

BBC response to the Ofcom consultation:- Broadcasting Code Review: Commercial references in television programming

This document is divided into two sections:-

1. Response from the BBC
2. Response from the BBC Commercial Services

SECTION ONE: RESPONSE FROM THE BBC

The BBC's response to the consultation is chiefly restricted to some general comments and to comments on sections of the proposed revised Code which apply to Licence fee funded services. Section 2 of this document, the response from BBC Commercial Services, offers a response in other areas.

1.Principles

Overall the BBC would welcome the Principles laid out at the beginning of the proposed Section Nine and considers that it is important that there is a distinction between editorial content and advertising on commercial television services.

2. Signalling of product placement in films made for cinematic release.

Product placement is a well established practice in feature films made for cinematic release. Currently when cinematic films containing product placement are shown on BBC or commercial television in the UK there is no requirement to signal product placement. The proposed new Ofcom Code (Section Nine of the consultation document) maintains this approach, with no requirement for UK broadcasters to signal placement in feature films originally made in the UK or elsewhere for cinematic release.

The Ofcom Code is being revised in the light of the requirements of the European AVMS Directive and the UK Government Regulations. The Regulations insert a new Schedule 11A into the Communications Act 2003 which specifies, amongst other things, the permissible types of product placement, the types of programmes in which it can be used and a requirement re signalling. However, this requirement only applies if the programme containing the product placement has been "produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider".

In line with its public purposes to support the creative industries in the UK, the BBC provides some financial investment to support feature films made by independent producers for cinematic release. These are not programmes "produced or commissioned" by the BBC (or a connected person). They are

feature films made by independent producers with a range of investors. We would argue that transmissions of such films on BBC television should be treated in the same way as transmissions of other feature films made for cinematic release and should not require signalling for product placement.

- UK Film Funding by the BBC

The UK film industry is supported by a number of funding mechanisms including tax concessions and support by various funding bodies. Independent films in this country are not in a position to survive without a range of funding sources and in some limited cases BBC Films may provide some of this funding.

BBC Films is a division of the BBC which invests solely in cinematic productions, not television productions. All of the films are made by independent producers.

We do not believe that BBC Films can be considered to "commission" the feature films in which it invests. As a funder with limited resources BBC Films is one of several funders in a film. The amount of such funding can range from a very small minority proportion (less than 1%) of the total production budget to larger proportions depending on the nature of the BBC's involvement. It therefore does not have ultimate editorial or business control of the films in which it invests but shares this with those other funders, sometimes on a very limited basis. The BBC starts from the position that there should be no product placement in films in which it invests. BBC contracts specify that there should be no product placement in these films and in cases where the BBC has made a significant financial investment it will be able to secure sufficient editorial control over the content of the film to stipulate that it does not contain product placement.

However, in many cases, the nature of the funding may not give rise to an ability to prevent the inclusion of product placement, should this be accepted as part of the arrangement agreed by the majority funders of the film. Furthermore, because these feature films are made by independent producers over which the BBC does not have control, the BBC may not be in a position to know if the finished version of the film contains product placement.

- Minority Investment does not constitute Commissioning

In such cases the BBC's role is therefore fundamentally different from when it commissions television programmes from independent producers. The latter follows a well-known process which is highly regulated, whereas the involvement in films is as an investor in, rather than as a commissioner of, the film concerned. In the case of TV programmes, the commissioning activity is the essential prerequisite to the coming into existence of the relevant programme in the first place and the commissioner is also the primary recipient of the programme. The commissioning broadcaster will effectively be the motivating force behind the programme, without which it would not be

made. The feature films in which the BBC invests are being made for cinema release. Primary consideration is given to the views of the theatrical distributors. The BBC gets to show the film at the end of the exploitation chain, securing a licence for first showing on U.K. terrestrial television after it has been shown in cinemas and possibly after it has been shown on non-terrestrial television.

Since the Regulations do not define what “commission” means, the word should be given its normal meaning, taking into account the manner in which it is used in the broadcasting industry. On this basis, the BBC strongly believes that its activity as a minority investor in films should not be considered to be that of a commissioner of such films, such that the films concerned would need to be accompanied by signalling if they are shown on UK television programme services. There is no sense in which the limited degree of control obtained through the BBC’s investment can be considered to be in any way equivalent to the control obtained when TV programmes are commissioned.

- Potential Adverse Effects

We think it would be counter-productive for a sub-set of the small number of films in which the BBC invests to be subject to a signalling requirement while all other films made in Hollywood and elsewhere are not subject to this requirement. The audience could not be expected to understand why only these few independently produced films shown on the BBC had signalling for placement. The audience might well assume there was no placement in any other films, while in fact many films made by mainstream studios contain significant placement. Furthermore if product placement is contained in UK films in which the BBC invests, the extent of product placement is likely to be smaller and less prominent than in the case of films from major studios.

So far, there has been relatively little product placement in independently produced UK films, but the economic squeeze on film production in the U.K. may herald an increase in placement. The BBC will not wish to show films where it is required to signal product placement save in the most exceptional cases. If there is a requirement to signal placement in films in which the BBC only has a very small minority investment, and cannot control the placement, this may lead to a reduction in investment from the BBC in a range of innovative and artistically valuable independent films. This would be particularly damaging at a time when British films are struggling to find finance.

