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Dear Stewart

#### **ISBA RESPONSE TO DCMS' NOVEMBER 2009 CONSULTATION ON PRODUCT PLACEMENT ON TELEVISION**

This document constitutes ISBA's response to DCMS' invitation to comment on its proposals for the possible introduction of product placement on UK television.

#### ABOUT ISBA

ISBA is the representative body of the British advertisers whose advertising expenditure funds and makes possible a very significant part of the UK's commercial media. We are well-known to several parts of Government including DCMS, having contributed to numerous legislative and regulatory consultations over many years. Further details on ISBA are available at [www.isba.org.uk](http://www.isba.org.uk).

Given that this consultation concerns the commercial exploitation of UK television, ISBA considers itself a primary stakeholder in the issue.

#### BACKGROUND & SUMMARY OF ISBA'S POSITION

We offered our carefully-considered views on the introduction of product placement to UK television to the statutory regulator, Ofcom, first in March 2006 and then refreshed them in January 2008.

The rigorous and comprehensive arguments we rehearsed then remain salient and current. A copy of our original paper is **attached** as we refer to it frequently in this response. Our views were and remain somewhat uncharacteristic for an organisation which has typically and over the long term tended to seek regulatory relaxation. This perhaps makes them all the more notable.

In summary :

- We challenge the assertions from broadcasters and programme producers that *paid* product placement presents a *significant* opportunity for them to drive much-needed incremental revenues
- We consider that the introduction of *paid* product placement will lead to a formalisation of a market for unpaid *prop* placement which has evolved naturally, inconspicuously, at low cost to advertisers and without a single viewer complaint being upheld over the last 25 years

- We are very concerned that the combination of overly-optimistic revenue expectations and formalisation of this market might lead to attempts, particularly by broadcasters, to close off low-cost *prop* placement in order to drive advertisers into more expensive *paid* product placement in programmes under their control
- Any such resultant increase in the cost to advertisers of *paid* product placement would result in an increase in their expectation as to the prominence of products thus placed, leading to an increased likelihood of viewer disenfranchisement and, in turn, complaint
- These would be entirely unwelcome and unacceptable by-products of deregulation. We therefore continue to support unpaid *prop* placement but question the wisdom of allowing *paid* product placement in UK-originated programmes.

Conversations with other industry stakeholders suggest that the comments in this response may not be entirely aligned with those of others. Others' responses may therefore seek to highlight their perceptions of apparent tensions between ISBA's comments on behalf of its advertiser members and their own conversations with their individual advertiser customers.

This is explained in two ways :

- first, discussions in the context of individual sales relationships can be quite different to those which determine policy within the context of a representative body
- second, any such conversations can and do often take place with different representatives of the same organisations

We would also reiterate the view we expressed in our 2006 response that - perhaps with some regret – even if *paid* product placement were to be allowed, advertisers are much less likely to be doing much broadcast product placement business with content makers and programmers than they are with broadcasters.

This is because the former can only deliver placement within content, whereas the latter can deliver the other two necessary commercial ingredients for advertisers – a commission, without which a programme might not even be made and cannot be shown and therefore achieve an audience; and a scheduled slot where channel, timing and competitive context all influence the likely volume and profile of the audience which forms the very basis of the commercial transaction with the advertiser.

#### GENERAL COMMENTS IN RESPONSE

This subject has seen some curious twists and turns as the UK has moved towards implementation of the European Union's AudioVisual Media Services Directive.

In March 2009, then Minister of State for Culture, Media & Sport Andy Burnham declared against permitting *paid* product placement for commercial broadcasters (the Government concluding that there was no evidence that economic benefit outweighs detrimental impact).

His successor, current Minister of State Ben Bradshaw, himself an ex-broadcaster, then decided in September 2009 to signal a U-turn and permit *paid* product placement, perhaps in response to mounting pressure from broadcasters craving incremental revenues in a depressed economy.

