

THE AUDIOVISUAL MEDIA SERVICES DIRECTIVE

**CONSULTATION ON PROPOSALS FOR
IMPLEMENTATION IN THE UNITED KINGDOM**

Response to DCMS from Endemol UK plc

31st October 2008

About Endemol UK plc

Endemol UK is one of the largest independent production companies in Britain and annually produces over 5,000 hours of output. It incorporates a number of production brands including Brighter Pictures, Cheetah Television, Initial, New State and Zeppotron. These brands specialise in a broad range of genres including comedy, gameshows, entertainment, specialist factual and scripted series. The UK group has offices in London and Bristol and employs up to 1000 people at any one time.

Endemol UK is part of Endemol, a global leader in entertainment that comprises an international network of companies that spans over 20 countries on five continents.

Introduction

This paper provides a response to questions 26-38 only in the DCMS consultation document, i.e. the questions in the Consultation relating to product and prop placement.

Endemol welcomes the AVMS Directive's approach to product and prop placement. In particular Endemol believes that a controlled permission of product placement in suitable programme genres, with safeguards to maintain editorial integrity and avoid undue prominence, as outlined in the Directive, could make a significant contribution to the ongoing growth and vibrancy of the UK's television production sector.

Response to DCMS Questions on Product Placement

26. Should product placement be prohibited by law? Please explain the reasoning behind your preference.

The AVMS Directive indicates that 'Product placement shall be prohibited'¹. Endemol therefore agrees that product placement should be prohibited by law, but with derogations for certain types of programmes. The nature of these derogations and the rationale for them is discussed below.

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

Endemol strongly believes that any legal prohibition of product placement should allow for Ofcom and the co-regulator of video-on-demand services to permit product placement in all of the programme genres specified by the AVMS Directive, i.e. feature films, television films and series, sports and light entertainment programmes.

Our rationale for this assertion is set out in our response to question 28 below.

¹ Chapter IIa, Article 3g, AVMS Directive

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

Endemol believes that permitting product placement in feature films, television films and series, sports and light entertainment programmes could, over time, make a significant contribution to the ongoing growth and vibrancy of the UK's creative economy.

The UK's television production sector is renowned for its creativity and for the contribution it makes to the UK economy. The UK production sector is the second biggest global exporter of finished programmes behind the US industry, and the largest exporter of television formats.²

This success has been stimulated by a range of interlocking regulatory initiatives, such as the Independent Production quota and the recent Communications Act, that have enabled the UK's television producers to thrive creatively and commercially.

But it is widely acknowledged that new technologies are putting commercial television's advertising-funded model under increasing pressure. As Ofcom indicated in its recent Second Public Service Broadcasting Review, 'Commercial public service broadcasting under the current system will not survive the transition to an all-digital world.'³ As viewers consume more content via digital channels, on-demand platforms and online, the economic impact on the current model is forecast to be acute: in Ofcom's view, 'if audiences continue to want to enjoy the same mix of public and private content they have today, we estimate that public funding of between £330-420 million is likely to be required by 2012 in addition to the core [BBC] licence fee. Towards that total, we estimate existing regulatory assets will contribute around £185 million, leaving a likely gap of £145-235 million. After 2012, it is increasingly difficult to be precise about funding requirements given uncertainty about the wider media environment.'⁴

80% of consumers surveyed by Ofcom in the course of its PSB review want 'a high proportion of first run programmes i.e. not repeats', 76% wanted 'lots of new and innovative programme ideas' and 74% wanted 'a high proportion of programmes made in the UK.'⁵ But Endemol is concerned that the business model that currently funds the production of the high quality, innovative and entertaining UK programmes that consumers clearly value is under increasing pressure. Endemol does not see product placement as a complete solution to this funding gap. But Endemol does advocate the controlled permission of product placement as an important potential contribution to this funding gap, a gap that needs to be bridged if the UK production sector is to retain and build on its current strong position and if UK audiences are to continue to enjoy 'the continued availability of high quality, original UK content that meets public service purposes, from a range of providers'.⁶

It is difficult to quantify accurately the commercial value of product placement to the UK television sector, particularly in the early years, but Endemol believes that it could be a material source of funding for the production of UK television programmes in the longer

² *Rights of Passage 2*, Television Research Partnership, commissioned by Pact and supported by DTI

³ *Ofcom's Second Public Service Broadcasting Review Phase 2: preparing for the digital future*, p.2