Overall position

- The BBC’s activity as an investor in feature films is fundamentally different from that of commissioner of a television programme
- The level of control derived from investment by BBC Films does not confer the extent of control necessary to constitute commissioning. The BBC is

an end user, it merely secures a licence to broadcast the film after cinematic release

- In feature films in which the BBC invests, the BBC will often not have sufficient power or control to insist that product placement should not be contained in the film
- The vast majority of feature films shown on UK television services are free to take placement and no signalling is required. A requirement for BBC services to signal placement in just a handful of independently produced films will wrongly and misleadingly suggest that it is only these films which contain product placement
- It will therefore be confusing to viewers to BBC television if a very small proportion of films made by UK independent producers and with limited financial support from the BBC are the only ones where there is product placement signalling. Signalling placement in these few films will make it unduly prominent while viewers will be unaware of the significant levels of placement in many mainstream films.

We would therefore propose that Ofcom makes no requirement for the signalling of product placement in feature films in which the BBC has invested.

3. Clarification of the prohibition of product placement in news

We would welcome proposed Rule 9.9(a) which clarifies that product placement is not acceptable in news.

However, in 4.43 of the document Ofcom points out that this prohibition includes a ban on product placement in any news from outside the UK which is included in a UK broadcast. We totally accept that, as suggested “licensees will need to ensure that they have systems in place to identify product placement and remove placement prior to transmission”. But Ofcom will need to recognise that it would not always be possible to know if product placement were contained in such news material. This might be a particular difficulty with a live news feed. For example, when for an unexpected high profile American news story, a UK News channel went over live to a U.S news broadcaster.

4. Sponsorship credits

The proposal to allow programme sponsor credits within programmes, together with the ability to include product placement references could lead to a proliferation of commercial mentions. This might particularly be the case in programmes covering sponsored events, such as sports events, where there could also be references to the event sponsor. This problem would be further exacerbated if the event and programme sponsor were the same and the sponsor also placed product in the programme covering the event. It would be most helpful for broadcasters, sponsors and event organisers if Ofcom could

publish guidance about the amount of sponsor references which might be acceptable in such programmes.

5. New Code rules in force

We do not think it would be advisable for the revised Code to come into force on the same date it is published by Ofcom. Broadcasters need to be given a short period of time to fully understand and adjust to the new Code. We would therefore propose that the Code should come into force two months after it is published.

SECTION TWO: RESPONSE FROM THE BBC COMMERCIAL SERVICES

Introduction

BBC Worldwide is the principle commercial subsidiary of the BBC. In 2009-2010 it's turnover was £1,074 millions. BBCW broadcasts nine television channels within the European Union under broadcast licences from Ofcom. The company also holds a fifty percent share of the broadcaster UKTV.

BBC World News is the BBC's international news channel and is part of the BBC Global News division. It is broadcast globally, except in the UK. Its broadcasting within the European Union is under a broadcast licence from Ofcom.

In general terms, the BBC's commercial services welcome the proposals put forward by Ofcom. However, there are a few areas where we believe clarification is needed. We have therefore only responded to these questions within the consultation.

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

Whilst we agree with the principle that news and current affairs programmes should be free from commercial influence, the current wording of 'news programmes' may create a mismatch with the rules around sponsorship which currently prohibits sponsorship of 'news and current affairs programmes'. There are currently programmes broadcast on rolling news channels which are not classed as news and current affairs programmes and can therefore be sponsored. We would expect that product placement could also be accepted within these programmes. We believe it would therefore be helpful to use the same phraseology of 'news and current affairs programmes'.

There is also a potential issue with live syndication of foreign news broadcasting. This occurs regularly on rolling news channels (particularly during the night) where a feed from a US broadcast network might be shown. In such circumstances the US broadcast network may include product placement which cannot be detected because of the live nature of content. Clearly if it were known in advance that such placement would appear, steps

could be taken to remove it. However, we would expect that such syndication would still be permissible where it cannot be foreseen that product placement is included, or where the nature of the content, for example coverage of a developing news story, warrants such syndication.

Proposal 4: Thematic placement

We support the clarification that thematic placement is prohibited. However we believe guidance is required around the extent of thematic placement. For example, it should be acceptable within a comedy programme set in an office for a company to pay for their office to be used as the setting.

Proposal 6: Additional prohibited categories

We agree that it is appropriate to prohibit placement of those products and services that are not allowed to be advertised on television.

We also agree that it is unnecessary to apply advertising scheduling restrictions to product placement because the government has already established the policy of prohibiting placement of those products (such as HFSS foods) which might require scheduling restrictions.

Proposal 7: Signalling

We agree with Ofcom's proposal for a universal neutral logo to identify product placement. However we would question the necessity for a universal audio signal in addition as this, in itself, could make the product placement more prominent than desired.

For reasons of transparency we can see why there is a case for broadcasters to provide the audience with a list of products/services that appear as a result of product placement arrangements. However, where this information is made available on a website as well as in end credits, we do not believe the requirement that end credits are not reduced in size should apply.

Proposal 9: Identifying sponsorship arrangements (sponsorship credits)

We support the proposal that sponsorship credits should clearly establish the relationship between the programme and the sponsor. We also support the amendment from separation between sponsorship credits, editorial and advertising to distinction. However, we believe that these new rules will require further guidance to clarify exactly what is meant.

Proposal 10: Allowing sponsorship credits during programmes

Whilst we support this change, it may be appropriate for further guidance to indicate the number of sponsorship credits that would be acceptable.

Proposal 11: Content of sponsorship credits during programmes

We support the proposals to limit the content of sponsorship credits during programmes so that they do not detract from enjoyment of the programme. However, it may be appropriate for further guidance to indicate the duration and quantity of such credits.

New Code rules in force

We do not agree that the revised Code should come into force on the same date it is published by Ofcom. Broadcasters need to be given a short period of time to fully understand the new code. We would therefore propose that the Code come into force two months after it is published.