

## **DCMS consultation on proposals to implement Audiovisual Media Services Directive into UK law**

### **Response by the Advertising Association**

#### **1. About the Advertising Association**

- 1.1. The Advertising Association is a federation of trade bodies and organisations representing the advertising and promotional marketing industries including advertisers, agencies, media and support services. It is the only body that speaks for all sides of an industry worth over £19 billion in 2007.
- 1.2. The Advertising Association supports and promotes responsible advertising self-regulation and has a seat on the code-owning bodies, CAP (the Committee of Advertising Practice) and BCAP (the Broadcast Committee of Advertising Practice).
- 1.3. In compiling this response, the Advertising Association has consulted members of CAP and BCAP.
- 1.4. A list of the Advertising Association's members is at this link:  
[http://www.adassoc.org.uk/html/advertising\\_association\\_member.html](http://www.adassoc.org.uk/html/advertising_association_member.html)

#### **2. Summary of this response**

- 2.1. All advertising regulation, including VOD, should remain with the ASA, and not become statutory.
- 2.2. The ASA should be “the established means” – with AVMS non-linear VOD services subject to self-regulation and Ofcom as the arm’s length legal backstop.
- 2.3. This would comply with the Directive but reflect the ASA/OFT model, in keeping with the Directive’s “light touch” approach for non-linear AV services, rather than the ASA/Ofcom co-regulatory approach applied to linear, licensed broadcast services.
- 2.4. The industry should have room to decide on the ASA structure and code rules for VOD advertising once there are clear definitions about the services and advertising in scope.
- 2.5. The VOD advertising brought within the scope of AVMS rules should be the ‘de minimis’ definition, i.e. the advertising linked to the programmes, not the service (other types of advertisements within VOD services are already effectively regulated by the ASA via the CAP Code).
- 2.6. Product placement should be allowed for the programme genres permitted by the Directive, and regulated through editorial content Codes, not via statutory legislation.

### **3. Overview**

#### **A. *The regulatory framework for advertising on non-linear audiovisual media services***

- 3.1. The advertising industry has always taken the lead in deciding the shape and structure of the regulation of advertising through the creation of a self-regulatory system. As the only body representing all sides of the industry, the Advertising Association is periodically tasked with leading industry reviews of the system. Thus we are well-placed to express the wider advertising industry's consensus view and to comment on proposals regarding the future of advertising regulation for non-linear 'on demand' audiovisual media services.
- 3.2. The Advertising Association considers the Advertising Standards Authority as continuing to be the sensible and rational option for the regulation of advertising on these services (**Option A** (paragraph 25, Part 3b)) on the grounds that:
  - CAP and the ASA already have knowledge and expertise as regards display advertising on Video on Demand (VOD) services which currently fall within the self-regulatory CAP remit;
  - retaining the "one stop shop" for the regulation of all advertising is in the public interest, because of the transparency and simplicity of having only one "letterbox" or "front door" for all advertising complaints;
  - the industry benefits from the continuation of a coherent, rather than a split regulatory approach to advertising content regulation.
- 3.3. The ASA has experience of and expertise in both self- and co-regulation, and already has the principles of effective self-regulation (i.e. funding, independent adjudications, enforcement) firmly established. It is therefore well-placed to take on any new regulatory arrangements for advertising on non-linear on demand audiovisual media services, and we understand that this is also supported by ATVOD.
- 3.4. However, the advertising industry will need time to reflect on the best structure within the ASA to regulate advertising on these services in accordance with AVMS. We cannot decide this until there is greater clarity, arising from the consultation, about what is "in scope" in terms of both the audiovisual services and the advertising carried on them.
- 3.5. DCMS regards co-regulation or direct Government regulation as the only two options to implement the Directive, and its preference is for the former.
- 3.6. However, it is too early to begin imposing fixed and heavy-handed regulatory structures onto a nascent industry which may look and feel like broadcasting, but which differs significantly from it. The objectives of the Directive can best be met by a simple, straightforward, flexible and fleet-of-foot self-regulatory model. Though we accept that, to implement the Directive, there has to be some form of "legal intervention mechanism", there are already some self-regulatory models such as CAP or the Internet Watch Foundation that have some form of legal backstop, and the two are not mutually exclusive.

