

Response to DCMS consultation
On
Proposals for implementation of
Audiovisual Media Services Directive
in the UK

pact.

October 2008

Executive summary

- 1) Pact agrees with the measures and protections set out in the Directive, and welcomes the Department for Culture, Media and Sport consultation on the Audiovisual Media Services Directive. Our submission relates to product placement, which is part four of this consultation.
- 2) We believe that product placement should be permitted in the UK, providing there is a clear and robust regulatory framework in place. This is crucial in ensuring editorial control and protection of the consumer.
- 3) Product placement already exists in the UK in many forms, particularly through imported programming such as Lost, American Idol, CSI, Crime Scene Investigation, and Desperate Housewives, all of which enjoy loyal UK audiences.
- 4) This suggests that UK viewers do not object to product placement, providing the programming around it is of sufficiently high quality and the product placement itself is managed well enough so as not to intrude. This is supported in the Ofcom report 'The Future of Television Funding', produced in September 2005, which was a study looking at consumer attitudes towards potential new funding mechanisms.
- 5) This was also backed up by a more recent report where 79% of consumers said it would not make any difference ¹ to their viewing of a programme if products had paid to appear in it.

¹ Ipsos MediaCT: Base Jan – June 2008 658 version 1

- 6) Given this evidence Pact believes that the main issue is not whether or not it should be allowed – clearly much of the public already accept it, but it is how it is governed to ensure transparency, separation and that the rules of undue prominence remain.

- 7) Allowing imported programming to be broadcast in the UK to include product placement, but prohibiting domestic producers from doing the same, puts the UK production sector at a substantial competitive disadvantage in terms of being able to access funding. This imbalance encourages programmes with product placement to be made overseas under less restrictive regulations and then imported into the UK. The UK production sector must be able to offer similar product placement opportunities to its foreign competitors to be globally competitive.

- 8) If other EU member states are to allow product placement this will also put the UK at an unfair disadvantage when raising finance through co-productions.

- 9) Relaxing the usage of product placement in UK programming would create more opportunity for UK production companies to compete worldwide, increase the level of available investment for UK programme budgets, and attract co-productions, which will contribute to sustaining the UK's strong position in the global marketplace.

- 10) Currently 53% of all television formats sold around the world are from the UK². These formats are reproduced overseas using product placement..Many of these programmes are then imported back to the

² Rights of Passage 2, 2007, TRP for Pact

UK and viewed by UK consumers. Programmes such as UK hit show 'How to Look Good Naked' are reproduced in the US using product placement and then sold back into the UK and shown on E4.

- 11) The DCMS has highlighted the concern over editorial control when using product placement. Pact agrees that this is a serious issue and as part of our response we consulted with a range of broadcasters and independent producers to create a 'Product Placement Code' (annex one), which aims to be part of addressing these issues.
- 12) If the prohibition was lifted on product placement, then this Code forms a potential agreement between broadcaster and producer to ensure that issues of transparency, editorial independence and restrictive use of product placement are in step with the DCMS' principles.
- 13) Within the Product Placement Code, we have considered editorial independence as a key factor, agreeing that in order to achieve this there must be a clear separation of the commercial and creative process to ensure that there will be no programme distortion for commercial purposes.
- 14) The process would ensure that the principles of brand presence, editorial independence and editorial justification are adhered to, and creative and commercial activities are structurally separated.
- 15) Product placement opportunities are identified by the production team and agreed by the broadcaster. However, we feel that it was important that these opportunities are not identified until the script/programme concept has been finalised ensuring that product placement is creatively, rather than commercially, led.

16) Product placement is only one of many ways in which the brand will deliver a message. It must not be thought that product placement is the same thing as traditional spot advertising; instead it will be about imbuing a brand with credibility by its integration into a programming brand, or indeed by telling us something about a character or a person – it is why Carrie Bradshaw (Sex in The City) would wear Manolo Blahnik and not Clarkes, or why James Bond chooses to drive a Aston Martin and not a Skoda.

