



department for
**culture, media
and sport**

Consultation on Product Placement on Television

November 2009

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

Section 1 Introduction and Purpose of the Consultation

Section 2 Current Position in the UK and the rest of the EU

This Part of the document sets out the current position on product placement in the UK and other EU Member States and summarises the key provisions of the Ofcom Broadcasting Code.

Section 3 Summary of the main conclusions on product placement from the 2008 public consultation on implementation of the AVMS Directive

This Part summarises respondents' comments on the financial value of product placement, its impact on viewers and undue prominence.

Section 4 Safeguards in the AVMS Directive

This Part sets out the requirements of the Directive on product placement and advertising.

Section 5 Issues and questions

This Part of the consultation document poses specific questions which would be raised by the introduction of television product placement. These include in particular possible new safeguards that might be put in place, in addition to the requirements of the AVMS Directive.

Section 6 Full List of Questions, as raised in Section 5 of the consultation document.

Section 7 How to respond to this consultation

Annex Extracts from the Audiovisual Media Services Directive, 2007/65/EC

Section 1: Introduction and Purpose of the Consultation

- 1. This consultation document seeks your views about allowing product placement in programmes made to be shown on UK television. We would be grateful for your comments by Friday 8 January 2010.**
2. Product placement means payment to a broadcaster or producer to feature a product or service in a programme. UK television broadcasters are not currently allowed to include product placement in programmes which they have made or which have been made for them. This has been the position since commercial television first began in this country in the 1950s.
3. We sought views on this topic in 2008, as part of our consultation on the EU Audiovisual Media Services Directive (AVMS)¹. The arguments for and against product placement on television put forward in response to that consultation were finely balanced.
4. Programme makers, many commercial broadcasters and advertisers argued that product placement would give broadcasters a new source of revenue. Consumer and viewer groups argued that allowing product placement could blur the distinction between advertising and editorial content in television programmes and that this could undermine the trust viewers have in the integrity of UK-made programming. There were also concerns about permitting product placement of certain products and the potential impact on children and on public health.
5. The Government concluded then that the balance of argument was against changing UK regulation to permit UK television broadcasters to include product placement in their programmes. There was a Parliamentary statement to that effect on 11 March 2009.
- 6. We are now reconsidering the position. The Government is currently minded to permit product placement on UK television, subject to safeguards. But the arguments remain finely balanced. We remain concerned in particular about the potential health issues associated with the promotion of particular types of goods by means of product placement.**
- 7. If television product placement of these types of product is to be permitted it will be important to ensure that any impacts that this has on health or welfare are rigorously monitored. This in turn raises the question of how that work should be funded.**

¹ Directive 2007/65/EC, of December 2007. You can find the previous consultation document, along with the responses to it and the Government's summary of them, at http://www.culture.gov.uk/reference_library/consultations/5309.aspx

8. We say more about this in Section 5 of this document.
9. As well as seeking your views as to whether the Government is right to permit television product placement, this document asks for your views on the safeguards which would be needed to protect viewers and consumers if it were to be allowed.

Role of Ofcom

10. If television product placement is to be allowed, then it is likely that Ofcom, as the UK's national regulator of the content of television programmes, will need to make provision for it in their Broadcasting Code. Before doing this Ofcom will need to run a separate consultation on it.

The AVMS Directive

11. The AVMS Directive allows Member States to permit television product placement in programmes in the following genres:
'cinematographic works, films and series made for audiovisual media services², sports programmes and light entertainment programmes' (Article 3g.2).
12. It specifically prohibits product placement in children's programmes.
13. This marks a significant change to EU legislation. Previously, the Television Without Frontiers Directive (TVWF) – though it contained no specific ban of product placement – had generally been taken as meaning that product placement was not allowed in TV programming made in the EU. In a 2004 'interpretative communication' on advertising, the European Commission said that Article 10(1) of TVWF
'provides that advertising must be kept quite separate from other parts of the (television) programme service programmes which fail to observe this so-called principle of separation between advertising and editorial content are prohibited'
14. The new AVMS Directive however gives Member States including the UK room for manoeuvre in this area. They can if they wish continue to prohibit TV product placement. The effect of the announcement which the Government made on 11 March 2009 was that the UK would do that, at least until a review of the position in 2011.
15. Alternatively, Member States can if they wish move to permit TV product placement in some or all of the programme genres listed in Article 3g.2 of AVMS, subject to the safeguards which are set out in the Directive and to any other safeguards which the Member State wishes to impose. That is the option which we explore in this consultation document.
16. We discuss the safeguards set out in the Directive in Section 4 of this document. As well as the prohibition of product placement in children's programmes, they include in particular a requirement that products which are placed should not be unduly prominent, that product placement should not influence the editorial judgement of the broadcaster, that product placement should not directly encourage viewers to

