

## **Channel 4 response to Ofcom consultation on product placement and commercial references in television programming**

Channel 4 welcomes the opportunity to respond to Ofcom's review of the Broadcasting Code with respect to commercial references in television programming.

Channel 4 is a publicly-owned, commercially-funded public service broadcaster. Its core public service channel, Channel 4, is a free-to-air service funded predominantly by advertising. In recent years, Channel 4 has broadened its portfolio to offer a range of digital services, including the free-to-air digital television channels Channel 4+1, E4, E4+1, Film4, More4 and 4Music.

As a public service broadcaster, Channel 4 is committed to the fulfilment of its public purposes and to generating the maximum possible amount of revenue to invest in UK-produced content. As commercial revenues are the primary way of delivering Channel 4's public purpose end, Channel 4 is interested in exploring new ways of generating revenues—such as product placement—in order to invest in the delivery of its public service remit.

Following the Government's decision to permit product placement on UK television, Channel 4 has seen it as a priority to help ensure that product placement is implemented responsibly and in a way which maintains broadcasters' editorial independence. Channel 4 therefore welcomes Ofcom's proposals for a clear regulatory framework in the Broadcasting Code, with industry guidance, to ensure that the central principles of preventing undue prominence, protecting editorial integrity and prohibiting direct encouragements to purchase are maintained.

In addition, Channel 4 notes that the introduction of product placement will have an impact on the regulation of other types of commercial references seen during television programming, such as sponsorship. This consultation is an extension of Ofcom's 2009 review of the Broadcasting Code, which also covered commercial references—this submission should be read in conjunction with Channel 4's submission to Ofcom's 2009 review.

In this context, Channel 4 would like to address the specific questions in Ofcom's current consultation document.

### **Consultation questions**

#### Applying the rules to placement for a "non-commercial purpose"

*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.*

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

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

Channel 4 notes that the amended Communications Act ("the Act") defines product placement by reference to its inclusion in a programme "for a commercial purpose". Ofcom proposes to extend the scope of the rules to placements that are not for a commercial purpose—such as a reference to a charity—on the grounds that:

- there is likely to be appetite for placement of non-commercial references;
- allowing placement for non-commercial purposes would bring this type of placement within the regulatory framework, providing protection for consumers; and
- it would ensure regulatory consistency with spot advertising and sponsorship—where ads from non-commercial organisations are regulated.

Channel 4 agrees with Ofcom’s analysis. In particular, extension of the rules to placements for a “non-commercial purpose” would provide clarity for placement relating to, for example, charities or Government initiatives, such as any run by the COI. Channel 4 also agrees that broadcasters would benefit from a consistent approach in compliance terms.

#### Clarification that product placement is permitted in single dramas

*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.*

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

Channel 4 notes that the Act permits product placement in a limited number of genres, including:

- “cinematographic works” (films made for cinema); and
- films and series made for audiovisual media services (including TV and on-demand).

Channel 4 believes that UK-produced drama is a key public service genre that plays a vital role in meeting Ofcom’s purposes and characteristics of public service broadcasting. However, as advertising revenues have declined in recent years, it has been increasingly difficult for the commercially-funded public service broadcasters to sustain investment in UK-produced drama. For example, Ofcom’s PSB Annual Report stated that spending on drama and soaps fell by 17% in real terms between 2005 and 2009. Channel 4 therefore welcomes the opportunity to include product placement in drama series as this should help facilitate greater investment in UK-produced drama.

Channel 4 also welcomes Ofcom’s view that the intention of the Act is to permit product placement in televised single dramas—on the grounds that it would be anomalous if product placement was allowed in a drama series, but not in a single drama. To resolve this issue, Ofcom proposes to clarify that single dramas fall within the permitted genre of “films made for television”.

Channel 4 supports the inclusion of product placement in single dramas. Channel 4 has a track record of commissioning high-quality, UK-produced single dramas, most recently *I Am Slave*, the story of one woman’s fight for freedom from modern-day slavery; *The Unloved*, about a young girl growing up in a children’s home, providing insight into the UK’s care system; and *Mo*, the award-winning story of politician Mo Mowlam. Channel 4 would welcome regulatory clarification to help sustain investment in this type of public service content.

