

Viasat Response
Ofcom Broadcasting Code Review:
Commercial References in television programming
17 September 2010

INFORMATION ABOUT VIASAT

Viasat, with its main offices in Chiswick, London, is the broadcasting division of the Swedish public company Modern Times Group MTG AB. MTG is a leading international entertainment broadcasting group with the largest geographical broadcast footprint in Europe.

Viasat is the leading free TV and pay TV operator in Scandinavia and the Baltics and has broadcasting operations in 31 countries, attracting a total of 125 million viewers.

Viasat's free and pay TV channels are received throughout Europe with perhaps the best known channels being those broadcast under the TV3 and TV6 brands. 30 of these channels are operated from the UK and regulated by Ofcom.

Consultation questions

Proposal 1: 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. **Yes**
- 1.2 Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible. **None**
- 1.3 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. **None**

Proposal 2: 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. **No**
- 2.2 Please identify any areas of this clarification which you consider Ofcom should issue guidance on. **None**

Proposal 3: 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)). **None**
- 3.2 Please identify any areas of this rule which you consider Ofcom should issue guidance on. **None**

Proposal 4: 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. **No, we do not believe that thematic placement should be prohibited at all. This goes beyond what is required by the AVMS Directive. Rule 9.10 reflects what is stated in the AVMS Directive Recital 93 about editorial independence, and this rule, together with the other rules in new section 9 (particularly the rules on undue prominence and signalling), as well as other sections of the Ofcom Code, especially section 2 (Harm & Offence), section 4 (Religion) and section 5 (Due Impartiality) provide sufficient protection to the viewing public. We do not see the need for a distinction between the placement of products and the placement of ideas/themes. It does not follow that just because a third party is funding the placement of an idea (such as the need for home insurance) as opposed to a product (such as home insurance from Aviva) that any harm**

will be caused to the public as a result as other sections of the code provide sufficient protection to the viewer.

Broadcasters should be allowed to make their own decisions about which elements of their programmes are funded by third parties. We believe there will be self-regulation in the industry and broadcasters will not make programmes with storylines that are so absurd or subjective that the public does not wish to watch them. Broadcasters want to make quality programmes that people want to view, and in order to ensure that such programmes are made it is important to allow third parties to fund as many aspects of the programme as possible. The proposed limitations would impact on the ability of broadcasters to generate funds to create quality programming for their audience.

- 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. ***No, we do not believe it is necessary to include the additional wording in Rule 9.10 at all.***
- 4.3 Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible. ***If thematic placement is prohibited it may be difficult to determine what is allowed and not allowed in programmes, particular in reality shows. For example, many celebrity chef programmes are funded by the celebrity chefs themselves and the script will be used to promote the chef's beliefs and interests, such as organic farming, buying local, or whatever their beliefs might be. Under the proposed Ofcom wording, which is very broad, this could be seen to be 'thematic placement' and would be prohibited. However, we see no harm in such programmes containing such ideas.***
- 4.4 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. ***If the proposed wording is accepted guidance should be given on what does and does not come under the definition of thematic placement.***

Proposal 5: 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. ***No, we do not consider it is appropriate to prohibit product placement in specialist factual programmes. This goes beyond what is required by the AVMS Directive.***

We believe viewers will be adequately protected if product placement is allowed in specialist factual programmes by the other rules within the new section 9, particularly those on editorial independence, undue prominence and signalling, and other sections of the Ofcom Code (particularly section 2, Harm & Offence, and section 5, Due Impartiality). It does not follow that just because a third party has placed products in an educational, science or arts programme that the integrity of such programme will be undermined or that the audience will be harmed or misled. It all depends on how broadcasters

handle the product placement and as most broadcasters will wish to keep their audiences happy they will not make programmes which are subjective or misleading.

We suggest that Rule 9.14(d) is therefore removed but if concerns about product placement in specialist factual programmes arise after section 9 comes into effect a further review could be carried out by Ofcom.