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Introduction

- 1) Pact is the trade association that represents the commercial interests of the independent production and distribution sector. We have more than 600 member companies across the entire UK, involved in creating and distributing television, film and interactive content.
- 2) Turnover in the independent production sector represents more than £2 billion per annum.³ Within this, independent production companies account for £1.35 billion in new, UK originations per annum – around half of all network originations.
- 3) According to new research commissioned by Pact, the UK is second only to the far larger US industry as an exporter of television programming. Sales of UK programmes account for 13.1% of the global market (by hours exported). The UK is also the global leader in exporting so-called format rights – or the right to remake local versions of UK programmes in overseas market – with more than 50% of the global market.⁴
- 4) Independent production companies are responsible for some of the most popular shows on television today, and are amongst the market leaders in so called public service genres, such as current affairs, drama and factual.

³ Independent Production Census 2007/08, Digital-i for Pact.

⁴ Rights of Passage 2, 2007, TRP for Pact.

Background – Product Placement Global Market

- 1) The broadcast industry is undergoing rapid change in an era of ad-skipping technological invention, such as PVR's and new media opportunities. Brands are increasingly exploring new ways to distribute their advertising budgets, rather than concentrating on the traditional 'spot ad' option.
- 2) Although the initial value of the product placement market in the UK is predicted to be relatively low, global product placement is continuing to grow, and is predicted to grow at vast rate. Australia, which has a total advertising spend of \$2.47 billion USD (a third of the UK value), attracts \$95.5 million USD of product placement in television (excluding film), climbing 27% in 2005⁵. Australia is still relatively new to product placement and about 10-15 years behind the American market, which is still growing. In 2005 the overall US product placement market grew a further 48.7% to \$1.5 billion USD⁶.
- 3) Globally product placement spending surged 42.2% in 2005 to \$2.2 billion USD⁷. However, the US is by far the world's largest combined paid product placement market at 1.5 billion USD. The US also generated \$58.1 million USD in 2005 in paid placement in other media, such as videogames, magazines, internet and recorded music, amongst others⁸.

⁵ PQ Media LLC: Global Product Placement Forecast 2006 – page 46

⁶ PQ Media LLC: Global Product Placement Forecast 2006 – page 21

⁷ PQ Media LLC: Global Product Placement Forecast 2006 – page 46

⁸ PQ Media LLC: Global Product Placement Forecast 2006 – page 46

Product Placement - UK

- 4) British programming is globally renowned for its quality and creativity. The UK currently accounts for 13.1% of all global programming sales (by hours), the second biggest market share in the world after the far larger US industry, and 53% of all format sales, which means the UK is by far the world-leader in formats⁹. Creating further opportunities to boost programming budgets, through product placement, would help the UK production industry to continue to compete to maintain its strong position within the global television export market.
- 5) It would also ensure that the UK was on a level playing field when competing for co-productions. Should our European partners introduce product placement and the UK does not, this would put the UK at a disadvantage for attracting co-production partners.
- 6) The key growth areas for UK exporters are sales of formats (i.e. remakes) and co-productions with international partners. Many of these exported formats, when made outside of the UK, attract investment from product placement. . Programmes such as UK hit show 'How to Look Good Naked' are reproduced in the US using product placement, then sold back into the UK and shown on E4, and are enjoyed by UK consumers.
- 7) Imported programmes such as US shows 24, Sex and The City, Lost and Desperate Housewives are popular with UK audiences. All these programmes contain product placement.
- 8) Brands recognise that, although viewers want to be entertained the spot ad approach of reaching viewers is under threat from ad-skipping technology and the growth of personal video recorders (PVRs). But

⁹ TRP: The Rights of Passage Report 2008

- currently they are prohibited from paying for their brands to be part of the editorial mix.
- 9) The principle of separation between advertising and editorial material on television has been present in regulation since the first commercial appeared on the UK's television screens in 1955.
- 10) The way in which the 'separation principle' has been interpreted and applied has evolved over time to keep pace with commercial developments and audience expectations. Advertising is no longer limited to spot advertising; sponsorship, for example, is now a well-regarded feature of commercial television, generating revenues for broadcasters and independent producers.
- 11) In 2005 at a three-day conference in Liverpool Charles Allen, who was then the ITV Chief Executive, said: "20 years or so ago both TV sponsorship and advertiser-funded programming were virtually non-existent. We have been able to create, execute and regulate both, and both have benefited the viewer and the broadcast economy with their different contributions to the 'virtuous circle'. There is no reason why new techniques like product placement can't do the same"¹⁰.
- 12) Speaking at the close of this three-day conference, Viviane Reding, European Media Commissioner, said product placement: "Would secure new revenues for [European broadcasters] and boost our creative economy and thus boost our cultural diversity."¹¹
- 13) Following this conference in December 2005, the Commission published a draft revision to the Directive which proposed to liberalise the rules

¹⁰ Media Guardian: Audiovisual Conference Between Culture & Commerce: 22 September 2005

¹¹ Media Guardian: Audiovisual Conference Between Culture & Commerce: 22 September 2005

governing television advertising and which would allow certain forms of product placement on television.

