the Ofcom-regulated television service, to comply with Rule 9.6.

Which programmes cannot contain product placement?

Relevant legislation:

- *Article 11(3) of the AVMS Directive*
- *Schedule 11A paragraph 3(2) of the Communications Act*

Rule 9.7

Programmes that fall within the permitted genres must not contain product placement if they are:

- a) news programmes; or**
- b) children's programmes.**

(see also guidance on Rule 9.12 relating to prohibitions relating to programmes produced under UK jurisdiction).

- 1.67 Product placement is prohibited in all programmes (whether acquired or originated) except in the case of programmes in the permitted genres set out at Rule 9.6.
- 1.68 Rule 9.7 sets out two specific types of programmes within which product placement is prohibited, even if they fall within the permitted genres. Broadcasters should note that there are further genre-based prohibitions applying to product placement in programmes produced under UK jurisdiction (see Rule 9.12 and associated guidance).

News programmes

- 1.69 A news programme is a programme (or a news flash), that includes local, national or international news.
- 1.70 Acquired news: The prohibition on product placement in news covers all news programmes made for audiovisual media services (e.g. television channels and on-demand services) regardless of their country of origin. Therefore the prohibition extends to news programmes acquired from outside the EU. Where acquired news contains product placement (or in the case of live acquired news, is likely to contain product placement), careful thought should be given to whether it is suitable for broadcast, bearing in mind the general requirements of editorial independence and due accuracy and impartiality in news (see Section Five of the Code).

- 1.71 In circumstances in which a broadcaster acquires news that is produced primarily for broadcast outside of the EU, we acknowledge that the broadcaster's ability to identify and cut out or obscure references to placed products, services and trade marks may be limited. This is particularly likely to be the case where live simulcasts are transmitted. In such cases, we expect that, where it is practically possible, broadcasters should take reasonable steps to determine whether the broadcast contains product placement and obscure or mask such placements.
- 1.72 Extracts of programmes/live feeds in news: There are limited circumstances in which a news programme may legitimately feature content that contains product placement. For example, where the news covers a story about a television programme and includes a clip from that programme that happens to contain a placed product. Or when a news programme cuts to a foreign news feed as part of its coverage of a breaking news story. In such circumstances, references to products, services or trade marks in the third party content are unlikely to meet the definition of product placement provided the broadcaster, producer or a person connected to either has not directly benefited from the product placement arrangement. However, broadcasters and programme producers should take particular care to avoid unnecessary references to products, services or trade mark in news programmes, and such references must comply with all other relevant Code rules, e.g. Rules 9.1 to 9.5.
- 1.73 News reports in programmes: Where news is provided as part of a programme that may contain product placement – for example, in the case of a daily magazine show that features hourly news updates – broadcasters should ensure that the news element of the programme does not contain, or appear to contain, product placement. For example, where set dressings (e.g. a studio sofa) have been product placed, it may be appropriate to transmit the news from a separate part of a studio that does not contain product placement.
- 1.74 Specialist reports: Some short specialist reports that accompany news (e.g. sport, travel and weather reports) may be suitable for product placement provided that such content does not itself comprise material that constitutes news. To avoid the impression that content containing product placement forms part of news, reports featuring placed products must be distinct from the news (e.g. by using different presenters and sets).

Children's programmes

- 1.75 For the purposes of the product placement prohibition, the Communications Act defines a children's programme as "a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen"⁶.
- 1.76 Where a children's programme is included as a segment of a programme that may contain product placement, broadcasters should note the guidance above for news programmes and adapt it accordingly, i.e. licensees should ensure that where a children's programme is scheduled within a programme containing product placement, the children's content should be set clearly apart and demonstrably free from product placement.

⁶ This definition for a "children's programme" applies solely in the context of product placement. Licensees should note that other criteria are used in different regulatory circumstances (e.g. for advertising regulation).

- 1.77 If an Ofcom-regulated broadcaster has acquired a children's programme that was originally produced after 19 December 2009 and contains product placement, the product placement must be edited out or obscured (e.g. blurring, blurring or masking) before it is transmitted on the Ofcom-regulated service, to comply with Rule 9.7(b).

Can programmes be created to feature product placement or be scheduled to suit the interests of the placer?

Relevant legislation:

- *Article 11(2)(a) of the AVMS Directive*
- *Schedule 11A paragraph 7(B) of the Communications Act*

Rule 9.8

Product placement must not influence the content and scheduling of programme in a way that affects the responsibility and editorial independence of the broadcaster.

- 1.78 Rule 9.8 should be read in conjunction with Rule 9.1 (editorial independence) and the associated guidance. As stated in the guidance for Rule 9.1, the Code does not prevent parties other than the programme-maker and broadcaster from providing input into programmes. However, broadcasters must retain ultimate control over the content of the programmes they transmit and also the positioning of programmes in their schedules.
- 1.79 Broadcasters should not enter into commercial arrangements that impair, or appear to undermine, editorial judgements. This does not prevent legitimate instances of product placement: product placement arrangements will necessarily involve contractual agreements relating to references to products, services or trade marks in programmes. Broadcasters or programme-makers may wish to enter into agreements about the manner in which a placed product will appear in a programme (e.g. whether it will be used by a particular character, in what scenes it will be used etc.). Likewise, the Code does not set restrictions on what point during the production process product placement arrangements are agreed. Ofcom acknowledges that, in some circumstances, it may be appropriate to determine product placement arrangements alongside the creation of the editorial content itself.
- 1.80 While such practices are acceptable in principle, broadcasters should take care to ensure that product placement arrangements do not take precedence over a programme's editorial needs. There must be sufficient editorial justification for references to placed products, services and trade marks. In this respect, Rules 9.8 (editorial independence), 9.9 (no promotion) and 9.10 (no undue prominence) are three key protections to ensure that editorial content is not distorted for the purpose of featuring placed products, services or trade marks.
- 1.81 Broadcasters should be able to demonstrate that neither they nor a programme producer (or a connected person) have provided guarantees relating to placed products etc that could result in, or amount to, the broadcaster relinquishing its editorial control. In particular, broadcasters must retain the right to amend, remove or obscure product placement references if they judge that these do not comply with the Code.

How can product placement be included in programmes?

Relevant legislation:

- *Article 11, (3)(a), (b) and (c) of the AVMS Directive*
- *Schedule 11A, paragraph 7(3) to (7) of the Communications Act*

Rule 9.9

References to placed products, services and trade marks must not be promotional.

- 1.82 This rule supports Rule 9.4 (see above). Where a product, service or trade mark is included in a programme as a result of a product placement arrangement, a positive reference to it, whether in vision or audio, is likely to be perceived to be promotional in intent.
- 1.83 Factors that are likely to be considered promotional include, but are not limited to, the following:
- encouragements to purchase (whether direct or indirect);
 - advertising claims;
 - price or availability information;
 - references (either explicit or implicit) to the positive attributes or benefits of the placed product, service or trade mark;
 - slogans associated with the placed product, service or trade mark; and/or
 - endorsements (either explicit or implicit).
- 1.84 A breach of Rule 9.9 is likely to occur where a clear promotional statement about a placed product is made (e.g. a comment about the superlative nature of a product) or where repeated implicit promotional content is broadcast (e.g. multiple references to a product that cannot be justified by the editorial requirements of the programme).
- 1.85 Implicit promotions are likely to arise, for example, when a character is, or a range of characters are, shown repeatedly using the same placed product. However, each case will be judged on its individual merits: there are some situations in which there is likely to be stronger editorial justification for showing a character repeatedly using the same placed product, e.g. a character in a soap or a drama series owning a particular make of car.
- 1.86 The use of a placed product by a programme presenter or a character will not, in itself, necessarily be treated as endorsement. However, this may depend on, for example, the individual in question and the manner in which they use or refer to the placement. The potential for promotion in verbal references to placements by presenters or characters will require careful consideration. Another important consideration may be any commercial arrangement the individual has with the placed brand (for example, where a presenter is contracted by a brand to be its ambassador, product placement involving the individual using that brand in a programme may be viewed as promotional, particularly if the placement coincides with an advertising campaign for the brand that features the individual).

- 1.87 Product placement and competition prizes: The donation of a competition prize is likely to be treated as prop placement provided the broadcaster, the programme-maker or a connected person receives no benefit beyond the value of the prize itself for featuring the prize in a programme. If the broadcaster, programme-maker or a connected person receives payment or other valuable consideration in return for including prizes in a programme, this is likely to be treated as product placement. Given the manner in which prizes are generally described to enable the audience to decide to enter a competition (see guidance on Rule 9.4), the product placement of competition prizes is unlikely to comply with Rule 9.9.
- 1.88 Broadcasters should note that, the donation of competition prizes via prop placement arrangements should not involve agreements with prize donors in relation to the manner in which competition prizes are featured in programmes (e.g. the amount of exposure or number of references to the prize).
- 1.89 Product placement and programme-related material (“PRM”): Where a reference to PRM meets the definition of product placement, the promotion of the PRM within a programme is unlikely to comply with Rule 9.9. See additional guidance under Rule 9.31.

Rule 9.10

References to placed products, services and trade marks must not be undue prominent.