- 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. ***We suggest the wording is removed altogether.***
- 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. ***We agree with the two main areas of concern which Ofcom has already highlighted: 1. the difficulty programme makers will have in determining which programmes can have product placement in them and which cannot, and 2. a prohibition may cause an increase in commissions for light entertainment factual programmes. In addition, prohibiting product placement in arts, science, educational and other serious factual programmes will remove a potential source of revenue which could make such programmes (which are more expensive to make than ‘lighter’ programmes such as reality shows) viable. It is hard for programme makers to fund serious factual programming at the best of times, despite the fact that many would like to do so, and it will become even harder if it is not possible to have third party funding through product placement, whilst such funding is allowed for other types of programmes.***
- 5.4 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. ***None.***

Proposal 6: 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. ***Yes, we agree with Rule 9.15(f).***
- 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. ***The first line of Rule 9.15 should say “The product placement of the following is prohibited...”***
- 6.3 Do you agree that it is unnecessary to apply advertising scheduling restrictions to product placement? If not, please explain why. ***We agree, given that placement of the products in Rule 9.15 (a)-(e) is prohibited. However, we believe that the placement of the products listed in Rule 9.15 (a)-(e) should not have been prohibited in the AVMS Regulations, but that they should have been allowed with the same scheduling restrictions as for advertising and sponsorship.***

- 6.4 Please identify any potential impacts of the proposals that you consider should be taken into account, and provide evidence, wherever possible. **None**
- 6.5 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. ***Guidance is needed on what is meant by “medicinal products” in Rule 9.15(e). The AVMS Directive only prohibits the product placement of prescription medicines and yet the AVMS Regulations refer to the Medicines Act 1968. We would hope that Ofcom would clarify that the meaning of “medicinal products” is intended to be limited to prescription medicines. Otherwise there is a risk of confusion over whether the placement of products such as vitamin supplements, herbal remedies and animal medication is prohibited.***

Proposal 7: Signalling

- 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. ***No, we do not think a visual and an audio signal is necessary. There is no requirement for both a visual and an audio signal for sponsorship arrangements. Given that under the AVMS Directive we are obliged to have at least one or the other then we are strongly in favour of a visual signal rather than an audio signal, particularly as the majority of products which are placed in programmes will be seen rather than heard. Also, an audio signal is highly likely to cause viewer annoyance, whether it is an announcement or a specified sound.***
- 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. ***We believe it should be up to the broadcaster to determine how any visual signal looks. As a non-UK facing broadcaster we do not think it is necessary or logical for us to use the same logo as UK facing broadcasters. It may make more sense for us to choose a logo which is the same as that being used by local broadcasters in the countries where we transmit or to choose a different logo altogether which we feel would be better accepted by our viewers in our markets. Therefore any guidance on how the visual signal should look should be for guidance only, and not compulsory.***
- If the criteria for how the universal neutral logo should look were to be compulsory for all Ofcom licensees, then we agree that a small transparent ‘PP’ in the corner of the screen for a short period of time would be appropriate, except that broadcasters should be allowed to translate the initials ‘PP’ into the initials of ‘product placement’ in the language of the country of reception.***
- 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. ***We do not think there should be any audio signal. It will undoubtedly cause viewer annoyance.***