We are surprised that a number of the issues we raised in our March 2006 response to Ofcom - each of which would demand further consideration were *paid* product placement to be permitted - do not appear to have been given much further attention in the interim.

In focussing on numerous details concerning implementation of product placement, this consultation gives the impression that the substantive issue as to whether *paid* product placement should be allowed at all has already been decided.

Finally, before we move to responding to DCMS' specific questions, we want to focus on the BBC. Although it only receives one mention of five lines' duration at the consultation's point 22, we welcome DCMS' recognition that the BBC should "...be subject to the same rules on product placement as other broadcasters".

We consider this entirely appropriate. The BBC is a very significant force in UK broadcasting, setting standards and precedents, as well as informing going rates for payment of talent to name but a few of its legion influences. It also has to prop its shows just like its commercial counterparts and is known to source props from the same unpaid *prop* placement companies. We consider this cost-effective sourcing of relevant props to be entirely appropriate to its role as a publicly-funded broadcaster and consistent with its obligation to deliver optimal value for money to tax (licence fee) payers.

However, whilst our consideration of the proposed introduction of *paid* product placement in commercial broadcasters' content sits within an already-commercial framework, the potential introduction of *paid* product placement to the BBC raises entirely new issues for the corporation. We therefore note with great interest the item on the BBC News web site dated September 13, 2009, which states that "the rules against (paid) product placement would remain in place on BBC shows". This suggests, at least for now, that it is not necessary to consider the significant impacts on the BBC were it to take *paid* product placement. We would of course expect to be consulted fully if this situation were to change.

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RESPONSES TO DCMS CONSULTATION QUESTIONS (DCMS text in green, ISBA responses in black)

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

We considered this issue in our March 2006 response to Ofcom, which is attached. In our view little if anything has happened since to cause us to modify our comments of that time, so we would refer DCMS to the section entitled 'Identification – clarity and transparency for viewers?'

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

We believe that Ofcom, as the nominated statutory regulator, should be charged with imposition of appropriate safeguards (if following this consultation, *paid* product placement is indeed permitted).

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?

Ofcom's consultation of 2005-6 concluded that, following the experience with the gradual build-up of sponsorship revenues, and assuming some continued regulation of the market, most observers believed that revenues from product placement would only be worth £25 to £35 million pa after some five years.

A recent paper by the European Parliament (Advertising rules and Their Effects under the New AVMS Directive, 2009) also concludes that product placement is likely to remain a modest source of income.

ISBA concurs with these views. Reports of and conversations with broadcasters, on the other hand, have on numerous occasions indicated that they believe that revenues of >£100m pa are achievable. In response to this suggestion, we would remind DCMS that the market for more intrusive (and therefore highly-valued) broadcast sponsorship has taken over 25 years to reach a value of ca.£200m pa.

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

No. Much of it is by necessity speculative and dependent on exactly what kind of placement might be permitted and the degree of regulation it might be subject to.

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

Whatever potential revenue benefits might exist for the broadcasters, these have probably declined alongside the dramatic and well-reported downturn in the advertising economy, itself driven by both cyclical (ie economic) and structural (ie growth of online and search) factors.

ISBA believes that any analysis of television broadcasting must be informed by digital expansion, increased competition and the steady fragmentation of media channels.

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

None of which we are aware, please see 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

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?

We believe that such definitions should be kept to a minimum and be as broad as possible. However, we are somewhat confused and disturbed that this topic should appear so early on in this consultation's list of questions. We believe that the main, substantive issue as to whether *paid* product placement should be allowed at all, should be address before such details are raised.

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

Please see our answer to question 8 above.

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

Again, please see our answer to question 8 above.

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

As above.

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?

As above.

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

As above.

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?

Broadcast sponsorship is not permitted in religious, news and current affairs programmes. We believe that both unpaid *prop* and, if permitted, *paid* product placement should be excluded similarly.

