

Title:

Mr

Forename:

Mark

Surname:

Wood

Representing:

Organisation

Organisation (if applicable):

Krempelwood llp

Email:

What do you want Ofcom to keep confidential?

Keep nothing confidential

If you want part of your response kept confidential, which parts?

Ofcom may publish a response summary:

Yes

I confirm that I have read the declaration:

Yes

Ofcom should only publish this response after the consultation has ended:

Yes

Additional comments:

Question 1.1: Do you agree that it is appropriate to apply product placement rules to paid-for references in programmes that are not included for a commercial purpose? If not, please explain why.

Yes

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

The proposals do not go far enough to allow the government's goal of allowing "television companies and programme makers to take advantage of product placement".

The restrictions on thematic placement and the vague definition of 'promotional' do not allow for any significant increase in advertiser spending, and also do not go far enough in allowing for distinction between "prop placement" and "paid-for product placement". This is based on our experience and expertise, not on specific evidence.

Additionally, the AVMS directive does not, in our opinion, preclude thematic placement providing promotional and prominence guidance is followed.

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

The distinction between prop placement and product placement. The definition of "thematic placement". The use of the words "direct or indirect", and "explicit or implicit", in relation to 'encouragements to purchase' and 'endorsements' are too vague; we propose that they should be restricted to "direct" and "explicit".

Question 2.1: Are there any impacts we have not identified above that you think would result from our proposal to clarify that single dramas are a form of film made for television? (See proposed Rule 9.8). If so, please provide evidence wherever possible.

No

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

N/A

Question 3.1: Please identify any potential impacts of the rule prohibiting product placement in news, and provide evidence, wherever possible. (See proposed Rule 9.9(a)).

N/A

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

N/A

Question 4.1: Do you agree that clarification that thematic placement is prohibited is appropriate? (See proposed Rule 9.10). If not, please explain why.

No.

The definition is too broad. We understand the need to avoid allowing an advertiser's "beliefs" or opinions to be paid for, but to go as far as "aims, objectives and interests" is not helpful. Any thematic placement would be to further the advertiser's marketing objectives, not their politics or lobbying, and a definition should be sought to reflect this. The AVMS Directive would allow for this; the phrase about product placement being allowed "only when it involves products or services appearing in a wholly natural way that is entirely justified by the editorial context in which they appear" is consistent with our view.

Without thematic placement there would be very little difference (other than payment) between prop placement and product placement; this would not result in significant revenues. There should be no concern over a drift to surreptitious branding, lobbying or editorial interference if a) 3rd parties are not able to pay for thematic placement, b) the brand involved will be clearly identified via signalling, and c) generic trade associations etc should not be allowed to promote issues in this way.

Question 4.2: Do you agree with Ofcom's proposed description of thematic placement? (See proposed Rule 9.10). If not, please explain why, and suggest drafting changes, if appropriate.

See above

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

See above

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

See above.

In addition, Advertiser Funded Programming should be exempt from any restrictions on "thematic placement" as there is an implicit presumption of prominence (though not "undue").

Question 5.1: Do you consider that it is appropriate to prohibit product placement in specialist factual programmes produced under UK jurisdiction? If not, please explain why.

No. The genre of "specialist factual" is not a readily understood definition of the types of programme involved. The existing restrictions on news and current affairs should suffice.

Question 5.2: Do you agree with the meaning for "specialist factual programmes" (See proposed Rule 9.14). If not, please explain why, and suggest drafting changes, if appropriate.

See above

Question 5.3: Please identify any potential impacts of either permitting or prohibiting product placement in specialist factual programmes that you consider should be taken into account, and provide evidence, wherever possible.

See above

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

See above

Question 6.1: Do you agree that it is appropriate to prohibit the placement of those products and services that are not allowed to be advertised on television? (See proposed Rule 9.15). If not, please explain why.

Yes

Question 6.2: Do you consider that the wording of proposed Rule 9.15(f) is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.

No. It should state something along the lines of “any product, service or trademark that is not allowed to advertise on television, or any product service or trademark that is not allowed to advertise in the programme or timeslot concerned”.

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

Yes

Question 6.4: Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible.

We do not agree that alcohol and HFSS products should be restricted from product placement assuming the programme and timeslot concerned are available to the brands concerned as allowable sponsorship or spot advertising opportunities.

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

See above

Question 7.1: Do you consider it is appropriate to require broadcasters to identify product placement by means of a universal neutral logo and universal audio signal? (See proposed Rule 9.16). If not, please explain why, suggesting alternative approaches where appropriate.

No. We believe a universal neutral logo is sufficient, and that audio signals can run in services for those with impaired hearing.