² 'audiovisual media services' means television services and video on demand services

purchase or rent the products or services which are placed, and that the existence of product placement in a programme should be signalled to viewers.

17. The Government has not reached any final decision on how it intends to proceed. Nevertheless, we have looked again at the evidence from last year's consultation and

- remain concerned about the commercial position of TV companies and programme-makers;
- are now minded to reach a different conclusion and allow product placement on television, subject to safeguards; but
- wish to seek further views and evidence before making a final decision.

What this document does not cover

18. This document is about product placement in programmes made to be shown on UK television. It is not concerned with:

- *product placement in video-on-demand services.* The Government's statement on 11 March 2009 made it clear that product placement will be permitted in video-on-demand services, subject to the safeguards in the AVMS Directive. That remains the position.
- *product placement in films, and in television programmes acquired from outside the UK.* The Government's 11 March statement confirmed that product placement will continue to be allowed in films shown on UK television and in non-UK television programmes which are shown here, subject to the existing rule about undue prominence and other limitations and safeguards. This remains the position.
- *'prop placement'* – that is, the loan or provision of clothing, cars or other goods or services to broadcasters, including prizes in quizzes and competitions, at a reduced rate or free of charge. The 11 March statement said that prop placement will continue to be permitted in all television and video-on-demand programmes, subject to safeguards, except that prop placements of greater than a specified 'significant value' would be treated as product placement. Again, this remains the position.

Other aspects of the AVMS Directive

19. This consultation similarly does not concern the Government's proposals for legislation on other aspects of the AVMS Directive – in particular the industry-led regulation of video-on-demand services, and the regulation of non-EU satellite TV channels uplinked from the UK – which were the subject of our consultation last year.

20. The EU implementation deadline for the AVMS Directive is 19 December 2009. We will therefore place before Parliament in the Autumn the legislation under the European Communities Act 1972 which is required to enact these requirements of EU law. That legislation will also cover product placement in video-on-demand services.

21. Subject to the outcome of this consultation, we intend to legislate for product placement in television separately.

The BBC

22. The BBC's Royal Charter and its formal Agreement with the Government prevent it from accepting any form of advertising, including product placement, in its licence-fee funded services. The Government is not proposing that this should change. The BBC's UK commercial services, operated through BBC Worldwide, will be subject to the same rules on product placement as other broadcasters

Section 2: Current Position in the UK and the rest of the EU

The position in the UK and elsewhere

1. UK television broadcasters are not currently allowed to include product placement in programmes which they have made or which are made for them. This has been the position since the start of commercial television broadcasting under the Television Act 1954.
2. Product placement is however a routine aspect of cinema films made in the UK, as it is in most other countries around the world. Many non-EU countries, in particular the United States and Australia, also permit product placement in their domestically-made TV programming.

Ofcom Broadcasting Code

3. In the UK, it is Ofcom's Broadcasting Code which currently implements the EU/TVWF provisions, by setting out rules governing the inclusion of products and services in television programmes. The Code requires that "broadcasters must maintain the independence of editorial control over programmes" (Rule 10.1), that "broadcasters must ensure that the advertising and programme elements of a service are kept separate" (Rule 10.2) and that "no undue prominence may be given in any programme to a product or service" (Rule 10.4).
4. The latter is of particular practical value because it is easier to see from a programme whether a product is "unduly prominent" than to be able to demonstrate that money has changed hands to secure the inclusion of a product in a programme.
5. The Code states that "product placement is prohibited" (Rule 10.5). It goes on to define product placement as:

"the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either)."

