

Channel 4 submission on product placement

Channel 4 welcomes the opportunity to provide its views on allowing product placement in programmes made to be shown on UK television.

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.

The Government is currently minded to permit product placement on UK television, subject to a range of safeguards for viewers. In previous consultations, Channel 4 has expressed reservations about the editorial implications of product placement and the level of financial benefits that may arise. Consequently, Channel 4's priorities are to ensure that product placement, if permitted, is:

- implemented responsibly and in a way which maintains broadcasters' editorial integrity. Channel 4 believes that there should be a strong system of safeguards—with a clear regulatory code and industry guidance—to ensure that the central principles of preventing undue prominence, protecting editorial integrity and prohibiting direct encouragements to purchase are maintained. To achieve this, Channel 4 believes that the Government should adopt an approach which seeks to replicate in UK law the broad safeguards set out in the AVMS Directive and leave detailed implementation to Ofcom, allowing for a more integrated approach to content regulation; and
- introduced in a way that does not compromise the revenues Channel 4 generates from television spot advertising and sponsorship. These two forms of advertising generate the overwhelming majority of Channel 4's income, and it is therefore vital that these regulated areas are not adversely affected by the introduction of product placement.

Channel 4 also believes it is important that the potential benefit from product placement is not overplayed—additional revenues are likely to be at the low end of the range of estimates cited by the Government, especially given the likelihood of substitution from other revenue streams. In relation to any deals, Channel 4 expects product placement to give rise to a revenue stream separate to the agreed price of commissions, and envisages a collaborative commercial arrangement between producers and broadcasters, rather than one regulated by the terms of trade.

In addition, Channel 4 notes that product placement in video on-demand services is already permitted. For some years, Channel 4 has been developing a range of on-demand services, both through 4oD, available at channel4.com, and in partnership with a range of third parties. Channel 4 believes that the regulatory frameworks for television and on-demand product placement should be as

consistent as possible, in order to facilitate content moving between platforms—from linear to online and vice versa—in the light of inevitable increasing convergence.

Finally, Channel 4 considers that television product placement, while a commercial communication, is a matter for content regulation rather than advertising regulation. Channel 4 therefore regards Ofcom as the most appropriate regulator for television product placement, rather than the Advertising Standards Authority (ASA)—in the same way that the video on-demand content regulator covers on-demand product placement, rather than the on-demand advertising regulator.

In this context, Channel 4 would like to address the specific questions in the Government’s consultation.

Consultation questions

Regulatory safeguards

- 1. What, if any, viewer and other safeguards should there be additional to those required by the AVMS Directive?*
- 2. How should those additional safeguards be imposed – by law, or by means of the Ofcom Code?*

The EU Audiovisual Media Services (AVMS) Directive enables the UK Government to permit product placement in programmes made to be shown on UK television. The AVMS Directive also sets out a range of provisions to safeguard consumers in the event that product placement is permitted. These include requirements that product placement:

- must not influence the content and scheduling of programmes in such a way as to affect the responsibility and editorial independence of the broadcaster;
- must not give “undue prominence” to products that have been placed; and
- does not directly encourage the purchase of goods or services, in particular by making special promotional references to them.

In addition, the AVMS Directive: requires that the presence of product placement must be signalled to viewers; prohibits the placement of tobacco products and prescription medical products; and requires that any placement of alcoholic drinks must not be aimed specifically at minors and must not encourage immoderate consumption.

Finally, the AVMS Directive states that product placement is not permitted in programmes which are made for children.

The AVMS Directive therefore sets out robust requirements for safeguarding viewers in the event that product placement is permitted. However, in recent months, concerns have been raised that allowing product placement might have a negative impact on viewer trust and editorial integrity, and this has led to pressure for the Government to introduce in UK law additional restrictions on television product placement, beyond those set out in the AVMS Directive.

Channel 4 agrees that product placement, if permitted, should be subject to a strong system of safeguards. Channel 4's priority is to ensure that product placement is implemented responsibly, and in a way which maintains broadcasters' editorial integrity and viewer trust in UK television. To achieve this, Channel 4 believes that the Government's objective at this stage should be to simply replicate the safeguards in the AVMS Directive in UK law. This approach would leave detailed implementation to UK regulators, allowing for a more integrated approach to content regulation.

It will of course be necessary to elaborate on the detail of the regulatory regime, but Channel 4 believes that the most appropriate vehicle for this is through amendments to the Ofcom Broadcasting Code, which contains the existing rules on television product placement. It is Channel 4's firm view that the detail of how regulatory safeguards should be developed in practice is best addressed through consultation with the UK regulator for television content—Ofcom.

