
**S4C's Response to Ofcom's Consultation entitled "Broadcasting Code Review:
Commercial References in television programming" ("the Consultation")**

16.09.2010

1. Introduction

S4C is a public service broadcaster whose remit is to provide a broad range of high-quality and diverse programming, a substantial proportion of which is in Welsh. S4C receives public funding by way of grant in aid and also generates income from advertising sales and sponsorship.

S4C does not propose to respond to each question raised by Ofcom in the Consultation, but has responded below to the proposals which are of particular relevance to S4C.

2. Specific Responses

Proposal 4: Thematic placement

Question 4.1

Do you agree that clarification that thematic placement is prohibited is appropriate? If not please explain why.

We believe that extending the prohibition on thematic placement beyond the requirements of the AVMS Directive could of itself restrict a broadcaster's editorial independence. We believe it is sufficient to rely on rule 9.10 that product placement must not influence the content and scheduling of a programme in a way that affects the responsibility and editorial independence of the broadcaster.

Proposal 5: Specialist factual programming

Question 5.1

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

The answer to this question depends on the definition of "Specialist Factual Programmes", please see comments in response to question 5.2 below.

Question 5.2

Do you agree with the meaning given for "specialist factual programmes"? If not, please explain why, and suggest drafting changes, if appropriate.

The guidance wording provided in connection with the meaning of "specialist factual programmes" is very wide and could capture a variety of programmes where the impact of product placement would not necessarily adversely affect the editorial integrity of such programmes. S4C foresees difficulty in applying the test as to whether a programme is "purely factual". Would a countryside magazine programme which has educational and science elements fall within this definition? Would a programme from arts/cultural festivals be considered "purely factual" or does the fact that these programmes also have an entertainment element to them take them outside the meaning of "specialist factual programme"?

In particular, we do not believe it appropriate to prohibit product placement in factual programming dealing with arts subjects. Any potential adverse affect of permitting product placement in a factual programme dealing with arts subjects can be controlled by the limitations of rules 9.10, 9.11 and 9.12.

In relation to the prohibition on product placement in factual programming dealing with educational, science and medical subjects, the integrity of the programme and the need to ensure that the viewer has complete confidence in the unbiased approach of the programme may provide arguments as to why some sort of prohibition on product placement is appropriate. However, it may be more suitable to prohibit the placement of products which are linked to the subject matter of the specific programme. Such limitation of the rule would therefore not be a wholesale prohibition on product placement and would keep a potential revenue stream open by permitting arrangements to be made for the placement of certain products, for example the products of a beverage company to be consumed by presenters where the subject matter of the programme is not linked to beverage products.

Question 5.4

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

Please see response to Question 5.2 above. If the concept of specialist factual programmes is retained, guidance should be issued to clarify whether the prohibition affects programmes which have a factual element but are not "purely" factual.

Proposal 6: Additional prohibited categories

Question 6.5

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

Guidance should be issued to clarify whether or not rule 9.15 relates to prop placement.

Proposal 7: Signalling

Question 7.1

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

We do not consider it appropriate to require broadcasters to identify product placement by means of a universal neutral logo **and** universal audio signal.

We question the value to the viewer of the requirement set out in rule 9.16. The inclusion of such a logo and/or audio signal would not in fact inform the viewer at all as to which of the products within a programme are the subject of product placement arrangements. We suggest that the provisions of rule 9.17 are sufficient in order to bring the viewer's attention to product placement arrangements.

If the requirement of rule 9.16 is to be retained, we do not agree that broadcasters should also be required to include an audio signal. The audio signal would be unduly and disproportionately disruptive to any title music during the opening sequence, the return from commercial break and end credit music of a programme. We believe that this would be intrusive, would compromise the editorial independence of the programme maker and would adversely affect the viewer's enjoyment of a programme. Such a requirement for an audio signal would provide that product placement is subject to more stringent rules than those relating to advertising breaks. The relevant rules in relation to advertising breaks, Rule 11 of the Code on the Scheduling of Television Advertising, provides the broadcaster with a discretion to use acoustic signals to denote advertising breaks. We suggest that a similar discretionary approach should be adopted in connection with product placement.

If it is intended that the logo and/or audio signal is to be included as an ident, such taking up of airspace (given the current requirement for so much information to be provided already in relation to offensive language, violence, sponsorship etc.) would not be welcomed. We believe that it would be appropriate for Ofcom to issue guidance as to the relative importance of each of the categories of notices and the relative prominence of each notice. It may be worth noting that in 2002, as part of a Programme Complaints & Interventions Report, the ITC welcomed the decision to remove On Screen Next notices (OSNs) from drama. From audience research, the ITC was aware that some viewers were irritated by any increase in 'clutter' around programmes.

We believe that it would be appropriate for Ofcom to issue guidance as to how broadcasters should deal with clips of programmes which contain placed products and which are included in promos for such programmes.

