Consultation response form

Your response

This response is made in a personal capacity by Jonathan Hardy, Professor of Communications and Media at London College of Communication, University of the Arts London. In 2022-2025 I was Principal Investigator for an international research project, the Branded Content Governance Project, funded by UK Research and Innovation (ESRC and AHRC (ES/W007991/1), https://figshare.arts.ac.uk/BCG_Project This submission is informed by that work and previous research including *Cross-Media Promotion* (Peter Lang, 2010) and *Branded Content* (Routledge 2022), and as an officer in Meccsa Policy Network, and formerly in the Campaign for Press and Broadcasting Freedom.

Summary

What is required is not a relaxation of broadcasting regulatory requirements but a new settlement for media and marketing communications and that is the focus of this submission. This settlement should be guided by some core principles.

1. Advertising transparency: a duty to ensure identification and disclosure of all paid-for marketing communications (all those subject to payment or economic consideration).

2. Editorial independence: this should be secured and safeguarded in production arrangements and be evident to users in the content and services they can access.

3.Separation of media and advertising: appropriate safeguarding of specific content genres from the direct or indirect influence of marketers or other sponsors.

4. Designating branded content: Overhauling the classification, labelling and identification for users, and regulation of content that is funded by marketers.

5. Cross-promotion safeguards: maintaining protection for consumers, media/information integrity, competition and media-advertising standards.

Advertising Transparency

- The Branded Content Governance Project calls for a comprehensive legal duty of advertising transparency for all paid-for communications (Hardy et al 2025a, 2025b).
- The EU's current Audiovisual Media Services Directive sets different rules for the disclosure of product placement in broadcasting and on-demand programme services (ODPS). There should be efforts to close this gap and to extend the use of the 'P' sign to ODPS.

The product placement market is growing, as marketers seek audience attention and engagement, and media seek revenue streams that supplement or replace revenue from interruptive advertising. Global spending on product placement grew by 12.3% in 2023 (to nearly $30 billion dollars), the majority of which was spent on television (70%), followed by film (12%) (Adnews 2024). Product placement is also an area where rapid industry developments are taking place. The ability to place virtual product placement in shows in post-production has been developing for some time (Dagnino 2022) but this can now be targeted and '(hyper-)personalised'. AI-assisted virtual product placement (VPP) can use the data collected on users to select and insert targeted brand placements into the content they consume and allied services. A leading VPP and in-content advertising platform, Mirriad (2024), describes this as 'the advertising solution for the streaming age'. These are 'hyper-contextual ads that do not interrupt the viewing experience…[claiming] seamless integration of brand messages directly within the content, promising more authentic engagement and enhancing viewer perceptions of advertisements' (Mirriad (2024). NBC Universal announced plans to use their data and make virtual ads programmatic; 'The products and brands will rotate based on who's watching the film taking into account factors like age, gender, search history, and more' (Lukyantseva 2024).

Managing the disclosure of paid-for marketing (and the issues of marketer payment and editorial/aesthetic control) will become more complex and challenging as they arise in 'emergent' audiovisual forms/formats beyond the more established editorial/advertising relationships in broadcasting. This is already occurring with the growth of marketers' interest in podcasting and SVOD, as well as live-streaming, short-form video and other media forms.

These changes will also make content monitoring, as a necessary basis for enforcement of vital rules, even harder. The period ahead needs to include discussion and planning around all these issues. It requires review, and where necessary strategic overhaul, of Ofcom's capabilities to monitor content, using AI and other tools, to identify rule-breaches and enforce compliance.

- The BBC should set a clear standard and not allow product placement, sponsorship (or branded content) in any programming that was originally commissioned by a BBC UK public service.
- The commercial PSMs and Ofcom should ensure that a P sign is used across all content they provide that includes paid for (or other economic consideration) marketing communications. Declaration of product placement should be standardised across all Ofcom regulated services, for the benefit of viewer awareness and to support media literacy. There is scope for flexibility to achieve the most suitable ways to inform viewers of paid-for content as new formats develop, but any departure from common and standardised identifiers like the P sign, should be necessary, justified and approved through a period review process that facilitate the maximum public access and participation.
- The prop placement market arrangements that have persisted since the liberalisation of product placement in 2011 should be subject to a transparent auditing system that provides a sufficient level of public information to enable all those participating, and Ofcom as regulator, to be held publicly accountable.
- There should be a periodic review by Ofcom of commercial communications in audiovisual services that will inform and accompany changes in the designation and rules for content across the media-marketing communications spectrum.

Editorial Independence and designating branded content

The pressures and incentives on broadcasters to accommodate brand involvement have increased considerably and take a variety of forms. Editorial independence and integrity should be safeguarded. This cannot occur with the increasing involvement on brands in the creation of programmes, from privileged access to brand properties, to prop supply and presence in programmes. The provisions of the existing Ofcom Broadcasting Code are under considerable strain, notably:

9.1(a): Broadcasters must ensure that no advertiser exercises editorial influence over the content of programmes.