Product Placement – The Consumer

14) European regulations have been out of step with reality. Product placement already existed in many forms on UK screens, particularly through imported programming such as Lost, American Idol, CSI, 24, and Desperate Housewives, all of which enjoy high, and loyal audience figures.

15) This suggests that UK viewers do not object to product placement, providing the programming around it is of sufficient high quality and the product placement itself is managed well enough so as not to intrude.

16) A recent survey, Television Opinion Monitor (TOM), asked consumers questions on their opinions regarding brands and product placement within television programmes.

Q:47 'To what extent are you concerned about companies paying to have their products or services used or shown in television programmes such as soap operas, dramas and reality programmes?' ¹²

68% are not concerned about companies paying to have their products used in TV programmes

¹² Ipsos MediaCT – TOM interim report Q47: Base: Jan-June 2008: 658 Version 1 only

- 17) Ofcom has been supportive of relaxing paid product placement rules. It released a report, 'The Future of Television Funding', in September 2005, which carried out a study looking at attitudes towards potential new funding mechanisms.
- 18) People were most positive about 'placement' when they were talking about its ability to add realism to a programme. They believed that brands were an intrinsic part of our world, and that there was value in reflecting them in programming.
- 19) Whilst Pact supports the introduction of product placement to most forms of programming genres such as drama, sport, and entertainment, we would recommend that, if product placement rules were relaxed, the new rules maintain a ban on using it within news, current affairs and children's programmes.
- 20) The level of initial investment into the UK production sector from product placement is predicted to be relatively small, but we would like to point out that product placement is growing in the worldwide production sector's economy. The global market place surged 42.2% in 2005 to \$2.21 billion USD¹³.
- 21) PQ Media estimates that in its first year in the UK product placement will be worth \$100 million USD, and \$500 million USD across Europe, and will grow at a rate of 30% year on year, meaning that after five years the market could be worth \$286 million USD¹⁴.

¹³ PQ Media LLC: Global Product Placement Forecast 2006 – page 21

¹⁴ PQ Media LLC: Global Product Placement Forecast

22)The UK has a strong and detailed compliance framework that has recently been reviewed and strengthened. This review has seen even more rigorous changes and transformation of regulations, policy, training and guidelines within independent production companies and broadcasters. The industry is currently the strongest it has ever been in terms of the regulatory framework and is in a strong position to work with product placement.

Product Placement – economic impact

23)Allowing imported programming to be broadcast in the UK to include product placement, but prohibiting domestic producers from doing the same, puts the UK production sector at a substantial competitive disadvantage in terms of being able to raise funding. This imbalance encourages programmes with product placement to be made overseas under less restrictive regulations and then imported into the UK.

24)The UK production sector must be able to offer similar product placement opportunities to that of its foreign competitors, to ensure that they can compete globally. If other EU member states are to allow product placement this will also put the UK at a disadvantage, restricting the opportunities for raising finance through co-productions.

25)With the proliferation of advertising across media platforms, the gradual decline in the effectiveness of the spot ad and the increasing choice of media mix viewing exercised by the consumer, brands will be looking for new opportunities for investment. UK brands could invest in overseas production companies where product placement is allowed, on the understanding that it can be imported and allowed to broadcast in the UK.