Channel 4 would therefore be keen to work with the Government and Ofcom to develop an effective regulatory system for television product placement, which protects effectively viewer trust and safeguards editorial independence. Channel 4 believes that a regulatory regime developed through the Ofcom Broadcasting Code is preferable to a regime set out in primary legislation for the following reasons.

- Flexibility. Regulations set out in the Ofcom Broadcasting Code are able to be more easily adapted in the light of changing public policy priorities, market developments and rapidly changing technology, compared to rules set out in primary legislation, which generally speaking can only be amended by further primary legislation. Rules set out in legislation may simply act to constrain new regulatory approaches in future.
- Effectiveness. An approach which passed detailed implementation to Ofcom would allow for a more integrated approach to content regulation. It would allow Ofcom, in considering changes to the Broadcasting Code, to take a holistic view of all content regulation issues that involve commercial messages—additional rules in primary legislation would act to constrain Ofcom.

The Government has already implemented in UK law the majority of the rules set out in the AVMS Directive, including restrictions on product placement in video on-demand services. In that process, the Government introduced laws which largely replicated the European provisions. These rules are now being interpreted and developed by UK regulators, with the input of various stakeholder groups and the industry. Channel 4 sees no reason to depart from this approach.

Finally, Channel 4 considers that television product placement, while a commercial communication, is a matter for content regulation rather than advertising regulation as it is interlinked with the editorial content of the programme. Channel 4 therefore regards Ofcom as the most appropriate regulator for television product placement—in the same way that ATVOD, the prospective video on-demand content co-regulator, will cover on-demand product placement—and is unclear on the locus or rationale for the Advertising Standards Authority (ASA) to be involved, as suggested in the DCMS product placement stakeholder meeting on 10 December 2009.

Commercial advantages

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

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

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

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

There are a wide range of estimates for the potential financial benefit of television product placement, from Ofcom's 2005 estimate that total UK income from television product placement would be about £25-35 million per annum after five years, through to much larger estimates of £140 million per annum.

Channel 4 believes that it is very difficult to predict accurately the true value of product placement, given that this is an entirely new form of commercial communication in the UK and that there are few, if any, comparable overseas markets. However, Channel 4 believes that the net commercial impact of product placement, taken across the whole industry, is likely to be towards the lower end of the estimates cited by the Government, particularly considering the following.

- Channel 4 believes that product placement is likely to cannibalise existing sponsorship and spot advertising deals. In Channel 4's experience, advertisers have a budget which they spend on audiovisual services in general, and the introduction of a new category—product placement—within audiovisual services is unlikely to result in advertisers raising their total budget. Rather, they are more likely to substitute away from other audiovisual areas, such as spot advertising and sponsorship.
- Product placement could compromise existing commercial arrangements. For example, sponsors may perceive a programme to have less value if it features product placement from other companies—particularly if competitors are involved.
- While the AVMS Directive sets out a wide range of genres in which product placement may be permitted, product placement is only likely to be appropriate in a certain range of programming. This is particularly relevant for Channel 4, as a substantial proportion of its programming is made up of public service genres such as news and current affairs, which may be inappropriate for product placement (see discussion of programme genres below).
- Broadcasters, especially those such as Channel 4 that do not make their own programmes but commission independent production companies, will also have to incur additional regulatory costs to ensure that product placement is implemented responsibly and in compliance with any regulatory codes.

Finally, Channel 4 believes that the experience of the introduction of sponsorship in the UK is instructive in predicting how new revenues may develop. From a small base the sponsorship market took a relatively long time to grow, and was initially characterised by low margins. Channel 4 believes that the product placement market is likely to develop more rapidly from inception than the sponsorship market,

as advertisers and broadcasters are now better prepared and resourced to exploit new commercial opportunities than they were 20 years ago.

Beyond the arguments set out above, Channel 4 has not identified any additional evidence about the possible benefits of the introduction of product placement since the Government's earlier consultation in 2008.

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?

The AVMS Directive permits product placement in "cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes". The AVMS Directive prohibits product placement in children's programmes, which it defines as programmes which are "intended for viewing primarily by persons under the age of 16".

Channel 4 recognises that the permitted genres are fairly broad concepts, and agrees that there should be a debate about what they mean in practice. However, Channel 4 sees no reason to exclude in UK primary legislation any of the programme genres permitted by the AVMS Directive—Channel 4 believes that the Government should simply seek to replicate in UK law the programme categories set out in the AVMS Directive.

