



**DCMS CONSULTATION ON  
PRODUCT PLACEMENT ON TELEVISION**

**Submission by the Satellite and Cable Broadcasters' Group  
8 January 2010**

The Satellite and Cable Broadcasters' Group (SCBG) is the trade association for satellite and cable programme providers who are independent of one of the main terrestrial broadcasters. Its members are responsible for over 100 channels in the UK and in addition broadcast many more services from the UK to continental Europe and beyond. Many member companies are pan-European broadcasters, producing and commissioning content for different national markets.

SCBG channels provide citizens and consumers with programmes and services for a diverse range of audiences across a wide range of genres and audiences, including entertainment, factual, educational, history, music, nature, art and science. Our member companies make and show programmes for children and young people, and for ethnic minorities in their own languages. SCBG members' channels are available in almost 50% of UK homes.

Satellite and cable broadcasting has been the fastest growing sector in the UK television industry, now employing over 6,000 people in the UK with revenues of nearly £5 billion.

Satellite and cable broadcasters operate in an extremely competitive and volatile environment, without privileged access to scarce Government-controlled spectrum or to the must-carry status afforded to terrestrial networks. They are therefore unable to attract mass advertising revenues, and – with a couple of notable exceptions – do not benefit from public funding.

## **Executive summary**

### **UK legislation should be amended to permit product placement**

As SCBG has outlined in previous submissions on the topic of product placement (Ofcom consultation, 2006; DCMS consultation on AVMS, 2008) SCBG supports the liberalisation of product placement rules as a way of providing broadcasters with the opportunity to secure additional revenue for commissioning and acquiring high quality content. As such we argue that the UK Government should take advantage of the AVMS Directive's derogation that permits Member States to allow product placement in a limited set of genres.

### **UK legislation should go no further than the AVMS Directive itself; detailed issues on product placement should be addressed by amending the Ofcom Code and through subsequent guidance**

SCBG is sensitive to the range of policy concerns raised in relation to both the practice and principle of product placement, and agrees that it is right to air these issues when consulting on how to implement this part of the AVMS Directive into UK law. However, we do not ultimately believe that legislation is the correct mechanism through which to address these concerns. As has been the case with all other aspects of the Directive, we believe that Government should look to transpose rules on product placement into UK legislation in a way that mirrors the original wording as closely as possible. Hard-baking detailed rules into legislation would be disproportionate and would undermine the flexibility needed in a regulatory framework for product placement that works for both industry and viewers.

### **Commercial imperatives combined with AVMS Directive safeguards and Ofcom's undue prominence rule provide sufficient safeguards to protect editorial integrity and address other public policy issues**

SCBG strongly believes in the importance of maintaining editorial independence and integrity in programmes that feature product placement, and in protecting vulnerable audiences from inappropriate product placement. However, we do not believe these principles are at odds with commercial incentives. Commercial and editorial objectives – to make programmes that are watched and loved by audiences – are in fact perfectly aligned. It is not in a broadcaster's, producer's or advertiser's interest to place products in a programme in a manner or context that is unsuitable for the intended audience; that negatively interrupts the natural flow of a programme; or that questions the honesty of the content.

It could be argued that the incentives for broadcasters, producers and advertisers to use product placement in a 'responsible' manner are so strong that additional safeguards are not necessary. Should, however, those incentives fail in a minority of cases, a safety net already exists:

- The AVMS Directive contains a number of safeguards, regarding children, alcohol and tobacco, as well as the requirement that 'product placement should be prohibited where they influence the content of programmes in such a way as to affect the responsibility and the editorial independence of the media service provider.'
- The Ofcom Code already contains the notion of 'undue prominence' – a rule that is well understood within UK broadcasting and working well.

The ultimate safeguard, however, is viewers themselves, who will collectively and individually switch off if broadcasters and producers do not handle product placement in a responsible way. SCBG sees no reason why the combination of commercial incentives, existing AVMS safeguards, Ofcom's undue prominence rule and audience choice cannot address public policy concerns without additional safeguards being created.

## Consultation questions

**1. What, if any, viewer and other safeguards there should be additional to those required by the AVMS Directive?**

**2. How should those additional safeguards be imposed - by law, or by means of the Ofcom Code?**

SCBG strongly believes that should Government decide to amend UK law to permit product placement that it should look to replicate the wording of the AVMS Directive as closely as possible, without including any additional rulings. We think that any detailed rules regarding product placement should be imposed through amendments to the Ofcom Code, and through additional guidance notes. However, we also argue that strong commercial and editorial incentives to use product placement responsibly, combined with the safeguards that are built into AVMS and Ofcom's existing undue prominence rule, will sufficiently address public policy concerns adequately, and negate the need for extensive amendments to Ofcom's Code.

It is also important to underline here that we think product placement should be regulated as editorial content, not as advertising. As such it should be regulated solely by the Ofcom Code, not by the ASA or indeed combination of Ofcom and the ASA.