As to consumer programmes, we find it hard to envisage a single instance in which an advertiser would advertently seek to have their product or service placed in an environment which might well prove to be directly or indirectly critical and therefore hostile. We therefore consider that this genre will in all likelihood self-regulate itself out of advertisers' consideration quite naturally.

### Children

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

There is a rigorous existing framework of regulations pertaining to broadcast advertising which must be followed in relation to 'children's programmes'. These regulations are mindful of the particular sensitivities surrounding advertising to children. We believe that regulation should be consistent across all forms of broadcast commercial communications.

Ofcom already takes considerable account of prevailing advertising regulations when it regulates broadcast sponsorship which occurs within programmes, and given that product placement also occurs within programme content, we believe it should be regulated similarly, by Ofcom.

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

Again, in the same manner on which judgements are currently made with regard to both advertising and sponsorships in such programmes.

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

As above, referencing the UK's world-leading television audience research body, BARB, and its outputs.

- 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

Please see our answer to questions 15-17 above.

- 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?

Please see our answer to question 15 above.

#### 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?

We discussed this critical issue in our original response to Ofcom in March 2006.

Broadcast sponsorship has been permitted for a number of years, and has been subject to gradual and welcome deregulation as its impacts have been better understood and misgivings as to its nature have proven unfounded. It has, however, always been subject to significant regulatory scrutiny.

We believe that product placement in the UK is already on a similar path, with unpaid *prop* placement already permitted and proving subtly benign and unobtrusive. If *paid* product placement is to be permitted, it should be with caution at first, subject to continuous assessment and review, and progressively deregulated as it is better understood by all stakeholders. Therefore significant regulatory consideration by Ofcom is required in order to avoid 'undue prominence', even if this disappoints or frustrates some stakeholders at first.

It has been suggested that *paid* product placement may be of little economic value to advertisers unless it is allowed to be quite overt and intrusive. The corollary of this is the truism that, as cost increases, so does customer expectation. Some advertisers might therefore ascribe greater commercial value to product placement if they are able to exercise control over the presentation of their product, in the manner of some US programmes such as 'American Idol'.

If higher prices are leveraged by broadcasters, we have no doubt that it will lead to increased advertiser expectations with regard to programme fit, location and instances of placement, prominence in both video and perhaps audio, and duration of exposure on screen. This would in turn point towards compromise in programme integrity, perhaps leading to audience disengagement and migration, which would be contrary to those same advertisers' and broadcasters' interests.

The only solution which readily presents itself to us is the drafting of relevant and sufficiently-fluid regulatory guidelines to protect against undue prominence. Any such guidelines would need to address the heart of the innate tension within the notion of *paid* 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?

We have already offered the opinion that product placement lies closer to editorial/programming, and further from spot advertising, than broadcast sponsorship, itself already regulated by Ofcom.

'Direct encouragement to purchase' as referred to in this consultation is already proscribed in broadcast sponsorship. We believe that this proscription should extend to paid product placement, if it is permitted. It should surely be administered by Government's statutory regulator, Ofcom, and not Government itself.

We believe such concerns are unlikely to arise in the case of straightforward placement in-shot, but could well emerge in the cases of presenter exhortation.

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?

We have suggested relevant regulatory guidelines to protect against undue prominence in our response to question 20 above. Our submission of March 2006 also considers the difficult issue of the options for making paid product placement transparent to viewers.

Tobacco, alcohol, HFSS foods, gambling

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

Spot advertising and broadcast sponsorship by tobacco products has not been permitted for some time. To the best of our knowledge, tobacco products have no part in the *prop* placement business, and should be similarly excluded from *paid* product placement, if it is permitted.

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?

There are extensive and well-considered rules covering alcoholic drinks, HFSS foods and gambling advertisements on television. These rules can and should be extended to cover *paid* product placement, if it is permitted.

