

Response to DCMS Consultation On Product Placement on Television

January 2010



ALL3MEDIA

ALL3MEDIA is comprised of a group of television, film and new media production companies from across the UK, Germany, The Netherlands, New Zealand, Australia and the USA. It also includes an international distribution company, 'ALL3MEDIA International', which represents third-party producers and broadcasters together with its own production companies.

In the UK, ALL3MEDIA is one of the largest independent television production companies. Its companies include Lime Pictures, North One Television, Cactus Productions, Bentley Productions, Maverick Television, Company Pictures, Objective Productions, Studio Lambert and Lion Television.

Executive Summary

ALL3MEDIA is pleased that the “Government is currently minded to permit product placement on UK television, subject to safeguards”. The television industry has been hit by a “perfect storm” of structural and cyclical factors that have resulted in significant reductions in commissioning spend on UK original content. Structural forces such as the penetration of PVR recording devices and video on demand services will continue to impact the economics of television funding even when the advertising recession starts to fade.

Against this background, it is critical that the industry finds new ways of raising revenue - ways that better suit the changing patterns of viewing in the UK and, critically, allow the UK TV sector to sustain its investment in the number of hours of high quality and diverse original TV programmes that UK audiences enjoy and expect. UK TV production is an international success story, employing a substantial work force and with an important role in the global market. As long as clear and robust safeguards are in place to protect viewers, ALL3MEDIA believes product placement provides a valuable new source of revenue into the television sector.

ALL3MEDIA believes the AVMS Directive and the existing provisions of Ofcom’s Broadcasting Code provide a strong set of guidelines to protect viewers’ interests. Protections could also be introduced to align product placement with the current ASA restrictions on the placement of spot advertising and sponsorship for HFSS and alcohol products around programming attracting a disproportionately high child audience. ALL3MEDIA believes that reliance can be placed on the existing regulatory framework and the protections it affords. Ofcom, the broadcasters and producers have developed the current regulatory model over time and it can easily be adapted to include Product Placement within its scope. This is preferable to “re-inventing the wheel” with the introduction of a whole new framework.

ALL3MEDIA also believes that strong partnerships between broadcasters and production companies will be essential to the successful implementation of product placement. A Product Placement should only happen with the involvement and consent of both producer and broadcaster. Neither party should be able to enforce a product placement over the other and ALL3MEDIA welcomes discussions between PACT and Broadcasters to establish a code with practical means of implementation.

1. What, if any, viewer and other safeguards there should be additional to those required by the AVMS Directive?

ALL3MEDIA believes that the AVMS Directive and Ofcom's Broadcasting Code contain adequate safeguards to protect viewers. Their provisions in respect of editorial independence, undue prominence, not permitting the direct encouragement to purchase or rent goods and services, informing viewers of product placement and restrictions in respect of childrens' programming, tobacco and prescription medicine products provide sufficient safeguards.

ALL3MEDIA also believes that guidelines on product placement could be aligned with current regulations on HFSS foods and alcohol products in spot advertising and sponsorship scheduling (see Q15).

2 How should those additional safeguards be imposed - by law, or by means of the Ofcom Code?

ALL3MEDIA doesn't believe any additional safeguards need to be imposed. ALL3MEDIA understands that Ofcom would run a consultation process and would suggest Ofcom regulates the product placement market through changes to the Broadcast Code.

Commercial advantages

3. Is the range of figures for the potential financial benefit of introducing television product placement set out a Part 3 of this document (between £25m and £140m p.a.) still broadly applicable?

Yes. ALL3MEDIA believes the estimated financial benefit is still applicable. ALL3MEDIA believes the likely value is at the high end of these estimates based on evidence from other markets such as USA and Australia.

4 Is it possible to narrow this wide range of estimates?

As explained above, ALL3MEDIA's expectation is that the likely value will be towards to top end of the range.

5 Are there grounds for thinking that the potential benefits have increased or decreased since last year?

ALL3MEDIA believe that changes in the media landscape over the last 24 months have increased the potential benefits of product placement.

From a broadcaster/content producer perspective, the market has been hit by a "perfect storm" of structural and cyclical pressures. The "need" for additional revenue streams has never been more acute.

Structurally, there has been further audience fragmentation with increased penetration of digital television channels, increased PVR usage and the growth of the Internet as an entertainment platform. At the same time, the general economic downturn has seen the size of the television advertising market fall by 12% in 2009. Analysts (such as O&O Analysis and Enders) believe the television advertising market will be flat (at best) through 2010 and 2011.

These structural and cyclical changes have had a significant negative impact on the amount of revenue generated by the commercial “terrestrial” broadcasters - who rely solely on advertising revenue. It is these broadcasters (along with the BBC) that are responsible for 90% of the commissioning of UK original content.

ITV, Channel 4 and five have all responded with significant cuts to their commissioning spend and ALL3MEDIA has also seen a shift in commissioning to cheaper entertainment based programming at the expense of more expensive programming such as drama.