European Union

6. In the EU, the Television Without Frontiers Directive (TVWF) was generally taken as meaning that product placement was prohibited in domestically-made TV programming. However, not every Member State took that approach. One Member State had national rules which permitted some forms of product placement.
7. Under the new AVMS Directive, a majority of Member States will allow product placement in the permitted genres of programmes (cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes). Others will permit product placement (in all of these genres) for their non-public service commercial broadcasters only.

8. Very few Member States are expected to persist with a full prohibition. Member States which have allowed or will allow product placement include Italy, Spain, and Poland.
9. The issue of product placement is still under active discussion in both France and Germany, but it seems likely that both of these jurisdictions will move to a position in which some product placement is permitted, at least for fully commercial television broadcasters.

Section 3: Summary of the main conclusions on product placement from the 2008 public consultation on implementation of the AVMS Directive

Financial Value of Product Placement

1. In response to our consultation last year, advocates of allowing product placement argued that it would generate funding to encourage production and innovation, and that it would help the UK's commercial public service broadcasters – ITV, Channel 4, Five, and S4C – to continue to meet their obligations. They also argued that a continued prohibition of product placement would leave UK television broadcasters and programme-makers at a disadvantage as compared with international competitors especially in the EU and across the Atlantic.
2. These are important arguments. There was however a lack of clear information as to the extent of the commercial impact which allowing television product placement would be likely to have. A number of respondents thought that Ofcom's estimate, from their 2005/6 survey ("*Product Placement: A consultation on issues related to product placement, December 2005*")³ that income from product placement might be worth £25m-£30m per annum after five years, was about right.
3. Others were of the opinion that the economic impact of product placement had been over-estimated. Channel 4 expressed some scepticism as to whether the impact of product placement on both viewer engagement and the editorial integrity of programming would be proportionate to what they saw as the modest economic gain that it offered.
4. At the other end of the scale, estimates that product placement could be worth as much as £140m per annum were put forward.
5. Our consultation therefore elicited widely varying estimates of the potential value of product placement to UK commercial television broadcasters. It also demonstrated little certainty about the extent to which television product placement, were it to be allowed, would generate additional revenue for television broadcasters as opposed to displacing money from the existing revenue streams of spot advertising and sponsorship.

³ http://www.ofcom.org.uk/consult/condocs/product_placement/

Impact of Product Placement on viewers

6. Assessing the potential impact of television product placement on viewers is also difficult.
7. The conclusion which the Government drew following our consultation last year, and which it announced in March, was that no conclusive evidence had been put forward that the economic benefit of allowing product placement was sufficient to outweigh the detrimental impact it would have on the quality and standards of British television and viewers' trust in it.
8. In response to the 2008 consultation, which preceded that announcement, advocates of product placement argued that:
 - UK viewers already accept product placement in films shown on television and in non-UK television programming (especially American programming); ;
 - viewers are capable of recognizing when they are being sold to, and there is no evidence that product placement in films and non-UK TV shows has led to viewers being misled or harmed;
 - viewers like product placement because it makes content look more realistic;
 - viewers would not watch TV programmes which contain clumsy and excessive placement – no producer or advertiser would want a product to be 'unduly prominent' as this would immediately penalise both the programme and the product;
 - the AVMS Directive contains safeguards to protect viewers and ensure the integrity of programming.
9. Opponents of product placement were concerned about the integrity of the programme-making process. They argued that allowing product placement would be bound to influence editorial decisions, distorting programme agendas for commercial purposes; and that it would create a 'US-style environment' in which programmes become surreptitious commercials. For example, in 2007 more than 4,300 separate product placements were recorded on *American Idol*.
10. Respondents were also particularly concerned about product placement in programmes watched by children. The AVMS Directive prohibits product placement in 'children's programmes'. But children watch other programmes too. Product placement of food and drink high in fat, salt and sugar (HFSS) in other programmes, popular with children, could, it was argued, undermine Ofcom's rules restricting the advertising of HFSS food and drink products.
11. Some proposed that the only way to ensure that children would not be exposed to alcohol and HFSS food promotion was a complete ban on product placement on television. Others added that product placement of HFSS foods should be prohibited in sport and in popular entertainment shows as well as children's programmes.