That said, television soaps and dramas must reflect society and life if they are to be realistic. Although care should be taken with respect to categories such as alcoholic drinks, HFSS foods and gambling, these categories also need to be fairly represented in broadcast content which seeks to reflect real life. A viable solution would be to allow unpaid *prop* placement, and not *paid* product placement, to continue to supply these products and services.

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?

- The UK advertising industry invests significantly in a self-regulatory system which is widely held in high regard, not least by Government and politicians. A key part of this system is the Advertising Codes. Ofcom regulates broadcast sponsorship with regard to these codes. We believe it to be eminently possible for Ofcom to extend this regard to cover their regulation of *paid* product placement. At this point we would however reiterate that, despite an absence of formal and heavy regulation, *unpaid* product placement has existed without a single viewer complaint being upheld over the last 25 years.

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

For the reasons above at question 25, we would consider the application of any further safeguards to be unnecessary, the equivalent of gold-plating of an existing gold standard.

### 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?

Advertisers monitor and attempt to isolate the effects of all their commercial communications continuously. As we understand, Ofcom monitors and researches viewers' attitudes and opinions, again continuously. These parallel channels should be more than sufficient.

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

As we understand, Ofcom is funded in large part by the licences it grants its licensees, and from a proportion of its licensees' commercial revenues (Percentage Qualifying Revenue or PQR).

Any incremental revenues which broadcasters might enjoy if *paid* product placement were permitted would therefore bolster the commercial revenues on which their PQR contributions to Ofcom's funding are calculated.

We therefore believe that this would be the most appropriate means of covering any incremental cost of regulation by Ofcom. Any direct levy on those buying product placements would in our opinion serve to deter advertisers, diminishing total revenues which we have already suggested at question 3 are unlikely to be very significant in any case.

### Other types of product

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

We feel that any product or service categories which are permitted to advertise and sponsor programmes should also be allowed to place products in programmes. We would also reiterate our comments at question 24 about ensuring that soaps and drama productions are able to reflect real life.

- 30 If so, what, and why?

Please see our answer to question 29 above.

### Terms of trade

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

It is not our role to offer detailed views in this area, but please see the comments at the section entitled 'Who should 'control' product placement?' in our March 2006 paper attached.

- 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?

Please see our answer to question 31 above.

### 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?

The *prop* placement market is fairly small – our best estimate is that it is worth less than £10m pa – and has grown steadily but unobtrusively and *inoffensively* since its establishment in the UK in 1984. We believe that allowing *paid* product placement could well have a devastating effect on it.

This is because broadcasters (or perhaps producers) with programmes that are in the strongest position to attract *paid* product placement might decide not to continue to allow *prop* placement in them in order to actively leverage and divert advertisers into more expensive *paid* product placement.

This would represent an exercise of undue dominance and an abuse of market power on the part of the 'owners' of the relatively small number of such major programmes, and would have one of two outcomes, neither desirable :

- either advertisers' expectations would be raised by the (greatly?) increased cost of *paid* product placement, with resultant increased prominence leading to increased likelihood of viewer disaffection and complaint, or
- the resultant level of prominence would be similar to that achieved by the much lower cost of unpaid *prop* placement, access to which had been closed down, for the much greater cost of placement

Unless regulatory provision is made to prevent it, we envisage a situation developing wherein broadcasters will take a commercial decision based on analysis of the benefit accrued from sourcing props and services via *prop* placement, some of which they would not be able to purchase through retail outlets (eg point of sale collateral materials for propping the set of a shop; beer mats for a pub set) compared with the benefit of charging a premium for more prominent *paid* product placement.

Advertisers who have been making their products and materials freely available to programmes through using *prop* placement agencies at modest fees would rightly be concerned if that facility were withdrawn or curtailed, to drive them into *paid* product placement at higher cost.

### Signaling product placement to viewers

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

We considered the options in our paper of March 2006 – see section entitled Identification – clarity and transparency for viewers?. Our conclusion is that the only practical and proportionate solution would be notification in a programme's end credits.