Question 7.2

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

Any such criteria and guidance would need to provide the broadcaster with sufficient flexibility to place the logo in a location on screen which does not adversely affect any other messages which appear on screen such as channel name, subtitles, sign language, sports programme score boards, red-button functionality and other messages.

S4C will require additional guidance in connection with the appropriate Welsh language universal logo.

Question 7.3

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

Please see response to Question 7.1 above.

We would welcome a clear indication from Ofcom as to whether any airtime taken up by such signals would be considered as programming time or advertising time for the purpose of calculating the minutage allocated to advertising breaks pursuant to rule 14 of the Code on Scheduling of Television Advertising.

Question 7.7

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

No, we do not agree that additional description text should be made available alongside the universal signal. We would propose that an information campaign, possibly similar to that relating to digital switchover, should be relied upon to inform viewers of the change in product placement rules and the meaning of the signs.

Question 7.8

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

We believe that this could form part of the audience awareness campaign mentioned in response to Question 7.7 above. We would welcome guidance from Ofcom as to the minimum frequency with which such messages are to appear on screen to ensure that all broadcasters are subject to the same requirements and whether such messages are to appear in peak or off-peak times.

We would welcome a clear indication from Ofcom as to whether any airtime taken up by such messages would be considered as programming time or advertising time for the purpose of calculating the minutage allocated to advertising breaks pursuant to rule 14 of the Code on Scheduling of Television Advertising.

Question 7.9

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

Please see response to question 7.7.

Proposal 8: Sponsor references (product placement) within programmes

Question 8.1

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

Yes, we view the possibility of being able to offer to sponsors a package which contains product placement in programmes as being attractive to sponsors and a potentially valuable opportunity for a broadcaster to increase its sponsorship revenue. The provisions of rules 9.10, 9.11 and 9.12 would ensure that any such arrangements would not affect the editorial integrity of any programmes.

Proposal 9: Identifying sponsorship arrangements (sponsorship credits)

Question 9.1

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

Yes

Proposal 12: Principles

Question 12.1

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

A note immediately preceding the paragraph entitled "Principles" states that this section does not apply to BBC services funded by the licence fee. The BBC provides S4C with a significant proportion of its programming. Product placement should be a permissible option for BBC programmes on S4C, as is the established practice with spot advertising and sponsorship.

Proposal 13: Rule on distinction between editorial content and advertising

Question 13.3

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

Guidance on what constitutes "advertising" would be useful e.g. promotional messages such as calls to action and promotional information about the sponsor or its products/services. Clarification should be provided that prop placement and product placement do not amount to advertising.

Proposal 14: Rules prohibiting surreptitious advertising

Question 14.2

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

No, we consider this rule to be somewhat contradictory. The rule itself contains a statement that "Surreptitious advertising is prohibited" and the guidance states that "Such advertising may be included in programmes in return for payment or other valuable consideration." We would welcome clarification on this rule and its application.

Product placement rules specifically permit the inclusion of products or services within a programme and Rule 9.11 makes it clear that any references to products placed must not be promotional. It is not therefore clear what would constitute surreptitious advertising as indicated by this rule.

If such a rule regarding surreptitious advertising is to be included, we believe Ofcom should include clear guidance that prop placement and product placement undertaken in accordance with the Rules do not amount to surreptitious advertising.

Alternative approaches

Question 16.3

Do you wish to suggest an alternative approach to the regulation of product placement, and its impact on sponsorship, and other rules in the revised Section Nine of the Code?

Prop placement

Further clarification is required in relation to how the rules apply to prop placement. Do rules 9.11, 9.12, 9.13 and 9.15 apply to prop placement? Prop placement has been an effective tool for sourcing products for programmes cost

effectively without affecting editorial integrity. In particular, we do not consider that rule 9.15(a) and (b) should apply to prop placement.

If rule 9.11 applies to prop placement, relevant factors should be listed as for product placement.

Undue prominence

Guidance on the application of rule 9.12 would be welcome. For example would a branded drinking glass which appears in front of each member of a panel of judges in a talent competition programme be considered undue prominence? If the product being placed is a location, how should undue prominence be avoided where elements of the location will appear in the background of most shots?

In the context of prop placement, guidance as to what is considered "significant value" would be welcomed. For example:

- (a) If a car manufacturer were to provide use of cars during the filming of a programme, would this be considered to be "significant value"?
- (b) If a car manufacturer were to offer a car used in the programme as a prize in a viewer competition, would this be considered to be "significant value"? What about a games console offered as a prize?
- (c) If a location owner were to allow filming at a location free of charge, would this be considered to be "significant value"?
- (d) If a sportswear brand offers to provide free branded sportswear for contestants to wear during a programme where various competitors undertake sporting challenges each week, would such offer of branded clothing be considered to be "significant value"?

Competition prizes

We would welcome specific guidance to clarify whether the rules relating to prop placement and/or product placement apply to competition prizes.

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