- 1.90 This guidance should be read in conjunction with the guidance for Rule 9.5.
- 1.91 We recognise that the purpose of product placement is the exposure of products, services or trade marks in programmes in return for payment or valuable consideration. This is a significant change to the previous longstanding regulatory regime for commercial references in television programmes, which had at its heart an absolute prohibition on product placement in programmes produced or commissioned by Ofcom licensees
- 1.92 As such, we accept that, alongside the introduction of product placement, the existing concept of undue prominence must develop and evolve, and we intend to issue regular updates to the guidance supporting this rule as the product placement market establishes itself. However, broadcasters should note that Rule 9.10 is an explicit requirement of both the AVMS Directive and the Communications Act. In short, the prominence with which products, services and trade marks can be placed in programmes has limits, and these limits are required by EU and UK law.
- 1.93 Editorial justification is one of the fundamental tests by which undue prominence will be assessed. In particular, storylines, themes and narratives that appear to have been constructed for the purpose of giving exposure to or featuring placed products, services or trade marks, with a lack or absence of sufficient editorial justification will be more difficult to justify as duly prominent. However, where a storyline or theme fits comfortably with the programme’s understood character, issues of undue prominence (and also promotion and editorial independence) may be less likely to arise.
- 1.94 Examples of format or storyline construction that are likely to lead to issues of undue prominence may include:

- a reality format in which participants are required to perform tasks or challenges that feature strongly or frequently a placed product, service or trade mark; or
 - improbable or contrived character or plot development, presenter behaviour, location, setting or other structural elements of a programme resulting from or linking to a product placement.
- 1.95 Broadcasters will need to exercise particular care to ensure that there is clear and sufficient editorial justification when a placed product is integral to the storyline/theme of a new programme or format. In such cases, consistency with an established programme format or profile will be more difficult, or impossible, to demonstrate.
- 1.96 Generally, broadcasters should always bear in mind that the placing of products or services should be defensible editorially. The extent and nature of the exposure always needs to be considered against the editorial requirements of the programme.
- 1.97 In this respect, questions broadcasters and producers should consider include:
- is the placement easily accommodated editorially, or do significant changes have to be made to integrate the placement?
 - similarly, would viewers be likely to perceive the placement as natural and in keeping with the programme's style and content?
 - does any repetition of reference to the product, in vision or sound or both, suggest that the placement is guiding or distorting editorial content?
- 1.98 Judging how much placement can be supported by a programme will be a matter for the broadcaster in the first instance; but as the number of references to a placed product increases, or indeed the number of placements in any one programme overall, so should the broadcaster's caution.

Prop placement and undue prominence

- 1.99 Prop placement – where a product is supplied without consideration and the prop has no significant value – is as much subject to the undue prominence rule as is product placement. See guidance for Rule 9.5.

What restrictions are there on the types of products, services and trade marks that can be placed in programmes?

Relevant legislation:

- *Article 11(4) of the AVMS Directive*
- *Schedule 11A, paragraph 4 of the Communications Act*

Rule 9.11

The product placement of the following products, services or trade marks is prohibited:

- a) cigarettes or other tobacco products;**
- b) placement by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or**
- c) prescription-only medicines.**

1.100 The prohibition listed at b) includes non-tobacco products or services which share a brand name associated with a tobacco product (e.g. clothing items). See guidance on Rule 9.13 in relation to the use of prohibited products as props.

1.101 Broadcasters should also ensure they consider legal advice on wider legal controls over the promotion and exposure for sale of tobacco and tobacco-related products, and prescription-only medicines.

What are the additional rules that apply to product placement included in programmes produced under UK jurisdiction?

Relevant legislation:

- *Schedule 11A, paragraph 6 of the Communications Act*

1.102 Rules 9.12 and 9.13 of the Code apply to programmes produced under UK jurisdiction. A meaning of “programmes produced under UK jurisdiction” is set out above Rule 9.12 in the Code. In summary, a programme will be subject to Rules 9.12 and 9.13 if it:

- i) has been produced or commissioned by an Ofcom-regulated broadcaster, or a person connected to such a broadcaster, and is not a film made for cinema; or
- ii) has been made by anyone with the intention of its first broadcast being on an Ofcom-regulated television service

1.103 Edits to acquired programmes: In the case of acquired programmes or content (produced after 19 December 2009⁷) that does not meet the criteria set out above, we do not expect that general edits (e.g. for compliance, compilation or re-versioning purposes) would result in such material being considered as produced under UK jurisdiction. However, where a programme is heavily re-versioned, it may become subject to Rules 9.12 and 9.13, depending on the extent of the changes made.

1.104 Use of third party content in programmes produced under UK jurisdiction: When a programme that meets the criteria set out above features third party content - such as music videos, film or programme clips - references to placed products, services or trade marks in the third party content are unlikely to meet the definition of product placement *provided the broadcaster, producer or a person*

⁷ This is the date that the relevant requirements set out in the AVMS Directive came into force.

connected to either has not directly benefited from the original product placement arrangement. To ensure such references are not subject to the product placement rules, the broadcaster, producer (or person connected with either) should not enter into any agreement in relation to retaining references to placed products in their own programme.

What programmes produced under UK jurisdiction cannot contain product placement?

Relevant legislation:

- *Schedule 11A, paragraph 6 (1)(a) of the Communications Act*

Rule 9.12

Product placement is not permitted in the following:

- a) religious programmes**
- b) consumer advice programmes**
- c) current affairs programmes.**

For the purposes of applying Rule 9.12, Ofcom will adopt the following meanings:

- 1.105 **A religious programme** is a programme that covers religious acts of worship or whose main focus is religious belief (but is not a news or current affairs programme).
- 1.106 **A consumer advice programme** is a programme offering advice, or including reviews, on products or services (including ‘what to buy’, ‘where to go’ and ‘what to see’).
- 1.107 **A current affairs programme** is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.
- 1.108 Where a programme produced under UK jurisdiction does not fall within the prohibited genres listed in a) to c) above, but contains **an element of content** that falls within these genres (e.g. a magazine format programme featuring a regular consumer affairs item), broadcasters should ensure that the relevant element of the programme does not contain, or appear to contain, product placement (see also guidance on Rule 9.8).

What are the additional restrictions on the types of products, services and trade marks that can be placed in programmes produced under UK jurisdiction?

Relevant legislation:

- *Schedule 11A, paragraph 6(2) of the Communications Act*

Rule 9.13

The product placement of the following is prohibited:

- a) alcoholic drinks;
- b) foods or drinks high in fat, salt or sugar (“HFSS”);
- c) gambling;
- d) infant formula (baby milk), including follow-on formula;
- e) all medicinal products;
- f) electronic or smokeless cigarettes, cigarette lighters, cigarette papers, or pipes intended for smoking; or
- g) any product, service or trade mark that is not allowed to be advertised on television.

- 1.109 For the purposes of a), “**alcoholic drinks**” means drinks that contain above 0.5% ABV.
- 1.110 In respect of b), **HFSS food and drink products** are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at: <http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>
- 1.111 When considering the appropriateness of allowing the product placement of a **trade mark associated with HFSS foods or drinks**, broadcasters should follow the guidance issued by the Broadcast Committee of Advertising Practice (BCAP) on differentiating HFSS *product* television advertisements from *brand* television advertisements and apply it accordingly. The guidance can be found at: <http://www.cap.org.uk/Media-Centre/2007/Advertising-guidance-note-on-differentiating-HFSS-product-TV-ads-from-brand-TV-ads.aspx>
- 1.112 For the purposes of c) “**gambling**” means gaming and betting (as defined in the Gambling Act 2005), spread betting and National Lottery products.
- 1.113 In respect of d) “**infant formula**” and “**follow-on formula**” have the meanings given in Article 2 of Commission Directive 2006/141/EC amending Directive 1999/21 EC.
- 1.114 In respect of e), Schedule 11A of The Communications Act makes clear that “**medicinal product**” has the meaning given in section 130 of the Medicines Act 1968.
- 1.115 In respect of g), details of **prohibited advertisers** can be found in Section 10 of The UK Code of Broadcast Advertising (“BCAP Code”) which can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>
- 1.116 The prohibitions on the product placement of these specific types of products and services do not prevent the legitimate use of such products or services as props, subject to prop placement arrangements. Broadcasters should note the relevant definitions of “product placement”, “prop placement”, “significant value” and “residue value” included at the beginning of Section Nine and in the introduction to the product and prop placement guidance.

When do broadcasters have to signal that a programme contains product placement?

Relevant legislation:

- Article 11 (3)(d) of the AVMS Directive
- Schedule 11A, paragraph 8 of the Communications Act

Rule 9.14

Product placement must be signalled clearly, by means of a universal neutral logo, as follows:

- a) at the beginning of the programme in which the placement appears;**
- b) when the programme recommences after commercial breaks; and**
- c) at the end of the programme.**

1.117 Rule 9.14 applies to programmes (including films made for cinema) produced or commissioned by the broadcaster or any person connected with the broadcaster:

1.118 **The universal neutral logo is defined by the criteria set out in Annex 1 of this guidance.**

1.119 Identifying product placement in non-English language services: For those Ofcom-regulated television services that do not broadcast in English, we may offer limited flexibility in relation to the use of the universal logo, taking into account language differences and viewer familiarity with product placement logos that may be used in other countries. In such circumstances, licensees should contact Ofcom directly for case-by-case guidance.

1.120 Providing details of placed products: If broadcasters wish to provide viewers with a list of placed products, services or trade marks, they may do so in the end credits of the programme or by other means (for example, on a channel or programme website). However, if such information is provided in programme credits, to comply with Rule 9.9 and 9.10 (no promotion; no undue prominence), this may only be done in a neutral, non-promotional manner, without the inclusion of any information about the placed products, services or trade marks (e.g. no brand slogans; advertising messages etc).

1.121 Identifying generic placement: Product placement may involve the placement of generic references to products or services (for example: a placed type of product on which no branding or brand-associated features are evident). In such cases, the universal signal may be insufficient to alert viewers to the product placement. This is because viewers are less likely to associate references to non-branded products and services with product placement. The risk of surreptitious advertising may therefore increase. To ensure that instances of generic product placement do not raise issues of surreptitious advertising (and therefore potentially breach Rule 9.3), broadcasters who wish to enter into such generic product placement arrangements should consider taking additional steps to ensure adequate signalling of generic placements (for example, it may be appropriate to provide further information in the programme's end credits naming the placer and stating what the placed product or service was). However, if such information is provided in programme credits, to comply with

Rule 9.9 and 9.10 (no promotion; no undue prominence), this may only be done in a neutral, non-promotional manner, without the inclusion of any information about the placed products, services or trade marks (e.g. no brand slogans; advertising messages etc).