Undue prominence

12. In response to last year's consultation, many respondents argued that preventing "undue prominence" could provide safeguards to ensure that product placement is introduced in a way that maintains viewers' trust and prevents the more overt and intrusive forms of product placement. Broadcasters and content providers would not devalue their product, and alienate viewers, with excessive use of product placement.

13. Public attitudes pointed against the Government's position of prohibiting product placement: nobody complains about product placement in, for example, US-made programming.
14. A rigorously enforced undue prominence regime would be essential for the success of product placement: this would ensure products and commercial references only appeared in programmes when they could be justified and would not compromise the editorial integrity of the programme. Editorial integrity is absolutely fundamental for all aspects of programming and it would be important not to underestimate the regulatory, and cost, challenges presented by the introduction of product placement. It could only be permitted with a strong system of regulation with clear codes and industry guidance.
15. Those against product placement argued that undue prominence was a vague concept, open to abuse. If product placement was permitted, the 'undue prominence' rules would be undermined and eroded: a transactional relationship to realise value for the advertiser could not be made compatible with rules on undue prominence or rules on programme and editorial integrity.

Section 4: Safeguards in the AVMS Directive

1. This part of the consultation sets out the safeguards on product placement, and advertising, provided by the AVMS Directive. Subject to the agreement of Parliament, the Government intends to put these safeguards into UK law.
2. The AVMS Directive defines product placement in Article 1(m) as a form of audiovisual commercial communication which consists of
“the inclusion of, or reference to, a product or service in a programme in return for payment or similar consideration”.
3. The other parts of the Directive that concern product placement are Articles 1h, 3e, and 3g, and recitals 60 to 63.

Permitted Genres

4. The Directive places a general prohibition on product placement but then allows Member States to decide whether to permit product placement in:
 - cinematographic works;
 - films and series made for audiovisual media services;
 - sports programmes and
 - light entertainment programmes
5. Product placement is not permitted in any programmes which are made for children. News and current affairs are not listed in the permitted genres.

Safeguards

6. The specific provisions relating to product placement are set out in Article 3g of the Directive and would apply to all programmes produced after 19 December 2009. In summary:
 - i. Member States must implement a general prohibition on product placement;
 - ii. Member States may then decide to permit product placement in feature films, television films and series, sports and light entertainment programmes, but not in any programmes which are made for children;

- iii. Member States may also decide to permit product placement in all types of programme (including children's programmes);
 - iv. programmes containing product placement must conform to the rules relating to editorial independence and undue prominence, and may not directly encourage purchase or rental of goods or services;
 - v. viewers must be informed of the presence of product placement in a programme at the start and end of the programme and after any advertising break during the programme;
 - vi. Member States may choose to waive this notification requirement for feature films and programmes which have not been produced by the media service provider concerned or a company affiliated to it;
 - vii. product placement for cigarettes and other tobacco products, or from companies whose principal activity is the manufacture or sale of cigarettes and other tobacco products is prohibited; and
 - viii. product placement for medical products and treatments available only on prescription is prohibited.
7. The rules governing content standards for audiovisual commercial communications in Article 3e of the AVMS Directive also apply to product placement. In addition to the restrictions in Article 3g, Article 3e imposes additional requirements in relation to human dignity and behaviour, discrimination, and protection of minors. In particular, it requires that any product placement of alcoholic drinks must not be aimed specifically at minors and must not encourage immoderate consumption.

Section 5: Issues and Questions

1. This part of the consultation sets out issues and questions on which the Government would be particularly grateful for your views.
2. As part of that, it describes some additional safeguards that there might be if product placement were allowed in television programming made by or for UK broadcasters. Section 4 sets out the safeguards which are required by the AVMS Directive. Subject to the agreement of Parliament, the Government intends to put those safeguards into UK law.
3. The Directive also allows us to introduce other safeguards on television product placement. There are two options for introducing such additional safeguards. Either the Government could ask Parliament to put them into UK law, or they could be imposed on television broadcasters by Ofcom, by means of amendments and additions to their Broadcasting Code.

We therefore seek your views not only on

what, if any, viewer and other safeguards there should be additional to those required by the AVMS Directive?; but also on

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

Commercial advantages of product placement

4. Part 3 of this document sets out the information which the Government received about the potential commercial benefits of product placement as a result of the earlier 2008 consultation on product placement. There may however be updated estimates available.

