

## PART 4 - PRODUCT PLACEMENT

### Current Position

1. Product placement – payment to a broadcaster or producer to feature products in a programme – is one of the more controversial practices in broadcasting. The TVWF Directive, which first came into force in 1989, had no specific ban on the practice. However, the Directive did require a clear separation of advertising from programmes and prohibited surreptitious advertising, advertising which uses subliminal techniques and any sponsorship which affects the editorial independence of the broadcaster in relation to programme content or scheduling.
2. Similarly, in the United Kingdom, there has, since the start of commercial broadcasting under the Television Act 1954, been a requirement for advertisements (i.e. paid-for commercial messages of any kind) to be clearly distinguishable as such and recognisably separate from the rest of the programme and inserted only at the beginning or end of programmes or in clearly signalled breaks in them.
3. The UK and most other Member States have regarded the requirements of the TVWF Directive as amounting to a *de facto* prohibition on product placement in television broadcasting, and have continued to prohibit product placement in television programmes produced or commissioned by broadcasters within their jurisdiction.
4. However, not all EU Member States have taken this approach. One or two have had national rules which permit some forms of product placement.
5. In a 2004 'interpretative communication' on advertising, the European Commission observed that Article 10(1) of the TVWF Directive  
*"provides that advertising .... must be kept quite separate from other parts of the programme service" and that "programmes which fail to observe this so-called principle of separation between advertising and editorial content are prohibited"*<sup>10</sup>.
6. In the UK, it is Ofcom's Broadcasting Code which currently implements these EU provisions, by setting out rules governing the inclusion of products and services in television programmes. The Code requires that "broadcasters must maintain the independence of editorial control over programmes" (Rule 10.1), that "broadcasters must ensure that the advertising and programme elements of a service are kept separate" and that "no undue prominence may be given in any programme to a product or service" (Rule 10.4).
7. The latter is of particular practical value because it is easier to see from a programme whether a product is "unduly prominent" than to be able to demonstrate that money has changed hands to secure the inclusion of a product in a programme.
8. The Code states that "product placement is prohibited" (Rule 10.5). It goes on to define product placement as:

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<sup>10</sup> Commission interpretative communication on certain aspects of the provisions on televised advertising in the 'Television without frontiers' Directive (2004/C 102/02), paragraph 19

*"the inclusion of, or a reference to, a product or service within a programme in return for payment or other valuable consideration to the programme maker or broadcaster (or any representative or associate of either)."*

### Rationale

9. The policy behind the prohibition of product placement is based on a number of principles which are sometimes seen as distinguishing the "European" approach to the regulation of broadcasting from a purely commercial approach:
  - that programmes and paid-for commercial messages should be separate and clearly distinguished, so that viewers know when they are being "sold to";
  - that those licensed to broadcast are permitted to advertise to the public principally in order to fund entertaining and informative programmes (especially when the public resource of terrestrial spectrum is used) rather than vice versa;
  - that audiences are better served if the principal incentive for broadcasters is the production of attractive programmes, in the breaks of which they can sell advertising slots, rather than making editorial decisions based principally on the advertiser's wishes to include their products.

### Prop placement; product placement in films and in non-UK television programming

10. Ofcom's Code exempts from the definition of product placement

*"references to products or services acquired at no, or less than full, cost, where their inclusion within the programme is justified editorially"; and*

*"the inclusion of products or services in a programme acquired from outside the UK and films made for cinema provided that no broadcaster regulated by Ofcom and involved in the broadcast of that programme or film directly benefits from the arrangement".*

11. The first of these exemptions is known as 'prop placement'. Prop placement is the loan or provision of clothing, cars or other pieces of equipment to broadcasters at a reduced price or free of charge. It can also involve the offer of services, such as hairdressing.
12. The effect of Ofcom's Code is that prop placement is permitted in all television programming, provided that its inclusion is justified editorially and that it conforms to the rules on editorial independence and avoiding undue prominence.
13. Ofcom's Code also means that UK television broadcasters are able to show cinema films and non-UK television programmes which contain product placement. There are numerous examples of this. This is recognisably a compromise, but the rationale is not merely practical: broadcasters will have acquired the programme on the basis of audience appeal, rather than because they have been paid by an advertiser, and the commercial element must still avoid "undue prominence". In some cases therefore the product or brand reference concerned may be pixellated or otherwise edited.
14. Ofcom's Broadcasting Code is available at [www.ofcom.org.uk/tv/ifi/codes/bcode](http://www.ofcom.org.uk/tv/ifi/codes/bcode).