- 3.7. Both self- and co-regulation are endorsed by AVMS (recital 36) as ways in which the objectives of the Directive can be met, and self-regulation has been endorsed by the House of Lords<sup>1</sup> and by the independent report from Rand Europe, commissioned by Ofcom. But AVMS recital 52 makes it clear that “detailed rules governing audiovisual commercial communication for on-demand audiovisual media services appear neither to be justified nor to make sense from a technical point of view”.
- 3.8. We therefore propose that the legal underpinning should be more “arm’s length” than that which exists for example in the co-regulatory broadcast advertising model. In other words, this could be more like the relationship between the self-regulatory non-broadcast part of the ASA with the OFT or the Gambling Commission).
- 3.9. Of the two legal backstop options proposed in the consultation for non-linear audiovisual media services now ‘in scope’, we have opted for Ofcom rather than direct Government intervention. However, the co-regulatory model for advertising on licensed linear broadcast services, with the prescriptive Memorandum of Understanding between the ASA system and Ofcom, setting out a detailed modus operandi and requiring extensive accountability, in addition to the powers that the Secretary of State has under the Communications Act to direct changes to the Code in exceptional circumstances, is not the most suitable model for non-linear on-demand services which are still developing, are not (and will not be) licensed, and which require a lighter-touch approach.
- 3.10. Instead the Government could consider granting the ASA the status, in its relationship with Ofcom, that the non-broadcast side of the ASA already has with the OFT in respect of enforcing the Unfair Commercial Practices Directive, namely that of the “established means”.
- 3.11. However, whilst the current self-regulatory structure embodied by CAP would fulfil the criteria<sup>2</sup> for effective self-regulation set by the AVMS Directive, its members will not want any change to its self-regulatory status by having within its scope advertising in media subject to co-regulation.
- 3.12. There are many self- and co-regulatory models and we would urge the Government not to rule out the principle of self-regulation with some legal underpinning at arm’s length, as a way of implementing this Directive.
- 3.13. As regards the regulation of sponsorship credits on non-linear audiovisual media services and product placement, we propose that the content regulator or co-regulator should deal with both.

#### **B. Definition of VOD advertising in scope**

- 3.14. The Advertising Association is not placed to comment on the definition of a non-linear audiovisual media service falling within the scope of the Directive,

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<sup>1</sup> House of Lords European Union Committee Report on Amendments to the Television without Frontiers Directive, 31 January 2007, concluded that “*We are persuaded that self-regulation is the best means of operation in principle, especially for rapidly developing technological markets such as broadcasting*” (paragraph 169).

<sup>2</sup> Except as regards liability, which for CAP rests with advertisers, and under AVMS rests with media service providers

but this is key to defining what VOD advertising, sponsorship and product placement should now be subject to the new regulatory regime required by the Directive.

- 3.15. However, in terms of advertising the Government should adopt a 'de minimis' approach as regards the extension of scope to non-linear on demand audiovisual media services<sup>3</sup>, with the lowest regulatory burden necessary to achieve the purposes of the Directive. This would reflect the 'on demand' nature of these services, in comparison to linear television, as well as the intentions of AVMS recital 52, which says that detailed rules for these services appear neither justified nor necessary.
- 3.16. The Advertising Association therefore supports **Option A** (paragraph 10, Part 3b), which would confine the new regulations to advertisements which appear in, or are adjacent to TV-like VOD programmes (see answer to question 19 below), as opposed to option (B) which is based on accessing the service. Option A is the closest interpretation of the wording of the Directive.
- 3.17. In other words, only the advertising embedded within such audiovisual content, and seen as an integral part of this viewing experience, should be within the scope of the Directive. This makes sense as users tend to watch on-demand audiovisual services as a single viewing experience (ie in full screen mode).
- 3.18. Banner advertisements on VOD services are not always linked to the advertising accompanying or included in an on-demand audiovisual programme, and are similar to paid-for display advertising in print media. These should not be included in the Directive's scope, and to do so would be to go further than the Directive intended.
- 3.19. This 'de minimis' approach would minimize the risk of online inventory associated with multiple services (including VOD) being subject to overlapping regulation (ie both the new AVMS requirements for "TV-like" advertising on VOD services, and the non-broadcast self-regulatory CAP Code applying to display advertising content). This would be confusing for users, advertisers and media owners alike, and it was not the intention of the Directive to compromise existing self-regulatory systems where they are established and successful (see recital 36).