- 1.122 Acquired programmes and signalling: When a broadcaster acquires a programme containing product placement (i.e. the broadcaster has not produced or commissioned the programme, and it has not been produced or commissioned by a connected person), there is no signalling requirement. However, please note that such programmes must comply with other relevant Code rules (and in particular, Rules 9.1 to 9.5).
- 1.123 Nevertheless, if a broadcaster acquires a programme from a third party on the condition that product placement within the programme will be broadcast (subject to compliance with relevant rules), the requirements of Rule 9.3 (surreptitious advertising) should be noted. In such circumstances, Ofcom expects broadcasters to ensure that audiences are made aware that the programme includes product placement.

ANNEX 1 – UNIVERSAL LOGO CRITERIA

These criteria will be inserted here during the implementation period before the rules come into force on 28 February 2011.

Q&As – product and prop placement

- 1.124 The following Q&As are intended to assist broadcasters with specific questions they may have about product and prop placement, and to provide cross-references to relevant parts of the guidance above.
- 1.125 Ofcom will regularly add to and update these Q&As to assist broadcasters. If you have an additional product or prop placement question which you would like answered and added to this list, or you wish to discuss a product or prop placement Code issue confidentially, please contact Suzanne Wright (suzanne.wright@ofcom.org.uk) or Lauren Cleverley (lauren.cleverley@ofcom.org.uk).
- 1.126 **How do I know which product placement rules to apply to a programme?**
The guidance above on the product placement rules contains a flowchart to help broadcasters determine whether a programme is permitted to contain product placement and identify which product placement rules apply to different types of programmes. The flowchart can be found on page 14 of this guidance.
- 1.127 **How many products can be placed in a programme or series?**
There is no set limit, but there are rules that prevent the promotion of placed products and prevent placed products being featured in a manner that is unduly prominently. See Rules 9.9 and 9.10 and the associated guidance.
- 1.128 **If a programme features a clip from another programme in which product placement is included, does this mean it then includes product placement?**
Not necessarily, as the product placement arrangement is likely to relate to the original content. See guidance on Rules 9.7 and 9.12 for further information.
- 1.129 **Do edits to an acquired programme (e.g. for compliance purposes) result in the programme becoming “produced under UK jurisdiction”?**
It is unlikely that edits to acquired content will lead to a programme becoming treated as being produced under UK jurisdiction. See paragraph 1.103 of the guidance for further information.
- 1.130 **Can competition prizes be of “significant value”?**
The significant value test is based on any residual value of a prop to the broadcaster/programme producer after it has been used in a programme. In the case of competition prizes, there is unlikely to be any residual value for the broadcaster after it has awarded the prize to a competition winner. See guidance accompanying Rules 9.4 and 9.9 (paragraphs 1.30, 1.87 and 1.88, above) for further information.
- 1.131 **Can a filming location be of “significant value”?**
As above, the use of a location is unlikely to provide the broadcaster/programme producer with residual value. However, if the broadcaster, programme producer or connected person provides a representative of a location with an incentive in return for permission to film at the location (e.g. guarantees of on-air mentions), this is likely to meet the statutory definition of product placement.

1.132 Will a prop be considered to have a residual value if it is retained by a broadcaster for future use as a prop in other programmes?

The purpose of the residual value test is to prevent the broadcaster, programme producer or connected person from receiving any incentive for featuring props in programmes. It is therefore unlikely that a product that is acquired and used solely as a prop, albeit for more than one programme, would be likely to be treated as having a residual value.

1.133 Can products that are prohibited from product placement be prop placed?

Yes, in most cases. See paragraph 1.116 above on Rule 9.13 for further details.

1.134 When acquiring programmes from outside the UK, should broadcasters request details of product placement arrangements?

Broadcasters should take reasonable steps to identify instances of product placement in programmes they acquire and take appropriate action to ensure compliance with Rules 9.6 to 9.11. See paragraphs 1.70 and 1.71 of the guidance above in relation to editing instances of product placement in acquired news.

1.135 Can types of products be placed, for instance, bottled water or mobile phones?

Yes, the rules permit such generic placements, and these must still comply with the product placement rules irrespective of whether any branding or trade marks are evident. See paragraph 1.121 of the guidance on Rule 9.14 should be noted.

1.136 Can a prohibited product be placed if just a brand name or trade mark is seen or mentioned, and not the product itself?

No, but see the question below in relation to brands associated with both permitted and prohibited products.

1.137 If a brand sells both prohibited and permitted categories of product – for example HFSS foods and non-HFSS foods – can it product place a brand reference?

Licensees are advised to adapt the guidance BCAP has issued in relation to differentiating HFSS product advertising from brand advertising in such circumstances. See paragraph 1.111 above on Rule 9.13 for further details.

1.138 Does a paid-for reference to a colour, design etc. that is usually associated with a particular brand count as product placement?

Yes, see the statutory definition of “trade mark” included under the product placement rules in the Code.

1.139 What are acceptable methods of removing prohibited product placement from programmes?

The key aim is to try and ensure that placed products are not identifiable. Either editing out or obscuring (e.g. by pixellating, blurring or masking) references to placed products is acceptable.

1.140 What is a medicinal product?

A medicinal product is defined in section 130 of the Medicines Act 1968.

1.141 Is the product placement of alcoholic drinks in acquired programmes acceptable?

The prohibition on the product placement of alcoholic drinks applies to programmes produced under UK jurisdiction. See paragraph 1.109 above on Rule 9.11 for the meaning of “programmes produced under UK jurisdiction”. If a broadcaster acquires a programme that does not fall into this category and it contains product placed alcoholic drinks, they should pay particular attention to Rules 9.1 to 9.5, as well as the requirements of Sections One and Two of the Code to assess whether the references to the alcoholic drink are appropriate under the Code.

1.142 Do low alcohol drinks or liqueur chocolates count as prohibited products?

In relation to low alcoholic drinks, see paragraph 1.109 above on Rule 9.13. Liqueur chocolates are likely to be classified as an HFSS food and, if so, cannot therefore be product placed in programmes produced under UK jurisdiction. For acquired programmes featuring placed liqueur chocolates, broadcasters should note the answer to the question above.

1.143 Do bingo, pools and lotteries count as gambling for the purpose of the product placement prohibition?

Yes, see paragraph 1.112 above on Rule 9.13.

Sponsorship

Introduction

What is sponsorship?

- 1.144 Rules 9.15 to 9.25 apply to broadcast sponsorship arrangements. Section Nine of the Code sets out the meanings for the following terms relevant to these rules: “sponsored programming”; “sponsor”; “sponsor reference”; and “costs”. These can also be found in the Glossary at the end of these Guidance Notes.
- 1.145 In summary, programme sponsorship involves the funding of a programme, or a contribution to the funding of a programme, by a third party (i.e. not the programme producer of the broadcaster) for the purpose of promoting its products, services, trade mark or activities.
- 1.146 Sponsors can fund programmes at any stage of the production process. For example, a broadcaster may sell the sponsorship of a programme that it has commissioned or produced, or an advertiser may directly fund the production of content (an advertiser-funded programme).
- 1.147 Sponsorship may also involve the funding of blocks of programmes, entire television channels or programme segments.
- 1.148 Rules 9.15 to 9.25 apply to all sponsored content.

What is the purpose of the rules?

- 1.149 While the rules allow a sponsor the promotional benefit of being associated with the content it is sponsoring, they also help ensure that sponsorship arrangements do not lead to a blurring of the boundaries between editorial and advertising (for instance, by preventing the editorial of a sponsored programme promoting the sponsor’s interests). The rules require broadcasters to retain editorial independence over sponsored content, ensure the audience is told when content is sponsored, and prevent unsuitable sponsorship.
- 1.150 Subject to relevant restrictions, sponsors may product place in the programmes they are sponsoring. When a reference to the sponsor within a sponsored programme meets the definition of product placement, licensees should note the requirements of Rules 9.6 to 9.14 and the associated guidance.

Content that may not be sponsored

Rule 9.15

News and current affairs programmes must not be sponsored.

- 1.151 The prohibition on the sponsorship of news and current affairs programmes is a direct requirement of the AVMS Directive (Article 10(4)).
- 1.152 News includes any programme or newsflash containing local, national or international news.

- 1.153 A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.
- 1.154 Short specialist reports that accompany news (e.g. sport, travel and weather reports) may be sponsored – provided that such content does not itself comprise material that constitutes news or current affairs. To avoid the impression that news content is part of a sponsorship arrangement, the sponsored report must be distinct from the news (e.g. by using different presenters and sets).

Prohibited and restricted sponsors

Rule 9.16

Programming (including a channel) may not be sponsored by any sponsor that is prohibited from advertising on television.

- 1.155 Examples of prohibited advertisers include: political parties; tobacco brands; prescription only medicines; guns and gun clubs; and obscene material. Full details of prohibited advertisers are included in the BCAP Code, which can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-TV-Code.aspx>

Rule 9.17

Sponsorship must comply with both the content and scheduling rules that apply to television advertising.

- 1.156 Sponsorship arrangements and sponsorship credits must comply with advertising content and scheduling rules, as set out in the BCAP Code. This means, for example, a children's programme cannot be sponsored by a food or drink high in fat, salt or sugar and sponsorship credits must not include material likely to lead to harm. Full details of the relevant content and scheduling restrictions can be found at: <http://www.cap.org.uk/The-Codes/BCAP-Code/BCAP-TV-Code.aspx>
- 1.157 Licensees should note that sponsorship credits are also subject to Rules 9.19 to 9.25.

Content of sponsored output

Rule 9.18

A sponsor must not influence the content and/or scheduling of a channel or programming in such a way as to impair the responsibility and editorial independence of the broadcaster.

- 1.158 Rule 9.18 should be read in conjunction with Rule 9.1 (editorial independence).
- 1.159 Rule 9.18 does not prevent sponsors from having an involvement in the commissioning and creation of programmes (as is likely to be the case with advertiser-funded programmes). However, sponsorship arrangements should not lead to the creation of content that is a vehicle for the purpose of promoting the sponsor or its interests, or the distortion of editorial content for that purpose. As stated in the guidance for Rule 9.1, the broadcaster must ensure that it retains ultimate control over the programmes it transmits.

