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Review of Broadcast Regulation

Sky response to Ofcom Call for Input

January 2026

Introduction

Sky is a major content producer, broadcaster, VOD provider, platform operator, and pay TV retailer. As Ofcom has recognised, Sky plays a crucial role in the provision of high-quality public service media (PSM) content in the UK. Notably, we provide high quality news at scale through Sky News, we provide a significant volume of free-toair arts programming through Sky Arts, the UK's only TV channel dedicated to the arts, and we have bucked the trend of a decline in children's programming through our ad free linear channel Sky Kids. Sky is also a leading commissioner of original UK programming, providing significant amounts of high-quality content in genres such as drama and comedy that reflect UK stories and regional life, often based and filmed outside London, for example, the comedy *Brassic*, filmed around Manchester; *Lockerbie: a search for truth*, a recent drama about the Lockerbie bombing filmed in Stirling in collaboration with Screen Scotland; and the upcoming series *Under Salt Marsh*, filmed in Wales in collaboration with Creative Wales.

Unlike the PSBs, Sky receives no regulatory benefits for the PSM content that we produce, whilst at the same time unlike many global streaming services or platforms operating in the UK such as Netflix and YouTube our content activities are heavily regulated by Ofcom. We therefore find ourselves caught between the PSBs who benefit from regulatory advantages, and global players who operate under far lighter regulatory scrutiny whilst growing shares of audience and the revenues that fund UK content production. This uneven playing field hampers competition and puts UK-based media businesses such as ours, providing content for and about UK audiences at a disadvantage, impacting our ability to continue to invest in content.

As Ofcom's has frequently observed, most recently in its 'Transmission Critical' report, whilst the explosion of choice as to what to watch and how to watch it has undoubtedly been positive for audiences, this has come at the price of a significant decrease in reach and impact of traditional UK linear and BVOD content (including PSM content). This has had an inevitable impact on the success of the traditional TV model: viewing is declining and TV advertising continues to decline in real terms and has done so over a substantial period of time.

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However, we welcome the opportunity to input into Ofcom's Call for Input (CFI) into the review of broadcast regulation and to contribute to the debate about how such regulation needs to evolve to benefit the broadest possible set of PSM providers and not just the traditional PSBs.

Ofcom is correct again to identify in this CFI that in this increasingly competitive environment "*the PSBs are finding it harder to fund the production and distribution of high-quality content to all audiences*". However, Ofcom should have also acknowledged that these challenges are not unique to the PSBs – they impact all traditional TV broadcasters and BVOD providers, many of whom (including Sky) create a wide range of high-quality and UK focused PSM content.

We consider that Ofcom's primary objective in this review of regulation should be to assess how it can use this process to create a more level playing field between Ofcom-regulated broadcast channels (currently heavily regulated) and SVoD services and content made available online via social media sites and video sharing

platforms ("VSPs") which are either not regulated at all, or subject to lighter-touch regulation that currently applies to On-Demand Programme Services ("ODPS"). Regulated broadcast channels increasingly sit alongside unregulated (or less heavily regulated) content on the same devices, competing for the same viewers, and advertising revenues. Audience expectations are changing accordingly, and, in this context, applying differing restrictions to different methods of content delivery becomes increasingly difficult to justify, both in terms of viewer protection and in terms of supporting fair and effective competition between UK based providers such as Sky (providing content for and about UK audiences) and the Global players.

While changes introduced by the Media Act may go some way towards addressing this, for example by applying new content standards for Tier 1 designated ODPS providers, they will not address the imbalance in regulation between Ofcomregulated linear channels and entirely unregulated content accessed via YouTube, to which UK viewers (in particular children and young people) are increasingly turning.

However, at the same time, we caution against Ofcom taking a blanket approach of levelling up all the rules – a well-considered and proportionate approach will be essential, balancing the need to protect viewers and to support the provision of high quality/PSM content by traditional broadcasters (including the PSBs) with the need to support innovation and investment in content supplied via alternative means.