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?

Is it possible to narrow this wide range of estimates?

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

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

Permitted Genres

5. As explained in the introduction to this consultation, Article 3g of the AVMS Directive places a general prohibition on product placement in all programmes which are not in one

of the following genres - 'cinematographic works, films and series made for audiovisual media services, sports programmes, and light entertainment programmes'.

6. The Directive also places a specific prohibition on product placement in all 'children's programmes', whether they fall into one of permitted genres or not.

We would welcome your views as to the genres permitted by the Directive. If product placement is allowed in programmes made by or for UK television, should any of these genres be excluded?

7. The Directive does not describe these four genres further, and they are all fairly loose concepts. **There are therefore important questions about what they mean.**

- 'Cinematographic films' is intended to refer to films originally made for showing in the cinema.
- The phrase 'films and series made for audiovisual media services'⁴ potentially covers an enormous variety of television programming, both factual and non-factual. To take some possibly extreme examples, it could be taken to include
 - 'reality' strands such as Channel 4's *'Big Brother'*
 - programmes in serious documentary strands such as ITV's *Tonight* and Channel 4's *Dispatches*;
 - programmes in entertainment focused documentary strands, maybe verging on 'reality' TV (*Ramsay's Kitchen Nightmares, Jamie's School Dinners*);
 - fictional TV series, whether based on original material (for instance ITV's *The Bill*) or not (for instance ITV's *Dance to the Music of Time*);

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.

We would however appreciate views on this issue. In particular

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

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

- The term 'sports programmes' should in the Government's view be taken to include both broadcasts of sports events and programmes *about* sport. But

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

⁴ 'audiovisual media services' = television and video on demand

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

- Light entertainment programmes', like 'films and series', refers to a very wide range of television programming. Soap operas, comedy, variety, quizzes, and 'reality' strands between them possibly cover most of this territory, but new concepts and formats appear all the time.

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

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

News, current affairs and consumer programmes

8. Product placement might be thought to pose particular risks in some types of programme. In particular, there are
 - religious programmes;
 - news programmes;
 - current affairs programmes; and
 - consumer programmes.
9. The wording of the AVMS Directive would allow product placement in each of these types of programme, in as far as they could be regarded as belonging to any of the permitted categories of 'films', 'series', or 'light entertainment'. (Article 3f of the Directive prohibits the sponsorship of news and current affairs programmes, and specifically provides for Member States to place restrictions on the sponsorship of religious programmes. But Article 3f does not apply to product placement).
10. Some types of news programme (in a wide sense) might be thought of as 'series made for audiovisual services'. Religious and current affairs programmes often appear as part of a series. Consumer programmes are frequently presented as light entertainment.
11. However, product placement in news, current affairs and consumer programmes might be seen as affecting their impartiality. Product placement in religious programmes could offend religious or cultural sensitivities.

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?**

Children and children's programmes

12. The AVMS Directive specifically prohibits product placement in children's programmes, and the Government's legislation on television product placement will replicate that. We

would however welcome your views as to whether the UK rules on television product placement should go further than this.

13. Ofcom's rules on television advertising of foods high in fat, salt and sugar (HFSS foods) and alcohol require that spot advertisements for these products are not shown in or around programmes that are likely to be of particular appeal to children. Ofcom determine whether a programme is of particular appeal to children by means of 'audience indexing', which indicates the proportion of viewers of the programme who are under a specified age.
14. This Ofcom rule about television spot advertising concerns the placing of spot adverts around programmes. It requires the broadcaster to assess whether a programme is likely to be of particular appeal to children when scheduling advertising.
15. Product placement deals however will be struck before a programme is made (or, at least, before it is completed and scheduled). It may not be possible at the time when product placement arrangements are agreed to assess accurately whether the programme containing the placement will be of particular interest to children or not.
16. If a programme – and in particular a series – that contains placed HFSS foods or alcohol has a higher than predicted child audience (for example because of its scheduling) there are likely to be practical difficulties in removing product placement from it (unlike spot advertising, which could in those circumstances be rescheduled, or simply not shown).
17. As well as being prohibited in specifically 'children's' programmes, therefore

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

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

how could a 'disproportionately high child audience' be defined?;

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

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?