### **C. *Implementation of AVMS product placement rules***

- 3.20. The Directive's safeguards on product placement are already extensive and have been fully debated when they were being drawn up. Ofcom also consulted widely on the matter in 2006. Thus we believe they should be implemented as they stand, in a way that reflects the difference in user experience between broadcast and on-demand services, and that leaves the detail of how to implement requirements on undue prominence and editorial integrity to the industry and co-regulators to work out.

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<sup>3</sup> Interpreted in this consultation as being "video-on-demand services whose principal content is in the form of programmes and which compete for the same audience as television broadcasting, with the lowest regulatory burden necessary to achieve the purposes of the Directive" (paragraph 6, Part 1)

- 3.21. There is now a compelling case to allow an expansion of the range of programming containing product placement, since some product placement is already allowed on TV in the UK for some bought-in content. This is important to attract new sources of funding for UK-originated TV programmes at a time when broadcasters are facing financial challenges, as demonstrated by Ofcom's PSB review.
- 3.22. Furthermore, the well-established principle of Undue Prominence will ensure that product placement is introduced in a way that preserves editorial integrity and maintains viewer trust. It is important to recognize that there are many different forms of product placement, some far more overt and intrusive than others, and the Government should seek to strike a fair balance between permitting some forms of product placement in some kinds of programming, and putting in place safeguards to protect viewer interests. There is a significant amount of middle ground between the two absolute solutions of complete liberalization and a complete ban.
- 3.23. There is no case to ban product placement in non-linear on demand services, as it already provides a source of funding for content on those services with no apparent consumer detriment. A ban on product placement in 'on-demand' services brought within the scope of AVMS would disproportionately penalize established business models.
- 3.24. We see little reason why the Government needs to ban product placement and then create exceptions to it in primary legislation. This seems unnecessary, over-complicated and too rigid an approach, given that product placement has been satisfactorily regulated for years in this country through Ofcom's Broadcasting Code.
- 3.25. Continuing this approach, and giving the VOD co-regulator the powers to develop a Code of Practice regarding product placement in on-demand services, seems to us a more pragmatic and flexible option. However, if the Government does decide the rules need to be implemented in legislation, the wording should be as minimal as possible, with the detail left to the co-regulators to implement.
- 3.26. In the answers to the questions on product placement below, we go into more detail on the specific issues raised in the consultation paper.

#### **4. Answers to consultation questions**

##### **Part 3 – Regulation of On-Demand Audiovisual Media Services**

##### **Part 3A – A Regulatory System for On-Demand Audiovisual Media Services**

Although Part 3A is about the co-regulatory system for content, not advertising, and therefore not directly applicable to the advertising industry's direct interests, Part 3B appears to carry through to advertising co-regulation the models outlined in Part 3A, and so for this reason, we have given some short answers below. These are focused only on the regulatory structure for advertising.

10. Do you agree that the criteria at paragraph 9 (effective implementation, transparency, consistency with existing content standards, incentives for VOD providers to participate and comply, risk of creating new barriers to entry, public awareness and visibility of the scheme, consumer confidence, resources and workload, cost and funding mechanisms, existing relationships, flexibility and future proofing, complaint handling, appeals and enforcement) are the right ones for determining the best regulatory option?

Yes. These are all criteria already applied in the case of the ASA. As VOD advertising is already within the ASA remit, the advertising levy is already collected on paid-for space in these services. However, depending on the model ultimately required for the ASA system, there could be an additional cost burden on industry to fulfil the terms of the Directive – an additional reason for the ‘light touch’ route.

11. Are there any other possible co-regulatory or statutory models that you think we should consider?

The description of the DCMS’s preferred model (2), which involves Ofcom assigning powers to a co-regulator, appears to be based on the existing very prescriptive co-regulatory model for broadcast advertising regulation. This is confirmed by paragraph 34 which states “This model partly replicates the co-regulatory arrangements currently in place for broadcast advertising regulation”. What is meant by “partly” is not spelt out and needs more discussion, as highlighted in paragraphs 3.5 - 3.11 above.

13. Who should be responsible for interpreting the legislative definitions and determining which services are subject to the regulatory framework – Government, Ofcom or an appointed industry co-regulator?

The appointed “industry co-regulator” (as proposed by Model 2).<sup>4</sup> Applied to advertising, this would be the ASA.

14. Who should be responsible for developing and maintaining a standards code and any additional guidance?

Applied to advertising, the Model 2 appointed “industry co-regulator” through the code-owning committee structure. In Part 3B, paragraphs 29 and 32, it is assumed that a new advertising code would be required specifically for video-on-demand, but

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<sup>4</sup> Paragraph 32, page 25

as stated in 3.4 above, it is too early to decide whether this is necessary. The industry will need to take a view once there is more clarity, arising from this consultation, on what services and advertising are to be included within scope.