We have identified the following areas where we consider that changes to existing Ofcom regulations are likely to be appropriate to meet these objectives:

- Rules on Commercial references
- Advertising standards
- Accessibility requirements

Rules on Commercial References

Section 9 of Ofcom's Broadcasting Code should be relaxed

Ofcom's CFI notes that '[I]t is critical that regulation does not stifle innovation or deter investment in PSM content'. Section 9 of Ofcom's Broadcasting Code (which sets out rules on commercial references) is a good example of outdated rules creating unnecessary restrictions, which are hampering the ability of PSM content providers such as Sky to compete with unregulated online platforms - as well as the less-stringently-regulated ODPS - for sponsorships, product placements and other commercial arrangements.

We consider that there is a clear case for Ofcom to review Section 9 of the Code. In doing so, it is essential that Ofcom goes back to the first principles which focus on the protection of viewers. The principles currently set out at Section 9 of the Code are:

- 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).

At present the rules on commercial references contained within the Code go further than these principles, as they create restrictions on broadcasters that afford no more real protection for viewers, but stifle creativity and the willingness of brands to work with broadcasters (when they can instead work with a global streamer or VSP/online platform who faces no such restrictions). Our view is that Section 9 should instead seek to protect viewers by (i) only prohibiting product placement from brands which can't legally advertise; (ii) prohibiting explicit calls to purchase and sales info; (iii) ensuring broadcasters are transparent in the way they present commercial references.

In Sky's experience, the concepts of "undue prominence" and "promotion" contained within the Code have proven particularly problematic as well as rules relating to sponsorship credits and the prohibition of certain products/services from product placement and sponsorship credits. We expand on these points in more detail below.

Meaning of "Undue Prominence" and "Promotion"

Section 9 of the Broadcasting Code hinges to a large degree on the concepts of "undue prominence" and "promotion". The former is a highly problematic and subjective concept, and both are open to vastly differing interpretations. The lack of clarity built into the rules here creates material uncertainty about what is or isn't compliant and prevents broadcasters including commercial references that in fact might fall well short of being a genuine advertisement or call to purchase.

Rule 9.5 states that no undue prominence may be given in programming to a product, service or trade mark. "Undue prominence" is essentially a term with no clear and objective meaning. The term isn't clearly defined, as its meaning depends on contextual factors in the programme which make a huge difference as to what may (or may not) be acceptable in terms of brands and products appearing in programmes absent product placement. Ofcom should revisit whether this term/rule is needed in order to achieve the aim of preventing advertising from appearing within a programme. It appears clear that this objective is already achieved by the prohibition on promotion of products (Rule 9.4). Adding an extra layer of "undue prominence" merely ties the hands of broadcasters, as it is impossible to ever say with any real certainty that a commercial reference is compliant with the rule, while providing no additional protection for viewers.

Further, when Product Placement rules were introduced – including an additional requirement at rule 9.10 that product placements must not be 'unduly prominent' - this exposed how the requirement to adhere to this nebulous standard was impractical. This is especially the case when trying to assess what "due" prominence

may be, which is especially complex in circumstances where the brand is paying money in order for their product to appear in the programme. In Sky's experience, the concept of "undue prominence" has stifled the take-up for product placement because it has never been possible to say with any certainty where the limits of acceptability for prominence lie, and therefore without any degree of certainty as to how a product might appear in the programme, such investment has gone elsewhere.
Similarly, the prohibition on "promotion", for both traditional commercial references and those that are included as product placement, is also open to significant interpretation.[1] This term could encompass a passing but positive comment, all the way up to an advertising line or direct call to purchase. Again, Ofcom should assess what the actual intent is here, ensure that its application is consistent with, and goes no further than, the principals outlined above and ensure that the rules are much more clearly defined so as not to rule out commercial references that fall short of true advertising.