Editorial independence; undue prominence; direct encouragement to purchase

18. The AVMS Directive requires Member States to ensure that

- the content and scheduling of programmes containing product placement are not influenced in such a way as to affect the responsibility and editorial independence of the broadcaster;
- programmes do not give 'undue prominence' to products that have been placed; and
- product placement shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references' to them. .

19. If television product placement is allowed, the Government will ask Parliament to put these requirements into UK law. We would however be grateful for your views on

how ‘undue prominence’ could be avoided, given the commercial imperative for audiences to recognize the products and services that have been placed?

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?

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?

Placement of specific types of product or service

20. As stated at the start of this consultation document, the Government is concerned in particular about the possible health and welfare impacts of allowing product placement of some specific types of product or service. In as far as television product placement of any of these is allowed, we would wish to monitor the effects very carefully.

21. The placement of tobacco products is specifically prohibited by the AVMS Directive (along with all other forms of tobacco advertising on television) and our legislation on television product placement will place this prohibition into UK law. This will cover not only tobacco products already on the market but also take into account niche and novel tobacco products that are being introduced onto the market now or may be in the future. Beyond that

we would be grateful for your views as to whether television placement of smoking accessories such as cigarette papers and pipes should be prohibited?

22. Tobacco aside, the types of product and service about whose placement the Government has particular concerns are

- **alcohol;**
- **HFSS foods; and**
- **gambling.**

23. In each case, we would be grateful for your views as to

whether television product placement of this category of product should be subject to an outright prohibition, or if not prohibited, whether it should be subject to restrictions of some kind, and if so what those restrictions should be.

24. As already noted, the AVMS Directive requires that any product placement of **alcoholic drinks** must not be aimed specifically at minors and must not encourage immoderate consumption. The Advertising Standards Authority’s BCAP (Broadcast Committee of Advertising Practice) Code which applies to TV advertising generally

- prevents alcohol advertising in and around programmes ‘of particular appeal’ to people aged under 18, and
- contains detailed guidance to prevent association between alcohol advertising and irresponsible consumption or youth culture (BCAP Advertising Guidance note no. 6)⁵.

25. Ofcom's Broadcasting Code contains rules that require broadcasters to apply generally accepted standards to programme content to protect audiences from harmful material. To ensure adequate safeguards around the placing of alcoholic products in programmes, one option may be to require the placement of alcohol to comply with the rules which BCAP apply to television advertising of alcohol.
26. There are however practical difficulties around applying the full detail of BCAP Code rules on the content of alcohol advertising to product placement;. For example, requiring that product placement

'must not suggest that the success of a social occasion depends on the presence or consumption of alcohol'

or that

'no one who is or appears to be under 25 years old may play a significant role No one may behave in an adolescent or juvenile way'

would have implications for programme content around the placement and could present difficulties of enforcement and/or interpretation. It could also undermine the editorial independence of the programme maker.

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?

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

Monitoring possible effects on health

27. To the extent that television product placement of alcohol, HFSS foods, and gambling is to be permitted, Government will want to make sure that there are robust systems in place to ensure that any possible effects on health, welfare and problem gambling are assessed and monitored. As well as the question of how this could best be done in an accurate and effective way, the Government would need to consider how any programme of monitoring and/or research could be paid for.

28. This gives rise to two questions

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?

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

⁵ BCAP has recently consulted on whether the current code rules on alcohol advertising provide adequate safeguards (BCAP Code Review, May 2009). We expect the outcome of this consultation to be known later this year.

Other types of product

29. Current rules on television advertising prohibit, for example, political advertising and the advertising of firearms and escort services. The Government takes the view that these prohibitions would need to be replicated for television product placement.

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

If so, what, and why?

Terms of trade between broadcasters and programme producers

30. Codes of Practice introduced under the Communications Act 2003 govern the contractual relationship between commercial public service broadcasters – ITV, Channel 4 and Five – and independent producers whom they commission to make programmes.

31. These codes address the potential imbalance of negotiating strength between the public service broadcasters and independent producers. They make provision for the commissioning broadcasters to provide clarity and transparency on the different types of rights they seek to acquire over the programmes they commission. The codes of practice are then applied to the terms of trade that are commercially negotiated between broadcasters and producers.