- 1.160 There are limited circumstances in which a sponsor (or its interests) may be referred to during a programme it is sponsoring as a result of a commercial arrangement with the broadcaster or programme-maker. For example, in the case of a product placement arrangement or when the sponsorship arrangement is identified (see Rules 9.19 to 9.25).
- 1.161 Where a sponsor reference in a programme meets the definition of product placement, it must comply with the relevant product placement rules (see Rules 9.6 to 9.14 and the associated guidance).
- 1.162 An incidental reference to the sponsor (i.e. a reference that does not result from a commercial arrangement between the sponsor and the broadcaster and/or programme maker or a connected person) must comply with Rules 9.1 to 9.5. Such circumstances may arise, for instance, when a product is acquired for use as a prop or when a reference to one of the sponsor's products is unintentionally included in a programme as a result of filming on location.
- 1.163 In the case of an advertiser-funded programme, where the sponsor has been involved in the creation of the programme, any reference to the sponsor or its interests is likely to be considered to be deliberate and therefore subject to the product placement rules.

Identifying sponsorship arrangements

Rule 9.19

Sponsorship must be clearly identified by means of sponsorship credits. These must make clear:

- a) the identity of the sponsor by reference to its name or trade mark; and**
- b) the association between the sponsor and the sponsored content.**

- 1.164 Viewers should be told when a programme is sponsored and who the sponsor is. The sponsor's association with the sponsored content must be clear to the audience in all sponsorship credits. Broadcasters are free to use various and different creative messages to identify sponsorship arrangements, for example: "sponsored by..."; "in association with..."; "brought to you by...". However, care should be taken to avoid ambiguous statements that may lead to viewer confusion over the nature and purpose of the announcement.
- 1.165 Sponsorship messages should not suggest the sponsorship arrangement has in any way compromised the requirements of the Code.
- 1.166 For guidance on the content of sponsorship credits, see Rule 9.22 below.

Rule 9.20

For sponsored programmes, credits must be broadcast at the beginning and/or during and/or end of the programme.

- 1.167 To ensure viewers are made aware when a programme is sponsored, credits must be broadcast at either the beginning, during, or end of the programme. To help ensure transparency, credits may be broadcast at each of these junctures as well as entering and/or leaving a commercial break.

- 1.168 However broadcasters should note the rules on undue prominence will apply. For example, excessively long sponsorship credits or frequent internal credits are likely to be judged to be unacceptably prominent.
- 1.169 For additional guidance on the appearance of sponsorship credits during programmes (“internal credits”), see paragraphs 1.179 to 1.181 below.
- 1.170 For sponsored content other than programmes (e.g. channels, programme segments) sponsorship credits should be broadcast at appropriate points during the schedule to ensure audience members are able to identify sponsored content. For instance, where a programme segment or item is sponsored - such as a cookery spot in a magazine format programme or a sports programme - credits could be broadcast at the time the segment/item is shown.
- 1.171 See also additional guidance on channel sponsorship below, and the guidance against Rule 9.19 above.

Sponsorship credits

Rule 9.21

Sponsorship credits must be distinct from editorial content.

- 1.172 This rule supports the requirement that viewers should be able to distinguish between editorial content and paid for commercial references. Particular care is needed when a credit is broadcast during a programme to ensure that it is not confused with editorial material.

Rule 9.22

Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.**
- 1.173 As stated in the guidance for Rule 9.2, the AVMS Directive (Article 23) limits the amount of advertising that can be transmitted on a television channel. However, it exempts sponsorship announcements from this limit. Rule 9.22 helps ensure that sponsorship credits are not used as a means of circumventing the restrictions on the amount of advertising that can be shown. Credits should fulfil the role of identifying the sponsorship arrangement and not be capable of being confused with advertising by, for example, focusing on the products or services of the sponsor.
- 1.174 Sponsorship credits are an intrinsic part of the sponsored content (albeit distinct from editorial) and their purpose is to identify sponsorship arrangements: they are not a platform for a sponsor to sell its products or services. Article 10(1)(b) of the AVMS Directive states that sponsored programmes “must not directly encourage the purchase or rental of goods or services, in particular by making

special promotional references to those goods or services”. Guidance previously issued by the European Commission in relation to sponsorship arrangements⁸ stated that there should be “no explicit reference to the products or services of the sponsor during the [sponsored] programme, except where the reference serves the sole purpose of identifying the sponsor or making explicit the link between the programme and the sponsor” (emphasis added). It is on this basis that Rule 9.22 permits references to the products and services of a sponsor in sponsorship credits. However, care is needed to ensure that such references do not constitute advertising messages.

1.175 Ofcom recognises that when judging whether the various components of a sponsorship credit broadcast around a sponsored programme amount to the credit being sufficiently distinct from advertising, fine editorial judgements are often required. We are likely to take into account a number of factors including, but not limited to:

1.176 Focus of the credit: credits that focus predominantly on the sponsorship arrangement, rather than the sponsor or its products/services, are more likely to be compliant with the Code. The following are some of the features that Ofcom is likely to consider when judging whether the focus of a credit is the sponsorship arrangement:

- the use of a creative approach that thematically links the sponsor to the programme (e.g. by genre or using characters which have similar characteristics to the people/characters in the programme). Such links, when used effectively, highlight the fundamental difference between sponsorship and advertising, i.e. sponsorship is about the sponsor’s association with the programme, not selling the sponsor’s products/services;
- detailed descriptions of products/services or references to multiple products. These are likely to detract from the sponsorship message and result in content that is more akin to advertising. For example, excessive use of footage from DVDs or computer games (in cases where a DVD or computer game sponsors a programme) or references (both visual and oral) to the range of a sponsor’s products;
- the use of the sponsor’s slogans, straplines, jingles and so on. It is possible for some sponsor’s slogans and straplines to be used within a credit, for the purpose of helping to identify the sponsor and/or the sponsorship arrangement, provided they do not encourage the purchase or rental of the sponsor’s products/services (e.g. by featuring claims). However, broadcasters should take extra care when using such straplines, particularly in combination with footage from a sponsor’s advertising campaign that the primary focus of the credit is *clearly* on the sponsorship arrangement.

1.177 Claims about the sponsor’s products/services: claims about the sponsor’s products/services (in particular those that are capable of objective

⁸ This guidance was included in the Commission’s Interpretative Communication on certain aspects of the provisions on televised advertising in the “Television without frontiers” Directive (see https://www.ebu.ch/CMSImages/en/COM_2004_1450_TV_advertising_TWF_EN_tcm6-11666.pdf). It should be noted that the Commission is likely to update the Interpretative Communication in the near future in relation to the requirements of the AVMS Directive.

substantiation), are likely to be considered as advertising messages and therefore should not be included in sponsorship credits. Examples include:

- claims about market leadership, health benefits, efficacy; and
- the use of promotional language and/or superlatives to describe the sponsor and/or its products and services (e.g. referring to: the breadth of range of products a sponsor provides or how easy a sponsor's product is to use).

1.178 Calls to action: credits that contain direct invitations to the audience to contact the sponsor are likely to breach the Code. However, basic contact details (e.g. websites or telephone numbers) may be given in credits, but these should not be accompanied by language that is likely to be viewed as an invitation to the audience to contact the sponsor. In this respect:

- If sponsorship credits contain contact details, these should be minimal;
- any direct appeals to the viewer to buy or try the sponsor's goods or services or to contact the sponsor for more information are likely to breach Rule 9.22;
- mandatory price information (such as the cost of premium rate services) is acceptable provided it does not form part of an advertising message. Any price information that is not mandatory will normally be considered an advertising message.

Rule 9.22 (cont.)

b) Sponsorship credits broadcast during programmes must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.

1.179 In addition to ensuring that sponsorship credits are distinct from advertising, the intention of part (b) of Rule 9.22 is to ensure that credits transmitted during programmes ("internal credits") are not overly intrusive. Internal credits carry a greater risk of impacting negatively on the content of sponsored programmes.

1.180 Broadcasters should note that, as well as the content of credits, Ofcom is likely to take into account the size, frequency and duration of internal credits when applying this rule. Licensees are advised to approach internal credits with the aim of ensuring no greater prominence than is necessary for the audience to see or hear the credit and acknowledge it.

1.181 Broadcasters may wish to schedule internal credits at specific points during a programme, e.g. during coverage of a sports match, alongside match statistics displayed on-screen in a graphic overlay, rather than during play. When scheduling internal credits, broadcasters should bear in mind the requirements of Rules 9.1 (editorial independence), Rule 9.4 (no promotion of goods and services) and Rule 9.5 (undue prominence). Care should be taken to ensure that internal credits do not appear to have been scheduled with a view to providing the sponsor with an undue level of prominence. In particular,

sponsorship credits should not be, or appear to be, placed purposefully to coincide with references to the sponsor (including its products, services or trade marks) during the programme.

Rule 9.23

Where a sponsor is prohibited from product placing in the programme it is sponsoring, sponsorship credits may not be shown during the sponsored programme.

- 1.182 There are limited circumstances in which a product, service or trade mark that cannot be product placed in a programme (or a programme that cannot contain product placement) can nevertheless be subject to sponsorship arrangements. For example, where a programme is prohibited from containing product placement (e.g. a children's programme) or in programmes where the sponsor would be prohibited from placing its products (e.g. when the sponsor is an alcoholic drink brand). In such circumstances, Rule 9.25 prevents the broadcast of internal sponsorship credits during the programme.
- 1.183 The rule prevents a reference to a product, service or trade mark appearing in a programme as a result of a commercial arrangement where a reference to the same product, service or trade mark could not be made as a result of a product placement arrangement.
- 1.184 Broadcasters should refer to Rules 9.6 to 9.13 for details of those programmes, products, services and trade marks that are subject to product placement restrictions.