However, Channel 4 believes that Ofcom's proposed solution for permitting product placement in single dramas—clarification that single dramas fall within the genre of "films made for television"—is likely to give rise to unintended consequences and instead provide a disincentive for investment in and broadcast of UK-produced single dramas.

The reclassification of "single drama" as "film" would have the effect of restricting the number of breaks broadcasters could include in single drama. Over 90 minutes, only three breaks are permitted if the programme is a film, whereas five breaks are permitted if the programme is not. Ofcom states that broadcasters currently schedule a film break pattern for programmes falling within the single drama definition, and concludes that its proposal is unlikely to have a significant impact on most broadcasters.

However, Channel 4 understands that many broadcasters do generally transmit single dramas with conventional break patterns. Ofcom's proposed reclassification would therefore have a negative impact on broadcasters and their incentives to commission UK-produced single drama. Channel 4 has analysed the impact of replacing a conventional break pattern with a film break pattern for a range of UK-produced single dramas broadcast on Channel 4 over the last three years, and found that this change would decrease revenue. This negative impact is unlikely to be compensated by revenue from product placement, meaning the reclassification would have the perverse effect of making single dramas less economically viable.

Channel 4 therefore urges Ofcom to seek a solution which would permit product placement in single dramas but which would also allow broadcasters to transmit these programmes with conventional break patterns. As Ofcom notes, "film made for television" is not defined in either the AVMS Directive ("the Directive") or the Act and no mention is made of single television dramas—Channel 4 hopes that this gives Ofcom sufficient flexibility to clarify, through guidance, that single dramas do fall within the permitted genres for product placement, without reclassifying single drama as film. A solution of this nature would help support investment in UK-produced single drama, in accordance with the public policy rationale underpinning the introduction of product placement in the UK.

#### Clarification of the prohibition of product placement in news

*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))*

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

Channel 4 has no comment to make on Ofcom's proposal to include a rule in the Broadcasting Code prohibiting product placement in news. However, we would seek clarification in the guidance that this does not include entertainment or sports news.

## Thematic placement

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

*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.*

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

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

Channel 4 notes that the Act requires that product placement does not influence the content or scheduling of a programme in a way that affects editorial independence, and that one of the recitals in the Directive indicates that “thematic placement” is unacceptable because of its impact on editorial independence.

Ofcom defines “thematic placement” as arrangements which involve a third party funder paying for a specific plot line or theme to be included in a programme, but not necessarily a product or a service. Ofcom proposes to clarify that thematic placement is prohibited, on the grounds that this type of placement risks undermining editorial independence.

Channel 4 is keen to see product placement implemented in a way which protects editorial independence and prevents undue prominence, and therefore supports proposed rules 9.10–9.12 which seek to ensure these objectives are met. However, Channel 4 questions whether it is appropriate to include in the Code the level of detail set out in proposed rules—in particular, Channel 4 believes it would give Ofcom and broadcasters more flexibility if the italicised text in these sections was included in guidance, rather than the Code itself.

On the italicised text following proposed rule 9.10 (again, which Channel 4 believes should be included in guidance rather than the Code itself), Channel 4 would welcome a clearer definition of “thematic placement”, similar to that set out in paragraph 4.46 of Ofcom's consultation document, along with clear examples of what would and would not be considered by Ofcom as thematic placement.

## Specialist factual programming

*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.*

*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.*

*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.*

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

Channel 4 notes that while documentaries and other factual programmes are not specified in the Act's list of programme genres where product placement is

permitted, it is possible that product placement may be permitted in a documentary or factual programme if it is a film or part of a series.

Ofcom proposes to prohibit product placement in “specialist factual programming”, defined as “purely factual programmes covering education, science, medical or arts subjects, or those that are investigative in nature”. This would mean specialist factual programming would be added to the list of genres in which product placement is prohibited, along with “religious programmes”, “consumer advice programmes” and “current affairs programmes”.

Channel 4 understands the concerns about the editorial integrity of some types of factual programming, but does not believe that Ofcom should impose a blanket ban on product placement in “specialist factual programming”. Factual programming, like UK-produced drama, is a key public service genre that plays a vital role in meeting public service broadcasting objectives. It is therefore important that the right incentives are in place for broadcasters to invest in factual programming, especially more “serious” factual programming. As Ofcom points out, a prohibition on product placement in certain factual programmes could result in increased commissions for “lighter” factual entertainment programmes, with a consequential reduction in the number of “serious” factual programmes made.