This reflects the way signalling is handled in the US, from which a significant proportion of the UK's imported programming, some of it containing product placement, emanates.

#### 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?

Please see our answer to question 34 above.

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

Probably not, for purely practical reasons. We believe that, if paid product placement is to be permitted, broadcasters will seek to attract multiple placements in many of their programmes, particularly those reflecting real life. This would make detailed product attribution unfeasibly complex and cumbersome.

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?

It is clear that the AVMS Directive prohibits placed storylines, subjects or themes. However, it is not clear to us if and how the Directive considers the insertion of valuable social policy messages (for example concerning substance abuse, domestic violence or excessive borrowing) in soaps, for example.

We do not believe that viewers would accept 'thematic placements' with awkward or clumsily-placed story overlays. Nor are we convinced of the commercial value and viability of the any of the rather strange generic 'placed storylines' posited in this consultation.

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?

Please see our answer to question 38 above.

Negative and simulated placements

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

Advertising regulations already have specific provisions to cover comparative and 'knocking' claims. In theory, these could probably be carried over with some care by Ofcom to cover negative and simulated placements. In practice, however, we feel that such placements would be very unlikely as advertisers and their agents would not be given the power or control to construct placements with sufficient detail to convey complex negative or comparative messages.

Further to our response at question 38 above, it is not yet clear to us how valuable negative social policy messages (eg 'don't mess with drugs' etc.) might be accommodated.

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

Yes. If *paid* product placement is to be permitted, and if unpaid prop placement is allowed to continue and is not compromised as we fear it might be in our response to question 33, we question why there should be any need for 'simulated' products. Acceptable real products will be available in all appropriate situations. The only exception we can envisage is tobacco products, which programme producers would have to source through normal retail channels.

#### **4 CONCLUSION**

We trust that these responses are clear, but would be happy to provide further comment and information as requested.

Yours sincerely

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**The Voice of British Advertisers**

13<sup>th</sup> March, 2006

Julia Snape  
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Dear Julia

**OFCOM CONSULTATION ON ISSUES RELATED TO PRODUCT PLACEMENT**

INTRODUCTION

ISBA – the representative voice of British advertisers (further details at [www.isba.org.uk](http://www.isba.org.uk)) - welcomes the opportunity to submit comments in respect of this consultation. We are responding in this format rather than on the online pro-forma, as some of our responses span more than one of, or in some cases reach beyond, its 13 specific question areas.

BACKGROUND

The current economic climate and forecast is arguably brittle, and the advent of new media channels and ways of using them is making an equally brittle advertising market increasingly competitive.

There is also no doubt that new consumer technologies, such as digital multichannel and personal video recorders, are changing the way people can watch television, amongst other things enabling advertisement avoidance. Spot advertising audiences - and thus revenues - are potentially seriously threatened, and competition for programme funding is stiffening as broadcasters seek ever greater economies to offset these influences.

Much has been written on this subject already, and considerable doom and gloom posited regarding the imminent failure of the spot advertising model, and with it some TV channels. Although early data from BARB suggests such sentiments are overblown, at least at this stage, many such comments tend to position possible deregulation of product placement as the panacea for advertisers seeking to remain connected to attentive viewers, and broadcasters seeking to protect or even bolster their commercial revenues.

While we agree that the relationships between broadcasters, advertisers and viewers are changing, we do not subscribe to an alarmist view. Rather, we believe that spot TV advertising will continue to be one of the most powerful and effective commercial communication channels available to advertisers, though there is little doubt that advertisers and their advertising agents will have to increase their efforts better to engage with target consumers who are increasingly able to avoid their messages.

Some have suggested that product placement might enable programmers to access hitherto untapped sources of funding. Certain programmes lend themselves to placement – game shows and entertainment, for example - whereas it would sit uncomfortably in others, notably period/costume drama.