Sponsorship

A review of Section 9 should also consider the current restrictions on sponsorship credits, in particular the requirement that sponsorship credits broadcast during programmes must not be "unduly prominent" (Rule 9.22(b)). When assessing a sponsorship credit, which is designed to allow a form of brand promotion, it is completely redundant - in terms of preventing viewer harm - for a broadcaster to have to consider whether not the sponsorship credit is unduly prominent. Similarly, it is hard to see how the inclusion of a call to action (currently forbidden under Rule 9.22) is inherently harmful to viewers. For example, under the current rules, "*more information is available on nike.com*" would be permitted, but "*visit nike.com for more information*" would be considered a call to action and therefore not permitted. Again, the rules cast a very wide net and prevent broadcasters entering into deals to include commercial references that fall far short of genuine advertising.

Prohibited categories

Rules 9.13 and 9.23 of the Broadcasting Code prohibit product placement, and sponsorship credits shown during programmes, in relation to a number of products/services including alcoholic drinks, gambling, and food/drinks high in fat, salt or sugar. However, no equivalent outright ban exists for ODPS or online platforms. Further, stadium sponsorships, sports shirt sponsorships, and billboards promoting these products/services are permitted and clearly visible on screen during live sporting events, while Sky is unable to show on-screen graphics from the same brands. In Sky's view these prohibitions are outdated and afford little protection to viewers, while creating an uneven playing field that makes it more difficult for broadcasters to compete for these additional revenue streams. Ofcom should therefore consider relaxing these rules.

Signalling Product Placement

Rule 9.14 of the Broadcasting Code requires that broadcasters apply Ofcom's "universal neutral logo" to signal product placement, and the rule further prescribes

[1] See Rules 9.4 and 9.9 of the Ofcom Broadcasting Code

that this be done at the beginning of the programme, when the programme recommences after a commercial break, and at the end of the programme. Rather than requiring Ofcom licensed linear broadcasters to use the "universal neutral logo", Ofcom should instead remove this prescriptive obligation to align broadcast with ODPS and ASA requirements. It would be much more transparent for viewers if programme makers were free to choose alternative ways to signal product placement, for example by including text to this effect (i.e. "contains product placement") as currently occurs in the VOD space. There is likely low understanding/awareness of the "universal neutral logo" amongst audiences, and so its use creates an unnecessary additional requirement for broadcasters, whilst

potentially making product placement signalling less transparent and less consistent for viewers.

We would also urge Ofcom to consider removing prescriptive requirements around the placement/frequency of the signalling. For example, if there was a 4-hour programme, in which only one part contained a 2-minute sequence of product placement, the rules would require signalling to a level that would do nothing useful in terms of flagging the arrangement to the viewer. The signalling rules should be revisited so that the requirement to signal is proportionate to the actual product placement and the timing at which it occurs in the programme.

Ofcom-commissioned research into commercial references in television programming

In 2022 Ofcom published research into viewers' attitudes to commercial references in and around TV programmes, and to explore the factors that influence when viewers may consider commercial references in programmes to be unduly prominent and/or promotional.[2] The findings were intended to help Ofcom to consider whether the current guidance to the rules on commercial references on TV remained relevant and/or proportionate. As yet, no action has been taken as a result of this research, which did appear to support liberalisation of the rules.

The research highlighted that many of the key factors for people in determining their perceived acceptability of commercial references are in fact matters of taste. Two elements fell beyond this – namely transparency and safeguarding from harm. However, the other elements appeared to relate to personal preferences as to what people found off-putting.

The commercial rules should not seek to govern taste and Sky notes that the other content standards sections of the Broadcasting Code do not seek to do this. For example, the rules do not forbid a programme from causing offence, nor - to use a word that came up in the 2022 research - do they forbid "vulgarity". Programmes can cause offence, subject to editorial justification and adequate signalling. Of course, people will then avoid watching programmes that they find distasteful, and the more distasteful a programme, the lower the viewership is likely to be.