## Video-on-demand

15. Until the AVMS Directive is implemented, there are no restrictions in the EU or the UK on product placement in video-on-demand services. In the UK, this has been the case only since 2003, as prior to that video-on-demand was regulated as broadcasting.

### **What the Directive requires**

16. The AVMS Directive defines product placement in Article 1(m) as a form of audiovisual commercial communication which consists of

*“the inclusion of, or reference to, a product or service in a programme in return for payment or similar consideration”.*

17. It does not separately define prop placement, but Recital 61 points to treating the provision of products and services free of charge or at less than full cost as product placement only when the product or service concerned is of *“significant value”*.
18. The specific provisions relating to product placement are set out in Article 3g of the Directive and would apply to all programmes produced after 19 December 2009. In summary:
  - i. Member States must implement a general prohibition on product placement;
  - ii. Member States may then decide to permit product placement in feature films, television films and series, sports and light entertainment programmes, but not in any programmes which are made for children;
  - iii. Member States may also decide to permit prop placement in all types of programme (including children’s programmes);
  - iv. programmes containing product placement must conform to the rules relating to editorial independence and undue prominence, and may not directly encourage purchase or rental of goods or services;
  - v. viewers must be informed of the presence of product placement in a programme at the start and end of the programme and after any advertising break during the programme;
  - vi. Member States may choose to waive this notification requirement for feature films and for programmes which have not been produced by the media service provider concerned or a company affiliated to it;
  - vii. product placement for cigarettes and other tobacco products, or from companies whose principal activity is the manufacture or sale of cigarettes and other tobacco products is prohibited; and
  - viii. product placement for medical products and treatments available only on prescription is prohibited.
19. The rules governing content standards for audiovisual commercial communications in Article 3e of the AVMS Directive also apply to product placement. In addition to the

restrictions in Article 3g, this imposes additional requirements in relation to human dignity and behaviour, discrimination, and protection of minors. In particular, it requires that any product placement of alcoholic drinks must not be aimed specifically at minors and must not encourage immoderate consumption.

### **The form of prohibition**

20. Because of the way in which Article 3g of the Directive is structured, Member States must implement a prohibition on product placement, but can then, by way of derogation, allow product placement in certain genres of programme if they wish.
21. The Government's view is that the initial prohibition will require legislation. Full or partial prohibition in industry or regulators' codes, such as the current prohibition in Ofcom's Broadcasting Code, may not necessarily be sufficient to reflect the Directive's direct and express prohibition of product placement.
22. There are three basic options.

#### *Option 1 – no legislation*

23. For television broadcasting services, this would mean relying on the existing, or an amended, prohibition in Ofcom's Broadcasting Code. For on-demand services, it would mean relying on a similar prohibition in the relevant Code of the co-regulator for on-demand services. This might be an option if the UK decided to take advantage of the liberalisation allowed by the Directive, but, as indicated above, may not be sufficient properly to implement the Directive ban and would not secure any continued prohibition on product placement.

#### *Option 2 - legislate to prohibit product placement except in some or all of the programme genres specifically permitted by the AVMS Directive*

24. The legislation would place a specific prohibition in UK law on the inclusion of product placement in programming shown in television broadcasting or video-on-demand services, except for some or all of the programme types in which the Directive permits product placement (that is '*cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes*'). It would also specify that children's programmes must not contain product placement.
25. It would be for Ofcom and the co-regulator for video-on-demand services to establish more detailed rules, after consultation, and to determine whether or not to take full advantage of the derogations. For example, it would be consistent with Ofcom's advertising rules for it to continue to prohibit product placement of foods high in fat, salt or sugar in programmes of particular appeal to children, as well as programmes made specifically for children.

#### *Option 3 - legislate to prohibit product placement in all types of programming*

26. The legislation would prohibit product placement in all types of programming shown in television broadcasting and video-on-demand services.