- 26) Indeed, if we are denied this opportunity to further grow the production sector, and restrict the opportunity for co-productions, this could result in fewer British programmes being produced. Not only would this impact on the production sector's economy, but we could see product placement increase on our screens through imports, but without regulation.
- 27) There is, however, an opportunity for the sector as a whole to develop a new framework, by regulating product placement we are better placed to serve and protect the viewer by introducing product placement within our programmes under a regulatory system.
- 28) Product placement is one way for brands to deliver messages in an integrated fashion across multiple platforms whilst maintaining the editorial independence and quality of the producer/broadcaster. It must not be thought that product placement is the same thing as traditional spot advertising; instead it is about imbuing a brand with credibility by its integration into a programming brand, or indeed by telling us something about a character or a person – it is why Carrie Bradshaw (*Sex in the City*) would wear Manolo Blahnik and not Clarks, or why James Bond chooses to drive a Aston Martin and not a Skoda.
- 29) Additionally, imported programming can include brands in a way that indigenous productions cannot. With the global nature of brands this opens the door to branded content being made overseas under laxer regulations and then 'imported' into the UK. This would have an adverse effect on the UK production community and the economy.
- 30) Independent UK producers have pioneered branded content and have been at the forefront of building this emerging sector but they are unfairly disadvantaged compared to overseas programming. As imported

acquisitions rather than home-grown commissions, US programmes are, for example, able to carry product placement.

- 31) In some cases, this is resulting in production migrating overseas to countries such as the US, with the resulting loss of spend in the UK.
- 32) Crucially, if the rest of the key programming-making territories around the world are able to incorporate product placement and the UK cannot, we are likely to see a rise in acquisitions which could incorporate product placement that is not subject to our cultural sensibilities or regulations.

AVMS Directive – Part 4, Product Placement

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

- 1) No. Allowing imported programming broadcast in the UK to include product placement, but prohibiting domestic producers from doing the same, puts the UK production sector at a competitive disadvantage in terms of being able to raise funding. This imbalance encourages programmes with product placement to be made overseas under less restrictive regulations and then imported into the UK. The UK production sector must be able to offer similar product placement opportunities as those enjoyed by its foreign competitors to be globally competitive.
- 2) According to research released by PQ Media, global paid product placement grew 37.2% to \$3.36 billion USD in 2006 and is forecasted to grow 30.3% to \$4.38 billion USD for 2010¹⁵, driven by relaxed European regulations. The UK cannot afford to be excluded from this

¹⁵ PQ Media LLC: Global Product Placement Forecast 2006 – Executive Summary

growth. As we have pointed out we are currently one of the world leaders in television exports, and by enabling the UK to compete would position us more fairly in the global marketplace.

- 3) PQ Media estimates that in its first year the UK product placement will be worth \$100m USD, and \$500m USD across Europe. This is predicted to grow at 30% year on year, meaning that after five years the market could be worth \$286m USD in the UK.
- 4) The media industry is undergoing rapid change in an era of ad-skipping technologies and accelerating audience fragmentation. PVRs are growing in popularity, as is viewing online and through mobile devices, which have lead to large-scale advertisers to look at opportunities to spend their budgets outside of traditional media.
- 5) If product placement is not allowed to be used within home-grown programming, we run the risk of losing advertisers' budgets to programming made overseas.
- 6) We welcome the measures and protections set out in the Directive and believe that, if the DCMS were to permit product placement to be used in a regulated environment, it would allow indigenous programming to compete fairly in the global market and ensure budgets were available to continue high quality British made programming. This is in line with DCMS' core stated objectives, as outlined below:

“We want to ensure that we foster fair and effective competition, promote high quality broadcasting from a diverse range of sources, provide a high level of consumer protection, and safeguard freedom of expression.

We ensure that the framework for commercial television services encourage the development of new channels and helps promote innovation and competition”¹⁶.

- 7) An Ofcom report, ‘The Future of Television Funding’, produced in September 2005, carried out a study looking at attitudes towards potential new funding mechanisms. Many participants were either unfamiliar with the concept of prop placement or were not always aware when it was happening. They rarely thought about the processes that happened behind the scenes in order to bring a car, for example, into a programme. When the concept was explained to participants, they were generally comfortable with the idea. People understood that certain props need to be used in order to make television programmes, and the existing process of prop placement seems to be a reasonable way to make this happen.
- 8) People were most positive about prop placement when they were talking about its ability to add realism to a programme. They believed that brands were an intrinsic part of our world, and that there was value in reflecting them in programming.

“I feel that prop placement makes some programmes feel real if you see products that you’re use to” - Female, 38, Manchester

- 9) Making the brands visible was not a concern for most participants, as long as it was done in a natural way. People felt that over-enthusiastic efforts to hide brand names could be just as jarring as giving undue prominence to the brands. For example, many said it felt right that the shop in Coronation Street should be selling real brands of chocolate, rather than fictional brands, as that is simply reflecting reality.

