

DISCOVERY NETWORKS UK RESPONSE TO DCMS CONSULTATION TO IMPLEMENT THE AVMS DIRECTIVE IN THE UNITED KINGDOM

Introduction

Discovery Networks UK (Discovery) is responding to the Department of Culture Media and Sport (DCMS) consultation on implementing the European Union's new Audiovisual Media Services Directive in the United Kingdom. Specifically, Discovery will focus the majority of its response on one particular area of the Directive, the question of the future of product placement in UK audiovisual content. It is DCMS' contention that there should be legislation to ban product placement in all programme categories in television and video-on-demand content as the only way to ensure consumer confidence in the integrity of UK programming. While Discovery recognizes the value of consumer trust and confidence in programming content, it also believes that product placement is crucial to the future success of the content industries – and that consumer confidence, programme integrity and product placement are not mutually exclusive.

The rapid growth of new content delivery platforms all competing for the same advertising dollars, make product placement a crucial part of the mix for new commercial opportunities that content providers must seek out to ensure they remain viable. At a time of economic uncertainty in all world markets and when media markets in particular are in such a state of flux, it seems irresponsible to suggest that a form of commercial enterprise as benign as product placement, should be deemed illegal because television viewers presumably need to be protected from their own lack of sophistication. This could not be farther from the truth. Today's entertainment and information consumers are incredibly savvy, with multiple outlets from which to receive their content and technology that allows them to dictate where and when they view it.

Discovery does not believe that legislation to ban product placement is necessary. Indeed, we believe that the AVMS Directive can be accommodated by amending the existing code to permit product placement in all genres allowed in the Directive. Discovery believes the existing undue prominence rules will aptly address any concerns about product placement being intrusive to the consumers' viewing experience.

The Importance of Ad-Supported Media

Advertising has been an integral part of the television business in the UK since 1955¹. For companies that do not benefit from government largesse, advertising allows them to generate revenue for investment in quality programming which attracts viewers – which in turn attracts advertisers. In the UK, it is a symbiotic cycle that has created the most competitive media environment in the world. Advertisers have recognized that television is the most cost-effective medium to reach the broadest number of consumers. Advertisers face more competition for viewers' attention than ever before, and continue to look for ways to reach consumers who flip channels during commercials or use digital video recorders (DVRs) to fast forward through them. Discovery, too, which depends on its advertising revenues in order to keep the costs of its programming down, must remain flexible to avoid losing its advertising support.

With the success of digital technology, both programmers and advertisers have worked together to find unique solutions to ensure quality programming without disrupting the viewer experience. Product placement is one such response. It may be helpful to understand the value advertising

¹ <http://www.nationalmediamuseum.org.uk/pdfs/TVads.pdf>

revenue provides to content providers as well as the local economy and how competition for that revenue has evolved. According to PQ Media's Global Product Placement Forecast for 2006²:

- The UK's advertising market grew by 6.3% to £14.9bn in 2007, the largest growth rate for three years and the first year in which growth has outstripped inflation since 2005.
- Television advertising revenue remained more or less flat in 2007, at £3.5bn. However, the share of the digital-only channels grew by three percentage points to account for nearly a third (32.6%) of all television advertising. The public service broadcasters were the key beneficiaries of this, accounting for, over two-thirds (68%) of the digital channel revenue growth through their portfolio channels.
- The UK product placement market is expected to be the fastest growing paid placement market from 2005 to 2010, rising at a CAGR of 28.7% mainly driven by the expected triple digit jump near the end of the forecast period in paid TV placements.
- Across Europe, a relaxation of the EU (TWF) directive will significantly drive growth in the TV paid placement market, resulting in an expected CAGR of 35.3% from 2005 to 2010 to \$134.2 million.

The Australian market provides an interesting comparison. According to PQmedia³, "Paid product placement spending in television climbed 27.5% to \$95.5 million in 2005 as advertisers began to deal with ad-skipping technology and advertising clutter by seeking alternative marketing methods like product placement". In that market, "paid product placements [were] expected to climb 26.3% in 2006 to \$131.7 million⁴. Television placements are expected to continue being the dominant choice for advertisers, rising 27.9% to \$122.1 million."⁵

² Global Product Placement Forecast 2006 by PQMedia. August 2006.

³ Global Product Placement Forecast 2006 by PQMedia. August 2006.

⁴ Global Product Placement Forecast 2006 by PQMedia. August 2006.

⁵ Global Product Placement Forecast 2006 by PQMedia. August 2006.

With this kind of revenue potential, a prohibition on product placement in the UK would put the UK broadcast industry at a distinct disadvantage against other European markets, most importantly with respect to the funding of local production. When seeking clarity on the intention with respect to drafting the new AVMS rules on product placement, Discovery was told by senior EU Cabinet officials that a ban was not the intention. Indeed, Discovery was told, it was hoped that EU Member States would embrace the new rules, with the existing parameters in place, to ensure continued funding of productions in each Member State as State funding becomes scarce. Why, then, would DCMS seek to drive this significant ad revenue to other members states that are moving to embrace the rules, such as Italy, France and Spain.

Consumers are Savvy and Aware of Product Placement

Today's media environment allows consumers to watch television on their computers, access content on their mobile phones and use the internet to network with new found friends across the globe. Consumers create and program their entertainment and information choices on a schedule that suits their individual needs. This environment has been created by savvy consumers who are no longer held captive by appointment viewing. These consumers created the success of YouTube, Twitter, Facebook and the increasingly popular DVR. Product placement is already part of their lexicon.