9.2: Broadcasters must ensure that editorial content is distinct from advertising.

In recent years, there has been an expansion of programmes built around featuring brands as the principal topic, such as *Inside Cadbury: Chocolate Secrets Unwrapped* (Channel Four, 2019). Some of these are regular programmes, others are advertising-funded programming. All of them are required to maintain the broadcaster's editorial independence. The presence of the brand is usually clear and obvious. However, that is not the same thing as clarity about the kind of influence, funding and control the brand may have exercised. The description of the programme may take various forms, or like *Inside Cadbury* have no designation beyond that of normal programming, and so there is a greater risk that viewers/users will not recognise and understand the type of programme they are engaging with when there is significant brand presence.

Some of those working in branded content express concerns about the limitations arising from current rules covering programmes, advertising (minutage), sponsorship, teleshopping and related content. The work of the Branded Content Governance Project has been principally focused on how governance can best support advertising transparency for consumers, media and information integrity, and wider public values and interests in communications. However, we recognise the need to overhaul the designations that apply across the media-advertising spectrum as an opportunity for developing good governance and best practice for all, and even for 'antagonistic consensus' between different concerns and interests in media-marketing integration.

The new settlement for media and marketing communications would create a new category for branded content separate from programmes where editorial independence is maintained. This would seek to strengthen how editorial independence is secured and presented to users. It would also move to allow types of brand-funded content that are clearly labelled, while making these subject to specific rules on content, permitted programme types/genres, scheduling and minutage, placement/display and promotion/cross-promotion.

- There should be a prominent, common sign used to indicate brand-funded content, such as a 'B' sign for 'branded content'.

Sponsorship

The opportunity for marketers to sponsor programmes, strands, channels or other media properties, should only exist where there is no direct brand benefit within the programme/content, beyond any paid product placement (duly acknowledged). So, programmes build around brands, and involving any payment (or economic consideration) should not be permitted to be designated as sponsored and should instead be identified as 'branded content' and subject to new rules. The existing requirement that sponsorship should not exercise any editorial influence most be maintained. This cannot be achieved when the sponsor who pays features in the programme content and so such content should be designated as branded content and regulated accordingly.

The principle of editorial independence has been stretched. This is a highly valued quality by marketers, but also one liable to be undermined, not necessarily intentionally, but through the inherent dependencies between sponsors, marketing agencies, content makers, distributors and other market actors such as other advertisers, platforms and adtech intermediaries.

Programmes or content that present branded and brand-sponsored events such as arts, sports, educational or other events should usually be presented as normal programmes but with enhanced verification of editorial independence and integrity.

Separation between content and advertising

The revision of rules should establish coherent, cross-platform and suitably durable rules on the programme genres and content types that should be subject to restrictions. Ofcom's rules, shaped by EU and Council of Europe regulation, do not allow product placement in news and current affairs, consumer, children's and religious programmes. There is a strong case that 'branded content' in those genres should not be permitted. There are significant funding challenges in these genres and so programme sponsorship remains appropriate in genres other than news and current affairs. However, special safeguards are necessary, including those highlighted in this submission.

Media literacy

There should be strong coherence and integration between regulation and media literacy. The BCGP has made submissions to Ofcom's reviews of media literacy strategy to advocate the full inclusion of commercial communications into educational initiatives. Such work on the identification and understanding of marketing communications also forms part of broader work on understanding sources, source influence and source disclosure in communications and tackling dis/misinformation. A media literacy impact assessment should be conducted before significant changes as made to user-facing broadcasting/communications regulations such as those in scope for this review.

Cross-promotion

The current rules on cross-promotion were first developed in response to media industry and policy activities in the late 1980s and 1990s. I examined this period and the development of rules in a PhD and then book-length study *Cross-Media Promotion* (Peter Lang, 2010).

There are significant new conditions and challenges today, but some key principles remain salient. These include the principles set out in Ofcom's cross-promotion code (3.1) that cross-promotions should not prejudice fair and effective competition, and should inform viewers of services likely to be of interest to them.

The rules should enhance consumer welfare, fair dealing and competition, media quality and integrity. The capacity and power of media outlets to promote and cross-promote needs to be managed to protect interests beyond those of providers themselves. Relaxing rules on the grounds their underlying purposes are obsolescent will not achieve that management.

The case to relax rules on broadcasters to achieve greater parity across audiovisual content services is not strong. Linear broadcasting retains core qualities that justify regulation. In linear broadcasting, scheduling and presentation power still largely rests with channels. If a viewer is attracted to content on the channel, then they are captive to the timing and flow of content provided. They can direct their attention elsewhere, channel-hopping, second-screening or otherwise, but this will not affect the programme start time and so their options and agency are limited. This underpins why rules on advertising time, and self-/cross-promotion remain so important and necessary.