¹⁶ DCMS website 2008

“You couldn’t have someone walk into a pub and ask for a ‘pint of non-specific, please’ could you?” – Male, 25, London

10) A number of people mentioned Coca Cola in American Idol (pixilated for UK transmission). A recurring theme was that the pixilating out of brands in (usually imported) programmes was often ineffective. Many respondents said they were actively drawn towards brands which have been blurred out in this way, and which they would probably otherwise have ignored. They are intrigued, and try to work out what the original brand is, often with success.

“when it’s fuzzed out it draws more attention to the product” – Female, 53, Edinburgh

11) Overall, Ofcom’s research shows that audiences do not object to seeing brands on our screens, and in most cases feel that it makes the programme more realistic.

12) Another recent consumer survey (below) shows that the majority of consumers agree that it will not make any difference to the way they view programmes.

Q51 If a programme could be made and funded by a company, to what extent would that make you more or less favourable towards the programme, or would it make no difference¹⁷.

6% favourable

11% not favourable –
more likely to be ABC1

15) If product placement is regulated, and broadcasters and production companies work within strict codes of practice, ensuring editorial controls are in place, then we see no reason why this cannot be introduced as a way to boost British programming budgets, and by definition raise production values as a result.

16) Pact has consulted with a wide range of broadcasters on guidelines which need to be considered. From the guidance in the AVMS Directive, but in the absence of detailed regulation, we will illustrate the approach which broadcasters and producers would take with paid for product placement.

¹⁷ Ipsos MediaCT - Base: Jan-June 2008: 658 Version 1 only

17) We considered current issues of transparency, programme indication, editorial control and restrictions, which would be in line with HFSS restrictions. From our consultation we have designed a 'Product Placement Code', which if product placement is allowed will enable editorial protection to be better controlled. (see annex one)

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

- 1) British broadcasting should hold, and has always held, a position of responsibility, with strong programming values. We feel that in order to maintain the respect of our news and current affairs programmes, these genres should not be allowed to use product placement. We also feel that product placement should not appear with children's programming.

Question 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?

- 1) Brands are part of our lives, and people expect to see them reflected on screen. As we have already pointed out, in the Ofcom survey, 'The Future of Television Funding', respondents recognised that brands made the programme feel more realistic.
- 2) Making the brands visible was not a concern for most participants in the survey, as long as it was done in a natural way. People felt that over-enthusiastic efforts to hide brand names could be just as jarring as giving undue prominence to the brands. For example, many said it felt right that the shop in Coronation Street should be selling real brands of chocolate, rather than fictional brands, as that was simply reflecting reality.

a. “You couldn’t have someone walk into a pub and ask for a ‘pint of non-specific, please’ could you?” Male, 25, London¹⁸

3) According to a study by New Media Strategies ‘Product Placement Tolerated’ it showed that online users already accept the introduction of product placement if not completely accepted by on-line users¹⁹. This suggests that the younger generation who are computer natives are already comfortable with product placement and are growing up accepting this concept.

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

- 1) Product placement, should it be permitted, should be an option for the broadcaster/producer as a way to boost production budgets, providing there is editorial justification for using it.
- 2) We would also suggest that the regulator should enforce strict penalties on broadcasters for any undue prominence cases, giving them the responsibility to ensure strict compliance systems are in place.
- 3) Another option which could be adopted to protect the audience and editorial control would be to avoid selling an exact amount of time to a brand and to work on a ‘stop clock’ minutage sell. This would avoid a producer having to ensure a product has to be seen a certain amount of times or a period of time. Product placement would then only be seen when there was editorial justification, and would appear as a more natural placement.

¹⁸ Ofcom: The Future of Television Funding 2006

¹⁹ Biz report by Kristina Knight: 21 December 2006

- 4) Producers and broadcasters also have a vested interest in preventing potential excesses in order to protect the international value of the content they create.
- 5) Ofcom's broadcasting code should require adherence to a best practice guide for branded content, to be developed through industry consultation. This will protect the viewer by upholding the key principles of transparency, undue prominence and editorial justification.
- 6) Pact has consulted across the media industry to create a proposed code that will ensure that commercial and creative processes are separated at the point where product placement is incorporated. This code would ensure transparency, separation and enshrine the concept of product presence not promotion within regulation.
- 7) As part of the code there is also a suggested mechanism to ensure that there can be no commercial undue influence in the process.