32. The introduction of television product placement may require changes to the agreed terms of trade between public service broadcasters and programme producers and could affect the prices paid by broadcasters for programmes. The nature of the changes needed may depend on whether the negotiation of product placement arrangements is between the broadcaster and the advertiser or between the programme producer and the advertiser.

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

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

Prop placement

33. 'Prop placement' is the loan or provision to television broadcasters and programme makers of clothing, cars or other goods and services, including prizes in competitions and quizzes, free of charge or at a reduced rate. This allows significant savings in the costs of programme production, and there are prop placement agencies which specialise in sourcing props and services to be used by programme makers on this basis.

34. The essence of the arrangement is that there is no payment to the broadcaster or producer to show the product or service in the programme, and no commitment on their

part to do so. Ofcom's Broadcasting Code permits prop placement provided that any inclusion in a programme of props which have been sourced in this way is justified editorially and that the broadcaster receives no direct financial benefit from it.

35. The introduction of television product placement could affect the extent to which broadcasters are able to take advantage of prop placement arrangements or are willing to do so.

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?

Signalling of product placement to viewers

36. If television product placement is to be allowed, the AVMS Directive requires that placements '*shall be appropriately identified at the start and the end of the programme, and when the programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer*'.
37. This requirement however does not apply when a programme which contains product placement has not been produced or commissioned by the broadcaster who is showing it (the idea being that the broadcaster will not then have received any payment, or at least any direct payment, for the inclusion of the product in the programme and will therefore be under no obligation to keep it there).
38. Although the Directive is quite specific as to *when* (as a minimum) viewers must be informed about the existence of product placement in a programme, it is silent about *how* they are to be informed (except that it says they must be informed 'clearly'). Each Member State that permits product placement can develop its own arrangements.
39. There are various options. Product placement could be indicated by a script appearing on the screen, or by a logo, by a spoken announcement, or perhaps in other ways. These (and other) alternatives would not be mutually exclusive – there could for example be both a logo and a spoken announcement. There might also need to be quite specific rules about, for example, how much screen space an announcement about product placement should take up, and how long it should stay on screen.
40. There are also questions about what a script or announcement might say. It could refer simply to the fact that the programme contains product placement (for example, '*This programme contains product placement*') Or it could say something about what was placed (for example, '*This programme contains product placement of Product X*') or who placed it ('*This programme contains product placement by the Advertiser Y*').
41. A relevant consideration here might be that a mention of what has been placed, and /or by whom it was placed, could itself amount to promotion of the goods or services which were placed. But it can also be argued that precise identification of this kind is in the interests of transparency and viewer awareness.
42. A further question is whether the rules should go further than the Directive requires in terms of when placements are notified. For example, alongside the Directive requirement for notification at the start and finish of the programme and after ad breaks, it might be

possible for a logo to appear on screen at the point in the programme where a placed product appears.

43. The questions about the signalling of product placement to viewers on which we particularly seek your views are therefore

how should television product placement be notified to viewers?

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?

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

We would also of course be grateful for any other views you may have about alerting viewers to the presence of product placement in a television programme.

Thematic placement

44. As a general concept, product placement can take three forms – visual (a product shot); oral; and a placed storyline, in which a scene, or a whole programme, is contrived so as to advertise a product or service.
45. The AVMS Directive prohibits product placement where it influences the content or scheduling of a programme in such a way as to affect the responsibility and editorial independence of the broadcaster and states that ‘this is the case with regard to thematic placement’. The Government considers that this means that product placement is acceptable under EU law only when it involves products or services appearing in a wholly natural way that is entirely justified by the editorial context in which they appear. Placed storylines, subjects or themes are not compatible with the AVMS Directive.
46. Some situations however will not be clear cut. For example, a broadcaster might for example be paid by a home insurance company or trade association to include a story line featuring house insurance in a soap opera. A religious organisation might pay a broadcaster to refer to their particular belief in a programme, or a local authority might pay for a reference to one of its traffic management initiatives.

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?

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?