Ofcom's cross-promotion code requires that cross-promotions are distinct from advertising. This has several meanings, one of which is that promotions are not included in advertising minutage (the total time per day allowed for commercials and teleshopping within TV broadcasts), except where payment (or economic consideration) is made between the promoting channel and an entity that does not meet co-ownership criteria.

Market conditions drive a likely intensification of promotion and cross-promotion, arising from increasing competition for audiences and attention, corporate consolidation and multimedia expansion, creating a greater number of services to (cross)promote on multiple platforms. These pressures lead to more promotional minutage on linear services, more 'locked in', un-skippable promotion for BVoD and SVoD services, especially in basic tier, ad-supported subscription, such as advertising-based video on demand (AVOD). AVOD platforms generally include more programme promotions than higher-priced ad free tiers. These platforms are designed to monetise viewers' time spent, when this is valued by advertisers, and to promote engagement with the properties and services of the content supplier.

The pressures to increase promotions have traditionally been countered by two main counter-forces. One is regulation, which also reflects a third force, pressure from market competitors for rules to manage rivalrous interests and promotional opportunities. The other force is audiences, influencing providers to try to ensure promotions are entertaining, fitting and valued to retain audiences. However, this has never been straightforward, as audiences are variously 'locked in' across both linear and non-linear services.

There are many aspects that need regulatory attention, informed by wider debate. The core principles of the cross-promotional rules need to be maintained and strengthened, while their precise description, scope and reach across audio/audiovisual content needs to be overhauled. This should also review setting appropriate limits on the variation of sound processing that can make advertisements and promotions louder than programmes. Another issue for regulatory review is the appropriate protection of artistic rights not to have works interrupted by split screen, on-screen next (ONS) and, on VOD, automatically cued and played content.

Final comments

This consultation has invited comments on broadcasting regulation including advertising and cross-promotion rules. Yet Ofcom's (2025 *Transmission Critical* report that we are invited to respond to, does not discuss cross-promotion and has little to say on media promotion. The challenges of advertising finance for broadcasters are discussed but not the specific contexts of media-marketing integration. The report offers a positive account of advertising changes, describing these as 'making audio-visual advertising more accessible to a broader range of businesses, including small and medium enterprises, and shifting the focus of advertising from outputs (e.g. audience size) to outcomes (e.g. consumer action in response to an advertisement)'. Those changes are relevant and significant, yet some of the wider implications of adtech are not referenced and need to be addressed. Across publishing today, AI-powered content management systems go beyond providing targeted advertising running alongside content to offer integrated management of content, customer data, subscriptions and hyper-personalised advertising. Such technological and business models are already informing the growth in connected-TV advertising spending and retail media.[i] As these systems develop the need to debate the importance and application of the principles outlined at the start of this submission will only grow.

References

Adnews (2024) 'Product placement grows 12.3%', *Adnews* (26 July). https://www.adnews.com.au/news/product-placement-grows-12-3

Dagnino, G. (2022) *Branded Entertainment and Cinema: The Marketisation of Italian Film*, Abingdon, Oxon.: Routledge.

Hardy, J; MacRury, I; Núñez-Gómez, P. (2025a) *Branded Content Governance: Problems and Mitigations,* University of the Arts London. https://doi.org/10.25441/arts.29424842.v2

Hardy, J. MacRury, I., Núñez-Gómez, P., Rangel, C.; Martínez Isidoro, B.; Establés, M., Vazquez Rodriguez, L., Kubicka, H. and Wysokinski, M. (2025b) *Media-Marketing and Branded Content*

Policy Analysis: UK and Spain, University of the Arts London. https://doi.org/10.25441/arts.30998674

Lukyantseva, Z. (2024) 'Netflix Made Me Buy It: Brand-Content Collaborations in TV Streaming World', *Allrites*, 18 January. https://www.allrites.com/post/netflix-made-me-buy-it-brand-content-collaborations-in-tv-streaming-world).

McDonald, J. (2025) 'Q1 2025 Global Ad Forecast update: Market prospects downgraded by initial $20bn', WARC, March. https://www.warc.com/SubscriberContent/article/warc-data/q1-2025-global-ad-forecast-update-market-prospects-downgraded-by-initial-20bn/en-gb/159814

Mirriad (2024) 'Mirriad at the 2024 TV Upfronts: Virtual Product Placement To Be Included in This Year's Presentations', Mirriad. https://blog.mirriad.com/2024-upfronts

Ofcom (2025) *Transmission Critical: The future of Public Service Media*, London: Ofcom

[i] According to research by the World Advertising Research Centre (WARC), the highest year on year global advertising spending growth for 2025 was forecast for retail media, connected TV/streaming and social media (all over 10%) with modest growth (<10%) in search, out-of-home, cinema and audio, and contraction (around 5%) in publishing and linear television (McDonald 2025).