### **Commercial advantages**

**3. Is the range of figures for the potential financial benefit of introducing television product placement set out a Part 3 of this document (between £25m and £140m p.a.) still broadly applicable?**

**4. Is it possible to narrow this wide range of estimates?**

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

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

We do not have any additional information to add.

### **Programme genres**

**7. If product placement is allowed in programmes made by or for UK television, should any of the programme genres permitted by the AVMS Directive be excluded?**

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

**9. Are there definable types of 'films and series' in which product placement either should or should not be permitted?**

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

**11. Is there any reason to restrict product placement in particular types of sports programming?**

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

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

SCBG supports the proposal that product placement is permitted in the genres outlined in the consultation document and contained within the AVMS Directive itself – cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes. We also agree with DCMS that these genres are loose, overlapping and likely to evolve over time. For this very reason we do not believe that legislation or Ofcom should attempt to define them further or to prohibit product placement in sub-genres. What's more, any attempt to do so is likely to become quickly out of date and may undermine broadcasters' and producers' professional editorial judgement for justifiably placing products in a range of yet to be developed settings.

**14. Should there be a specific prohibition of product placement in religious programmes; news programmes; current affairs programmes; consumer programmes; or any other specific type of television programme?**

Again, SCBG does not believe that UK legislation should go further than the AVMS Directive in prohibiting specific sub-genres within those genres already permitted, and neither does it believe that it will be necessary for Ofcom to do so. By only permitting product placement in the four genres cited above, the AVMS Directive has already effectively prohibited the practice in religious, news, current affairs and consumer programmes. It may be the case that there are programmes that fall into both prohibited and permitted categories. In these instances we believe that it should be left to the producer/broadcasters' discretion as to whether product placement is editorially justified.

**Children**

- 15. Should any or all product placement be restricted or prohibited in programmes with a disproportionately high child audience?**
- 16. If so, how should that assessment be made in advance of a programme being broadcast?**
- 17. How could a 'disproportionately high child audience' be defined?**
- 18. Should there be restrictions on placing certain types of products (e.g. HFSS foods or alcohol) in programmes with a disproportionately high child audience?; and if so**
- 19. Should those restrictions be the same as or greater than those which are currently in place for the scheduling of spot advertising of those products?**

While SCBG is sensitive to the lively debate surrounding this topic, we do not believe that this is an issue best addressed by legislation. The AVMS Directive is clear in prohibiting product placement in programming directly aimed at children under 16 and SCBG does not believe it is practical, necessary or justifiable for Ofcom to further restrict product placement in programmes that may or may not attract a disproportionately high child audience for the following reasons:

- As the consultation document has already pointed out, the mechanics of product placement are such that at the time when product placement deals are being agreed, and when products are being physically placed in programmes, it is difficult to know whether a programme being made primarily for an adult audience will attract, either by appeal or by scheduling, a high proportion of under 16s. In order therefore to 'catch' those programmes that do go on to be of particular appeal to children a blanket ban would need to apply to some or all products. Such a ban would unjustifiably penalise a whole range of programmes that are permitted by the Directive to carry product placement and would significantly reduce any benefits that may be derived from permitting product placement in the first place.

- Further, it is essential to remember that product placement appears in programming in an editorial context and should therefore be judged according to editorial and not advertising regulatory criteria. As such, it is inappropriate to apply rules that are now being applied to spot advertising with regards certain products, for example HFSS foods, to product placement. For example, the Ofcom broadcasting Code contains no restrictions on programmes that attract a disproportionately high number of children featuring HFSS foods as part of an editorially justified plot-line, a character buying a chocolate bar, for example. These products are not banned from appearing in programmes when they appear as placed props and therefore neither should they be when part of a paid-for placement.
- Finally, by its very nature, successful (and permissible) product placement is not unduly prominent and therefore appears in the background without any direct call to action. Consequently the potential negative impact on any children who may be watching programmes intended for adults will be minimised.

In the undesirable event that a ban on certain products is introduced for high indexing programmes, we strongly feel that acquired programmes should be exempt from this rule in the same way that AVMS exempts acquired programming from notification requirements. If this were not the case, and a ban was applied to all programmes, this would present very significant problems for some channels, and could result in a number of high quality acquired programmes not appearing before UK audiences.

**Editorial independence; undue prominence**

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

**21. At what point should the Government, or Ofcom, draw the line between legitimate paid placement of goods or services and illegitimate ‘direct encouragement’ to purchase or hire them?**

**22. Are rules – in addition to those that prevent ‘undue prominence’ and the promotion of placed products – needed to safeguard editorial integrity? If so, what should these be?**

As we have stated above, we do not believe that commercial and editorial imperatives are at odds with respect to undue prominence. The primary need to create programmes to which audiences respond positively will act as an in-built brake on any product placement practices that could undermine the editorial quality of UK programming. Ultimately viewers will vote with their viewing habits and so product placement in practice will align itself to a position where UK audiences are happy. We do not therefore believe that additional safeguards are needed. In addition, we would argue that the notion of ‘undue prominence’ is incompatible with ‘direct encouragement to purchase’ and that Government/Ofcom will not have a cause to draw a line, except when also considering cases where the undue prominence rule has been broken.