Depending on the definition of “specialist factual programming”, a ban on product placement could have a particularly marked impact on Channel 4, as it broadcasts many programmes which would potentially fall under Ofcom’s definition, but where there is no easily identifiable risk to editorial integrity. For example, programmes such as *Time Team* could fall under the category of “specialist factual”, but are unlikely to be problematic in principle if they included product placement—especially if the placed product had no immediate relationship to the primary subject matter of the programme.

Channel 4 believes that broadcasters should be afforded the flexibility to make editorial/commercial decisions in relation to product placement in factual programming, within parameters set out in the Broadcasting Code. The Code will already include rules to prevent product placement in religious, consumer advice and current affairs programmes. The Government decided to prohibit product placement in these genres after detailed consultation, and Channel 4 sees no reason to go beyond the Government’s list. In Channel 4’s view, the prohibition on product placement in religious, consumer and current affairs programmes—as well as the rules on editorial integrity and undue prominence—will provide adequate protection for viewers, and there is no need for a further restriction on specialist factual programming.

In addition, Channel 4 believes that the rules in this area should be consistent with sponsorship regulation where possible—and as specialist factual programmes are allowed to be sponsored, Channel 4 believes product placement should also be allowed in these types of programmes to provide a consistent framework for broadcasters and advertisers.

Finally, Channel 4 would welcome guidance from Ofcom on the definition of the prohibited genres—“religious programmes”, “consumer advice programmes” and “current affairs programmes”—so broadcasters are clear on where they can and cannot include product placement. Channel 4 would be happy to work with Ofcom

and other broadcasters to devise workable guidance and definitions that would provide clarity for broadcasters.

#### Additional prohibited categories

*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.*

*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.*

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

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

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

Channel 4 notes that the BCAP Code specifies a range of products and services that can't be advertised on television, such as guns, breath testing devices or obscene material. Ofcom proposes to mirror these product restrictions for product placement, on the grounds of consistency with the spot and sponsorship regulatory regime.

Channel 4 further notes that the BCAP Code also restricts the scheduling of advertisements for specific products—eg. HFSS products, alcohol—to protect certain parts of the audience from the promotion of potentially harmful products. However, Ofcom proposes to not mirror these scheduling restrictions for product placement, as placement of many of these products is already banned, and the Code prohibits promotional references to placed products, so any product placement would not encourage viewers to buy these products.

Channel 4 agrees it is appropriate to prohibit the placement of products and services that are not allowed to be advertised on television, as it is important to maintain consistency between the product placement, sponsorship and spot ad regulatory regime where possible. That said, Channel 4 also agrees it is unnecessary to apply the advertising scheduling restrictions for specific products to product placement, for the reasons set out by Ofcom.

#### Signalling

##### Universal logo and audio signal

*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.*

*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.*

*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.*

*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.*

Channel 4 notes that the Act requires product placement to be signalled at the start of programmes, at the end of programmes, and after any commercial break. Ofcom proposes that product placement is signalled to the audience by means of both a universal neutral logo and a universal audio signal (both to be agreed by Ofcom).

Channel 4 agrees that product placement should be signalled in a way that is easily understood by audiences, and supports the introduction of a universal neutral logo. Channel 4 believes that a universal neutral logo strikes the right balance between ensuring that audiences are alerted to the existence of product placement, and the possibility that signalling may be overly intrusive to the television viewing experience.

However, Channel 4 believes that a requirement to broadcast a universal audio signal, in addition to a universal neutral logo, would upset this balance and would risk damaging the television viewing experience. A requirement to broadcast an additional audio signal would create greater clutter, risk generating more prominence and would interfere with audio either in the programme itself or associated with the programme, such as sponsorship credits or programme warnings (eg. this programme contains strong language). Channel 4 therefore opposes a requirement to broadcast a universal audio signal for product placement. Channel 4 also notes that the Directive does not require an audio signal and that no other European Member State has yet imposed a requirement for audio signalling of product placement.