17. If we opt for a co-regulatory structure, we would need to introduce legislative “backstop” powers. What should be the second tier level of enforcement to address cases of repeated breaches or system failure?

In terms of the ASA, there is a virtually universal compliance by industry with ASA adjudications and so the ASA rarely uses its powers of referral to the “second tier level of enforcement”, or backstop regulator.

For broadcast advertising, Ofcom’s backstop enforcement powers extend to fines and, in the last resort, withdrawal of licence, but these licensing powers are not suitable for non-linear services that are not licensed, and the DCMS may wish to explore alternative backstop powers.

We would also like to point out that the box showing how Model 2 would work, at the top of page 26 of the consultation paper, should not be applicable to the ASA. The ASA’s powers of enforcement<sup>5</sup> have never included fines, and it would not be appropriate for them to have such powers for non-linear services.

### **Part 3B - Advertising in On-Demand Audiovisual Media Services**

19. Should the controls on advertising in video-on-demand services cover

- advertisements which appear on-screen as a result of the user accessing a particular video-on-demand programme?
- advertisements which appear on-screen as a result of the user accessing a particular video-on-demand service?

19.1 The Advertising Association supports Option A – that the controls in video-on-demand services ie non-linear audiovisual media services falling within the scope of the AVMS Directive cover “advertisements which appear on-screen as a result of the user accessing a particular video-on-demand programme.”

19.2 The Advertising Association considers that only advertisements which appear on screen as a result of the user choosing to view a video-on-demand programme should be subject to the co-regulatory requirements of the AVMS Directive. There are several reasons for this:

- The Directive states in Article 1(h) that an audiovisual commercial communication “means images with or without sound which are designed to

<sup>5</sup> ASA sanctions are described on page 30 of consultation document

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”.

- The key question is how regulations define whether advertisements ‘accompany or are included in’ a programme. The directive clearly states that the only advertisements that should be subject to the regulations are those which ‘accompany or are included in a programme’.
- The Directive specifically states that it does not apply to services which may be deemed ‘information society services’. There is a need for service providers to have more clarity over the rules that apply to advertisements within and around audiovisual material included in information society services.

19.3 The Advertising Association therefore does not consider that the Directive applies to display advertising that may appear on related parts of the video-on-demand service – the definition proposed in Option B, for example on a platform operator’s portal which may include services other than VOD, or in online magazine, periodical or newspaper services that fall within the more general “information society service” definition and are exempt from the scope of the Directive in accordance with recital 21.

19.5 Banner advertisements that can be seen on a platform provider’s EPG or equivalent are analogous to display advertisements in paid-for space that would be present on any website or in print media. They are not comparable to traditional broadcast advertisements. As such, these advertisements are subject to strict rules under the self-regulatory CAP Code which, incidentally, contains standards that exceed those in the AVMS Directive. Applying the AVMS rules to these advertisements would be confusing to advertisers and media owners alike and would constitute double jeopardy and regulatory creep, which is not intended by the Directive.

19.6 The Advertising Association therefore considers that only video advertisements in paid-for space and embedded within a video-on-demand programme should be subject to the legal requirements of the Directive. These advertisements may be compulsory to view as a pre-roll advertisement before accessing a programme, or may be included within a programme, where the viewing is interrupted for an advertisement break. This is current practice in some video-on-demand programmes.

19.7 These two types of advertising can easily be distinguished for enforcement purposes by user experience. For example, display advertisements on a platform provider’s website are not present when the user is viewing the VOD programme. The consumer therefore does not see display advertising on the EPG as part of their viewing experience, whereas pre-, mid- and post- roll advertisements are integrated into on-demand programmes and therefore are part of the TV-like on-demand service seen by the viewer.

19.8 It makes no sense from the consumers’ perspective to have regulation which depends on the purpose of accessing the medium, which is what Option B would mean. Why would consumers expect to have different degrees of regulation depending on the purpose of the access to the medium? Would they understand that some advertisements on the internet are covered by one code, while others are covered by another?

