



Response to the Department for Culture, Media and Sport Consultation on Product Placement on Television

Introductory comments:

Equity is a trade union representing 37,000 performers and creative personnel. Equity members work in a range of media and the creative industries including visual broadcasts, sound recordings and film; principally in drama, comedy or entertainment roles. The nature of the work of Equity members means that the decisions regarding product placement are likely to have a direct impact upon the creative process, the nature of funding and the content of television programmes in which they are involved.

Equity recognises that product placement could be of considerable benefit in enabling commercial broadcasters to sustain and increase their investment in original UK produced content. Equity also recognises that UK audiences are already, to some extent, familiar with paid-for product placement through sport programmes and imported content such as feature films.

However, the further use of product placement on television should be limited and strictly defined so as to pose as little risk to the integrity of UK programming as possible. The full engagement and involvement of the artists who will be affected by the changes is also necessary in order to ensure its success.

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

Equity is pleased to note that the BBC's UK television operation will remain unaffected by any proposed introduction of product placement. This will ensure that viewers will still have a choice of programmes that have no commercial involvement. If it is to be introduced, the rules governing product placement must be very tightly defined and include a clear distinction, between the commercial channels able to access this revenue and the operation of the BBC, which should continue to be funded by the licence-fee.

In terms of additional safeguards, writers and performers will require clarity in respect of their rights to refuse to endorse products through placement within television programmes. This refusal may be due to the exclusivity of existing commercial arrangements with particular individuals, or due to a conflict with personal beliefs (e.g. ethical or religious).

2. How should those additional safeguards be imposed – by law, or by means of the Ofcom code?

In the first instance Parliament should enact legislation to regulate product placement activities, which is then supported by an Ofcom code. Equity believes that there must also be clear definitions and guidance provided by Ofcom in the event of the introduction of product placement. Full consultation with representatives of performers and writers working in the sector must precede the drafting of a Code.

This guidance will also need to make a clear distinction between the current use of “prop placement”, the proposed nature of “product placement” and should provide safeguards against the use of “product integration”, a method of promotion whereby product endorsements are subsumed into the actual content of programs. 'Product integration' is becoming very popular in the US and forces content creators to become ad writers.

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?

Ofcom has previously provided detailed analysis of the economic context facing UK broadcasters. Equity has made it clear in previous submissions to Ofcom and DCMS that it accepts much of this analysis. In particular, audience fragmentation and declining viewing share is likely to have a direct effect on net advertising revenues and the profitability of commercial public service broadcasters (PSBs) in future.

While the current projections of a potential market of £25m-£35m initially do not appear capable of replacing these revenues in full, they could form one of a number of important future revenue streams.

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?

Equity remains of the view that commercial broadcasters are facing a steep decline in revenues from traditional “spot” advertising in the long-term. The recession has impacted greatly on the level of drama production being undertaken in the UK, which is having a severe knock-on effect on work opportunities for artists.

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?

Equity believes that all of those genres set out in Article 3g of the AVMS Directive should be permitted to use product placement, namely feature films, television films

and series, sports and light entertainment programmes. Equity also agrees that ‘any programmes which are made for children’ should be excluded.

As indicated above Equity members appear principally in drama, comedy or entertainment programmes. If product placement were introduced in the limited and tightly defined manner referred to, then there are no additional reasons to prevent this practice. Similarly there would not appear to be any obvious benefits from delaying the introduction of product placement in the short term. The key is not necessarily when such changes are introduced – but how such a change is made, the manner of its implementation and the future monitoring of its operation.

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?

Equity agrees with the consultation’s assessment that “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 about whether particular types of ‘films and series made for audiovisual media services’ should be excluded from the permitted genres for product placement”.

However, if there are programmes within these genres which are, or could be of particular interest to children, or which attract a substantial children’s audience, these programmes should be subject to stricter controls.

14. Should there be a specific prohibition of product placement in
Religious programmes
News programmes
Current affairs programmes
Consumer programmes
Any other specific types of television programme?

We agree with the DCMS view that product placement should not take place within religious, news, current affairs, consumer and children's programming.

Children

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

Equity believes that product placement should be 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?

Equity recognises that if product placement deals are to be agreed prior to a programme being produced or broadcast, there will be a number of practical difficulties involved with removing product placement from programmes which are then found to attract a high child audience.

It may therefore be useful to consider a number of factors, including the intended scheduling of a programme (i.e. will it be broadcast pre or post watershed) and audience indexing in order to make an assessment of a programme’s appeal to children.

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?

Restrictions on placement of the above products should be applicable to programming with a disproportionately high child audience. These restrictions should be at least in line with those currently applied to spot advertising.

Editorial independence; undue prominence

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

It is imperative to ensure that the definition of ‘undue prominence’ is very clear and to be particularly mindful that clumsy handling by broadcasters and/ or producers may have a detrimental effect on the viewing experience and/ or risk viewers perceiving that editorial integrity is being undermined. Equity is firmly opposed to product placement that is out of context or disrupts the narrative of a programme in a clumsy way. This can be to the detriment of viewers, as well as the integrity of writers and performers.

The creative process, including scriptwriting, should remain as independent and separate from commercial decision making as possible. Reference to products must be incidental, within context and have editorial justification.

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

It is essential to ensure that product placement does not become the sort of product integration that is out of context or disrupts the narrative of a programme. Scripted references to the attributes of certain products and "calls to buy" are particularly unacceptable in dramatic works, where narrative realism is often essential to the integrity of the work and the reputation of the writer and performer.

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?

Additional rules and safeguards may be necessary in order to avoid the development of product integration, as stated above. In previous responses on product placement Equity has recommended the white paper prepared by the Writers Guild of America as a useful guidance document on this issue. This document recommends a code of conduct which is supported by the Screen Actors Guild. This code would provide clearer information for viewers, as well as a transparent framework to protect artists involved in the creative process in US film and television.