Rule 9.24

Where a sponsorship credit is included in a programme trail, the credit must remain brief and secondary.

- 1.185 The purpose of a programme trail is to alert viewers to a forthcoming programme. References to a programme sponsor should not distract from this purpose and generally should be limited to a brief on-screen reference to the sponsorship arrangement.

Rule 9.25

Programme-related material may be sponsored and the sponsor may be credited when details of how to obtain the material are given. Any credit must be brief and secondary, and must be separate from any credit for the programme sponsor.

- 1.186 As with references to programme sponsors in trails, any reference to the sponsor of programme-related material ("PRM") must be limited. When crediting sponsors of PRM, broadcasters should take into account the requirements of Rule 9.22(b).
- 1.187 Viewers should be able to distinguish easily between credits for sponsors of PRM and sponsors of other broadcast content.

Channel sponsorship

1.188 The Code permits the sponsorship of programmes, programme segments and channels. Ofcom recognises that the sponsorship of entire channels may raise specific issues in relation to compliance with the sponsorship rules. The following guidance is intended to assist broadcasters when entering into channel sponsorship arrangements.

Which channels can be sponsored?

- 1.189 There are certain rules that may render the sponsorship of some channels unacceptable.
- 1.190 Rule 9.15 prohibits the sponsorship of news and current affairs programmes. Channel sponsorship involves the sponsorship of a service as a whole rather than individual programmes. Therefore the sponsorship of a channel that broadcasts some news and current affairs programmes is not necessarily incompatible with the Code. However, broadcasters need to take care that channel sponsorship arrangements do not result in the sponsorship of programmes that cannot be sponsored, nor appear to apply to such programmes. When assessing whether a channel can be sponsored, Ofcom will take into account the following factors:
- 1.191 The amount of sponsorable content on the channel: where a channel broadcasts content that consists wholly or mainly of programmes that can be sponsored, channel sponsorship may be acceptable. As a rough guide, these programmes should normally account for around 75% or more of the channel's output. Channels that broadcast a significant amount of unsponsorable programmes are likely to be considered unsuitable for sponsorship. For example, unsponsorable programmes that account for around 25% or more of channel's output are likely to be considered a significant amount.
- 1.192 Positioning of channel/audience expectations: regardless of the proportion of sponsorable programmes it transmits, a channel is unlikely to be considered suitable for channel sponsorship if it: promotes itself predominantly as a news and/or current affairs service; is positioned in the news section of an electronic programme guide; or is recognised by audiences primarily as a news and/or current affairs channel.
- 1.193 The Code rules prohibiting the sponsorship of news and current affairs supports the important principle that news must be reported with due accuracy and presented with due impartiality (see Section Five of the Code). A broadcaster's editorial control over the content of its news and current affairs content should not be, or appear to be, compromised. Where a broadcaster is regarded primarily as a news provider, a commercial arrangement such as channel sponsorship risks undermining the perception of the broadcaster's editorial independence and will not be compatible with the Code.

Channel sponsorship must comply with both the advertising scheduling rules (Rule 9.17).

1.194 Certain programmes cannot be sponsored by certain types of sponsors (e.g. an alcohol brand cannot sponsor a children's programme). If a broadcaster is considering a channel sponsorship arrangement that involves a sponsor that is subject to advertising scheduling restrictions, they are advised to apply similar

criteria to those stated above, e.g. a channel that broadcasts a significant amount of children's programmes should not be sponsored by an alcohol brand.

See the BCAP Code, which can be found at:

<http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

Identifying channel sponsorship arrangements

- 1.195 Rule 9.19 of the Code requires sponsorship to be clearly identified. It is important that credits for channel sponsors make clear what is sponsored (i.e. the channel, not the programmes) and by whom.
- 1.196 Because it is possible for a brand that is better known in another field to own a channel (e.g. NME TV), credits should ensure that audiences can distinguish between a channel ownership and channel sponsorship arrangement. A credit for channel sponsorship should therefore name the channel and explain who the sponsor is (e.g. channel X is sponsored by Y). It is particularly important that the credit makes clear that the channel is sponsored rather than individual programmes it is broadcasting.

Placing of channel sponsorship credits (Rule 9.20)

- 1.197 Unlike most programmes, channels do not have a clearly defined beginning and end at which credits can be placed. Broadcasters will therefore need to judge when and where to identify channel sponsorship to ensure that the Code requirements on transparency and distinction are met while avoiding undue prominence for the sponsor.
- 1.198 Natural breaks in the schedule (e.g. before and/or after commercial breaks, between programmes etc.) provide suitable junctions at which to place channel sponsorship credits. However, care needs to be taken to avoid confusion if a programme sponsorship credit is also broadcast near to a channel sponsorship credit.
- 1.199 Channel sponsorship credits, like programme sponsorship credits, must be distinct from both editorial and advertising content. Channel sponsorship may be identified when channel 'idents' are broadcast. However, the size and duration of credits should be limited to avoid giving undue prominence to the sponsor.
- 1.200 Where a sponsored channel broadcasts a limited amount of programmes that cannot be sponsored, or is sponsored by a brand that cannot sponsor all the programmes it broadcasts (see guidance above on which channels can be sponsored), the channel sponsorship credits must be kept away from the unsponsorable content. Credits should therefore not be broadcast directly before, during or after the programme that cannot be sponsored e.g. news. Additionally, credits should not be broadcast around trails for the unsponsorable programmes.

Premium rate services

1.201 In this section, premium rate services (PRS) are those regulated by PhonepayPlus.

Rule 9.26

Where a broadcaster invites viewers to take part in or otherwise interact with its programmes, it may only charge for such participation or interaction by means of premium rate telephone services or other telephony services based on similar revenue-sharing arrangements.

1.202 This rule serves to ensure that paid-for interaction between a viewer and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. In other words it seeks to prevent participation in programming by payment methods like credit or debit cards, for example. In short, it ensures that a distinction is maintained between editorial content and advertising, and that programmes do not become mediums for carrying advertising.

'Apps' and paid-for audience participation in programming

1.203 'Apps' are software applications downloaded to mobile phones and related devices.

1.204 It has become reasonably common for some broadcasters to include references within their programmes to free apps. These apps include, for example, offers of programme-themed games, or those that enable users to access behind-the-scenes footage of a particular programme. In general, this type of app would meet the Code's definition of programme-related material (PRM), and Rules 9.31 and 9.32 apply.

1.205 However, this guidance addresses the suitability under the Code of apps as a way to charge the audience to participate in programming, e.g. an app which enables the user to buy votes or broadcast competition entries, and so participate or interact in programming.

1.206 If a broadcaster invites its audience to participate in or interact with programming, Rule 9.26 of Code requires that it may only charge for such activities "...by means of premium rate telephone services or other telephony services based on revenue-sharing arrangements".

1.207 Is a paid-for app a telephony service?: As stated, Rule 9.26 serves to ensure that paid-for interaction between a viewer or listener and a broadcaster takes place through a means of communication rather than merely a money transfer instrument. To date, paid-for participation in programming has therefore been limited to telephony services (phone/text).

1.208 However, Ofcom recognises the pace of change and innovation in the sector, and the advantages that evolving technologies offer to viewers and listeners. We also understand that licensees will want to add emerging proprietary platforms to ways that viewers and listeners can contact them or interact with them, where this involves an additional element of financial benefit for the licensee.

- 1.209 We have therefore concluded that, in principle, the use of apps to charge the audience for participation is an acceptable form of premium-rated telephony service for the purposes of Rule 9.26. This applies in cases where the app itself is paid-for, or where the app is free but enables payment to be taken – for example, to purchase a number or block of votes or competition entries. (The effect of this decision is confined to the Broadcasting Code: it does not affect the status of apps as premium rate services or otherwise under other codes or rules, such as the PhonepayPlus Code or other provisions of the Communications Act 2003). Currently, we envisage that such apps will be linked to telephony platforms, i.e. they will not be self-standing mechanisms such as websites, independently existing payment methods and the like. We are however prepared to re-examine this area should developments make it desirable to do so.
- 1.210 What are the key considerations for broadcasters?: To comply with Rule 9.26, a key requirement for broadcasters to consider is whether revenue from the audience's use of such an app is shared, for example with the platform owner or service provider.
- 1.211 The app must also meet the requirements of Rule 9.27 (“...enabling viewers/listeners to participate directly in or otherwise contribute directly to the editorial content of the programme” or meeting the definition of PRM) and Rule 9.28 (“...where a premium rate service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose”).
- 1.212 As with the use of conventional premium-rated telephony, apps will be subject to all other relevant rules in the Code. These include, in particular, Rules 9.1 to 9.5 which govern editorial independence and the need to avoid it being compromised by the promotion, or unjustifiable exposure, of products and services in programming.
- 1.213 Undue prominence: Licensees should feature acceptable paid-for participation routes only in a manner and to an extent that can be justified editorially. General guidance on undue prominence and editorial justification can be found in the guidance to Rule 9.5 above. This contains advice on the use of PRS which is directly relevant to the use of apps.
- 1.214 However, a significant difference between conventional premium rate services and apps is that the former are non-proprietary and the latter are not. Apps are created for particular platforms and devices. This gives rise to additional questions of undue prominence where programming references to participation or interaction through a particular app gives exposure to a specific platform operator or device manufacturer, or both.
- 1.215 Undue prominence will be a particular concern where a premium-rated app tied to only one platform is the sole means for viewers to participate. One way of managing this risk is to ensure that such an app is one of a range of possible other entry routes, such as conventional voice and text mechanisms. Of course, even in such circumstances, exposure for the app must be appropriately limited so as to comply with the undue prominence rule.