- 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. ***As stated in 7.2 above, we believe it should be up to the broadcaster to determine the criteria for the visual signal. However, if Ofcom is to specify the criteria then it should be in the guidance and not in the Code.***
- 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. ***No, we do not think broadcasters should be required to provide a list of products either in end credits or on a website. It should certainly not be compulsory to provide a list in end credits. It would be extremely difficult (administratively and technically) to ensure that such a list at the end of every episode contained a complete and accurate list of the products contained in such episode. Any arrangements for crediting product suppliers should be up to the broadcaster. It may be beneficial for viewers to see a list of products which have been placed in some programmes, for example, a list of clothes and make-up providers in a makeover show, and broadcasters and product suppliers would no doubt both be keen to provide such a list on a website. It will be of less or no benefit to viewers to see a list of products that have been placed in a soap opera. It should be borne in mind that viewers have been used to seeing product placement in US-produced programmes for many years without seeing a list of the products in the end credits or on a website.***
- 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. ***As stated in 7.5 above, the wording should be voluntary and not compulsory, i.e. "Broadcasters may make available..."***
- 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 think this is necessary, particularly if an audience awareness message has been transmitted as per 7.8 below. Descriptive text on top of a visual and/or audio signal is very likely to increase viewer annoyance.***
- 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 agree that an audience awareness message should be shown in order to introduce the audience to product placement and the product placement signal, but, as it is not a requirement on the AVMS Directive, it should not be compulsory to do so. It should be up to the broadcaster to decide what is appropriate in the territories in which it broadcasts. In some of the territories in which Viasat broadcasts, such as Sweden, product placement is not a new concept so it***

is unnecessary to have a long or detailed campaign. In other territories where product placement is new, such as Hungary, we may decide it is appropriate to run a longer more informative campaign. If Ofcom were to issue guidance on the length of time during which a campaign should be run, a more acceptable length of time would be a period of 4 weeks prior to product placement coming into effect and 4 weeks afterwards, this being sufficient time to inform the audience about the product placement signal but not so long that they become annoyed by it. A period of six months is unnecessarily long.

- 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. ***The message, timing, duration and content of the audience awareness campaign should be up to the broadcaster. It is the broadcaster who knows their audience best. Any guidance from Ofcom should be followed voluntarily.***
- 7.10 Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible. ***See responses to 7.1 to 7.8 above.***
- 7.11 Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on. ***None.***

Proposal 8: Sponsor references (product placement) within programmes

- 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***
- 8.2 Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible. ***None***
- 8.3 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. ***None***

Proposal 9: 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. ***No, we do not think it is appropriate to replace this rule. It goes beyond the requirements of the AVMS Directive. We believe the current rules provide sufficient protection to viewers from surreptitious advertising. Viewers have become familiar with programme sponsorship and we do not believe they need to hear or see a specific statement informing them of the sponsorship arrangement to understand what is meant by sponsorship. Many broadcasters may choose to include such a statement anyway, but we do not feel it is necessary to make this obligatory. We also believe that despite what Ofcom says there will be a significant financial impact in remaking all our credits which do not contain such a statement.***

- 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. **Yes.**
- 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. ***The wording regarding the sponsorship statement is not needed in Rule 9.22, as explained in 9.1 above.***
- 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. ***There is a risk that the new Rule 9.22 would prevent the kind of creativity which sponsorship producers have shown (and Ofcom has encouraged) in linking sponsorship messages to the programmes they are sponsoring. There will be no need for any creativity or link between products and programmes if all that is required is a statement saying "x is sponsored by y".***
- 9.5 Please identify any areas of these proposals which, if it is accepted, you consider Ofcom should issue guidance on. **None.**

Proposal 10: 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. **Yes.**
- 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. ***No, we do not think it is necessary to have this rule. It should be up to broadcasters to decide if it is appropriate to have the sponsorship credit and the product appear at the same time or not. Many may decide that it is not appropriate because it will cause viewer annoyance, but it should be a self-regulating system and not an Ofcom requirement. We believe that Rule 9.27 on undue prominence is sufficient to protect viewers from being overloaded with commercial messages.***
- 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. ***We do not believe Rule 9.29 is necessary, as stated in 10.2 above.***
- 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. **None**
- 10.5 Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on. **None.**