The programme genres will of course need to be interpreted in greater detail, but in Channel 4's view the most appropriate place to consider this is within context of the Ofcom Broadcasting Code. It is important that the Government maintains flexibility in regard to genres as industry practice and programme formats develop, and Channel 4 therefore believes it is not appropriate to include a greater level of detail in primary legislation. As identified by the Government "the sheer variety of TV show concepts and formats and the speed with which they mutate might make it difficult to devise hard and fast rules". Ofcom has sound experience in content regulation and genre classification and is well placed to interpret what is meant by the permitted genres in practice and to reflect the expectations of audiences.

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?

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

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

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

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?

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

For the reasons set out in response to question 7, Channel 4 does not believe that the UK law should be more specific as to what is meant by “films and series”, and does not believe the Government should seek to define specific types of “films and series” in which product placement either should or should not be permitted. In addition, Channel 4 does not believe that UK law should be more specific as to what is meant by “sports programmes” or “light entertainment programmes”, and sees no reason to restrict product placement in particular types of “sports programmes” or “light entertainment programmes”.

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 line with the points made above, Channel 4 believes that the Government’s approach to implementing the AVMS Directive should be to seek to replicate the European provisions in UK law. While the AVMS Directive places a specific prohibition on product placement in children’s programmes, it does not specifically prohibit product placement in any other programme genres.

Channel 4 recognises stakeholder concerns that product placement might pose risks to editorial independence in certain genres. In news, for example, there is a risk that product placement might compromise impartiality—and given the fundamental importance of a trustworthy news service at the centre of Channel 4’s public service role, Channel 4 supports the principle of ensuring news programmes are free of product placement.

However, Channel 4 remains of the view that the most appropriate vehicle for debating these concerns is through consideration of the Ofcom Broadcasting Code. The Code already contains provisions which prohibit sponsorship of news and current affairs programmes, and includes a section dedicated to religious programmes. Channel 4 believes that this provides the appropriate framework for considering editorial regulatory issues that might arise from the introduction of product placement.

As set out in response to question 7, Channel 4 believes that it is important that the regulatory regime maintains flexibility in relation to genres. This is particularly relevant for “consumer programmes”—which may take different forms and levels of seriousness. For this area in particular, a blunt prohibition in primary legislation would not give Ofcom flexibility to assess specific programmes or adapt as genres and formats develop. Channel 4 therefore does not believe there should be a specific prohibition in primary legislation of product placement in religious, news, current affairs or consumer programmes.

Children

15. Should any or all product placement be restricted or prohibited in programmes with 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?

The AVMS Directive sets out clearly that product placement is prohibited in children's television programmes, which it defines as programmes which are "intended for viewing primarily by persons under the age of 16".

Channel 4 believes that this restriction will act as a sufficient safeguard for children, and does not regard it necessary to impose further general restrictions on product placement in programmes intended for viewing primarily by adults, but which attract a high child audience. The AVMS Directive states that product placement should be prohibited in programmes "intended for viewing" by under-16s, which is a completely different test to whether a programme is "of particular appeal" (ie. has a disproportionately high child audience) to under-16s, and Channel 4 believes that the Government should adhere to the meaning on the face of the AVMS Directive. This would also be consistent with the approach taken in implementing the AVMS Directive's safeguards for children in relation to video on-demand product placement.

If further safeguards for children are deemed necessary, Channel 4 believes that these should be considered in the context of the Ofcom Broadcasting Code. In the event of such restrictions, broadcasters have experience, through adherence to rules prohibiting spot advertisements for products high in fat, salt and sugar (HFSS), in determining whether programmes are likely to be of particular appeal to children. This is achieved through audience indexing, which predicts whether the proportion of children who watch a programme is likely to be above or below the proportion of children in the population in general.

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?

Channel 4 understands that there are legitimate concerns about children's exposure to commercial communications about HFSS products and alcohol. In relation to alcohol, the AVMS Directive is clear that any product placement of alcoholic drinks must not be aimed specifically at minors and must not encourage immoderate consumption, and Channel 4 agrees that the Government should replicate this safeguard in UK law.

Beyond this, Channel 4 believes that the placement of HFSS and alcohol products is an important issue for debate, and considers the most appropriate forum for this discussion to be consideration of changes to the Ofcom Broadcasting Code.

Channel 4 looks forward to engaging in this debate in future and considering potential ways of safeguarding children's viewing. In relation to HFSS products and

alcohol, it may make sense for reasons of consistency to seek to replicate the rules which limit sponsorship of these products. However, as the Government points out, it may be difficult from a practical perspective to implement audience indexing measures, as product placement deals are likely to be struck well before a programme is scheduled for transmission.

Editorial independence; undue prominence; direct encouragement to purchase

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

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?

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?