Question 7.2: Please provide comments on the proposed criteria for determining how any universal neutral logo looks, and any additional or alternative criteria which you consider should define the visual signal, including views on the nature, size and duration of the signal.

Question 7.3: Please provide comments on the proposed criteria for determining how any universal audio signal sounds, and any additional or alternative criteria which you consider should define the audio signal, including views on the nature and duration of the signal.

Question 7.4: Please provide comments on whether you consider that such criteria should be specified in the Code or in Ofcom's guidance. If you consider that the criteria should not be specified in either, please explain why.

Question 7.5: Do you consider it is appropriate to require broadcasters to provide the audience with a list of products/services that appear in a programme as a result of product placement arrangements, either in the end credits or on the broadcaster's website? (See Rule 9.17(a) and (b)). If not, please explain why.

Yes

Question 7.6: Do you consider that the wording of proposed Rule 9.17(a) and (b) is appropriate? If not, please explain why, and suggest drafting changes, if appropriate.

Yes

Question 7.7: Do you agree that broadcasters should include additional description text alongside the visual and audio signal for the first month that they are transmitted? If not, please explain why.

Yes

Question 7.8: Do you agree that broadcasters should transmit an audience awareness message if they show programmes that must be signalled during the first six months of the rules being in force? If not, please explain why.

No. Broadcaster's pre-promotion and first month additional text information is sufficient.

Question 7.9: Please provide your comments on the proposals we have set out on the key messages, timing and duration of the audience awareness campaign.

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

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

Question 8.1: Do you consider that it is appropriate to allow sponsors to product place in programmes they are sponsoring? If not, please explain why.

Yes

Question 8.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.:

N/A

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

N/A

Question 9.1: Do you consider it is appropriate to replace the rule requiring sponsorship arrangements to be transparent with a requirement that all sponsorship credits include a clear statement informing the audience of the sponsorship arrangement? (See proposed Rule 9.22). If not, please explain why.

Yes

Question 9.2: Do you consider it is appropriate to amend those rules requiring sponsorship credits to be separated from editorial and advertising, to rules requiring that credits must be distinct from editorial and advertising? (See proposed Rules 9.23 and 9.24). If not, please explain why.

Yes

Question 9.3: Do you consider the drafting of proposed Rules 9.22, 9.23 and 9.24 is appropriate? If not, please explain why, and suggest drafting changes were appropriate.

Yes

Question 9.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.

Yes

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

Yes

Question 10.1: Do you consider that it is appropriate for sponsorship credits to be broadcast during programmes? (See proposed Rule 9.25). If not, please explain why.

Yes

Question 10.2: Do you agree that sponsorship credits shown during programmes should not coincide with sponsor references (product placement) within the programme? (See proposed Rule 9.29). If not, please explain why.

Yes

Question 10.3: Do you consider the drafting of proposed Rules 9.25 and 9.29 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.

Yes

Question 10.4: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence to support these, wherever possible.

Yes

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

Question 11.1: Do you consider that it is appropriate to limit the content of sponsorship credits broadcast during programmes? (See proposed Rule 9.27). If not, please explain why.

Yes

Question 11.2: Do you agree that sponsorship credits broadcast during programmes should not conflict with product placement restrictions? (See proposed Rule 9.28). If not, please explain why.

Yes

Question 11.3: Do you consider the drafting of proposed Rules 9.27 and 9.28 is appropriate? If not, please explain why, and suggest drafting changes, where appropriate

Yes

Question 11.4: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence to support these, wherever possible.

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

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

Yes

Question 12.2: Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible.:

Question 13.1: Do you consider that the proposed Rule 9.2 requiring that there is distinction between editorial content and advertising is appropriate? If not, please explain why, and suggest drafting changes, where appropriate.

Yes

Question 13.2: Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible.:

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

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

Yes

Question 14.2: Do you consider that the wording of the proposed rule and meaning is appropriate? (see proposed Rule 9.3). If not, please explain why, and suggest drafting changes, where appropriate.

Yes

Question 14.3: Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible.

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

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

Yes

Question 15.2: Please identify any potential impacts of the proposed removal of the virtual advertising rule that you consider should be taken into account, and provide evidence, wherever possible.

Question 16.1: Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate.

Yes

Question 16.2: Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible.

Yes

Question 16.3: Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code? If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008.

Question 16.4: Do you agree that the revised Section Nine of the Code should come into force on the same date it is published by Ofcom? If not, please explain why.

Yes

Question 16.5: If you would prefer that the revised Section Nine of the Code does not come into force at the time it is published, to allow a period of preparation/ implementation, how long would you prefer this period to be? Please give reasoning.