ALL3MEDIA was interested to read John Yorke (BBC’s controller of drama) comments to the Royal Television Society that “in the past five years [the UK] has lost 120 hours of [drama] programming.” ALL3MEDIA believes this reflects the competitive pressure felt by broadcasters and the shift away from more expensive programming.

Bringing new revenue into the television industry through product placement has two direct and tangible benefits:

A. Viewers: viewers benefit because new revenue provides an opportunity for broadcasters to invest in more original programming and more specifically, to sustain spend in the expensive genres (such as drama).

B. Commercial: this, in turn, has significant commercial advantages in secondary revenue streams. The UK has developed a strong and vibrant UK production sector thanks to the significant growth in format and programme sales overseas. The 2008 Annual UK Television Exports Survey reported in December 2009 that estimated revenue from the international sale of UK programmes had grown by 25% in the year to £782m. This is a rare UK economic success story and relies on the UK broadcasters maintaining their levels of spend and numbers of hours of commissioned programmes.

Any reduction in UK original programming impacts the volume of content to be distributed internationally. Furthermore, if UK independent producers and UK distribution companies are unable to benefit from the additional revenues generated by product placement, they could be further disadvantaged as they compete for sales against international producers and distribution companies who are able to derive funding from Product Placement.

From an advertiser perspective, ALL3MEDIA believes there is increasing evidence that advertisers are seeking more engaging and immersive experiences to reach their customers. Whilst spot advertising revenues have fallen, TV sponsorship revenues and advertiser investments in online concepts (which are deemed to provide more engagement than spot advertising) have grown. We believe that product placement

offers advertisers a new engaging and immersive advertising opportunity and, as such, we expect believe demand will be considerable.

6 Has any new evidence emerged about the possible benefits since the earlier consultation?

See question 5 above.

Programme genres

7. If product placement is allowed in programmes made by or for UK television, should any of the programme genres permitted by the AVMS Directive be excluded?

No. ALL3MEDIA doesn't believe any of the programme genre permitted by the AVMS Directive should be excluded.

8. Should UK controls on product placement be more specific as to what is meant by 'films and series' in which product placement can appear?

No.

9. Are there definable types of 'films and series' in which product placement either should or should not be permitted?

No.

10. Should UK controls on product placement be more specific as to what is meant by 'sports programmes' in which product placement can appear?

No.

11. Is there any reason to restrict product placement in particular types of sports programming?

No.

12. Should UK controls on product placement be more specific as to what is meant by 'light entertainment' programmes in which product placement can appear?

No.

13. Is there any reason to restrict product placement in particular types of 'light entertainment' programme?

No.

14. Should there be a specific prohibition of product placement in

- religious programmes
- news programmes;
- current affairs programmes;
- consumer programmes; or
- any other specific type of television programme?

In respect of Questions 7-14, ALL3MEDIA believes that audiences are adequately protected by the provisions of the AVMS Directive and the Broadcast Code. Ensuring that product placement is implemented in line with these regulations seems a more sensible and simple solution than attempting to narrowly define different genres of programming. ALL3MEDIA believes that the AVMS Directive and Broadcast Code provide clear exclusions (to Childrens' Programming and tobacco and prescription medicine products) and clear guidance to broadcasters/producers as to how product placement should be implemented (undue prominence, editorial independence).

Children

15. Should any or all product placement be restricted or prohibited in programmes with a disproportionately high child audience?

ALL3MEDIA agrees with the AVMS Directive's exclusion of product placement in children's programming.

In respect of programming with a disproportionately high child audience, ALL3MEDIA believes that product placement protections should be aligned with existing codes in spot advertising and sponsorship scheduling which prevent the placement of advertising for HFSS foods and alcohol products around programming attracting a disproportionately high child audience.

16. If so, how should that assessment be made in advance of a programme being broadcast?

17. How could a 'disproportionately high child audience' be defined?

In respect of Questions 16 and 17, ALL3MEDIA believes Ofcom's current conversion index for determining whether a programme reaches a disproportionately high child audience should be utilised.

18. Should there be restrictions on placing certain types of products (e.g. HFSS foods or alcohol) in programmes with a disproportionately high child audience?; and if so

19. Should those restrictions be the same as or greater than those which are currently in place for the scheduling of spot advertising of those products?

As stated above, ALL3MEDIA believes product placement should be subject to the same restrictions as currently exist in the scheduling of spot advertising.

Editorial independence; undue prominence

20. How could 'undue prominence' be avoided, given the commercial imperative for audiences to recognize the products and services that have been placed?

For many years, broadcasters and producers have had to work within the Broadcast Code's undue prominence guidelines. This is the case where products are used within a programme through prop placement. Ofcom, broadcasters and producers have a working understanding of the Code's undue prominence protections and, as a result, ALL3MEDIA would ask that the current regulatory principle is maintained.