Channel 4 believes that it is vital that editorial integrity is maintained and that any instances of product placement are editorially justified. The AVMS Directive sets out requirements designed to safeguard editorial independence, prevent undue prominence, and prohibit direct encouragements to purchase, in the event that product placement is permitted. Channel 4 strongly supports these principles and agrees that the Government should replicate these provisions in UK law. Channel 4 believes that these requirements are sufficient to safeguard editorial independence and protect viewer trust, and does not consider it necessary to introduce any further rules in primary legislation.

Channel 4 is clear that programmes should not give undue prominence to products that have been placed. In all situations, product placements must be assessed against the editorial requirements of the programme and the editorial justification for the presence of the product—if a product is not justified by the editorial context, it is likely to be unduly prominent.

In Channel 4's view, the interpretation of these concepts should be considered by Ofcom in the context of the Broadcasting Code. The Code already touches on these issues—including by providing guidance on the definition of "undue prominence" and by prohibiting "promotional references" (ie. encouragements to purchase)—and Channel 4 looks forward to working with Ofcom to further develop practical understanding of these safeguards.

Tobacco, alcohol, HFSS foods, gambling

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

The placement of tobacco products is specifically prohibited by the AVMS Directive. In relation to the product placement of tobacco products in on-demand services, the Government has replicated this provision in UK law and enabled the on-demand content regulator to develop guidance. Similarly, Channel 4 believes that any further restrictions on non-tobacco products on television should be a matter for the Ofcom Broadcasting Code rather than primary legislation.

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?

Channel 4 recognises that there are concerns about the health and welfare impacts of allowing product placement of some specific types of products or service, such as HFSS foods, alcohol or gambling. All three categories are subject to UK regulatory restrictions in relation to spot advertising and sponsorship. In addition, the AVMS Directive places restrictions on the product placement of alcoholic drinks.

While Channel 4 recognises there will be a need for some form of regulation of the placement of these types of products, Channel 4 does not believe that there should be an outright prohibition on the placement of HFSS foods, alcohol or gambling. Channel 4, along with all commercial broadcasters, is experienced in applying responsibly current restrictions on the advertising of these types of products, and believes that an outright ban on product placement would be disproportionate.

The challenge will be to develop a workable set of safeguards for product placement of products that raise concerns—which provide appropriate protection, take into account editorial requirements, and also make practical sense. As discussed above, the rules on sponsorship may provide an appropriate framework for product placement, and Channel 4 looks forward to discussing these issues with regulators.

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?

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

The AVMS Directive's rules on the placement of alcohol provide robust, practical safeguards for viewers and Channel 4 agrees that these rules should be replicated in UK law. In particular, restrictions on alcohol placement "aimed specifically" at under-18s will provide a robust safeguard and—as it is not a programme restriction but a specific placement restriction—will allow Ofcom to assess both the content of the programme and the context on which the specific placement is presented. The rules in the AVMS Directive will also allow concepts such as "encourage" and "immoderate" to be judged via context.

As discussed in response to question 24, the challenge is to provide an appropriate set of safeguards, and Channel 4 believes that this is best considered by regulators. For example, the current Ofcom Broadcasting Code already contains rules in relation to the depiction of the misuse of alcohol in programmes, which would provide a useful starting point for considering how to implement safeguards in relation to alcohol product placement in practice.

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 [tobacco, alcohol, HFSS foods, gambling]?

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

Channel 4 believes that any monitoring of the effect of product placement is a matter for Ofcom and the Government. In any case, it will be difficult to assess the direct impact of the introduction of television product placement as these public health issues are complex with many contributing factors.

If the Government and Ofcom decided it was necessary to undertake research, Channel 4 believes that this should be funded by Government and Ofcom budgets. Broadcasters will already have to incur additional regulatory costs to comply with the regulatory regime for product placement, and Channel 4 believes that it is not justified to impose additional costs on the industry to meet public policy research and monitoring objectives. This would be consistent with the monitoring of other regulation—such as restrictions on spot advertising—which are not funded directly by the industry.

Other types of product

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

30. If so, what, and why?

Channel 4 does not consider that other product or service categories should be subject to prohibition or restriction. The AVMS Directive sets out a range of safeguards in relation to products and services of potential concern, including tobacco products, prescription only medicines and alcohol, and believes that these rules should be transposed into UK law. As discussed above, additional concerns have been raised about HFSS products and gambling, and Channel 4 looks forward to engaging in the debate about safeguards for these products with Ofcom.