- 1.216 Voting and competition entry – licence conditions and verification: In 2008 Ofcom varied all its categories of television licence to include conditions that made clear that the licensee remains responsible for all communication with viewers. The conditions cover all forms of communications that are publicised in programmes. In particular, the conditions specify what constitutes a PRS, and require that where PRS are used for the purpose of viewer voting or competition entries, third party verification is required.
- 1.217 Where one of the possible entry routes is a PRS and verification is therefore required, all votes and entries, including those submitted via non-PRS routes, must be verified for the PRS verification to retain its integrity. For example, this applies to free entries to audience competitions that also include PRS entry routes.
- 1.218 Therefore in cases where paid-for participation via apps does not fall within the definition of PRS, those apps would not, in themselves, require third party verification for their use in voting or competitions. However, licensees who use such apps alongside conventional PRS should be aware that all votes and entries made through apps (and other non PRS-means) should be included in a scheme of verification, in line with the licence conditions.

Rule 9.27

Premium rate services will normally be regarded as products or services, and must therefore not appear in programmes, except where:

- a) they enable viewers to participate directly in or otherwise contribute directly to the editorial content of the programme; or**
- b) they fall within the meaning of programme-related material.**

- 1.219 Each case must be assessed on its particular facts. However, in considering whether a particular instance of promotion of PRS complies with the requirement regarding direct contribution to editorial content, the following questions are likely to be relevant:
- Is it clear that the PRS enables viewers to participate directly in or contribute directly to the editorial content of the programme? Such interaction could include voting, competition entry, or texting in views on a particular issue.
 - Is the degree to which a PRS is referred to within the programme clearly justified by the degree to which the PRS contributes to editorial content? If, for example, there are very frequent and prominent messages to viewers to call a premium rate number to give their views on air on a particular issue, but the programme in fact includes little or no discussion of views submitted by callers this tends to suggest that the PRS does not satisfy the requirement for direct contribution to editorial content.
 - Does the PRS involve the provision of a private consultation or conversation similar in nature to other commercial services provided by non-broadcasters, typically promoted in newspapers, magazines, or broadcast advertising (as opposed to programming)? If so, this tends to suggest that the PRS is primarily a commercial service rather than a genuine means of contributing to editorial content, and should therefore not be referred to within programming.
- 1.220 See also guidance on programme-related material below.

Rule 9.28

Where a premium rate service is featured in a programme, the primary purpose of the programme must continue to be clearly editorial. Promotion of the featured premium rate service must be clearly subsidiary to that primary purpose.

1.221 Programme content should clearly be editorially driven and not be essentially a vehicle for the promotion of PRS.

1.222 In interpreting Rule 9.28, we consider it relevant to take into account a Judgment by the European Court of Justice ('ECJ') on 18 October 2007⁴⁶ regarding interpretation of the TWF Directive. In its judgment, the ECJ ruled that:

“a broadcast or part of a broadcast during which a television broadcaster offers viewers the opportunity to participate in a prize game by means of immediately dialling a premium rate telephone number, and thus in return for payment, is covered by the definition given by Article 1(f) [of the TWF Directive] of teleshopping if that broadcast or part of a broadcast represents a real offer of services having regard to the purpose of the broadcast of which the game forms part, the significance of the game within the broadcast in terms of time and of anticipated economic effects in relation to those expected in respect of that broadcast as a whole and also to the type of questions which the candidates are asked”.

1.223 Whilst the ECJ's ruling was made in the course of proceedings between the Austrian communications authority and an Austrian broadcaster regarding a particular quiz show broadcast by that broadcaster, Ofcom considers that the ruling is of wider significance. If it is possible for a quiz show, which invites viewers to call a premium rate number for a chance to answer a question and win a prize, to represent “a real offer of services”, then it follows that other genres of broadcast content predicated on the use and promotion of premium rate services may – depending on the particular facts – also represent a “real offer of services” and therefore be a form of advertising.

1.224 In assessing compliance with Rule 9.28, broadcasters should therefore consider each of the following questions:

- What is the nature of the programme? If a programme consists primarily of promotional messages for the PRS and there is little recognisable editorial content, it is unlikely to be compliant with Rule 9.28 (and will also raise issues under Rules 9.1 to 9.5). If, however, PRS is only one element of the broadcast content, e.g. as may be the case in a studio based game show, a magazine-format show, a sports discussion show, or a reality show, then references to it within the show are more likely to be acceptable (provided they are not unduly prominent).
- Is the degree to which the PRS is referred to within the programme clearly justified by the degree to which it contributes to editorial content? If, for example, a programme includes frequent and prominent exhortations to viewers to call a premium rate number in order to speak to a presenter on air but, of the calls received, disproportionately few are in fact put through to the studio (and therefore the contribution to editorial content is minimal), this may well be problematic. To take a contrasting example, where the presenter is seeking input from viewers but in fact few people are calling the

show, there may be editorial justification for the presenter to repeatedly ask viewers to call (or text) a PRS, in order to generate sufficient editorial content for the show.

- What is the cost to an audience member of calling the PRS? This may be relevant in considering whether a PRS is genuinely intended to encourage audience participation or whether a viewer is in effect purchasing a service or product, e.g. a private consultation.

- 1.225 Even where the PRS does clearly contribute to editorial content, broadcasters must take care to ensure compliance with other aspects of the Code. For example, if on calling the PRS number promoted in the programme, a caller is presented with advertising messages or with options other than direct participation as promoted within the programme, this would tend to suggest that the programme is seeking to promote a product or service (other than the legitimately promoted PRS) and be in breach of the Code. Advertising-type claims about the PRS that go beyond what is editorially justified (and what is required under PhonepayPlus regulations) are also likely to be in breach e.g. “cheaper call rates”.
- 1.226 Broadcasters should also note that particular care must be taken with pre-recorded broadcast content which encourages viewers to call a PRS. Such material has the potential to mislead viewers if there is a suggestion that using the service offers the opportunity for viewer interaction with the programme. In addition to raising issues under Section Nine, such content may also raise questions of fairness and audience trust. See also Rule 2.2.
- 1.227 Where PRS is used and promoted in a programme in a way that is not consistent with the rules in Section Nine, Ofcom may judge that such content is in effect advertising. In such cases, it must comply with the relevant advertising content and scheduling rules.
- 1.228 From 1 September 2010 ‘participation TV’ (PTV) services have been regulated as teleshopping (i.e. advertising) material⁹. Channels predicated on such output have had adjustments made to their licences to reflect this change.
- 1.229 Such material – whether provided as whole channels or as blocks (‘windows’ of programming) – is now regulated by Ofcom under the BCAP Code, ASA/BCAP¹⁰ is not responsible for this category of advertising, though it retains responsibility for spot advertising of services of this type on non-PTV channels, where it is permitted.
- 1.230 PTV is television content whose purpose is to generate interaction by viewers. PTV’s funding model is to encourage such interaction through premium rated telephony (therefore including voice, text, MMS and so on) and in some cases

⁹ See Ofcom Statement “Participation TV: Regulatory Statement” at <http://stakeholders.ofcom.org.uk/binaries/consultations/participationtv3/statement/statement.pdf>

¹⁰ For the purposes of this guidance, ‘ASA’ is the Advertising Standards Authority (Broadcast) Ltd and ‘BCAP’ is the Broadcast Committee of Advertising Practice Ltd. Further details can be found at <http://www.asa.org.uk/>

through the use of credit and debit card payment. The most common genres of PTV programming are 'flirt' chat, 'adult' chat and 'psychic' readings¹¹.

- 1.231 Whether in any particular case the use of PRS or other, related pay mechanisms can be accommodated within the rules for programming or whether the licensee should regard the material as teleshopping (and therefore in some cases change the nature of the content to promote the pay mechanism more frequently explicitly) must be assessed on its individual facts.
- 1.232 This rule ensures that licensees do not employ non-telephony methods of charging for participation in or interaction with programming. The use of credit or debit cards, for example, or other money transfer arrangements cannot be used for this purpose.

Rule 9.29

Any use of premium rate numbers must comply with the Code of Practice issued by PhonepayPlus.

- 1.233 See <http://www.phonepayplus.org.uk/output/Code-of-Practice-1.aspx>

Rule 9.30

The cost to viewers for using premium rate services must be made clear to them and broadcast as appropriate.

- 1.234 Where viewers are charged for interaction with or participation in programming, Ofcom expects that costs are made clear as fully as is necessary for callers or potential callers to understand what the cost will be. PhonepayPlus rules on the disclosure of call costs should be observed (in line with Rule 9.29), but further considerations may apply.
- 1.235 Licensees are advised to consider carefully the information they make available to viewers about costs and to give as much clear detail as is practicable. Where costs are provided in on-screen text, this must be legible. We advise broadcasters to refer to the following: <http://www.cap.org.uk/Resource-Centre/Advice-and-guidance/Broadcast-guidance-and-help-notes/Advertising-guidance-notes/Advertising-guidance-1.aspx>
- 1.236 Ofcom believes adequate emphasis should be placed on warnings about the higher charges likely to be incurred by some users of non-BT networks, particularly the mobile networks. Rather than merely saying that 'networks/mobiles may vary', Ofcom advises strongly that a more emphatic message is used, for example:
- "Calls cost Xp from BT lines. Calls from other networks and from mobiles may vary and can cost a lot more. Contact your provider for details."*
- 1.237 An alternative approach likely to be acceptable would be the use of a maximum mobile charge – an 'up to' price – where that can be established. Whatever form

¹¹ At the same time that Ofcom assumed responsibility for chat and 'psychic' PTV output it also brought back to Ofcom output offering long-form gambling services and message board-style channels (most of which offer dating services).

of words is chosen it should indicate that calls from mobiles may be significantly more expensive than the benchmark BT price.

- 1.238 Licensees must make clear the costs of interaction or participation whether the mechanism to do so is formally a PRS or is otherwise acceptable under Rule 9.26. Where apps are used, for example, the costs must be clearly publicised in programming even where charges are applied at a later stage.
- 1.239 **Broadcasters should note that at the time of publication of this initial guidance Ofcom was in the process of considering the structure of non-geographic tariffs. Outcomes of that consideration may affect the form of price warnings: we will update the rule and this guidance as necessary.**

Programme-related material (PRM)

Rule 9.31

Programme-related material may be promoted only during or around the programme from which it is directly derived and only where it is editorially justified.