As noted in Ofcom's research on the Future of Television Funding, "Product placement was generally popular amongst respondents, especially when it was seen to enhance the realism of a

programme, was relevant and was not too prominent. If it becomes too aggressive onscreen or is perceived to compromise a programmes editorial integrity, then it is less favorably accepted.”⁶

Viewers are used to seeing product placement in films and programmes acquired from the US. Ofcom’s research also demonstrated that this background product placement was seen in a very positive way, and in fact, enhanced the realism of the programme. Respondents also noted that blurring a product often drew attention to it and they “try and work out what the original brand is, often with success”⁷.

DCMS has also suggested that an increase in product placement will impact on the commercialization of young people. We would argue that editorially justified commercial presence in programming is just a realistic reflection of the world/society we live in, and to regulate against that presence provides viewers with a false perspective. Whilst we appreciate that viewer “trust” is at the heart of much of the consultation we feel that the reaction to recent abuses of the public trust by some companies should not result in impulsive restrictions.

The goal of the content provider is to retain viewers and keep them coming back to their channel as a destination. If product placement was so offensive and/or overt that it forced a viewer to turn the channel, the content provider will have defeated their purpose. Consumers are sophisticated enough to understand when messaging or branding within a programme becomes intrusive, they do not need the government to legislate that behaviour for them.

Allowing programmers to gauge and react to consumer feedback is the best means of ensuring that product integration and product placement do not become overwhelming or distracting. A

⁶ http://www.ofcom.org.uk/research/tv/reports/future/future_tv_funding.pdf

programmer's primary goal is always satisfying consumers so that they remain loyal viewers. Viewers will naturally seek out and continue to watch programming that utilizes embedded programming in positive and unobtrusive ways and will avoid programming that uses embedded advertising that grates or interrupts the natural flow of the show's narrative. Given that programmers already have a strong interest in providing the best viewing experience possible, there is no need to impose additional burdensome government regulation that would interfere with programmers' business judgment.

The US Regulatory View

The consultation also notes an "increasing concern in the US about levels of product placement". The Federal Communications Commission (FCC), in its Notice of Inquiry and Notice of Proposed Rulemaking⁸, on the subject of product placement, does not seek to examine whether to continue allowing product placement in television. Rather it takes product placement as an acceptable form of commercial advertising that is increasingly prevalent due to the rapidly changing nature of the media business and asks whether there should be any changes to the sponsorship identification rules that "protect the public's right to know who is paying to air commercials and other programme matter on broadcast television, radio and cable."

In addition, the Federal Trade Commission (FTC) determined, in response to a filing from Commercial Alert⁹, that product placement is not, by definition, misleading and that "a one-

⁷ http://www.ofcom.org.uk/research/tv/reports/future/future_tv_funding.pdf

⁸ FCC 08-15 Notice of Inquiry and notice of proposed rule making

⁹ www.commercialalert.org

size-fits-all rule or guide would not be the most effective approach to addressing any potential for deception in some forms of product placement.”¹⁰ Commercial Alert had asked the FTC to require advertisers to disclose placements in a clear and conspicuous fashion and to require advertisers to identify placements when they appear on screen. The FTC said those determinations could be made under existing law on a case-by-case basis by evaluating whether a particular placement constitutes an unfair or deceptive practice.

Prop Placement

With regards to prop placement – Discovery believes that there should be no prohibition on a practice which is already practiced throughout the industry. Equally to set a figure on an acceptable “value” for prop placement is not practical. If a benchmark needs to be set, then we would encourage a system which derives a value from a daily rate, or a percentage of production costs. However, we believe that the detail of this issue should be discussed by Ofcom and the co-regulator(s) and industry.

Regulation System for On-demand Audiovisual Media Services

Discovery welcomes the light regulation approach to on-demand services enshrined in the AVMS Directive. This is based on the rationale that this nascent industry needs to be allowed to reach its full potential and innovate on future services and on the fact that consumers have significant control over the content they access than they do on traditional media.

Audiences have different regulatory expectations when accessing audiovisual services online. By and large, audiences are engaging with a global market and will often be unable to determine

¹⁰ Federal Trade Commission letter to Commercial Alert 10/02/05

whether a service-provider is established in the UK or even the EU. Therefore a different kind of regulation to that of linear broadcasting is required which should reflect the realities of the global converged environment and allow innovation and new services to thrive for the benefit of consumers and the industry alike.

The AVMS Directive gives Member States the choice to implement a self-regulation or co-regulation regime to regulate video-on demand. Government has expressed a preference for a co-regulatory system services in the UK with backstop powers assigned to Ofcom but has not justified why it had discounted a purely self-regulatory regime.

Discovery would strongly prefer to see a self-regulatory system in place which builds on the experience of ATVOD and the IMCB. We believe that industry should take the leading role in developing the necessary standards code, complaint handling and enforcement procedures as it has done for the last few years. Industry has a vested interest to develop trust with consumers and is best placed to understand and respond to their viewers' expectations. We therefore support industry led initiatives which could include the development of media literacy tools to deliver consumer protection as well as brand or consumer codes to reassure consumers that they are not accessing harmful content.

Summary

The rapid growth of new content delivery platforms all competing for the same advertising dollars, make product placement a crucial part of the mix for new commercial opportunities that content providers must seek out to ensure they remain viable. With an adherence to the

principles of transparency on observing the undue prominence rules, Discovery does not believe that legislation to ban product placement is necessary. Indeed, we believe that the AVMS Directive can be accommodated by amending the existing code to permit product placement in all genres except news and children's programming.