## The debate about product placement

27. Three main arguments have been put forward in support of allowing product placement. First, it is argued that viewers are used to product placement in programmes acquired especially from the United States, and are capable of recognising when they are being sold to.
28. As noted at paragraph 13 above, allowing such placement is recognised as a compromise, but crucially protects the editorial integrity of broadcasters (programmes are acquired on the basis of audience appeal) and products cannot be unduly prominent. Audiences may or may not be able to distinguish product placement and raise their guard: that will differ across the population.
29. Secondly, it has been argued that allowing product placement would add to the realism of television, since we are surrounded by branded products. However, the Ofcom Code already allows the inclusion of branded products if justified by the editorial context.
30. Thirdly, it is argued that income from product placement will help broadcasting, including commercial public service broadcasting, to compete more effectively with other forms of entertainment at a time of increasing competition for people's attention and for advertising revenues. This was the principal reason cited by the European Commission when bringing forward its proposals.
31. There have also been suggestions that international brands may seek to circumvent European restrictions by placing their products in US programmes, benefiting US rather than European programme-makers. Very significant levels of potential income have been quoted: in a consultation document on product placement issued in 2005, Ofcom noted that PQ Media estimated television product placement in the USA to be worth \$1.87 billion in 2004 and due to grow by 30% in 2005. On the other hand the US figure remained small compared with traditional television advertising spot revenues there (about 3.3% of spot revenues)<sup>11</sup>.
32. Ofcom's analysis suggested that in the UK income of some £25-35 million a year after 5 years might be achievable; if US levels of 3.3% of spot advertising could be achieved, there would be potential to reach £120-125 million (at end 2005 prices). But these figures are likely to be overstated, given the limitations which were introduced into the Directive on the genres in which products could be placed, entirely excluding children's programmes, and the addition of conditions designed to protect editorial integrity and maintain the prohibition against undue prominence. Furthermore, UK audiences would be unlikely to find acceptable significant levels of product placement, certainly in the early years of any liberalisation.
33. It is also worth noting that there is increasing concern in the US about levels of product placement. There appears to be a significant increase. It has been reported that in last season's *American Idol* there were 4,349 product placement occurrences, and 3,291 in the first three months of 2008 alone. The Federal Communications Commission is examining the introduction of a requirement for better information for viewers about who has paid for their products to be featured.

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<sup>11</sup> *Product Placement: A consultation on issues related to product placement*, Ofcom, December 2005

34. The key issue therefore is whether the comparatively modest additional income which is forecast, at least in the short term, would justify abandoning the long-held principles of European and UK broadcasting.
35. An important element of the success of broadcasting in the UK, and especially of public service broadcasting, has been the trust audiences have been able to have in broadcasters. This has been challenged by recent abuses of premium rate telephone charging and there must be a priority now for broadcasters to re-build audience trust in their integrity and maintain their distinctiveness from other media.
36. There is also more general concern about the impact of commercialisation on children and young people, who would be likely to see many programmes not specifically defined as “children’s” (and thus subject to the Directive’s prohibition on product placement).

### Preferred Option

37. Subject to this consultation, **the Government’s initial preference is for Option 3 – to legislate to prohibit product placement in all types of programming.**
38. The Government’s central intention is to ensure continued viewer and consumer confidence in the integrity of television and video-on-demand programming and to maintain a reasonable distinction between editorial and commercial material. Option 3 seems best suited to deliver that.
39. Allowing product placement in the UK would risk damaging viewer and consumer confidence in the integrity of UK-produced programming. Following its 2005-6 consultation, Ofcom concluded that product placement was an issue on which there was no consensus. Commercial broadcasters and advertisers generally favoured a controlled introduction of product placement, but consumer and viewer groups were strongly opposed. Ofcom also noted that the ‘predicted economic benefits’ of product placement ‘appear to remain modest’<sup>12</sup>.
40. In the Government’s view the same considerations also apply to video-on-demand programming. It is important that consumers and viewers can continue to rely on the integrity of video-on-demand programmes, especially since much of the programming which appears on UK video-on-demand services also appears on television. In practice, there is very little differentiation in content between the two types of service despite the fact that in the UK, since 2003, product placement has not been prohibited in video-on-demand services.
41. **The Government’s initial view, therefore, is that it is right to continue so far as possible to prohibit product placement on television in the United Kingdom, not to take advantage of the permitted derogations, and that the UK’s rules in this area should apply equally to television and video-on-demand.**
42. **The Government nevertheless remains open to other options if there are strong arguments that the concerns can be met. The questions about product placement at the end of this chapter seek information about specific aspects of the issue, and**

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<sup>12</sup> *Product Placement: summary of responses to consultation on issues relating to product placement*, Ofcom, October 2006

this consultation as a whole provides an opportunity for you to express your views about the role which product placement should have in UK television and video-on-demand and about the advantages and disadvantages which might be associated with it.

