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Roger Michell

Peter Nicholson

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Susanna White

Paul Wilmshurst

David Yates

Chief Executive

Suzan Dormer

Stewart Gandy
Product Placement Consultation
5th Floor
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

13th January 2010

Dear Mr Gandy,

In response to your recent request for submissions to the DCMS Consultation on Product Placement on Television please find attached a submission on behalf of Directors UK.

If you would like any further information from Directors UK, or would like us to assist any further please do not hesitate to contact us.

Yours sincerely



Suzan Dormer
Chief Executive
Directors UK

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Submission to the DCMS Consultation on Product Placement On Television

On behalf of Directors UK

January 2010

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DCMS Consultation on Product Placement on Television

1. Directors UK welcomes the opportunity to respond to the UK government consultation on Product Placement on Television.
2. Directors UK is the single voice for UK screen directors, representing the creative, contractual and economic rights of its 4,000 members – almost all working directors in the UK. Directors UK also promotes excellence in the craft of direction both nationally and internationally. It works closely with fellow campaigning organisations and collecting societies in the UK and Europe to represent and lobby for greater protection of directors’ rights, and has associations with directors’ organisations across the globe through FERA (Federation of European Directors) and IAESDO (International Association of English Speaking Directors’ Organisations).
3. Directors UK has an elected Board of film and television directors under the presidency of Paul Greengrass (*The Green Zone, United 93, Bourne Supremacy*) and Chairmanship of Charles Sturridge (*The No 1 Ladies Detective Agency, Shackleton, Lassie*).
4. Programmes directed by Board members include: *Cranford, Doctor Who, Dispatches, Shameless, Merlin, The 39 Steps, Jamie’s School Dinners, Bleak House, Hiroshima, Warlords, Little Britain, Psychoville, Silent Witness, Wife Swap, Elijah, Messiah IV, The Government Inspector, Volvo City, State of Play, Britz, Inspector Morse, Company of Soldiers, The Bill, Cutting Edge, In Transit, Notting Hill, Harry Potter and the Half Blood Prince, Generation Kill and Feltham Sings*.
5. As the government is now “*minded to permit product placement*” in UK programmes this document outlines Directors UK’s views on some of the issues raised in the consultation, should this go ahead. We have focused our responses on those issues which we can usefully address and have done so under the appropriate headings. There are some questions which Directors UK would not be best placed to answer and have therefore not submitted a response to these.

Summary

6. Although we remain to be convinced that product placement will generate new production funding at the levels suggested, and fear that it could have a damaging effect on the independence and integrity of all programming, Directors UK is keen to support the UK television and film industry and to ensure that funds are available to enable the production of high quality programmes and films which our members are employed to make. In a time of reducing advertising revenue and concerns over future funding it is right to consider alternative funding mechanisms. However, we believe that that UK television programmes rightly benefit from a worldwide reputation for integrity, independence and impartiality and that it is in the interest of our industry for this to be properly protected.
7. As the director is responsible for every image that appears in any programme and for ensuring that this contributes in a direct way to its content, in both fiction and non-fiction programming, we strongly believe that the director must be at the heart of any decision concerning product placement.
8. We would argue that directors play a key role in maintaining the integrity of all programmes, and that if product placement were to be introduced Directors UK must be actively involved in

formulating guidelines to minimise the threat to viewers, to programme content and to editorial independence. The drafting of guidelines will require a good degree of wisdom and rigour to get right and must ultimately make creative sense in the longer term.

9. Directors UK believes that if product placement were introduced, in the early phase of implementation where some adaptability may be required, a clearly thought through regulatory code of practice or set of guidelines would be preferential to government legislation. However, the compliance and enforceability of the code of practice/ guidelines must be strictly adhered to and strongly enforced.
10. We would seek to enshrine in any future Code of Practice/guidelines regarding product placement, the independence of film and television directors to continue to have the right *not* to be influenced by commercial product placement and to be involved early in the process of determining how product placement will be used within a programme or film.
11. Whatever the outcome of this consultation we would argue that the following principles should be accepted:
 - i. Programme content should not be influenced by the specific commercial considerations of product placement.
 - ii. No director, actor or writer should be required to endorse directly or indirectly a specific 'product'.
 - iii. The financial participation of any separate commercial organisation in any programme should be made clear to the viewer.