Negative placement

47. Television product placement could be used by one company to create a negative, damaging perception of the products or services of a rival. The Advertising Standards Association’s Code of Practices for conventional forms of advertising – both on television

and elsewhere – prohibit ‘knocking copy’ of this kind. These ASA codes do not however extend to television product placement.

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

Placement of ‘look-alike’ products

48. Television product placement might involve simulated versions of the product which was intended to be promoted rather than the real thing – for example, a bottle which could be mistaken for that of a particular brand of soft drink, or a fake, rather than a real, cigarette. This issue might in practice only be significant where the placement of the item in question was either prohibited or restricted in some way.

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

Section 6: Full List of Questions

1. **What, if any, viewer and other safeguards there should 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?**

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?**

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?**

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?**

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?**

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?

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?
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?

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?
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?

Tobacco, alcohol, HFSS foods, gambling

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

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?

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

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?

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?

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?

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?

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?

Negative and simulated placements

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

Section 7: How to respond to this consultation

We welcome your views on the questions set out in this document. Please send them to us by **Friday 8 January 2010**.

We would particularly welcome updated and additional information to that provided in last year's consultation.

If you responded to last year's consultation, you do not need to repeat that response again now – we have retained all of last year's responses and will take them into account - but it would be helpful if you could refer to it. The responses to the 2008 consultation remain available for you to see on the DCMS website⁶.

Please send your reply to:

Stewart Gandy
Product Placement Consultation
5th Floor
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH
Or e-mail to: ppconsultation@culture.gsi.gov.uk

Disclosure of responses

Please note that the Department will publish all responses in full, unless specifically requested not to do so. However, all information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If a correspondent requests confidentiality, this cannot be guaranteed and will only be possible if considered appropriate under the legislation.

Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

⁶ http://www.culture.gov.uk/reference_library/publications/5911.aspx

ANNEX: Extracts from the Audiovisual Media Services Directive, 2007/65/EC

Article 1: Definitions

“For the purposes of this Directive:

1h

“audiovisual commercial communication” means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;”

1m

"product placement" means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;

Chapter IIa: Provisions applicable to all audiovisual media services

Article 3e

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:

(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;

(b) audiovisual commercial communications shall not use subliminal techniques;

(c) audiovisual commercial communications shall not:

(i) prejudice respect for human dignity;

(ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

(iii) encourage behaviour prejudicial to health or safety;

(iv) encourage behaviour grossly prejudicial to the protection of the environment;

(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;

(e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

(f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;

(g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

Article 3g

1. Product placement shall be prohibited.

2. By way of derogation from paragraph 1, product placement shall be admissible unless a Member State decides otherwise:

- in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or
- where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

The derogation provided for in the first indent shall not apply to children's programmes.

Programmes that contain product placement shall meet at least all of the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) they shall not give undue prominence to the product in question;

(d) viewers shall be clearly informed of the existence of product placement.

Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

3. In any event programmes shall not contain product placement of:

- tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or

- specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after 19 December 2009.";

Recitals

60) Surreptitious audiovisual commercial communication is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious audiovisual commercial communication should not cover legitimate product placement within the framework of this Directive, where the viewer is adequately informed of the existence of product placement. This can be done by signalling the fact that product placement is taking place in a given programme, for example by means of a neutral logo.

(61) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. In order to ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced by this Directive should cover any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration. The provision of goods or services free of charge, such as production props or prizes, should only be considered to be product placement if the goods or services involved are of significant value. Product placement should be subject to the same qualitative rules and restrictions applying to audiovisual commercial communication. The decisive criterion distinguishing sponsorship from product placement is the fact that in product placement the reference to a product is built into the action of a programme, which is why the definition in Article 1(m) of Directive 89/552/EEC as amended by this Directive contains the word "within". In contrast, sponsor references may be shown during a programme but are not part of the plot.

(62) Product placement should, in principle, be prohibited. However, derogations are appropriate for some kinds of programme, on the basis of a positive list. A Member State should be able to opt-out of these derogations, totally or partially, for example by permitting product placement only in programmes which have not been produced exclusively in that Member State.

(63) Furthermore, sponsorship and product placement should be prohibited where they influence the content of programmes in such a way as to affect the responsibility and the editorial independence of the media service provider. This is the case with regard to thematic placement.