Although an obvious point, ALL3MEDIA also wishes to highlight that the continuing, over-riding (and in most cases only) measure of a programme's success for the producer and the broadcaster is the viewer ratings of the programme in question. Irrespective of the regulations and guidelines of the AVMS Directive and Broadcast Code (vital and important as they are), ALL3MEDIA wishes to point out that the success of its business is predicated on producing great programming that viewers wish to watch. This, in itself, is a considerable filter for a producer to consider when ensuring there is no undue prominence of a product and when considering the viewers' reaction to a piece of product placement.

21. At what point should the Government, or Ofcom, draw the line between legitimate paid placement of goods or services and illegitimate 'direct encouragement' to purchase or hire them?

ALL3MEDIA believes the AVMS Directive's prohibition on "direct encouragement to purchase or hire" could simply be inserted into the Broadcast Code. Ofcom, broadcasters and producers have experience of working to Rule 10 of the Broadcast Code and have demonstrated that simple guidelines contained in the Code are preferential to detailed and extensive regulation that seeks to predict endless scenarios.

22. Are rules – in addition to those that prevent 'undue prominence' and the promotion of placed products – needed to safeguard editorial integrity? If so, what should these be?

In addition to the AVMS safeguard relating to editorial independence, ALL3MEDIA agrees with PACT that both the broadcaster and producer should have a right to veto a proposed product placement in a programme.

Please see PACT's submission to the AVMS Directive consultation in 2008 which set out a "product placement code" between broadcasters and producers.

Tobacco, alcohol, HFSS foods, gambling

23. Should television placement of smoking accessories such as cigarette papers and pipes be prohibited?

Yes.

24. Should television placement of alcohol, HFSS foods or gambling be subject to an outright prohibition; or, if not prohibited, should it be subject to restrictions of some kind?

No.

As stated in Question 15-19, ALL3MEDIA believes the rules applied to these types of products in spot advertising and sponsorship should be applicable to product placement.

25. If it is not practicable to apply the detail of the BCAP Code rules on alcohol advertising to alcohol product placement, would the simple AVMS Directive rules that alcohol advertising must not be aimed specifically at minors and must not encourage immoderate consumption provide adequate safeguards?

Yes.

26. Are there any alternative forms of safeguard that may be appropriate?

N/A

Monitoring

27. What methods of assessment and monitoring would be most effective in ensuring that there was accurate and reliable information about the actual effects of any introduction of product placement in these areas?

ALL3MEDIA believes Ofcom is best placed to decide on methods for the assessment and monitoring of product placement.

28. Would it be possible or desirable to levy a charge on product placements to enable monitoring and/or research to take place?

No.

Other types of product

29. Are there any other product or service categories whose placement should be subject to prohibition or restriction?

No.

30. If so, what, and why?

Terms of trade

31. If television product placement is allowed, what models might there be for revenue sharing between broadcaster and producer?

ALL3MEDIA believe that product placement revenue should be shared 50/50 between broadcaster and producer.

32. Does the industry anticipate that the commercial negotiation of product placement arrangements would form part of the terms of trade between broadcasters and producers?

Yes. ALL3MEDIA envisages that a 50/50 revenue sharing agreement would be agreed as part of the wider terms of trade agreed between PACT and the PSB broadcasters. An agreed definition of the method of arriving at the gross figure for distribution would also form part of the Terms of Trade.

Prop placement market

33. What impact would allowing television product placement have on the existing prop placement market, and on the ability of broadcasters to source props and services in this way?

ALL3MEDIA doesn't believe there is any evidence to suggest that the prop placement market will be impacted by the introduction of product placement.

Signalling product placement to viewers

34. How should television product placement be notified to viewers?

ALL3MEDIA believe that the notification should be as unobtrusive as possible. There could be a common kitemark or onscreen bug developed and communicated by all commercial broadcasters. Just as viewers have come to recognise parental guidance symbols, viewers would come to recognise symbols notifying them of product placement.

35. When should it be notified to viewers – should we go beyond the EU requirement for notification before and after the programme and after any ad breaks?

No.

36. Should notifications to viewers mention the product(s) which has or have been placed?

No. ALL3MEDIA doesn't believe products should be referenced in any notification. We believe this makes the product placement more intrusive to the viewer.

37. Do you have any other views about alerting viewers to the presence of product placement in a television programme?

No.

Thematic placement

38. Should the prohibition of 'thematic placement' extend to placements which feature only generic products and services or types of product and service rather than branded ones?

39. Should the prohibition of 'thematic placement' extend to the placement in a programme of references to the beliefs, policies, aims or objectives of the placer?

In respect of Question 38 and 39, ALL3MEDIA would seek to rely on the viewer protections set out in the AVMS Directive and the Broadcast Code – ie undue influence and editorial independence.

Negative and simulated placements

40. If television product placement is to be allowed, should there be rules which prevent negative placements?

Yes. ALL3MEDIA believes this view is already set out in the ASA's BCAP Code. Like provisions relating to programming reaching a proportionately high child audience, it seems possible to align new protections around product placement to existing regulation.

41. Should the regulation of television product placement, if it is to be allowed, contain specific controls on the use of simulated products?

Yes.