- 1.240 “Programme-related material” consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from, or to interact with, that programme.
- 1.241 Broadcasters may refer to the availability of programme-related material without such references counting towards the amount of advertising they are permitted to transmit (as specified in Ofcom’s Code on the scheduling of television advertising (COSTA)). The following rules support the key principle of editorial independence by ensuring that references to programme-related material are made primarily for editorial and not advertising reasons. As stated under Rule 9.2, the AVMS Directive (Article 23) limits the amount of advertising a broadcaster can transmit. However, it exempts from this limit “announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes”.
- 1.242 Recital 98 of the AVMS Directive makes clear that “In order to avoid distortions of competition, this derogation should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned. The term “ancillary” refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes”.
- 1.243 The following guidance is intended to assist broadcasters in determining the appropriateness of promoting programme-related material.
- 1.244 In considering whether or not a product or service is ‘programme-related’, it is important to bear in mind the principles set out in Section Nine. Broadcasters must maintain the independence of editorial control over programme content, ensure that programmes are not distorted for commercial purposes and ensure that the advertising and programme elements of a service are distinct. It is upon these principles that Rule 9.4, which prohibits the promotion of products and services within programming, is based. The promotion of ‘programme-related material’ is permitted purely by way of exception to Rule 9.4.

- 1.245 Broadcasters should note that for material to qualify as programme-related, it must not only be directly derived from a specific programme but also intended to allow viewers to benefit fully from, or interact with, that programme. Both elements of the meaning of 'programme-related material' must therefore be satisfied. Further guidance by way of clarification is provided below:
- 1.246 "Directly derived from a specific programme": The product or service must be 'directly derived' from a specific programme and therefore it is very unlikely that we would consider a product or service which existed before that programme to meet the definition of programme-related material.
- 1.247 Broadcasters should also note that similarity, in terms of genre or theme(s), between a programme and a product or service (for example, where both are about football, cookery or gardening) is not in itself sufficient to establish that the product or service is directly derived from the programme. A product or service directly derived from more than one specific programme may be considered to be programme-related material in relation to those programmes but the scope for this is limited. Ultimately this will depend on the facts of an individual case. In each case, in order for the material to be considered programme-related material and promoted accordingly, a broadcaster would need to be able to demonstrate to Ofcom's satisfaction that the material in question was directly derived **to a significant extent** from each of those programmes.
- 1.248 "Benefit fully from or interact with": Moreover, the material must be intended to allow viewers to benefit fully from, or to interact with, that specific programme. This will often be material that is editorially based, for example, a website, podcast, CD or DVD. Where the material is not editorially based, a broadcaster will need stronger editorial justification that the material is intended to allow viewers to benefit fully from, or interact with, the programme.
- 1.249 Where goods or services **are offered** in return for payment and/or are **referred to** in return for payment or other valuable consideration to the broadcaster, programme producer or connected person, broadcasters should note the requirements of Rule 9.2 and the product placement rules (Rules 9.6 to 9.14).
- 1.250 In particular, broadcasters should refer to the statutory definition of product placement (see meanings and rules after Rule 9.5). Where the inclusion of references to PRM during programmes could meet the definition of product placement, the promotion of such material should be kept distinct from editorial content to avoid issues being raised under Rule 9.9.
- 1.251 Likewise, where the PRM involves the promotion to the audience of the availability of products or services in return for payment, it is possible that this could meet the definition of television advertising (see COSTA). Therefore, such promotions should be kept distinct from editorial content (see Rule 9.2).
- 1.252 In such circumstances, broadcasters should ensure that any promotion of PRM is distinct from editorial. Distinction can be achieved by, for example, placing the promotion outside of the body of the programme; by using split screen techniques; or by including a distinct short segment or VT insert within the programme. In all cases, the focus of a programme must remain its editorial content, as opposed to any promotional message for programme-related material. The programme must not be primarily a vehicle for promotion of the product or service. Rule 9.5 (no undue prominence) also applies.
- 1.253 Programme-related material may be sponsored (see Rule 9.25).

Rule 9.32

The broadcaster must retain responsibility for ensuring the appropriateness of promoting programme-related material.

- 1.254 This rule places a responsibility on broadcasters to satisfy themselves that any product or service promoted under Rule 9.31 does in fact satisfy the definition of programme-related material. This does not mean that broadcasters may only promote programme-related material which they themselves own. The material may come from third parties, for example material created, manufactured, and/or distributed by persons other than the broadcaster. However, the broadcaster is the person with responsibility for ensuring that it may be promoted as programme-related material.
- 1.255 In promoting a product or service as 'programme-related material', broadcasters must have regard to the rules in Section One, Protecting the Under-eighteens, and Section Two, Harm and Offence. Particular care should be taken where broadcast advertising of the product or service is prohibited or restricted. For example, the promotion of a video game rated 16+ derived from a programme that attracts a child audience is likely to be unacceptable.
- 1.256 A promotion for programme-related material in or around a children's programme should normally be in terms of general information only, for example about the availability of the product; it would normally not be appropriate for such a promotion to invite a direct response.

Charity appeals

- 1.257 The rules on the broadcast of charity appeals in programmes are underpinned by the consumer protection, distinction and undue prominence principles.
- 1.258 Charity appeals are allowed in programming only if they are broadcast free of charge. Where a charity appeal is broadcast in return for payment or other valuable consideration, it should be broadcast as television advertising and comply with the relevant advertising rules.

Rule 9.33

Charity appeals that are broadcast free of charge are allowed in programming provided that the broadcaster has taken reasonable steps to satisfy itself that:

- a) the organisation concerned can produce satisfactory evidence of charitable status, or, in the case of an emergency appeal, that a responsible public fund has been set up to deal with it; and**
 - b) the organisation concerned is not prohibited from advertising on television.**
- 1.259 While charitable status can be demonstrated via charity registration, an organisation may not need to be registered to have charitable status. If a broadcaster has any doubts or concerns about a charitable appeal, the Charity Commission may be able to provide advice.
- 1.260 Details of those organisations that are prohibited from advertising on television can be found in the BCAP Code at <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

Rule 9.34

Where possible, the broadcast of charity appeals, either individually or taken together over time, should benefit a wide range of charities.

- 1.261 Charity appeals are subject to Rule 9.5 (undue prominence). This does not prevent a whole programme, or significant part of a programme, being dedicated to a charity appeal. However, the purpose of applying the undue prominence rule and Rule 9.34 to charity appeals is to ensure that such appeals benefit a wide range of charities. Not every charity appeal has to benefit a range of charities and it is acceptable for a broadcaster to partner with a particular charity for an appeal. However, broadcasters should aim to ensure that over time they run appeals for a range of charities.
- 1.262 When transmitting charity appeals, broadcasters should pay particular attention to the requirements of Section Five of the Code (Due Impartiality).

Appeals for funds

- 1.263 As stated in the guidance on the rules for programme-related material, Article 23 of the AVMS Directive limits the amount of advertising that can be transmitted on a television channel. The Directive exempts from this limit “announcements made by the broadcaster in connection with its own programmes ...” The Code rules allowing broadcasters to solicit donations from viewers to fund programmes or a channel are based on this exemption.
- 1.264 The following rules should be read in conjunction with Rules 9.1 to 9.5. In particular, as appeals for funds are seeking payment from viewers in return for the provision of a service, such appeals should be kept distinct from editorial content (see Rule 9.2). Distinction can be achieved by, for example, broadcasting appeals around programmes or by using split screen or caption techniques (but see below for further guidance on undue prominence).
- 1.265 Broadcasters should take care to ensure that the acceptance of donations does not prevent them from meeting the Code’s requirements relating to due impartiality, no undue prominence of views and opinions, and editorial independence. See Rules 5.1, 5.5, 5.13 and 9.1. Donations should not be used as a way of circumventing the prohibition on political advertising and sponsorship or the restrictions in Schedule 2 of the Broadcasting Act 1990 on bodies whose objects are wholly or mainly of a political nature from influencing “by the giving of financial assistance or otherwise” persons who hold broadcasting licences.
- 1.266 Broadcasters who transmit appeals for funds are encouraged to consider joining self-regulatory bodies such as the Institute of Fundraising, and adopting its Code of Conduct and Donors’ Charter: <http://www.institute-of-fundraising.org.uk/>

Rule 9.36

Viewers must be told the purpose of the appeal and how much it raises.

- 1.267 Donations can be sought solely for the purpose of funding a particular programme, or a broadcasting service overall.
- 1.268 When transmitting appeals for funds, broadcasters should ensure that the audience is told about the purpose of the appeal for which they are soliciting donations.
- 1.269 The broadcaster may choose to inform viewers about the amount of money raised by an appeal in a number of different ways, such as by an on-air announcement, or through information provided on a programme or channel website. However, where the information is not provided on air, its availability elsewhere must be made clear to viewers on air.

Rule 9.37

All donations must be separately accounted for and used for the purpose for which they were donated.

- 1.270 Broadcasters should keep accurate and detailed records of donations and how they are spent. Records should demonstrate how donations received are used to fund the service.
- 1.271 Ofcom strongly recommends that donations are kept in a separate, specific account so that information relating to donations and how they are spent is clear and easy to access. It is also recommended that audits of such accounts are conducted.
- 1.272 If Ofcom investigates the compliance of a broadcaster's appeal for funds with the Code rules, it is likely to request the provision of copies of the relevant records, accounts and/or audits. Broadcasters should be able to supply this information to Ofcom promptly and in a clear and accessible manner.

Rule 9.38

Broadcasters must not offer any additional benefits or other incentives to donors.