⁴ *ibid*, p.5

⁵ *Ofcom review of public service television broadcasting: Phase 1 supporting documents, Volume 1 – the role of television in society*, p. 12

⁶ *Ofcom's Second Public Service Broadcasting Review Phase 2: preparing for the digital future*, p.2

term. In the USA, for example, where product placement is a mature business model, at \$1,710m the product placement is worth c.5% of the US television advertising market, which is in turn worth an estimated \$42 billion.⁷ Applying this 4% benchmark to the UK television advertising market, which is worth an estimated £3.5bn⁸, implies a product placement market for the UK of £140m p.a. The immaturity of the UK product placement market and a tighter regulatory market (e.g. product placement prohibited for certain programme genres such as news) might serve to reduce this number but Endemol remains convinced that product placement has a key role to play in the ongoing funding of the production of original UK television programmes.

Endemol is also concerned that a complete prohibition of product placement in the UK would put the UK television production sector at a significant competitive disadvantage to countries outside the EU where product placement is already permitted (e.g. USA and Australia) and to those countries within the EU that decide to permit product placement in certain television genres as part of their implementation of the AVMS Directive.

For example, at present the UK is playing 'an important part in the global rise in co-production hours. The total volume of worldwide co-production hours rose 22% compared to 2003 levels, while UK co-production increased by 90%.⁹ UK producers at present are highly attractive co-production partners but if product placement is prohibited in the UK but permitted elsewhere, we risk losing our current competitive advantage to producers in territories where product placement becomes a core component of the funding mix.

As the DCMS concluded recently, 'the UK has a headstart in an expanding global creative economy. But we need to be constantly ready to adapt, building on our strengths and recognising those of other countries.' Endemol regards a carefully-controlled permission of product placement as an appropriate measure to ensure the ongoing competitiveness of the UK's television production sector, both by mitigating the impact of ongoing technological change on the current broadcast funding model and by ensuring the UK retains its ability to compete on a level playing field with other EU and international producers.

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

Ofcom, UK broadcasters and UK producers currently work within an existing Broadcasting Code that governs a wide range of issues relating to editorial integrity. Producers and broadcasters focus heavily on ensuring that their programmes comply with the Code and there is a robust set of regulatory processes in place to enforce the Code consistently. The existing Broadcasting Code already aims 'to ensure that the independence of editorial control over programme content is maintained and that programmes are not distorted for commercial purposes' and Endemol agrees that this central tenet should remain in any regulation of product placement.

⁷ *PricewaterhouseCoopers Global Media and Entertainment Outlook 2007-2011*, p. 146

⁸ *Ofcom Communications Market Context 2008*, p.55

⁹ *Rights of Passage 2*, Television Research Partnership, commissioned by Pact and supported by DTI

Regarding Product Placement, the AVMS Directive clearly requires that:

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.

Endemol believes that this requirement is both clear and helpful. In implementing this requirement in the UK, Endemol believes that Ofcom (and the video-on-demand co-regulator) could be tasked with amending the existing Broadcasting Code to incorporate the key principles required by AVMS.

Endemol believes that the existing regulatory framework, which is sufficiently robust to be trusted with the regulation of key issues such as Harm and Offence, Fairness, Privacy and Due Impartiality, is also able to govern the measured implementation of legitimate product placement.

In addition, to provide further confidence to regulators and audiences, Endemol believes that there could be merit in creating a system whereby either a programme's producer or broadcaster could veto the inclusion of any product placement in that programme. Endemol believes that this additional check could help ensure that the editorial integrity of a programme containing product placement was preserved, as it would extend the regulatory responsibility to the producer and broadcaster, whereas the current Broadcasting Code applies ultimately to the broadcaster.

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

The current Ofcom Broadcasting Code notes that ‘brands are an integral part of modern society and this will inevitably be reflected on television and radio as it is in other media.’¹⁰ Equally, the Code states that ‘no undue prominence may be given in any programme to a product or service’¹¹ and Ofcom also provides an explanatory note which states that

“Undue prominence” may result from:

- the presence of, or reference to, a product or service (including company names, brand names, logos) in a programme where there is no editorial justification; or
- the manner in which a product or service (including company names, brand names, logos) appears or is referred to in a programme.

¹⁰ *Ofcom Broadcasting Code Guidance Notes Section 10: Commercial References and Other Matters*

¹¹ *Ofcom Broadcasting Code 2008*, Clause 10.4,