43. The Government will give detailed consideration to all the points that are made in response to this consultation before reaching a decision.

#### Prop placement; product placement in films and in non-UK television programming

44. Under any of the three options above, the Government must also decide how to treat the ability which television broadcasters currently have under Ofcom's Code to show
  - programmes (of any kind) containing prop placement;
  - cinema films containing product placement; and
  - television programmes made outside the UK which contain product placement.
45. The AVMS Directive imposes some restraints in this area. It requires the UK, like every other Member State, to set a 'significant value' for the goods or services involved in a prop placement. Above that 'significant value' the goods or services involved fall to be treated as product placement.
46. The Directive also requires an absolute prohibition on product placement in any programme which falls outside the permitted categories of '*cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes*' – even if the programme in question is one which has been made outside the UK.
47. This means that the Government must prohibit product placement in children's programmes and in news programmes, even if these have been bought from outside the UK.

#### The Government's view

48. The Government wishes to preserve the existing UK position, in as far as is possible, in relation both to prop placement and to product placement in cinema films and non-UK programming. That means that both prop and product placement would continue to be permitted for both television and video-on-demand programmes, subject to avoiding undue prominence.
49. The AVMS Directive however means that there must be a threshold of 'significant value' for the goods or services involved in prop placement, above which the UK will have to apply the rules set out in the Directive. The UK rules will be able to allow prop placements above the 'significant value', but must ensure that they are subject to the rules about permissible genres, notifying viewers, and so on which the Directive sets out (see paragraphs 18 and 19).

#### 'Significant value'

50. The 'significant value' for prop placement purposes does not necessarily have to represent the retail or wholesale cost of a particular item which has been provided free of charge. The Government's view is that it should represent the value to the

broadcaster or programme-maker. For example, in the case of a car loaned for the production of a television programme it might represent the hire cost for the period.

51. In Austria, the authorities have a set benchmark of €1,000 (approximately £800) as the dividing line between prop placement and product placement. The Government would be interested in views as to whether a specific amount should similarly apply in the UK and, if so, at what level it should be set; and on whether alternative approaches might be better.
52. One alternative approach, for example, might be to apply a value which was related to the overall cost of the production and which therefore varied from one programme to another.
53. It would also be helpful to have views as to whether any relevant amount should be specified in legislation, or whether it would be preferable for it to be set in guidance by Ofcom and the video-on-demand co-regulator. The Government takes the view that the latter would provide a more flexible arrangement and would be preferable.

#### Signalling of product placement

54. The Directive sets out detailed rules about the signalling of product placement to viewers. Article 3g requires that  
*“programmes containing product placement shall be appropriately identified at the start and 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”.*
55. This requirement does not apply to programmes containing only prop placement which is below the ‘significant value’, or to ‘bought-in’ programmes which have not been produced or commissioned by the media service provider who is showing them or any of its affiliates. But it does apply to programmes containing prop placement which is *above* the ‘specified value’. It would also apply to genuine product placement if – under Option 2 above – it were to be permitted in the UK.
56. Although the requirements in the Directive are somewhat prescriptive, they leave Member States a significant amount of discretion to set their own rules. The UK will need to decide what an ‘appropriate’ identification would be. Should it for example be a generalised announcement, such as ‘this programme contains product placement’, or something more specific? Should it name products (which might in itself be promotional)? Should it appear on its own screen or be superimposed? The Government would welcome views on this issue.
57. The UK will also need to decide how to treat the concession in the Directive about the signalling of product placement in ‘bought-in’ programming. There may in particular need to be rules of some kind about who counts as an ‘affiliate’.
58. The Government proposes that power of decision on these matters should rest with Ofcom and the video-on-demand co-regulator. Issues of this kind are not in the Government’s view suitable for legislation. However, the Government would welcome views on this.