Similarly, some believe that placement of, say a luxury sports car in a James Bond film, or perhaps technology brands in modern action movies may be effective, but beyond such genres question how relevant and economic placement might be.

We consider product placement a desirable complement for advertisers, though we would urge some caution as to the scale of its economic value to broadcasters, particularly in its early days.

ISBA therefore welcomes Ofcom's consultation and the deregulatory sense with which it approaches the question of how paid product placement might best be introduced and regulated in the UK.

#### PLACEMENT THUS FAR

We also applaud Ofcom's recognition that UK viewers are already subject to product placement, notably within imported US content. Given this fact alone, the current prohibition is clearly disproportionate to any perceived detriment.

Product placement is already used by some of ISBA's advertiser membership, whether paid in other territories or unpaid in the UK. They already clearly consider it valuable, so we welcome Ofcom's consultation on how best to introduce and regulate paid product placement in the UK.

Programme content should surely reflect real life, and so should contain appropriate references to real products and services. But that said, product placement implies deeper embedding into content, and thus raises new issues and sensitivities in the areas of undue prominence and editorial influence and therefore presents new regulatory challenges.

#### NEW CHALLENGES?

Viewers and listeners understand, tolerate and enjoy advertising. Many understand implicitly, if not explicitly, the relationship between the quality and diversity of UK media and their funding. There is no reason why viewers should not therefore be equally amenable to product placement provided its execution is not unduly clumsy or intrusive.

We consider Ofcom's challenge to be to permit product placement, subject to relevant, proportionate and practical regulation. Unlike spot advertising and sponsorship, it sits within the very programmes which viewers tune in to. (Spot advertising appears, and can say anything as long as it is compliant with prevailing rules and regulations, in its own space – something viewers and listeners understand. Sponsorship sits adjacent to editorial space, but only within credits and bumpers). One of the key questions for regulation is how inbuilt product placement should be allowed to be.

Broadcast sponsorship has been permitted for many years, and has been subject to gradual and welcome deregulation as its impacts have become better understood (and perhaps its motives less suspect!). It has, however, always been subject to significant regulatory constraint.

**We believe paid product placement in the UK should follow a similar path – permitted and introduced with caution at first, subject to continuous assessment and review, and progressively deregulated as it is better understood by all stakeholders.**

That said, we would caution against overly-proscriptive measures, and particularly reliance upon bland numerical measures such as time on screen which do not take account of context - for example, in escalating order; presence in background; foreground; usage; advocacy.

Similarly, calls to action, perhaps linked to red button response, would surely sit more comfortably within studio talk shows than within contemporary drama. Regulation of product placement will have to be *flexible* and *proportionate* to all its potential expressions.

#### VALUATION AND PRICING

Advertisers understandably tend to attach higher value to space in which they are more wholly in control of their message. They also value and are often prepared to pay a premium for exclusivity.

In its early days, and in the absence of better ways of ascribing value to it, broadcast sponsorship valuation was roughly pegged to a discount on its equivalent spot advertising value. The market has only latterly begun to quantify and evaluate the benefits of sympathetic brand-broadcast content association.

Despite gradual successive relaxations in its regulation, sponsorship is still fairly tightly regulated. Its implementation is also usually more 'involved' than spot advertising purchase, and as a consequence of these factors, the commercial incomes it represents still form a relatively small part of broadcasters' total revenues.

Many advertisers have found that a substantial proportion (sometimes the majority) of the overall value of a sponsorship is delivered by attendant off-air promotion. The same principle may well apply to product placement, though it is a much subtler thing around which to centre a promotional campaign.

Product placement offers advertisers the opportunity to place their products in a variety of simulacra of real-life and imaginary situations, yet this will be at the cost of much control over the way their product is situated, portrayed or perceived. They are therefore likely to ascribe a lower financial value to product placement, at least in its early days.