- 19.9 A definition based on “when accessing the service”, could potentially result in double regulation because it could include display advertisements that consumers could see if they access the medium for other purposes, for example to read about a programme before viewing it. Were all display ads on VOD services, as opposed to those directly related to the programme, to be subject to AVMS regulation, some advertisements would be subject to two different, possibly conflicting codes, and potentially two different sets of sanctions.
- 19.10 The Advertising Association considers that this distinction is clear, both from the consumer’s perspective and from the point-of-view of managing inventory. This distinction between the different types of paid-for advertising on VOD services would satisfactorily meet the UK’s obligation to transpose the Directive whilst avoid confusing or undermining the existing regulatory framework.
- 19.11 For the above reasons, the Advertising Association strongly recommends that this delineation is made clear in regulations, so that only those advertisements that form an unavoidable part of viewing should be considered to “accompany or be included in” a programme for the purposes of the Directive.

20. Should there be only one co-regulatory body for advertising on video-on demand services?

- 20.1 Yes. The Advertising Association supports Option A – that is that the ASA should remain as the sole body responsible for advertising standards.
- 20.2 It does not make sense – either for the advertising industry or for consumers – to have two regulatory bodies responsible for advertising instead of the single front door - or “one stop shop” - for advertising that currently exists.
- 20.3. It is important to the advertising industry to have consistency in the interpretation of the Code. We believe that giving a new body a separate remit over advertising on VOD services would be confusing for the public and for industry alike.
- 20.4. The ASA has been responsible for advertising on VOD services through the self-regulatory CAP Code since 2001, and thus it already has valuable experience. In accordance with recital 36 of the AVMS Directive, successful existing self- and co-regulatory systems such as this that should not be disrupted or jeopardized.

21. Should such a body have its powers assigned to it by the Government, by Ofcom or by the body or bodies responsible for regulating programme and other content?

By Ofcom assigning powers directly to the ASA, ideally via an “established means” formula, rather than via a Memorandum of Understanding requiring Parliamentary assent from both Houses.

22. Should the Advertising Standards Authority be the body, or one of the bodies, which regulate advertising on video-on demand services?

Yes. The ASA should be the only regulator (under powers assigned by Ofcom) responsible for regulating advertising content in video-on-demand. See answer to 20 above.

23. Should regulation of advertising in video-on-demand services be handled by the body or bodies responsible for regulation of the programme and other content?

No. The ASA should remain the one-stop shop in respect of advertising.

#### **Part 4 - Product Placement**

24. Should product placement in video-on-demand services, if allowed, be regulated by (a) the body or bodies that regulate advertising on these services? Or (b) the body or bodies that regulate programme content on these services?

(b). Product placement is an integral part of the editorial and creative process and should be regulated by the body or bodies with a remit for programme or editorial content.

25. Should sponsorship of video-on-demand programmes and services be regulated by (a) the body or bodies that regulate advertising on these services, or (b) the body or bodies that regulate programme content on these services?

25.1 (b). Sponsorship of VOD programmes and services that now fall within the scope of the Directive should be regulated in the same way as sponsorship of television programmes: that is by the body regulating programme content.

25.2 If for any reason in the future, the regulation of TV sponsorship credits is contracted out by Ofcom to the advertising co-regulator (because they are increasingly similar in some respects to advertising messages and Ofcom therefore sees the advertising content rules as applying to the content of sponsorship credits), it may make sense for the VOD co-regulator to do the same with sponsorship on TV-like VOD services.

26. Should product placement be prohibited by law?

26.1 No, we do not think there is any necessity to prohibit product placement in law. For linear services, this is already prohibited through Ofcom's Broadcasting Code in line with the current TV without Frontiers Directive. This has worked satisfactorily for years and been accepted by the European Commission as adequate implementation of the Directive.

26.2 However, if the Government does implement the ban through law, it should keep the wording on the face of statute as minimal as possible. In other words, it should implement the ban and the possibility of exceptions to it, leaving Ofcom and the VOD co-regulator to address the detail.

27. Should any such legal prohibition allow for Ofcom and the co-regulator of VOD services to permit product placement in some or all of the programme genres specified by AVMS (feature films, TV films and series, sports and light entertainment programmes)?

Yes. But the exceptions allowed by the Directive could be permitted and reflected through the Ofcom Broadcast Code and the equivalent Code of the VOD co-regulator. We advocate that as much detail as possible be left to the co-regulatory bodies to implement, as this route provides greater flexibility. In addition, product

placement should not be permitted in children's programmes or programmes of direct appeal to children.

28. What advantage would there be in permitting product placement in any or all of the specified genres? If so, which genre(s) and why?