[2] Commercial References in Television Programming, Report Prepared by 2CV for Ofcom ([Commercial References in Television Programming - Report prepared by 2CV for Ofcom]())

The current commercial rules manoeuvre broadcasters into judging what is acceptable before it becomes too prominent or "vulgar". However, it would be more proportionate for these rules to follow the template of the offence rules, whereby they do not seek to make subjective judgements based on taste, but rather they ensure transparency through signalling. If a programme were to be uniformly considered by viewers to be "vulgar" from a commercial references point of view, this is self-policing given that broadcasters need to make programmes that people want to watch. If the quality isn't there, then viewers will cease watching.

The 2022 research also found that:

> *"strong encouragement to purchase and highly positive descriptions appeared most likely to change participants' perceptions of a commercial reference from being acceptable within programming to being advertising".*[3]

and

> *"[T]he notion of simply describing key features or attributes of a brand/product/service without hyperbole was considered acceptable."* [4]

Ofcom should give these findings further consideration, as the current prohibition on "promotion" casts a much wider net than this. A rule which clearly prohibits explicit promotion or a "strong encouragement to purchase" without preventing indirect promotions would provide much greater clarity for broadcasters and would not – based on the above research - adversely impact viewers.

ODPS restrictions should be relaxed in line with linear relaxations

While the restrictions on commercial references for ODPS are less strict than for linear channels subject to the Ofcom Broadcasting Code, there are some areas of overlap where the restrictions on ODPS should be relaxed for the same reasons that they should be relaxed for linear channels (described above). In particular, the following rules should be relaxed:

- Where a service or programme is sponsored for the purpose of promoting goods or services, the sponsored service or programme and sponsorship announcements relating to it must not directly encourage the purchase or rental of the goods or services, whether by making promotional reference to them or otherwise.[5]

[3] Page 21 of the 2022 Research
[4] Page 22 of the 2022 Research
[5] Section 368G(6) Communications Act 2003

- Condition C: The product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.[6]
- Condition D: The programme does not give undue prominence to the products, services or trade marks concerned.[7]

Process for relaxing rules

We acknowledge that some of the above rules mirror the wording of requirements set out in the Communications Act 2003 and therefore are not within Ofcom's power to amend – this would instead require legislative change. However, to the extent that Ofcom is able to amend the Broadcasting Code and/or associated guidance (as well as guidance to ODPS providers) to provide clarity and to narrow the scope of the above prohibitions, it should do so in order to create a more level playing field between Ofcom-licensed channels, regulated ODPS and their online competitors. Ofcom should also recommend that Government undertakes a review of the restrictions on commercial references under the Communications Act.

Advertising standards

The shift in advertising spend from linear TV to online has led to a reduction in the revenues available to traditional TV broadcasters to reinvest in PSM content

Advertising remains the key economic driver of high-quality commercial UK PSM content. As the popularity of SVoD services and VSPs/online platforms continues to grow, so does the threat that this poses to the sustainability of traditional linear TV advertising. In its 2025 Media Nations report, Ofcom found that across 2024 YouTube was the second-most-watched service, behind the BBC, with Netflix in fourth place behind ITV.[8] With streaming services recently introducing advertising tiers, the impact on broadcasters reliant on linear advertising grows.

Across 2025, the Advertising Association forecasts that 'online search' and 'online display' (including social media and YouTube) advertising spend is set to have grown by 12.6% and 10.7% respectively.[9] This is in contrast to a forecast drop in advertising spend for TV – including Video on Demand - of 2.7%.[10]

Despite competing for the same viewers and the same advertiser budgets, traditional broadcasters and 'online display' providers are regulated by different regulatory codes:

[6] Section 368H(9) Communications Act 2003
[7] Section 368(H)(10) Communications Act 2003
[8] Ofcom Media Nations Report, 30 July 2025, Page 22 (Media Nations 2025 - UK Report)
[9] AA/WARC Q2 2025 Expenditure Report, October 2025, https://adassoc.org.uk/our-work/uk-adspendforecast-to-reach-12bn-during-this-festive-period/
[10] Ibid

the BCAP Code, which covers broadcast and radio advertising and the CAP Code, which covers non-broadcast advertising, including online and out of home advertising as well as advertising in ODPS. Ofcom-licensed channels remain subject to the more stringent advertising rules set out in the BCAP Code.