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

- 1) Ofcom already regulates programming for undue prominence - “No Undue Prominence - Brands are an integral part of modern society and that this will inevitably be reflected on television and radio as it is in other media. Therefore, there is no absolute prohibition on the appearance of, or reference to, branded products and service within programmes²⁰.
- 2) Regulating product placement is of utmost importance in serving viewers' interests, though there must be an understanding that what is acceptable

²⁰ Ofcom – undue prominence rule 10.4

differs from genre to genre. Ofcom could adapt the current restrictions regarding undue prominence and transfer them to product placement.

- 3) Pact has consulted a wide range of broadcasters and independent producers and together we have agreed on a 'Product Placement Code'. There is a consensus across the industry that editorial control, transparency and consumer protection are priorities when working with any brands on product placement.
- 4) Within the Product Placement Code we have referred to product placement as 'presence not promotion' our guiding principle for product placement is that it should constitute brand presence in a programme where this is editorially justified and not unduly prominent. There can be no question of promotional references to such brands.

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

- 1) Yes the rules should apply for both broadcasting and on-demand audiovisual media services. If applied solely to online, then the rules governing broadcaster websites should be the same as for non-broadcaster websites.

Question 32: Should prop placement continue to be permitted?

- 1) Yes. Prop placement has been a useful source, which has enhanced programming budgets by providing props/products to use as part of making a programme without eating into the production budget.

Question 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?

- 1) There appears to be no logical argument for capping a figure to differentiating between what is prop placement and what is product placement. Clearly if a brand is willing to pay to place a prop it becomes product placement. If it is not paid for it is prop placement. To differentiate by a set value would be very hard to manage and would over complicate the process.
- 2) A product's value does not separate from the benefits of prop placement, an item worth £80 placed in a programme could have the same marketing benefits to one worth £20,000.

Question 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?

- 1) We do not feel that there are any strong arguments to setting a value that separates between prop and product placement. Props of all values have the same marketing benefits by being placed within programmes. Providing that both prop placement and product placement are equally regulated there should not be a capped value on their separation.

Question 35: If there is to be a set value for this purpose, should it be set by government legislation or by Ofcom (for television broadcasting) and the video-on-demand co-regulator?

- 1) If there were to be a set value for this purpose, we would expect Ofcom to set this. However, we do not believe there should be a set value. Introducing a capped value for prop placement would be very hard for any regulator to monitor.

Question 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?

- 1) Yes. It is important that UK audiences experience a mixture of rich, culturally diverse programming from different parts of the World. Many of the most current popular shows which are broadcast in the UK, such as Desperate House Wives, CSI, Lost and Heros, contain product placement. These programmes enjoy high volume audiences, which show that UK audiences do not object to product placement being used.
- 2) Allowing imported programming to be broadcast in the UK to include product placement, but prohibiting domestic producers from doing the same, puts the UK production sector at a substantial competitive disadvantage in terms of being able to raise funding. This imbalance encourages programmes with product placement to be made overseas under less restrictive regulations and then imported into the UK. The UK production sector must be able to offer similar product placement opportunities to its foreign competitors to be globally competitive.
- 3) To relax the usage of product placement on UK programming gives more opportunity for UK production companies to compete Worldwide. Rather than ban imported programming we would like to see a fair market where UK producers have the opportunity to compete globally.
- 4) Prohibiting imported programmes could be in breach of the GATT Trade Agreement Article XIII of the GATT agreement 'Non-discriminatory Administration of Quantitative Restrictions', which states:

'No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation of any product destined for the territory of any other contracting party, unless the importation of the like product of all third

countries or the exportation of the like product to all third countries is similarly prohibited or restricted'²¹.

Question 37: How should product placement be signalled to viewers?