Advertisers already successfully offering products for unpaid placement in UK programmes wonder how a model which merely adds cost to the process will succeed. If the consequence of deregulation were merely to give broadcasters' licence to charge incrementally for something that is currently available, it would in our view be a failure. We would see success more likely to arise from deregulation which successfully and proportionately formalised, and therefore gave more advertisers confidence in, product placement.

Unlike advertising and sponsorship, which exist in their own ascribed spaces, it is entirely conceivable that several products might be placed in the same programme, even the same shot. This could certainly deliver multiple, if modest, revenue streams, but the combination of lack of advertiser control and lack of exclusivity would also depress value.

It has been suggested that product placement may be of little economic value to advertisers unless it is allowed to be quite overt and intrusive. Some advertisers might, on the face of it, indeed ascribe greater commercial value to product placement if they were able to exercise control over the presentation of their product, in the manner of some US examples.

However, not only would many programmers resist this vigorously, but it might also compromise programme integrity, in turn leading to audience disaffection and migration which would be contrary to those same advertisers' interests.

For this reason, we believe that avoidance of undue dominance is probably a key issue, though we do not believe it needs to be overly divisive. Exhortations from programme presenters would probably need to be treated with great caution, at least at first.

Substantiation of claims is again a sensitive area. In cases of simple product appearance, there is no implicit claim and so there no apparent issue. However, there are obviously greater sensitivities in instances of presenter exhortation, which might conceivably lend itself to post-regulation but would not easily be subject to the pre-clearance procedures that commercials and sponsorships undergo.

## SCOPE

ISBA believes that the rules prohibiting certain products or services from advertising should probably also apply to the placement of products in programmes.

Similarly, rules prohibiting certain products or services from advertising at specific times or in specific types of programmes should probably also extend to apply to product placement.

We do not at this stage believe that any additional categories or products which are allowed to advertise or sponsor should be prohibited from product placement.

We see little need for different regulation of product placement on TV and Radio, but would observe that many Radio stations' broadcast formats involve live presentation which already includes on-air promotion – making the current Radio environment closer to one in which paid product placement might be permitted.

## IDENTIFICATION – CLARITY AND TRANSPARENCY FOR VIEWERS?

Currently, paid product placement in UK programmes is not permitted, so there are no commercial relationships of which viewers should be made aware. Major paid placements in imported (typically US) programmes are identified in end credits (eg Ford providing vehicles exclusively in '24').

Some might argue that paid product placement requires more active identification, though in practice it is difficult to see how this might be achieved in a proportionate manner. In increasing order of invasiveness :

- *mention in end credits* as already practised. We consider this level of intervention both practical and proportionate.
- *Additional mention in typically shorter beginning credits* might appear to be yet more transparent, but would also be significantly more invasive at a crucial time when viewer attention and adhesion are most sought. We would consider this unnecessarily invasive and disruptive and therefore disproportionate
- *in-programme identification at break bumpers* would be yet more intrusive to both programme and breaks; in further confusing viewers and compromising viewing, it surely would serve neither viewer, nor broadcaster nor advertiser interests
- *and continuous (perhaps) red-button identification adjacent to placement incidence* would probably challenge the very fundamentals of programme narrative and continuous viewing!

As for situations in which multiple products might be placed within the same programme, our view is that of the above options, only end credit identification/attribution is at all practical.

## IN WHAT KIND OF PROGRAMMES SHOULD PRODUCT PLACEMENT BE OR NOT BE PERMITTED?

Ofcom's consultation questionnaire's question two asks if product placement should not be permitted in news, current affairs and children's programmes. The first two mirror existing sponsorship exclusions, which seems broadly sensible. Whilst it is currently possible to sponsor children's programmes in certain circumstances, paid product placement in such programmes is probably not appropriate, at least in the new vehicle's early days.

Question three then asks if product placement in factual programmes, drama and any additional genres should be prohibited, at least in the short term. We would argue that with the above exclusion of news and current affairs, any further restriction of factual programmes would be unnecessary, while we believe that appropriately-regulated placement should be allowed drama, as it is principally an entertainment genre. We would consider product placement inappropriate in programmes of a religious nature.