Terms of trade

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

Channel 4 believes that the negotiation of television product placement, if allowed, should be a commercial arrangement between the product placer, the producer and broadcaster. Channel 4 looks forward to discussing future arrangements with its producer partners and product placers. Channel 4 expects product placement deals to give rise to a revenue stream separate to the agreed price of each programme commission—arrangements should not be made unilaterally by producers and used to reduce the production cost quoted to broadcasters.

Both producers and broadcasters must have appropriate financial incentives for product placement to work, and Channel 4 envisages a collaborative arrangement. Channel 4 believes that it is vital that the broadcaster must be consulted at the earliest opportunity and always be involved in the striking of all product placement arrangements, as the broadcaster will retain editorial and regulatory responsibility. Broadcaster involvement will also be important to ensure that: product placement does not muddy broadcasters' contact with advertisers and sponsors; consistency with other commercial communications is maintained; and product placement does not compromise existing commercial arrangements.

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?

Channel 4 sees no reason for the detailed commercial arrangements for product placement to form part of the regulated terms of trade. As stated above, Channel 4 believes that producers and broadcasters both need financial incentives to make product placement work effectively, and this will provide sufficient encouragement to strike fair commercial deals. In addition, the bespoke nature of product placement deals suggests the need for individual arrangements which do not form part of the regulated 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?

Prop placement arrangements are currently used to reduce the cost of programme production, and these deals are generally struck between the producer and the prop placer, often using a third party agency. In Channel 4's case, the broadcaster is not normally involved in these arrangements apart from the assessment of any undue prominence of commercial products and services in programmes.

For the regulation of product placement to work effectively, producers will have to be transparent about the presence of prop placement in programmes, and disclose any arrangements to broadcasters. Without this transparency, it will not be possible to have a meaningful discussion about product placement opportunities. There is therefore likely to be an incidental impact on the prop placement market—and it will ultimately be down to the producer to choose whether it wants to keep sourcing certain props via prop placement, or whether it wants to discuss product placement opportunities with broadcasters.

Signalling product placement to viewers

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

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?

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

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

The AVMS Directive requires product placement to be signalled “at the start and end of the programme, and when the programme resumes after an advertising break”.

Channel 4 agrees that it is important to signal product placement to viewers to avoid confusion and protect viewer trust. However, Channel 4 believes that the UK should not go beyond the requirements of the AVMS Directive. In addition, Channel 4 believes that it will be important to ensure that the signalling of product placement does not adversely affect the value of existing commercial arrangements such as sponsorship deals—so it needs to be signalled in a way that does not interfere with other commercial communications.

In practical terms, Channel 4 believes that the requirements of the AVMS Directive could be met by a generic industry-wide symbol that denoted product placement, to be shown at the times specified in the Directive. Channel 4 would be happy to work with other commercial broadcasters and regulators to develop an appropriate symbol and guidance as to its use. Channel 4 does not believe the signalling should mention the products which have been placed, as this would be likely to lead to undue prominence and would be detrimental to the viewing experience. Nor does Channel 4 consider that there should be any signalling within programmes at the point when placed products appear as this would also be likely to lead to undue prominence and would be detrimental to the viewing experience.

Finally, Channel 4 believes that, in order for the notification arrangements to be effective, there is a need to educate viewers about the concept of product placement, its benefits, and how it is signalled on screen.

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?

Channel 4 agrees that product placement should appear in a wholly natural way that is justified by the editorial context in which the products appear. In addition, product placement should not influence the content and scheduling of a programme in such a way as to affect the responsibility and editorial independence of the broadcaster.

The AVMS Directive states that in cases of “thematic placement”, product placement is likely to affect editorial integrity.

Channel 4 believes that “thematic placement” is a complex issue that needs to be considered in greater depth by broadcasters and Ofcom. To achieve natural placements, it sometimes may be necessary for the programme to introduce a concept, storyline subject or theme. This is exactly what makes a placement editorially justified, and without this product placement in isolation may be unduly prominent. Channel 4 also believes that this discussion needs to also consider the impact of any rules on advertiser-funded programming.

Negative and simulated placements

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

Channel 4 considers it highly unlikely that companies would be able to negatively place the products of other companies as intellectual property rights, such as trademark law, and the law of libel and malicious falsehood, would prevent this occurring. Channel 4 therefore does not see a need for rules to specifically address negative placements.

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

Simulated products include items such as “look-alike” products—for example, a fake, rather than a real, cigarette. Channel 4 believes that simulated products should not be used to circumvent the rules on prohibited product categories, and expects broadcasters to comply with the spirit, as well as the letter, of any restrictions. Channel 4 is therefore unsure of the need for additional rules on “look-alike” products, although this may be an issue for Ofcom to consider in the context of the Broadcasting Code.

8 January 2010