However, Channel 4 recognises that it is important to take into account the needs of as wide an audience as possible—including those who are visually impaired—and has therefore been at the forefront of increasing access services provision. Channel 4 recently announced some significant new voluntary commitments to improve access services across its channels, including a commitment to more than double provision of audio description ("AD") to 20% of programmes on Channel 4, More 4, E4, Film4 and +1 channels. Channel 4 believes an audio signal for product placement would be best applied within the AD stream to provide a more targeted and proportionate measure at the visually impaired audience.

Channel 4 notes Ofcom's proposed criteria from within which the minimum requirements for the universal neutral logo would be determined, including that: the letters P or PP be shown in a circular shape with some form of colouring; and the logo would be 0.5% or 2% of total screen size, appear in one of the corners of the screen, and appear on screen for between 3-7 seconds.

As noted above, Channel 4 supports the introduction of a universal neutral logo and is happy to work with Ofcom and other broadcasters to determine the details of these arrangements in practice. In relation to the proposed criteria, Channel 4 believes that the logo should be no larger than channel DOGs, and would request flexibility to place the logo in a corner of the screen that was going to be clean from other graphics/DOGs/promotional messages. Different corners of the screen are used at different times, so flexibility in this regard would be very useful to ensure that product placement is signalled adequately without damaging the viewer experience. Channel 4 believes that it would be overly prescriptive to specify in the

Code the duration which the logo should appear on screen—in Channel 4’s view the Code should replicate the existing provisions governing the duration of sponsorship credits ie. that they should be “brief and secondary”.

Finally, Channel 4 believes that the criteria would best be specified in guidance, rather than the Code itself, in order to provide greater flexibility.

#### List of products

*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.*

*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.*

Channel 4 notes that the Act does not require that the audience be told what products, services or trademarks are placed in programmes. Ofcom proposes that broadcasters make available a list of placed products in a brief, non-promotional manner in the programme’s end credits or on the broadcaster’s website (with a reference to this given at the end of the programme), on the grounds that this information may be in the audience’s interest.

Channel 4 agrees that this type of information may be useful to audiences and would increase transparency. However, Channel 4 believes it is important that broadcasters have flexibility to provide this information in the most appropriate way for a given programme, and therefore welcomes the flexibility to provide information in end credits *or* on a website—it is likely that Channel 4 would seek to meet this requirement by providing information on its website; which would provide viewers with a static source of information that would be easier to reference, compared to information in an end credit.

As Ofcom points out, these proposals do place an additional burden on broadcasters. Even at their least onerous, Channel 4 believes that a requirement to refer to a website list in a programme’s end credits still represents a significant burden. In addition, in the case of some content, such as music television, programmes do not carry end credits so it would be quite intrusive to include a visual reference to the website list at the end of a programme. Channel 4 therefore suggests that there be flexibility to notify the audience of the availability of product lists via the initial audience awareness campaign about product placement, rather than on a programme by programme basis, as proposed in rule 9.17(b).

#### Audience awareness

*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.*

*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.*

*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.*



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

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

Channel 4 notes Ofcom's conclusion that product placement signalling must be accompanied by an audience awareness campaign. Ofcom proposes to send a formal request to broadcasters to transmit two types of information about the product placement signal.

- For the first month that a broadcaster transmits programmes including the signal, an additional description is included in text next to the logo: "This programme contains product placement".
- Any broadcaster that transmits programmes that must be signalled within the first six months of the introduction of the rules must transmit specific audience awareness messages during this implementation period.

Channel 4 further notes Ofcom's proposal that broadcasters must include the following key points in their audience awareness message:

- an explanation that the signal will now be appearing in programmes;
- an example of the signal;
- an explanation of what product placement means; and
- details of where the audience can find more information.

Ofcom proposes to also specify:

- the minimum number of occasions on which the message must be broadcast;
- the minimum time period across which the message must be broadcast; and
- that broadcasters provide Ofcom an off-air recording of their audience awareness message and information about the dates and times it was broadcast.

Channel 4 agrees that audience awareness is important, and that broadcasters should play their part in helping audiences understand developments such as the introduction of product placement. In relation to the specific proposals, Channel 4 agrees that broadcasters should include the additional text "This programme contains product placement" alongside the visual signal in the first month a broadcaster transmits programmes including the logo.