- 1) In our view, and that of the broadcasters we have consulted, Ofcom should not be overly prescriptive on this point. The regulator should leave the market to dictate the precise structure, wording and nature of this identification as far as possible, providing audiences are clearly informed about the presence of product placement.
- 2) Pact and the broadcasters we have consulted are of the opinion that it is not in the viewers' interest to always identify the presence of product placement in an announcement at the start of a programme. This will often undermine audiences' enjoyment of a programme, as well as the value of the product placement.
- 3) Moreover, if regulations insist that a lengthy announcement is made in-between a sponsorship card and the programme, the value of that sponsorship will be undermined. It is also felt that too many announcements will also direct the viewer towards the brands, and this would have an adverse effect, effectively raising the risk of undue prominence, as it would be highlighting brands to the viewer.
- 4) Pact understands that there is a need for clear identification for viewers. If a programme with product placement or another form of advertiser funding must be clearly identified at the start, a generic symbol should be satisfactory. This symbol could be similar to that which is used for parental guidance, and through educating viewers this would become a recognised, unobtrusive indicator.

²¹ CIESIN Thematic Guides <http://www.ciesin.org/TG/PI/TRADE/gatt.html>

Question 38: Should the rules on signalling be set by the Government in legislation or by Ofcom (for television broadcasting) and the video-on-demand co-regulator?

- 1) In our view, and that of the broadcasters we have consulted, Ofcom should not be overly prescriptive on this point. The regulator should consult with the industry before deciding the precise structure, wording and nature of this identification.

‘ANNEX ONE’

PRODUCT PLACEMENT CODE

Guided by the AVMS Directive the aim of this document is to illustrate the approach broadcasters and producers would take to paid-for product placement (as opposed to prop placement) in UK originated content if its introduction in the UK is permitted. It is supported by:-

[Pact have a list of broadcasters who are supporting this code, such as ITV, Discovery, Virgin etc – we intend to submit a full list of those who agree with this code at a later date to the DCMS]

Transparency: as set out in the Directive, a visual indicator to signpost paid for product placement in UK originated programming will be displayed at the beginning, end and as programmes resume after a break. To ensure consistency and clarity for the viewer this should be an easily recognisable, industry-wide logo used by all commercial broadcasters

Presence not promotion: our guiding principle for product placement is that it should constitute brand presence in a programme where this is editorially justified and not unduly prominent. There can be no question of promotional references to such brands.

Editorial independence: the separation of the commercial and creative in the process outlined below will ensure that there will be no programme distortion for commercial purposes.

Process

The following process would ensure that the principles of brand presence, editorial independence and editorial justification are adhered to. Creative and commercial activity are structurally separated. Product placement opportunities are identified by the production team and agreed by the broadcaster. These opportunities are not identified until the script/programme concept has been finalised ensuring that product placement is creatively, rather than commercially, led.

The process for all paid for product placement would be as follows:

1. Script/programme concept and production budget are finalised.
2. Opportunities for product placement are identified in the script/programme concept by the producer/executive producer.
3. Opportunities, as identified by the producer/executive producer are agreed by the broadcaster at an editorial level after which brands are approached and commercial terms agreed. This is a separate commercial process. Brands are not guaranteed prominence or hold.

4. Products are passed to the producers with no prescription as to the manner and/or length of their exposure. Guided by the finalised script/programme concept the producer decides how to incorporate products, ensuring the producer is the sole custodian of the creative process.
5. The broadcaster must have the final say on whether a product placement is compliant and appropriate.
6. There should be transparency in the price payable for product placement and the value only ascertained once the programme has been delivered to and agreed to be compliant by the broadcaster i.e. based on actual screen presence in terms of prominence and hold (measured in seconds).

Content that could contain product placement would include:

- Films
- Films and drama or other series made for television or on demand delivery
- Sports programmes
- Entertainment programmes

For the avoidance of doubt the following content will never contain paid for product placement of any sort:

- news bulletins and news desk presentations.
- news and current affairs programmes on television (programme containing explanation/analysis of current events/issues, political or industrial controversy or with current public policy).
- Consumer advice programmes
- Children's programming

We recognise that it would ultimately be for Ofcom and the co-regulator to decide the types of programming in which product placement should be prohibited.

Restricted product placement

- Where there are existing restrictions on advertising particular products around certain categories of programming, products falling into the same categories should not be placed in such programming. For instance, products classified as HFSS should not be placed into programmes which the broadcaster considers are of particular appeal to 4-15 year olds in line with the 120 index.

Other

- A product placing company must not influence the content and/or scheduling of a channel or programme such that the responsibility or editorial independence of the broadcaster is affected.

- There must be no promotional reference (a ref that encourages purchase or rental of the product/service in question) to the placed item. Non-promotional references are permitted only where they are editorially justified.