Permitted genres

12. If product placement were to be introduced Directors UK believes there should be more clarification as to what is meant by 'films and series' and 'light entertainment'. 'Films and series' cover both fictional dramatic series and dramas based on true stories/real events; it can also encompass factual documentary strands, reality strands and those which straddle both entertainment and documentary. These would require different product placement considerations and guidelines. The impact of product placement in a programme or film claiming to have a voice of factual authority and thereby a relationship of trust with the viewer should be considered very differently to product placement within fictional drama or an entertainment programme.
13. For the purposes of useful discussion we would argue that this list needs to be made more specific, while recognising that audio visual media genres continually develop and may escape the confines of any definition.
14. For example:
 - **Drama** (scripted fiction or factual)
(E.g. *Coronation Street, Cranford, Little Britain, Spooks, Midsomer Murders, The House of Saddam, Casualty, The Bill*)
 - **Documentary** (singles and series)
(E.g. *Dispatches: Saving Africa's Witch Children, The Choir, Cutting Edge, True Stories, Extraordinary People*)

- **Light Entertainment** (Games shows/Talent Contests/Chat Shows)
(E.g. *Britain's Got Talent*, *X-Factor*, *Saturday Night Take-Away*, *The Paul O'Grady Show*)
- **Factual Entertainment**
(E.g. *Nigella Bites*, *Big Brother*, *Wife Swap*, *Hell's Kitchen*)
- **Sports** (Live and compilations)
(E.g. *Match of The Day*, *Rugby World Cup*, *Wimbledon*)

A more detailed breakdown could be applied by using BAFTA award categories.

15. Directors UK believes that, while the three principles (set out in point 11 above) can apply to any programme, the various genres may not easily be regulated in the same way. However, we argue that it is important to understand and identify the specific benefit to the audience and programme makers of product placement in different genres. This could include whether product placement will enable the programme to be made or not.
16. Directors UK unequivocally supports the ban on product placement in:
 - News & current affairs
 - Children's programming
17. We would also join PACT in supporting the automatic exclusion of
 - Consumer Advice Programmes
 - Educational Programmes
 - Religious Programmes
18. Details regarding any restrictions, prohibitions and permitted programme genres must be clearly specified in an enforceable regulatory code or set of guidelines.

Children

19. Regarding the exclusion of product placement from children's programmes we note that Ofcom have announced the prohibition of product placement in all children's programmes from 19th December 2009.
20. Directors UK would support the view that product placement should also be restricted or prohibited in programmes with high child audiences, or which are intentionally aimed at a young audience or at encouraging family oriented viewing. This is particularly relevant to HFSS products or alcohol. With regards how to identify programmes with high child audiences, this could include:
 - For repeat series/programmes - looking back at historical audience information and identifying programmes with high Audience Index (AI) for children.
 - For new commissions - identifying programmes which are intentionally aimed at a young audience or family oriented viewing, by examination of the scheduling/time-slot which a programme is commissioned for and whether it is historically a time-slot with high child

audiences; carrying out an audit of the production brief in which the target /intended audience is usually identified; and consideration of the department commissioning the production.

21. As expressed above, any prohibitions or restrictions to programme genres must be clearly specified in an enforceable regulatory code or set of guidelines.