Channel 4 also supports the objectives behind Ofcom's proposal to require provision of a specific audience awareness message during the initial implementation period for product placement. Channel 4 believes it would be most effective if broadcasters provided a consistent set of information, and the messages proposed by Ofcom seem appropriate. As Ofcom points out, different broadcasters can communicate the message in different ways, as long as the same information is imparted.

Channel 4 believes an audience campaign should be executed in a way that maximises awareness levels and works practically for viewers. In Channel 4's view, there needs to be greater clarity as to the timing of the campaign, in order to achieve maximum impact and avoid dilution of any messaging over a long period of time. While Ofcom proposes to specify the requirements of the campaign, Channel 4 would be happy to work with Ofcom and other broadcasters to define and plan an

industry-wide campaign, to be executed by all broadcasters covered by the product placement rules. For example, broadcasters could potentially agree to a standard campaign, which would run at the same time on each broadcaster, with the weight of airtime split between broadcasters depending on share of viewing. In this regard, Channel 4 believes that the recent industry-wide campaign to raise awareness about AD provision could provide a useful model for product placement.

#### Product placement by sponsors in a sponsored programme

*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.*

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

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

Channel 4 notes that current rules prevent sponsors placing their products/services within editorial content. Ofcom proposes to allow sponsors to place products in programmes they are sponsoring, and clarify that, with the exception of sponsorship credits, any reference to a sponsor and/or its products/services that appears in a sponsored programme as a result of commercial arrangements will be treated as product placement and must therefore comply with the relevant rules.

Channel 4 agrees it is appropriate for sponsors to be able to place products in programmes they are sponsoring. This could potentially allow broadcasters to take advantage of combined commercial arrangements, and may help prevent simple substitution from sponsorship to product placement.

However, Channel 4 would be grateful for general guidance in relation to the cumulative effect of branding. In particular, in the event that a product placer is also the event sponsor, the programme sponsor and a prize donor, whether a reference would be considered to fall under the sponsorship rules or considered to be product placement. In Channel 4's view, any incidental references to the sponsor during a bona fide event and any brief and secondary prize donor reference should not be considered to be product placement, in order to maintain the effectiveness of the existing sponsorship rules.

In addition, Channel 4 would also seek clarification that programme-related-material would not be counted as product placement. In Channel 4's view, if this type of material was considered to be product placement it would again have the adverse impact of devaluing the existing rules in place.

#### Identifying sponsorship arrangements (sponsorship credits)

*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.*

*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.*

*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.*

*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.*

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

Channel 4 notes that Ofcom proposes to replace the rule requiring that the relationship between the sponsor and the sponsored content is transparent with an explicit requirement (rule 9.22) that sponsorship credits include a statement informing the audience of the sponsorship arrangement (eg. "sponsored by..." or "in association with...").

Channel 4 is concerned that the requirement that sponsorship credits include a specific statement is overly restrictive. Channel 4 believes that the current rules regarding transparency are sufficient to ensure viewers are clear about what constitutes a sponsorship credit. Viewers currently have a good understanding of the look and feel of sponsorship credits, which have been well-established over many years, and viewers will gain a greater understanding of product placement through the audience awareness campaign. Channel 4 does not therefore believe that the small potential increase in commercial messages in and around programmes brought about by product placement warrants additional regulation in this area.

Channel 4 would welcome greater flexibility to make sponsorship arrangements transparent in the most appropriate way for a particular programme. Sponsorship credits have developed into a creative and engaging message—a requirement to use one of two prescriptive statements (eg. "sponsored by..." or "in association with...") is unnecessarily restrictive, and in practical terms would not sit well with integrated credits or situations where the sponsor's name is integrated in the title—eg. *Transmission with T-Mobile*. The requirement to include a specific statement could also compromise the viability of ad-funded programming, which is becoming increasingly important for broadcasters.

Channel 4 also notes that Ofcom proposes to replace the rules requiring credits to be separated from editorial and advertising with rules requiring distinction (rules 9.23 and 9.24), in order to reflect the wording in the Directive and to enable the proposed inclusion of sponsorship credits during programmes. Channel 4 agrees with the wording change from "clearly separated from programming by temporal or spatial means" to sponsorship credits must be "distinct" from editorial or advertising.