This has resulted in an uneven playing field, which is at odds with the direction of travel of advertising spend – i.e. from a more heavily regulated environment to a less heavily regulated one.

This uneven playing field is particularly unjustifiable, given that the definitional differences between what is and isn't 'broadcasting' has become increasingly blurred. The growth of viewing of YouTube has coincided with audiences increasingly treating it like a broadcast service on which they watch long form content via their primary TV as frequently noted by Ofcom.[11] However, in line with the current regime, advertising on YouTube is only subject to the CAP Code, which also notably comes with little liability on code breaches for the platform, whereas broadcasters of Ofcom-regulated channels are directly liable for BCAP Code breaches in respect of the adverts they carry.

The move of advertising spend away from more heavily regulated linear channels to less regulated online platforms takes investment away from commercial broadcasters such as Sky, ITV, Channel 4 and Channel 5, who would ordinarily reinvest advertising revenue in creating high-quality content for and, reflective of, UK audiences; whilst concurrently promoting platforms which deliver unregulated, global content to audiences in the UK.

Ofcom should consider closer alignment of the CAP and BCAP codes in order to help maintain investment in PSM content on traditional TV

Our understanding of Ofcom's intent in launching this CFI is that it is looking for ways in which it can evolve its own regulation to help sustain the future delivery of PSM content. We consider that levelling the playing field in advertising regulation between broadcast and online content would contribute positively to this aspiration.

To this end, while it would be a worthwhile exercise to consider closer alignment between the CAP and BCAP codes, in the immediate term the relaxation of Rule 14.5 of the BCAP Code would provide a significant opportunity for Ofcom-regulated linear channels to generate additional advertising revenue which could in turn be invested in high quality PSM content. Under Rule 14.5 certain financial services (including cryptoassets) can only be advertised around "specialist financial programmes" and the high bar for what constitutes this kind of content creates a de facto ban for Sky and most linear broadcasters, whilst no equivalent restrictions exist for online platforms under the CAP code. With so much viewing now taking place online, where such financial products can be freely advertised to all audiences, there is no justification for continuing to apply these restrictions to traditional TV and Rule 14.5 should therefore be removed.

[11] Ofcom Media Nations Report, 30 July 2025, (Media Nations 2025 - UK Report)

We do not consider that viewers will be adversely impacted by this change because the other remaining rules that govern these types of advertisements, require that the potential for harm is mitigated by requiring the risks posed to be clearly called out within the advertisement itself. Given that the general population is now already being exposed to branding from these providers on television (e.g. on kits and in stadiums during sports coverage), and to full advertisements in out-of-home and online spaces, restricting them from being shown to the general population in television commercial airtime is affording no meaningful protection and merely pushing all such advertising (and associated revenues) onto the other currently permitted platforms.

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Licensing and reporting

We note that the CFI identifies licensing as one of its three broad areas of focus. Sky does not have any specific concerns with the current licensing process for linear channels nor with the notification process for ODPS. Similarly, we do not currently have any specific concerns with the nature or volume of regular reporting that Sky is required to undertake in respect of its regulated linear channels and ODPS (for example, reporting on Access Services provision, EU Works and so on). We would caution Ofcom against making any changes to licencing that could lead to unintended consequences for content providers, in terms of additional compliance and/or administrative burden.

However, we consider that the objectives of the current review would be well served by Ofcom reconsidering its approach to information requests. which not only create a considerable burden on our resources but are also often not well co-ordinated – i.e. we often receive several information requests concurrently from different teams within Ofcom about different things. We would ask that Ofcom continually challenges itself to ensure that any future requests for information in relation to Sky's content services, whether formal or informal, are reasonable, proportionate, and limited to information strictly required by Ofcom to perform its duties. In particular, Ofcom should be mindful that Sky has a wide range of on-demand services across a number of different platforms and devices – we have not historically collected data across all these services and so will not always be in a position to provide the data requested.

Sky **January 2026**