Editorial independence; undue prominence; direct encouragement to purchase

22. Every film and television programme has a director whose creative role it is to transform the multiple strands of material (writing, performance, music and photography) into the single audiovisual form which appears on screen. As such, the director has a critical role to play in preserving the integrity of a programme or film. Ensuring that directors remain free to do their work and to shoot as best for the programme without having their judgement affected by placed products, is key to maintaining editorial independence and avoiding undue prominence. Many of our members have experienced situations where products required by production have been made available without charge or at a reduced charge without seeking to influence content. This practice commonly referred to as 'prop placement' if openly and transparently administered and credited can be of undoubted benefit to production.
23. Concern has been expressed by some directors over product placement dictating storylines and how this would be implemented. E.g. if X-Cola want to place their product in *The Bill* would they be asking script writers to write in an 'X-Cola moment', or is it simply that every time someone on screen has a drink they drink X-Cola? Would a director be required to twist the branding of a can towards camera? There is a vast difference between product placement happening after the story is written as a way of diffusing costs, as opposed to structuring a production around the hard sell of a brand. Directors UK would be against brands or placed products influencing scripts/programme concepts before they have been finalised or being introduced in a way which would be out of context or disruptive to the narrative of a programme. We strongly believe that opportunities for brand/product placement should not be identified until after a script is finalised to ensure it is creatively not commercially led.
24. Directors UK seeks to protect the independence of film and television directors including the right not to be influenced by commercial product placement, and to defend the right of directors to make their own judgement on set and to ensure no director is required or encouraged to place a product in shot.
25. We suggest that if it were to be permitted, product placement must never give way to deliberate or undue prominence or a 'direct encouragement to purchase'; that it should never appear that a product is being endorsed by the presenters or protagonists within a programme; it should be within context and there should be editorial justification for its presence. If product placement were to be permitted at all we recommend that it should be treated as an extension of prop placement i.e. where it is agreed that a product/service will be featured but how the product appears in the shot is not dictated and there is no undue prominence. If product placement were managed in the same way as prop placement its potential negative impact could be minimised. Product placement should not affect the process of programme making and no director should be forced to change their work in order to encourage people to purchase or hire products which are part of a product placement agreement.

26. In the event of any form of product placement being legally allowed the director should understand at the point of hire if a production has agreed any product placement, and have access to the conditions of that agreement. After the point of hire directors should be meaningfully consulted in any decisions about product placement and have an opportunity to fully discuss the creative consequences of such a decision.
27. There should be no representative of the product on set during filming.
28. A clearly enforceable regulatory code or set of guidelines to prevent undue prominence and to safeguard editorial integrity must be applied and compliance to this enforced.

Tobacco, alcohol, HFSS foods, gambling; Monitoring and assessment of these

29. Directors UK does not feel it is appropriate at this time to comment on specific products and services or how these should be assessed or monitored. However, we would be concerned over the introduction of product placement regulations which may restrict or prohibit certain issues or storylines being addressed within programmes, or which may undermine the integrity of the programme or programme-maker by featuring them.

Signalling product placement to viewers

30. Directors UK would recommend that notifying the viewer of product placement in a programme should be outside the body of the programme, and be part of the Broadcasters responsibility within continuity announcements or in the end credits.
31. Audiences are increasingly aware of product placement and it should not be necessary to alert them further to its presence through the use of additional logos or alerts within the programme itself. A simple verbal or visual/written product placement disclaimer should be sufficient. It should be unobtrusive and should not make a difference to the programme or how it is viewed. At this stage we do not feel any need to go beyond the EU recommendations.

Thematic placement; Simulated placements

32. Editorial integrity and the integrity of storyline should always be paramount. As with product placement, thematic placement should not be allowed in news and current affairs, religious, educational or consumer programmes. If thematic placement is allowed in non-factual programmes it must be governed by the same considerations as for product placement. As stated previously, Directors UK would be concerned by the introduction of thematic placement, or regulations surrounding this, which may affect or restrict issues or storylines being addressed; could be perceived as endorsements for a type of product or service, or would undermine the integrity of the programme or programme-maker.
33. Regarding simulated placements, as directors we would not encourage the regulation of simulated placements as the use of these is often a requirement of the job. However, we do not believe advertisers should be allowed to pay for the use of look-a-like products as a means of overcoming any product placement or advertising restrictions.

Conclusion

- 34.** To summarise our views, Directors UK is somewhat doubtful whether product placement can provide the much-needed production finance that is promised by its supporters. If it were to be introduced, we would argue strongly that it only be under the following strict conditions:-
- i.** Not in children's programming or programmes widely watched by children.
 - ii.** Not in news or current affairs, religious, educational or consumer programmes.
 - iii.** It must not compromise the integrity of a programme.
 - iv.** There be no defined requirement of how a placed product is shot.
 - v.** A producer cannot guarantee the nature of a product's inclusion.
 - vi.** There can be no implied endorsement by the programme, presenter or actor.
 - vii.** Any placement should be identified in credits.
 - viii.** Directors must be involved in any decisions about product placement.
 - ix.** If product placement does go ahead directors must be involved in developing a code of practice or set of guidelines.
- 35.** All of the above provisions must be clearly specified in an enforceable regulatory code or set of guidelines.
- 36.** We are grateful for the opportunity to contribute to this consultation and believe that this subject should be open to the widest public debate. We reserve the right to make additional comment after further consultation with our members.

8 January 2010