**Tobacco, alcohol, HFSS foods, gambling**

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

**24. Should television placement of alcohol, HFSS foods or gambling be subject to an outright prohibition; or, if not prohibited, should it be subject to restrictions of some kind?**

**25. If it is not practicable to apply the detail of the BCAP Code rules on alcohol advertising to alcohol product placement, would the simple AVMS Directive rules that alcohol advertising must not be aimed**

**specifically at minors and must not encourage immoderate consumption provide adequate safeguards?**

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

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

**30. If so, what, and why?**

We do not believe that UK legislation should go further than the AVMS Directive in prohibiting particular products, and neither do we believe that the Ofcom Code should do so.

We appreciate that there is some public concern around these products in a variety of settings – in people’s eating and leisure habits, in retail and in advertising generally, as well as on television – but we argue that the Directive already contains a sufficient safeguards in this respect:

- There is a prohibition of product placement of ‘tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products’ and we believe that this should also be interpreted to cover ‘cigarette papers and pipes’.
- With regards to alcohol there is already a prohibition on product placement encouraging ‘immoderate consumption’. Crucially, not only is it not practicable to apply the BCAP Code on alcohol advertising, but it is illogical as product placement takes place within an editorial setting. If there are to be additional safeguards surrounding the placement of alcohol products these should be done through guidance on the Ofcom Code not by applying the BCAP Code.

Again, in the undesirable event that Government and/or Ofcom decides to go further than AVMS, by prohibiting the product placement of certain products, we feel that it is imperative that acquired programmes are exempt from this rule, for the reasons outlined above.

### **Monitoring**

**27. What methods of assessment and monitoring would be most effective in ensuring that there was accurate and reliable information about the actual effects of any introduction of product placement in these areas?**

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

In the light of such extensive public debate on the topic of product placement it is understandable that Government and other stakeholders will want to assess its impact. However, we would strongly argue that any such research should be conducted from existing Government or Ofcom budgets rather than by undermining any potential financial benefits of product placement by imposing a levy on industry. We would also urge that any research or monitoring looks not just at potential negative impacts on health, welfare and gambling habits, but at potential positive impacts, for example on programme funding.

### **Terms of trade**

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

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

Should the prohibition on product placement be lifted a range of commercial and revenue sharing models will undoubtedly evolve, and it will be interesting to watch this take place, but we do not believe it is an issue for a Government or Ofcom consultation at this stage.

**Prop placement market**

**33. What impact would allowing television product placement have on the existing prop placement market, and on the ability of broadcasters to source props and services in this way?**

Paid product placement will inevitably have an impact on current prop placement practices, and vice versa. However, these changes are not necessarily of public policy interest and therefore not something with which either Government or Ofcom should concern itself.

**Signalling product placement to viewers**

**34. How should television product placement be notified to viewers?**

**35. When should it be notified to viewers – should we go beyond the EU requirement for notification before and after the programme and after any ad breaks?**

**36. Should notifications to viewers mention the product(s) which has or have been placed?**

**37. Do you have any other views about alerting viewers to the presence of product placement in a television programme?**

SCBG believes that best way to signal product placement clearly but without making the product unduly prominent by doing so is to feature a neutral and unobtrusive product placement logo at the beginning and after commercial breaks, and. Discussion between broadcasters and producers seems to indicate that it may be possible and desirable to create a uniform cross-industry logo for this purpose.

On a point of clarification, the AVMS Directive itself says that ‘Member States may choose to waive the requirement [to notify] provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider’ whereas the consultation document states affirmatively that the requirement to notify viewers of product placement ‘does not apply when a programme which contains product placement has not been produced or commissioned by the broadcaster who is showing it’. The difference in wording is slight, but SCBG seek clarification that the Government does actually intend to take up the option given to it by AVMS with regards this exemption.

**Thematic placement/Negative and simulated placements**

**38. Should the prohibition of ‘thematic placement’ extend to placements which feature only generic products and services or types of product and service rather than branded ones?**

**39. Should the prohibition of ‘thematic placement’ extend to the placement in a programme of references to the beliefs, policies, aims or objectives of the placer?**

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

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

Again, the Government should not go further than the AVMS Directive, and we argue that it is premature for either Government or Ofcom to predetermine, beyond those genres and products already prohibited, those programme types where a broadcaster/producer may judge that it is possible to feature products or services in a way that does not undermine editorial justification.

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