- 1.273 As appeals for funds offer a limited exemption to the restrictions imposed on the amount of advertising a broadcaster can transmit, viewers should not be invited to make a donation in return for anything other than the provision of the service. For example, viewers should not be offered gifts or the promise of an on-air mention in return for providing funding. Broadcasters may choose to transmit on-air acknowledgements of donations if they wish. However, such acknowledgements must not be a condition of the donation, or referred to as an incentive to donate. Particular care is needed when an on-air acknowledgement refers to a business. Such references may raise issues under Rule 9.4. In particular, details of the donor's business, such as its type or its address, should not be given.
- 1.274 Broadcasters should avoid creating unrealistic expectations about what will or may happen if viewers make a donation. Appeals should not improperly exploit

any susceptibilities of the audience. See also Rules 2.1 (generally accepted standards) and 4.6 (religious programmes must not improperly exploit any susceptibilities of the audience).

- 1.275 When broadcasters of religious programmes are soliciting funds from their audience in the form of an appeal, they should be aware of Ofcom’s published guidance on Rule 4.6 which states: “respondents to Ofcom research on religious programmes believe that all people are susceptible at one time or another. There are times when it will be clear to the broadcaster that they are soliciting an actual response from their audience. At these times broadcasters need to take care and recognise the possible risk to audience members particularly the vulnerable.”
- 1.276 Ofcom considers that vulnerable people, such as those experiencing financial or emotional difficulties, may be unduly encouraged to give donations. In particular, Ofcom considers that persuading viewers to donate money on the basis of inducements such as a offering a prayer for or on behalf of the donor; the promise of better health; or that a religious figure will create further wealth for donors or take particular care of donors is unacceptable. In Ofcom’s view, such inducements carry the risk that susceptible members of the audience may be exploited – and as a result persuaded to donate where they would not otherwise have done so.

Rule 9.39

Appeals for funds for programming or services must not be given undue prominence in relation to the overall output of the service.

- 1.277 Appeals for funds are permitted on the basis that they help broadcasters to raise funding to provide a programme service. Any airtime used for this purpose should be proportionate to that used for programmes. A channel should not be, or appear to be, primarily a vehicle for seeking funding.
- 1.278 When reaching decisions on a broadcaster’s compliance with this rule, Ofcom is likely to assess the proportion of a service’s overall output that such appeals take up, and the frequency with which such appeals are broadcast.

Cross-promotion (Television)

- 1.279 The Cross-promotion Code sets the parameters for the types of products and services that can be cross-promoted. These rules are also based on the AVMS Directive’s exemption of announcements made by the broadcaster in connection with its own programmes from advertising limits (Article 23(2)).
- 1.280 The Cross-promotion Code is included as an appendix to the Broadcasting Code and should be read in conjunction with it. Cross-promotions must be compliant with the Rules in Section Nine of the Code.
- 1.281 Neutrality requirements: Under the Cross-promotion Code, Channel 3 licensees, Channel 4 and Five are required to ensure that promotions are neutral in the way that they refer to digital retail television services and platforms¹².

¹² For full details, see the Cross-promotion Code which is an Appendix to the Broadcasting Code.

1.282 Whilst other broadcasters are not subject to this neutrality requirement, the primary purpose of any promotion should be to promote a broadcasting-related service: any additional reference regarding how to get that service, e.g. a reference to the platform or retail service on which the broadcasting-related service is provided, including price information, should not be unduly prominent in the context of the promotion. If it were, that would tend to suggest that that additional reference had been made in return for payment or other similar consideration, i.e. the promotion is in fact an advertisement for that third party¹³ and, as such, is subject to advertising minutage restrictions.

1.283 Examples:

- If Channel A, were to run a promotion which trailed one of its programmes and also said “Channel A is available on Platform X – the UK’s favourite cable company”, we would be likely to consider the reference to Platform X unduly prominent.
- If Channel A were available on both Platform X and Platform Y but promotions for it referred only to its availability on Platform X then, in the absence of editorial justification, this might be considered to be unduly prominent.

¹³ These ‘undue prominence’ considerations also apply to promotions broadcast by Channel 3 licensees, Channel 4 or Five which are not subject to the neutrality requirement set out in the Cross-promotion Code, e.g. a promotion for mobile phone content which mentions a participating mobile phone network.

Glossary

The following is a glossary of television broadcasting terms to assist readers of these guidance notes:

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| Advertiser-funded programming | Advertiser-funded programming is sponsored programming . |
| Advertising | Any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods and services, including immovable property, rights and obligations, in return for payment ¹⁴ . |
| Associate | In relation to connected person , “associate” has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990. |
| AVMS Directive | The Audiovisual Media Services Directive (Directive 2010/13/EU) – the European legislation relating to audiovisual media services which amended and replaced the TWF Directive . |
| Children’s programme | A children’s programme, in the context of product placement only, is “a programme made for a television programme service or an on-demand programme service, and for viewing primarily by persons under the age of sixteen” ¹⁵ . |
| Commercial references | Any visual or audio reference within programming to a product, service or trade mark (whether related to a commercial or non-commercial organisation). |
| Connected person | In summary, the following persons are connected with a particular person (‘person’ includes an individual as well as a body corporate and other incorporated and unincorporated legal entities): a) a person who controls that person; b) an associate of that person or of the person in (a); and c) a body which is controlled by that person or an associate of that person. |
| Control | In relation to connected person , control has the same meaning as set out in paragraph 1, Part 1, Schedule 2 of the Broadcasting Act 1990. |

¹⁴ This definition is from Article 1(ii)(i) of the AVMS Directive and is replicated in Ofcom’s Code on the Scheduling of Television Advertising:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.

¹⁵ See Schedule 11A, paragraph 3(2), of the Act.

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| Costs | In relation to sponsorship , costs means any part of the costs connected to the production or broadcast of the programming . |
| Current affairs programme | A current affairs programme is one that contains explanation and/or analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy. |
| Films | “Films” includes films made for cinema and films (including single drama and single documentaries) made for television or other audiovisual media services. |
| HFSS foods and drinks | Foods and drinks which are high in fat, salt or sugar (“HFSS”). HFSS foods and drinks are defined by the nutrient profiling scheme which was devised by the UK’s Food Standards Agency for use by Ofcom. This can be found at http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod |
| Product placement | “The inclusion in a programme of, or of a reference to, a product, service or trade mark where the inclusion is for a commercial purpose, and is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any connected person with a relevant provider, and is not prop placement ” ¹⁶ (emphases added). |
| Programme-related material “PRM” | Consists of products or services that are both directly derived from a programme and specifically intended to allow viewers to benefit fully from , or to interact with, that programme. |
| Programmes produced under UK jurisdiction | Any programme produced or commissioned by either: a) the provider of the television programme service or any person connected with that provider (except in the case of a film made for cinema); or b) any other person with a view to its first showing taking place in a television programme service under the jurisdiction of the United Kingdom (for the purposes of the AVMS Directive). |
| Programming | All broadcast content except spot advertising and teleshopping. Programmes, trailers, cross-promotions and sponsorship credits are all forms of programming. |
| Prohibited categories | Categories of products, services and trade marks that cannot be advertised on television, as set out in the Broadcast Committee of Advertising Practice (BCAP) UK Code of Broadcast Advertising. |

¹⁶ See Schedule 11A, paragraph 1(1) of the Act.

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| Promotional reference | This includes, but is not limited to, references (either explicit or implicit) that encourage, or are intended to encourage, the purchase or rental of a product or service . |
| Prop placement | “The inclusion in a programme of, or of a reference to, a product, service or trade mark where the provision of the product, service or trade mark has no significant value , and no relevant provider , or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trade mark , or a reference to it, in the programme” ¹⁷ (emphases added). |
| Premium rate services (PRS) | Premium rate services telephony services as defined by PhonepayPlus. |
| Relevant provider | “The provider of the television programme service in which the programme is included or the producer of the programme” ¹⁸ . |
| Residual value | In the context of prop placement , “residual value” means “any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trade mark , or a reference to it, in a programme” ¹⁹ (emphases added). |
| Signalling | The means of informing audiences of instances of product placement . |
| Significant value | In relation to prop placement , “significant value” is a residual value that is more than trivial. |
| Sponsor | Any public or private undertaking or natural person (other than the broadcaster or programme producer) who is funding the programming with a view to promoting its products, services, trade marks and/or its activities. |
| Sponsor reference | Any reference to the sponsor’s products, services or trade marks . |
| Sponsored programming/channel | Sponsored programming (which may include a programme, channel, programme segment or block of programmes) is programming that has had some or all of its costs met by a sponsor. It includes advertiser-funded programmes . |

¹⁷ See Schedule 11(A), paragraph 1(2), of the Act.

¹⁸ See Section 321(1)(c) and Schedule 11A, paragraph 6(1)(c) of the Act.

¹⁹ See Schedule 11(A), paragraph 9, of the Act.

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| Sponsorship credit | An announcement which informs the audience when content is sponsored and by whom. |
| Spot advertisement | Sometimes referred to as a ‘commercial’ or ‘spot ad’, this is an advertisement found in an advertising break. |
| Surreptitious advertising | Surreptitious advertising involves a reference to a product, service or trade mark within a programme, where such a reference is intended by the broadcaster to serve as advertising and this is not made clear to the audience. Such advertising is likely to be considered intentional if it occurs in return for payment or other valuable consideration. |
| Trade mark | In relation to a business “includes any image (such as logo) or sound commonly associated with that business or its products or services ” ²⁰ (emphases added). |
| TWF Directive | The Television Without Frontiers Directive – the European legislation relating to television broadcasting services, which has been amended and replaced by the AVMS Directive . |

Useful links

The Code on the Scheduling of Television Advertising:

<http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>

The UK Code of Broadcast Advertising (“BCAP Code”):

<http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>

The PhonepayPlus Code of Practice:

http://www.phonepayplus.org.uk/upload/PhonepayPlus_Code_of_Practice.pdf

Nutrient profiling scheme:

<http://www.food.gov.uk/healthiereating/advertisingtochildren/nutlab/nutprofmod>

²⁰ See Schedule 11A, paragraph 9, of the Act.