## QUESTIONS

26. Should product placement be prohibited by law? Please explain the reasoning behind your preference.
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)?
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?
29. If product placement were permitted, how could audiences and regulators be assured that editorial integrity had been preserved, as required by the Directive?
30. How could "undue prominence" be avoided, given the commercial imperatives for audiences to recognise the products placed?
31. Should the same rules apply to both television broadcasting and on-demand audiovisual media services? If not, how should they differ and why?
32. Should prop placement continue to be permitted?
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?
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?
35. If there is to be a set value for this purpose, should it be set by the Government in legislation, or by Ofcom (for television broadcasting) and the video-on-demand 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?
37. How should product placement be signalled to viewers?
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?

The Government would also welcome information from respondents about the potential impact of the options for product and prop placement in response to the five impact and competition assessment related questions at the end of the list of questions in Part 6.



## Summary: Intervention & Options

<b>Department /Agency:</b> DCMS	<b>Title:</b> Impact Assessment of legislative options for implementing the EU AVMS Directive - product placement	
<b>Stage:</b> Consultation	<b>Version:</b> 1.0	<b>Date:</b> July 2008
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.culture.gov.uk>

**Contact for enquiries:** Natasha Pavey

**Telephone:** 020 7211 6398

### What is the problem under consideration? Why is government intervention necessary?

The EU Audiovisual Media Services Directive (AVMS) changes EU law on product placement in EU-made TV programming. Member States must prohibit it in general terms, but may permit it in certain types of programme, subject to safeguards. In the UK, Ofcom's Code already prohibits product placement, but the Government must legislate to ensure compliance with the Directive.

### What are the policy objectives and the intended effects?

The aim is to retain the current UK position in which a) television companies and their affiliates cannot benefit from product placement deals with advertisers; but b) they may show films and non-UK programmes with product placement in; and c) they can show programmes which contain product placement. This will avoid damaging consumer and viewer confidence in the integrity of home-produced programmes, while allowing UK television and video-on-demand companies to continue to show the many non-UK programmes which contain product placement and to benefit from controlled provision of props.

### What policy options have been considered? Please justify any preferred option.

The Government has considered three options. These are 1) continued prohibition without legislation; 2) legislate to prohibit product placement in all programme categories; 3) legislate to allow product placement in all the programme categories permitted by the Directive but prohibit it in all other cases. The Government has a preference for option 2, as it is the only one that can ensure continued viewer confidence in the integrity of UK television and video-on-demand programming.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

2011

### **Ministerial Sign-off** For consultation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

Andy Burnham .....Date: July 2008

## Summary: Analysis & Evidence

Policy Option: 3

Description: Prohibit product placement in all UK-made programming

<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' If the prohibition on product placement is maintained, broadcasters and video-on-demand providers will be unable to develop and benefit from a new revenue stream. However, the amount of revenue which is likely to be foregone is unclear and seems likely to be relatively small.
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	£		
	<b>Average Annual Cost</b> (excluding one-off)		
	£		<b>Total Cost (PV)</b> £
Other <b>key non-monetised costs</b> by 'main affected groups' If the prohibition on product placement in UK-made programming is maintained, the foregone revenue might over time make it more difficult for programme-makers to maintain the quality and diversity of programming which viewers expect.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' If the prohibition on product placement is maintained, broadcasters and video-on-demand providers who are more reliant on bought-in programming will not lose revenue from any diversion of revenues from spot advertising to product placement.
	<b>One-off</b>	<b>Yrs</b>	
	£		
	<b>Average Annual Benefit</b> (excluding one-off)		
	£		<b>Total Benefit (PV)</b> £
Other <b>key non-monetised benefits</b> by 'main affected groups' If the prohibition on product placement in UK-made programming is maintained, there will be no risk of programme quality and the separation of advertising and editorial content being compromised by the inclusion of advertising in the form of product placement within programmes.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	UK		
On what date will the policy be implemented?	December 2009		
Which organisation(s) will enforce the policy?	Ofcom		
What is the total annual cost of enforcement for these organisations?	£		
Does enforcement comply with Hampton principles?	Yes		
Will implementation go beyond minimum EU requirements?	No		
What is the value of the proposed offsetting measure per year?	£		
What is the value of changes in greenhouse gas emissions?	£		
Will the proposal have a significant impact on competition?	No		
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium      Large
Are any of these organisations exempt?	No	No	N/A      N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of    £	Decrease of    £	<b>Net Impact</b>	£

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Background

The principle of separation of advertising and editorial content has been present since the advent of commercial television in the UK in 1955. It was most recently reiterated in Ofcom's Broadcasting Code of May 2005, which in turn reflected the requirements of the TVWF Directive in this respect. The Directive has, in the UK and most other EU Member States, been interpreted as imposing a de facto prohibition on product placement (but not on prop placement, when there is no payment to the programme-maker for including a product or service in a programme).