28.1 For TV broadcasters, permitting product placement would allow a new source of revenue that could be directly hypothecated into British programme content. In the context of Ofcom's PSB review, the case has compellingly been made already about the financial challenges facing the broadcasters that could directly threaten indigenous programme production as well as commissioning from independent producers. The broadcasters' need to generate new revenues is not in doubt.

28.2 In the online world, product placement is already used to support UK content creation, and to provide choice to the user. This is a nascent business model that would be damaged by a complete ban. For those services that fall within the scope of the Directive, there should be a de minimis approach to implementing the product placement provisions, so as to minimize consumer and business detriment.

29. If product placement were permitted, how could audiences and regulators be assured that editorial integrity had been preserved, as required by the Directive?

29.1 There was considerable discussion in the European Parliament about the need to protect editorial integrity during negotiations on the draft Directive, and this has resulted in detailed rules in the AVMS Directive itself.

29.2 Secondly, the well-established principle preventing "undue prominence" can provide safeguards to ensure that product placement is introduced in a way that maintains viewer trust and prevents the more overt and intrusive forms of product placement. There is a middle ground to be found between the two absolute solutions of complete liberalization and a complete ban.

29.2 A general condition could be introduced by Ofcom to require broadcasters to make appropriate disclosures to viewers about the presence of product placement in programmes.

30. How could “undue prominence” be avoided, given the commercial imperatives for audiences to recognise the products placed?

“Undue prominence” is an idea already well-understood within broadcasting. Maintaining a clear undue prominence regime would be essential to securing audience acceptance of product placement (see paragraph 2 of answer to question 29 above).

31. Should the same rules apply to both TV broadcasting and on-demand audiovisual media services? If not, how should they differ and why?

31.1 As set out above, we believe that the UK should take the discretion offered by the Directive to permit product placement in TV broadcasting services in the programmes specified by the Directive.

31.2 However, the same rules should not apply to non-linear on demand audiovisual media services that fall within the scope of the Directive.

31.3 The Directive is predicated on an understanding that users’ expectations of linear broadcasting and on-demand services are very different. This principle should be reflected in the Directive. Article 3(g) focuses on characteristics of traditional broadcasting which are not present in on-demand services. It makes sense to allow the co-regulator to develop rules that meet the requirements of the Directive and also reflect users’ different expectations of on-demand services.

32. Should prop placement continue to be permitted?

Yes. Prop placement is important in helping fund UK production. It enhances realism and programme quality. There would be real practical difficulties in making programmes if prop placement were to be banned.

33. Should there be a specific set value above which prop placement is subject to the Directive's rules on product placement? If so, what should it be?

No. This would be very difficult to operate. Setting specific set values would be arbitrary and add new and impractical vetting procedures that would affect programme production.

34. What other ways are there of ensuring that the UK meets the Directive's requirement that prop placement above a 'significant value' must be treated as product placement? Which test is best and why?

The Government should not be getting into such detail. It should leave such detail to the co-regulator. The Directive sets out de minimis requirements that should be sufficient, as they stand, to implement into UK law.

35. If there is to be a set value for this purpose, should it be set by the Government in legislation, or by Ofcom and the VOD co-regulator?

It is inappropriate for legislation to determine levels of market value, particularly as these may change. This should be left to Ofcom and the VOD co-regulator.

36. Should product placement continue to be permitted in programmes acquired from outside the UK and in films made for the cinema? If not, why not and how could such a ban be made effective in practice?

Yes, it should be permitted in acquired programmes and films. Current practice already allows for broadcasters to edit out product placement that is unduly prominent in imported programmes and movies. To go further and ban product placement altogether is tantamount to banning the programmes themselves. Such a move would result in huge viewer dissatisfaction and have devastating consequences for the finances of many broadcasters whose schedules are built in whole or in part on imported series and films.

37. How should product placement be signalled to viewers?

We support a proper level of transparency for audiences, but the level of detail should be addressed by Ofcom and the VOD co-regulator, not in the implementing legislation. It will be necessary to minimize the adverse impact of the product placement signalling so as to avoid viewer inconvenience and preserve the value of other messages, including content warnings and programme sponsorship.

38. Should the rules on signalling be set by the Government in legislation or by Ofcom and the VOD co-regulator?

The rules on signalling should be set out in Codes of Practice (ie. same approach as currently taken for TV sponsorship), rather than in legislation.