Clearly, the situation in the UK is currently quite different, as product placement has never been permitted in the same way as it exists in the US. However, it is instructive to see that disclosure of information, protection of children's programming and the constructive involvement of artists remain the key issues in an environment where methods of product placement and integration have been present for some time.

Ofcom should assist in ensuring viewers are protected from this type of integration by development of a code of practice which would make it clear to programme makers, advertisers, writers and performers, the nature of regulatory constraints on product placement. This should specifically include the prohibition of scripted references to the attributes of products and provide protection for performers in the sort of circumstances where product placement conflicts with an existing commercial arrangement, or an ethical or religious belief. There should also be strict time limits on the length of time logos and brand names can appear.

In terms of commissioning, it is also important to ensure that product placement does not compromise the ability to produce work that focuses on minority or lower-income groups. Equity agrees with concerns raised by the Writers Guild of Great Britain, namely that product placement deals may lead to a higher demand for programming with an aspirational dimension – where characters enjoy a relatively high income and associated lifestyle. It is vital that programming about, and for, lower-income groups continues to be made.

Tobacco, alcohol, HFSS foods, gambling

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

Should the relaxation in product placement rules proceed, there should be certain product types that cannot be promoted through product placement. While these items currently appear on television from time to time for editorial reasons, Equity believes that, in line with the advertising ban on smoking products, there should be no paid-for product placement permitted for smoking accessories, cigarette papers and pipes.

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?

Television placement of alcohol, HFSS foods and gambling should only be permitted in the appropriate editorial context and should not appear in prohibited genres such as children's programmes or programmes which attract a disproportionately high children's audience. Equity supports further restrictions on the placement of these items.

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?

Equity believes that restrictions governing the placement of alcohol, HFSS foods or gambling should be at least equivalent to the AVMS Directive rules. The flexibility to review and reject alcohol product placement should be retained by Ofcom.

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?

Equity is not qualified to provide a full response on the technical issues associated with monitoring of product placement, but would endorse the principle of the need for monitoring of this activity to take place.

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

In the absence of funding from other sources, a levy set at a proportionate and reasonable level may be necessary.

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?

As per the response to Qu. 26 above, Ofcom should retain the power to review and reject categories of products. Ofcom may find that, in line with the current Broadcast Advertising Code, some products will need to be completely prohibited and others may only be permitted to advertise in breaks around certain programmes. Additional flexibility should be allowed for realistic product use in order to ensure consistent creative use of products.

Moreover, artists should retain the right to reject the requirement to endorse a product or service that they believe to be in conflict with strongly held ethical or religious beliefs. This right of refusal should also take into account existing commercial arrangements that artists may be obliged to honour under separate sponsorship arrangements.

Terms of trade

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

The business models that may be used to enable product placement to appear in UK programming will need time to develop. This should properly be a commercial negotiation between broadcasters, producers and advertisers. Clearly, some broadcasters believe that existing contractual relationships with advertisers and their compliance responsibility means they will be best placed to sell product placement. Meanwhile, many producers will be concerned about the possible impact on their creative integrity, but may also see an opportunity to access an additional and potentially lucrative income source.

Equity believes that Ofcom should monitor the development of business models and if necessary propose a broad framework that may help to facilitate an agreed outcome, in the same way it has done in the recent dispute over new media rights.

It is also important to note the role of writers and performers in the success of product placement propositions. It is most likely that advertisers will want their product to be identified with a particular programme or its leading performer in order to develop a brand image. Consequently, the use of product placement may begin to have a direct impact on the work opportunities of artists, particularly if advertisers are able to assert greater influence over creative decision making and ultimately upon the casting process.

As a result, artists and their representatives must have a right to incorporate this matter in their programme negotiations, given their direct role in generating additional programme income through their indirect endorsement of commercial products.

Prop placement market

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

As stated above, Equity believes that there must be clear definitions and guidance provided by Ofcom in the event of any future change. This will also need to make a clear distinction between the current use of “prop placement”, the proposed nature of “product placement” and any potential use of “product integration”. Prop placement should continue to function as a useful component of the production process.

Signalling product placement to viewers

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

It is important to ensure that audiences are not misled where content includes a commercial element. Broadcasters should have ultimate responsibility in this field must adopt appropriate and consistent measures to deliver transparency.

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?

The use of placement should be clearly identified at the start and end of any programme in which it is contained and after any ad breaks. This would not be a huge additional burden for broadcasters and producers and would ensure transparency and awareness for viewers who may have missed the start of a programme and could otherwise be unaware of the product placement.

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

Notifications should only mention that there is product placement contained in the programme and should be indicated by a script appearing on the screen.

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

Equity believes that it would be unacceptable for notification of product placement to be included at the end of a programme in any way that would compromise the appearance of end-credits. In many instances credits are already running too quickly or are difficult to read due to screen shrinking – often for the purpose of promoting other programmes. The requirement to notify viewers about the presence of product placement should not further compromise the need for performers to be identified.

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?

As stated above, the creative process, including scriptwriting, should remain as independent and separate from commercial decision making as possible. Reference to products must be incidental, within context and have editorial justification. It is imperative that artists should retain the right to reject the requirement to endorse a product or service that they believed to be in conflict with strongly held ethical or religious beliefs. This safeguard is critical in instances where thematic placement is being considered.

Negative and simulated placements

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

Equity believes that negative placements should be prohibited especially in view of the fact that many artists are obliged to honour existing commercial arrangements under separate sponsorship and endorsement arrangements.

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 should be allowed if the reason for their use is justifiable on grounds of health and safety or for other practical reasons. However controls may be necessary to ensure that the use of simulated products does not subvert regulations on banned products.

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