However, commercial television revenues no longer rely solely on "spot" advertising. Other sources of revenue include sponsorship and interactive services, and programme costs may also be mitigated through the controlled use of prop placement. In a competitive environment, with a large number of providers of commercial television broadcasting services, and increasing competition from on-demand services, these revenues are widely spread. Commercial broadcasters are engaged in a constant struggle to maintain their revenues and develop new sources of revenue.

### Television broadcasting

Ofcom consulted on product placement in 2005-6. The consultation document<sup>13</sup> noted that, in the USA where product placement is not prohibited but on-screen disclosure is required, television accounted for about 55% of all product placement revenues (across the film, television and other media sectors) in 2004. Moreover, product placement revenue was growing faster than other media spending (over 30% across the film, television and other media sectors), but product placement still only accounted for 1% of total US advertising spending (\$2 billion out of a total of \$161 billion).

The latest US industry marketing forecasts indicate product placement growth of over 33% to \$2.9 billion in 2007. The sector expanded at around an annual compound growth rate of 41% from 2002 to 2007 and was expected to reach \$3.5 billion (a growth rate of 25%) in 2009<sup>14</sup>.

The European Commission's own impact assessment for the AVMS Directive noted that product placement "could generate substantial additional resources for the audiovisual value chain, starting from linear providers", and that "such resources could amount to €500 million", although no geographical area or time period is given<sup>15</sup>.

Sponsorship was first allowed in the UK in 1988 but it took 10 years for sponsorship to generate revenues of £50 million per annum. Between 1998 and 2004 sponsorship revenues grew from £51 million to £114 million (in real terms at 2004 prices). By 2004 sponsorship represented about 3% of total commercial television advertising and sponsorship revenues. Spot advertising revenues were around £3.5 billion of which commercial terrestrial television was responsible for £2.8 billion.

So while not insignificant, sponsorship revenues are clearly relatively small. However, as Ofcom noted in its 2005 consultation document, sponsorship (and potentially product placement) does offer additional flexibility to advertisers in attempting to communicate with viewers and so helps to retain advertising funding within the commercial television sector.

<sup>13</sup> *Product Placement: A consultation on issues related to product placement*, Ofcom, December 2005

<sup>14</sup> *Branded Entertainment Marketing Forecasts 2008-2012*, PQ Media, Stamford, 2008

<sup>15</sup> *Impact Assessment – Draft Audiovisual Media Services Directive*, COM(2005)646 final, European Commission, December 2005

On balance Ofcom concluded that if the US experience were replicated in the UK, product placement revenues might reach £100 million per annum (at 2005 prices). However, following the experience with the gradual build up of sponsorship revenues, and assuming some continued regulation of the market, most observers believed that revenues from product placement would only reach £25 to £35 million after around five years.

### **Video-on-demand**

Ofcom assessed total video-on-demand revenues at £66 million in 2006, although growing rapidly (by 50%), with video-on-demand delivered over the internet estimated to be worth £41 million and growing at 34%<sup>16</sup>. On a pro-rata basis, therefore, potential product placement revenues for video-on-demand services might eventually be worth £2 million (at 3%) or perhaps one third of that sum after five years. However, the figure is likely to be significantly lower, given the limited amount of content which is made specifically for video-on-demand services, although it would clearly grow in line with the growth in such content, which in turn is likely to grow rapidly in line with the projected overall rapid growth in video-on-demand services.

### **Prop Placement**

Prop placement is a small industry in the UK – around 12 companies providing television and film props which introduce realism into productions and reduce costs for producers<sup>17</sup>. These companies might be adversely affected if product placement replaces prop placement to any significant extent and if those seeking to place their products strike deals directly with broadcasters and programme- and film-makers. However, not all products will be suitable for 'paid for' product placement deals. Moreover, given their experience and knowledge of the market, prop placement companies may be well-placed to act as brokers for product placement deals between producers and programme-makers.