#### Allowing sponsorship credits during programmes

*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.*

*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.*

*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*

*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.*

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

Channel 4 notes Ofcom's proposal to allow sponsorship arrangements to be identified in credits broadcast *during* sponsored programmes, as this would provide broadcasters with greater scope to place credits at the most appropriate point during sponsored output. Ofcom also proposes to specify that sponsorship credits shown during programmes must not coincide with the appearance of product placement in the programme.

Channel 4 agrees it is appropriate for sponsorship credits to be broadcast during programmes and agrees that sponsorship credits shown during programmes should not coincide with the appearance of placed products/services.

Channel 4 would be grateful for guidance on what exactly constitutes a sponsorship credit broadcast *during* a programme. Channel 4 notes that under current rules, distinct programme items (eg. a weather report) can be sponsored, and that sponsorship credits for these distinct programme items can be placed both sides of the distinct programme item, as long as the credits are separated from the other parts of the programme (usually achieved by the means of an advertising break or channel/programme ident). Channel 4 would not expect the suggested provisions of rule 9.27 to apply in any way to this type of scenario, and expects to be able to continue with sponsor credits of this nature in the future.

Channel 4's understanding from Ofcom's consultation document is that a sponsorship credit for a distinct programme item broadcast *without* the separation achieved by an advertising break or ident would be deemed to be a credit broadcast during a programme—Channel 4 would be grateful for clarification on this point. Beyond this, Channel 4 would welcome further guidance on what would generally be considered a sponsorship credit broadcast during a programme—for example whether Ofcom considers this to mean an image, such as a DOG, broadcast during a distinct programme item, or a split screen where one part of the screen showed the sponsorship credit.

Similarly, Channel 4 would be grateful for confirmation that a sponsorship credit for a distinct programme item broadcast *with* the separation achieved by an advertising break or ident would continue to not be classified as a credit broadcast during a programme. This would provide comfort that current arrangements—for eg. sponsoring weather reports—were compliant with the Code. In general terms, Channel 4 is keen to ensure that any amendments to the Code in this area do not have unintended consequences of preventing current legitimate sponsorship arrangements.

#### Content of sponsorship credits during programmes

*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.*

*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.*

*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.*

*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.*

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

Channel 4 agrees with Ofcom's proposal to prohibit sponsorship credits during programmes where a sponsor would be prohibited from product placing in the programme it is sponsoring.

However, depending on the definition of what constitutes a sponsorship credit broadcast during a programme, Channel 4 believes the proposed rule 9.27 may have the effect of limiting current sponsorship arrangements and Channel 4 would therefore be grateful for clarification on definitions, as discussed above.

More broadly, Channel 4 notes that Ofcom's proposed rule 9.27 provides that sponsorship credits broadcast during programmes must be limited to a brief neutral visual or verbal statement identifying the sponsorship arrangement. Channel 4 understands Ofcom's objective of minimising the potential for sponsorship arrangements to damage the viewer experience through intrusiveness or undue prominence, but believes it would be better in this case if Ofcom pursued a less prescriptive approach. Channel 4 is keen to ensure that the rules and guidance allow broadcasters to maintain viewer enjoyment and would suggest the following wording "Sponsorship credits broadcast during programmes must not be unduly prominent. They must consist of a brief and clear visual and/or verbal statement identifying the sponsorship arrangement. Graphics used must be static and consist of only the name and/or logo, or any other distinctive symbol of the sponsor."

#### Other proposed revisions—principles

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

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

Channel 4 notes that the AVMS Directive has replaced the requirement that advertising be kept "separate" from editorial with a requirement that advertising be "readily recognisable" and "distinguishable" from editorial content.

Channel 4 agrees with Ofcom proposal to change the principles governing Section Nine of the Broadcasting Code to reflect this change.

#### Rule on distinction between editorial content and advertising

*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.*

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

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

Channel 4 agrees with Ofcom's proposal to change the rules requiring that the editorial and advertising elements of a service are kept "separate" to one that requires "distinction" between editorial and advertising. Channel 4 believes that this will provide greater flexibility for broadcasters, and would welcome further guidance on what "distinction" means.