## WHO SHOULD 'CONTROL' PRODUCT PLACEMENT?

Despite periodic challenges from independent producers and their representative body, the Producers' Alliance for Cinema and Television (PACT), current custom and practice sees licensed broadcasters, not programme originators, acting as 'gatekeepers' for the trade in broadcast sponsorship on their channels.

This is principally because whilst originators can offer their content, they cannot guarantee the commissions and on-air slots which form critical component parts of the package for sponsors. Nor are they responsible for compliance with regulatory and licence conditions.

It may be that a market for product placement market should operate along similar lines, particularly in its nascent stages. (Whilst it may at first glance be attractive to allow originating companies directly to generate revenues from placement, this could lead to overly direct influence over content which might render some programmes less attractive to broadcasters, or perhaps in extreme cases even 'unfit' for transmission. In such instances, the advertiser would already have committed funds, and the originators would have committed themselves to production, but no commission or broadcast slot would be forthcoming from the broadcaster for fear of audience disenfranchisement, or worse, penalty under licence conditions).

Broadcasters' commercial departments are currently best equipped and resourced to handle the commercial aspects of both spot and non-spot. However, this is not to say that different revenue-sharing models should not be fully investigated. With sponsorship, broadcasters currently produce or commission programmes and then seek sponsors to offset the origination or acquisition costs, whereas product placement might perhaps lend itself better to an upfront revenue-sharing model between originator and broadcaster.

We would note that most broadcast sponsorships are negotiated fairly close to transmission, some time after programme content is clear and the programme is commissioned, and when transmission slot and therefore likely audience composition and size are becoming much clearer. Product placement being embedded in editorial, its lead times for certain genres could be much longer. This in itself might raise issues of feasibility –contrast, for example the typical marketing company's budgeting radius of one year, against the gestation period of a drama, often 18 months.

## A PARTIAL OR HOLISTIC VIEW?

As with our concurrent response to Ofcom's consultation on cross-promotion, we would argue most strongly that the regulation of product placement should be absolutely consistent across all channels – commercial *and publicly-funded*.

In late 2005, the Sunday Times 'Insight' team alleged instances of 'paid' product placement on BBC channels. These were vehemently rejected by the BBC and subsequently dismissed after an internal investigation found no breaches of its 'Producers' Guidelines'. However, it has been suggested that such an internal investigation could only deliver one outcome – a 'whitewash'.

The BBC has as much need for products to 'prop' its content as any other content producer or commissioner, and even if no money changes hands, production costs can be significantly defrayed if major props (eg computers, vehicles, as well as travel facilities for overseas productions) do not have to be acquired or rented.

Where the BBC stands to differ is that its funding is secure, and if it is granted anything near the licence fee settlement it is currently seeking, it will be lavishly funded in contrast to the commercial broadcasters.

We believe that unless all channels are bound by and effectively held to account against the same rules, most preferably enforced by the same body – Ofcom being the natural candidate - regulation will be a nonsense. It will deliver little to the viewer, and it will hamper and disadvantage the commercial sector's ability to compete against a massively-funded BBC when originating quality content.

We believe that unless Government is persuaded that the constraints Ofcom proposes to apply to the nation's commercial broadcasters should also apply to the BBC and acts accordingly, we would warn that such constraints will be meaningless, ineffective, and a significantly-distorting influence on free and effective competition.

In this context, we welcome the recent announcement that Ofcom is to have a wide-ranging role in assessing the market impact of the BBC.

#### CONCLUSION

In conclusion, we would submit our view that **paid product placement should be permitted and introduced in the UK with caution at first, subject to continuous assessment and review, and progressively deregulated as it is better understood by all stakeholders.**

We are as ever ready to contribute further comment or information on request.

Yours sincerely

**Bob Wootton**  
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