### **Competition Assessment**

Maintaining the prohibition on product placement has some theoretical implications for competition in a "dual regime" world in which imported programmes from outside the UK can contain product placement. The revenues from product placement would be captured in producer countries and their costs reduced. However, this could lead to reduced costs for television broadcasters and video-on-demand providers using such imports and where a high proportion of programmes are in the genres where such placement is concentrated. In practice, this situation already exists in relation to the programming from the USA which is carried by UK broadcasters. If other EU Member States were to permit product placement, the effects would increase. However, given the relatively modest size of product placement revenues, even in the USA, Ofcom concluded<sup>18</sup> that in practice such effects could reasonably be expected to be insignificant for at least the first few years.

Allowing product placement might also have implications for competition between broadcasters. Those using more UK productions would have greater access to a new source of revenue than those which are more reliant on imported programming. Ofcom noted that this would be likely to benefit the commercial PSB channels more, because they invest significantly more in UK-produced programming. However, even here, some would benefit more than others because they import less and produce more in-house. Broadcasters who are more reliant on bought-in programming might also suffer from any transfer of advertising revenues from traditional spot advertising to product placement. Again, in view of the relatively small amounts of revenue at stake, Ofcom took the view that the impact on competition was likely to be negligible.

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<sup>16</sup> BBC new on-demand proposals –Market Impact Assessment, Ofcom, January 2007

<sup>17</sup> Product Placement consultation document, Ofcom, December 2005

<sup>18</sup> Product Placement consultation document, Ofcom, December 2005

## **Small Firms Impact Assessment**

Smaller broadcasters, video-on-demand service providers and programme- and film-makers might benefit from the opportunity to develop a new revenue stream if product placement is allowed. However, the benefits might be limited if most product placement deals are with the major broadcasters, and for those smaller companies that use largely bought-in programming. Overall, though, the relatively small amounts of revenue which product placement is expected to generate, at least in the first few years, suggests that any impact on small firms is itself likely to be very small.

As noted above, prop placement companies might be affected by a decision to permit product placement in UK-made programming. However, any loss of business as a result of a decline in the prop placement market might be offset by gains if they are able to use their experience and knowledge to move into the 'paid for' product placement market.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

# Annexes

## Legal Aid

There might be an impact on the legal aid budget if any individuals were to seek legal aid in order to challenge in the Courts either the implementation arrangements for product placement in the UK or, in due course, a decision of Ofcom in relation to product placement. However, no challenges are anticipated, and the Government expects that all sides will work together to resolve any problems or disagreements without the need for legal action.

## Sustainable Development

There will be no impact on sustainable development from the requirements of the Directive and the options set out in the consultation document.

## Carbon Assessment

There will be no impact on carbon emissions from the requirements of the Directive and the options set out in the consultation document.

## Other Environment

Product placement is defined in Article 1(m) of the AVMS Directive as a form of 'audiovisual commercial communication', i.e. advertising. As such it must comply with the content standards applicable to audiovisual commercial communications, which are set out in Article 3e. These include the requirement that such communications shall not encourage behaviour grossly prejudicial to the protection of the environment.

## Health

Article 3g of the AVMS Directive explicitly prohibits product placement for

- tobacco products and cigarettes; and
- medicinal products and medical treatments which are available only on prescription.

In addition, as a form of audiovisual commercial communication, product placement must also comply with the requirement at Article 3e.1(f) that alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages.

It should also be noted that the AVMS Directive explicitly prohibits product placement in children's programmes, with the result that the requirement at Article 3e.2 for Member States to encourage media service providers to draw up codes of conduct regarding advertising of foods high in fat, salt and sugar during children's programmes becomes redundant in relation to product placement.

## Race / Disability / Gender Equality

As a form of audiovisual commercial communication, product placement is required by Article 3e of the AVMS Directive not to:

- prejudice respect for human dignity; or
- include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.

Product placement is also covered by the general requirement at Article 3b that audiovisual media services must not contain any incitement to hatred based on race, sex, religion or nationality.

In addition, continuing to allow UK broadcasters and video-on-demand service providers to show programmes made outside the UK which contain product placement, even if the prohibition on product placement in UK-made programming is maintained, will allow them to acquire and transmit programmes which appeal to particular ethnic and other minority communities and which contain product placement, e.g. programmes from Central and South America, Africa and South and East Asia.

### **Human Rights**

There will be no impact on human rights from the requirements of the Directive and the options set out in the consultation document.

### **Rural Proofing**

There will be no impact on rural issues from the requirements of the Directive and the options set out in the consultation document.