#### Rule prohibiting surreptitious advertising

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

*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.*

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

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

Channel 4 agrees it is appropriate to include a rule prohibiting "surreptitious advertising"—surreptitious advertising is already effectively prohibited and this rule would provide greater clarity.

#### Removal of the virtual advertising rule

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

*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.*

Channel 4 notes Ofcom's proposal to remove the ban on virtual advertising (the practice of replacing on-screen existing venue advertising and other advertising in the television picture). Channel 4 agrees with this proposal as any virtual advertising would now be defined as product placement, which is permitted and regulated.

#### Additional questions

Part 7 of Ofcom's consultation invites comments on any other matters that Ofcom should take into account in its review. Channel 4 would like to raise three issues:

- clarification of undue prominence;
- signalling of product placement in films made for cinematic release;
- jurisdiction.

#### *Undue prominence*

Channel 4 believes there is an unnecessary duplication between rules 9.5, 9.11 and 9.12. It would therefore recommend a general provision at rule 9.5 that "no undue prominence may be given in programming to a product or service."

To avoid duplication, rule 9.11 should merely state "References to placed products, services and trade marks must not be promotional" and rule 9.12 "References to

placed products, services and trade marks must not be unduly prominent". In Channel 4's view, the remaining information in italics in the draft Code should be set out in the guidance as these are not hard and fast rules but factors Ofcom will consider in deciding if the content is acceptable.

Channel 4 would also recommend that the guidance contains clear examples of what would and would not be unduly prominent, especially as broadcasters are now in an environment where product placement is permitted.

### *Signalling of product placement in films*

Under current arrangements, when films made for cinema are broadcast on television, there is no requirement to signal the presence of product placement in those films. This is the case regardless of whether the film is UK-produced or made by a US studio.

However, Channel 4 is concerned that Ofcom's proposed rules 9.16 and 9.17, which set out the signalling requirements for product placement, may change these arrangements to the disadvantage of British film, including films supported by Film4.

Ofcom proposes that the signalling rules will apply to "programmes produced or commissioned by the provider of the television programme service or any person connected with that provider". If British films that have received support from Film4 are deemed to be "programmes produced or commissioned" by Channel 4, these films would have to signal any product placement when they were broadcast on television. In contrast, films produced by US studios would not have to signal placement.

As outlined above, Channel 4 supports appropriate arrangements for signalling product placement to audiences. However, Channel 4 is concerned that a requirement to signal product placement in films supported by Film4 (or other investors in British film which also have a television interest) risks causing viewer confusion. For example, a large number of US-produced films shown on television in the UK contain product placement, which will not have to be signalled. If a small number of films with UK-backing do have to signal product placement, this would misleadingly suggest to viewers that only these films contained product placement.

In addition, Channel 4 does not believe the investment by Film4 in a film can be equated to commissioning of that film for the purposes of the product placement rules. In many cases, Film4 invests only a small proportion of a film's total production budget, and does not exercise ultimate control over the editorial and business decisions relating to the film (or any product placement contained in the film).

Channel 4 would therefore welcome clarification from Ofcom that films made for cinematic release and which have benefitted from investment from Film4 will not be required to signal any product placement when broadcast on television.

### *Jurisdiction*

Channel 4 would be grateful for clarification whether certain music programmes fall within UK jurisdiction, and supports the points made in Box TV's submission to Ofcom's consultation in this regard.

#### Timing of new Code rules coming into force

*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.*

*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.*

Channel 4 notes that Ofcom proposes to make a statement on the new Code “at the end of 2010” and invites views on whether or not the new Code should come into force on the same date it is published.

Channel 4 is keen to take advantage of product placement as soon as possible, but recognises that a period of lead time for preparation and implementation has merits. For example, it may make more sense to run an audience awareness campaign for product placement prior to the new rules coming into force, rather than concurrently. In addition, if new rules come into place in relation to the content of sponsorship credits, for example, existing planned credits would have to be changed overnight which would cause difficulty—this latter issue could potentially be solved by bringing the rules into force on the same date the Code is published, but allowing a defined window for broadcasters to bring their compliance systems up to date.

**22 September 2010**