Proposal 11: 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. ***We agree that there should not be any advertising messages or calls to action during a programme. However, it is not necessary to limit the content of sponsorship credits beyond this. There is no need to regulate what the sponsorship graphics should look like (why must they be static and not moving?) nor how long they should be on the screen for. Broadcasters will be in the best position to determine what is an appropriate sponsorship message in a programme and for how long it is shown depending on the programme in question and the target audience. As we have stated with regard to many other of the proposed rules, we believe broadcasters will self-regulate and will not include content which will alienate or annoy their audiences.***
- 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. ***No, we do not see it as a conflict if the Ofcom rules on sponsorship credits during programmes differ from the rules on product placement during programmes. The legislation on sponsorship and product placement differs as well. For example, there is no legislation which prohibits providers of alcoholic beverages, HFSS foods and drinks, gambling products, infant formula and non-prescription medicinal products (who are prohibited from placing their products in programmes under new Rule 9.15) from sponsoring programmes (although there are of course restrictions on what some such providers can and cannot sponsor) and therefore there should be no restriction on such providers having sponsorship credits in programmes. To introduce such a rule would go beyond the requirements of the AVMS Directive. Viewers will be adequately protected by the fact that broadcasters have to adhere to scheduling restrictions with regard to certain sponsorship credits. There is no objective need to prevent such credits appearing in programmes if they are allowed to appear around them. For example, we do not see any harm in a sponsorship credit for eg. Bacardi appearing in as well as around an appropriately scheduled film.***
- 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. ***No, see responses to 11.1 and 11.2 above.***
- 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. ***The providers of the kinds of products prohibited under Rule 9.15 (a)-(e) make up some of the largest potential providers of sponsorship financing. Prohibiting sponsorship credits in programmes from such providers simply because they are not allowed to product place, will reduce the amount they are willing to pay to sponsor a programme, thus reducing a potential source of programme funding. This will have an impact on the type and quality of programming broadcasters can produce, which ultimately affects the viewers.***

- 11.5 Please identify any areas of these proposals which, if they are accepted, you consider Ofcom should issue guidance on. **None**

Proposal 12: Principles

- 12.1 Do you agree with the proposed revisions to the principles? If not, please explain why, and suggest drafting changes, where appropriate. **Yes**
- 12.2 Please identify any potential impacts of Ofcom's proposals that you consider should be taken into account, and provide evidence, wherever possible. **None**

Proposal 13: 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. **Yes**
- 13.2 Please identify any potential impacts of Ofcom's proposal that you consider should be taken into account, and provide evidence, wherever possible. **None**
- 13.3 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. **None**

Proposal 14: Rules prohibiting surreptitious advertising

- 14.1 Do you consider it is appropriate to include a rule prohibiting surreptitious advertising? If not, please explain why. ***We do not think the rule is necessary because, as you say in Proposal 14, paragraph 6.21: "current rules already effectively prevent surreptitious advertising".***
- 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, if the rule is to be included, then the line: "Such advertising may be included in programmes in return for payment or other valuable consideration" needs to be clarified.***
- 14.3 Please identify any potential impacts of the proposed rule that you consider should be taken into account, and provide evidence, wherever possible. **None**
- 14.4 Please identify any areas of this proposal which, if it is accepted, you consider Ofcom should issue guidance on. **None**

Proposal 15: 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. **Yes**
- 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. **None**

Relevant requirements of the AVMS Directive and the Act

- 16.1 Do you agree that the explicit requirements of the AVMS Directive and the Act are reflected appropriately in the proposed rules for product placement, as set out in Part 4? If not, please explain why and suggest drafting changes, if appropriate. **No, we believe Ofcom has gone beyond what is required under the AVMS Directive and the Act and to have done so provides unnecessary “gold-plating” to the legislation.**
- 16.2 Are there any other relevant matters you consider that Ofcom should take into account in this Review? If so, please provide details, with supporting evidence, wherever possible. **No**

Alternative approaches

- 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? If so please outline your proposals, which must comply with the Communications Act 2003 (as amended by The Audiovisual Media Services (Product Placement) Regulations 2010), the AVMS Directive, Article 10 of the European Convention on Human Rights and Schedule 1 of The Consumer Protection from Unfair Trading Regulations 2008. **No**

New Code rules in 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. **Yes.**
- 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.