

*"Working for quality  
and diversity in  
British broadcasting"*



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## **VLV's Response to Consultation on Product Placement on Television**

*Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British Broadcasting system.*

### **INTRODUCTION**

Voice of the Listener & Viewer has been, and remains, strongly opposed to any increase in product placement in television programmes. In VLV's view it is vital to the health of broadcasting in the UK to maintain the clear separation between advertising and content which has been the hallmark of British television since the advent of ITV in 1955, and one of its greatest strengths.

Various recent events like the 'phone-in' scandals have in VLV's view seriously damaged trust in our public service broadcasters. As the former Secretary of State for Culture, Media and Sport Andy Burnham said earlier this year "There is a risk that product placement exacerbates this decline in trust and contaminates our programmes. There is a risk that, at the very moment when television needs to do all it can to show it can be trusted; we elide the distinction between programmes and adverts." VLV strongly agrees with the former Culture Secretary that there is an important line between the two which should not be crossed.

Far from adding to the 'authenticity' of programmes, as some in the industry have argued, product placement destroys trust; and the more 'subtle' that placement is the more likely the viewer is to be deceived.

In VLV's view there are two fundamental reasons why product placement in UK-made programmes should not be allowed: first, creative and editorial decisions can be skewed in order to provide opportunities for it; and second, viewers may not know when they are being sold to. Product placement is essentially surreptitious advertising, and ought not to be permitted in UK-made programmes.

VLV is deeply concerned at the present parlous financial state of the commercial public service broadcasters, which has already damaged programme standards. We fully understand why these companies are looking for new sources of revenue. But product placement is not the way forward. As is widely acknowledged by the industry it is unlikely to make up the shortfall in advertising revenue experienced by commercial broadcasters, as well as being wrong in principle.

VLV recognises that product placement already exists, most obviously in American feature films and television series broadcast here, but we see no reason why Britain should abandon its present ban on product placement in UK production. To do so would be to destroy our high reputation for honest programme making which gives our television programmes their high reputation and, we would argue, a competitive advantage in the world market.

VLV strongly believes that to allow the introduction of product placement in UK-made programmes will damage the reputation of the British television abroad, and further erode the trust that our citizens place in the television programmes they watch.

VLV urges the Government to reconsider, and reject this ill-advised proposal to sacrifice a principle on which British commercial television was founded for the sake of uncertain financial gain.

## VLV DETAILED RESPONSE TO DCMS CONSULTATION

“[M]indful of the need to maintain public trust in television broadcasters and British television’s reputation for high standards, the Government has concluded that no conclusive evidence has been put forward that the economic benefit of introducing product placement is sufficient to outweigh the detrimental impact it would have on the quality and standards of British television and viewers’ trust in it.”

“Therefore the Government has decided to maintain the status-quo so that product placement will continue to be prohibited in television programmes made by and for UK television broadcasters”

Rt Hon Andy Burnham, MP, Secretary of State for Culture, Media and Sport,  
11 March 2009 (Written Statement to Parliament)

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

The AVMS Directive's first statement on the subject of product placement is in Recital 62 which baldly states 'Product Placement should, in principle, be prohibited' It does not say product placement should be permitted. Only after that initial statement does it go on to provide for derogation under certain conditions, plainly to embrace and regulate the needs of member states which have already permitted product placement.

But the overriding thrust is a prohibition, not permission. The derogation then attempts to bring existing practice under regulatory control, but the over-arching principle does not give encouragement to such expansion. The March 2009 UK ban on product placement followed precisely the principle of the Directive now enshrined in UK law.

Voice of the Listener & Viewer agrees with the former Secretary of State for Culture, Media and Sport Andy Burnham, that the introduction of product placement would have a detrimental impact on the quality and standards of British television and the viewers’ trust in it. As Ofcom observed in October 2006, in its summary of the responses which it received to its own consultation on product placement:

“From a viewer perspective, whilst some individual respondents were prepared to accept that audiences were sufficiently sophisticated to cope with product placement, consumer and viewers organisations were opposed to the concept. Voice of the Listener and Viewer (VLV), NCC, Sustain, Public Voice, National heart Forum (NHF), and Campaign for Press and Broadcasting freedom (CPBF) all stated that the prohibition on product placement should be retained. In most cases the primary reason was a belief that the blurring of separation between advertising and programming would be to the detriment of viewers, in contravention of Ofcom’s primary duty to further the interests of citizens.” (Ofcom, *Product Placement. Summary of responses to consultation issues relating to product placement*, 18 October 2006, paragraph 3.5)

*VLV has seen no evidence since that date to justify the apparent intention of the new Secretary of State, the Rt Hon Ben Bradshaw, MP, to overturn the current ban on product placement in UK television programmes. VLV therefore takes the view that the ban should remain in place, in addition to those safeguards required by the AVMS Directive.*

Moreover, VLV considers that the requirements of the AVMS Directive, are irrelevant to any proposed change in European law, as the UK has already implemented the requirements of the AVMS Directive through the agency of the *Audiovisual Media Services Regulations 2009* [Statutory Instrument 2009: 2979]

VLV therefore considers that the Government will be unable to use the European Communities Act in order to introduce product placement into UK television programmes. This is because section 2 (1) of the European Communities Act only applies to “liabilities, obligations and restrictions from time to time created or arising by or under the [European] Treaties.” [Emphasis in the original] The key difference between video-on-demand services and television programmes is that prior to the enactment of the *Audiovisual Media Services Regulations 2009*, product placement in video-on-demand services was unregulated in the UK, whereas product placement in television programmes was already banned, thus fulfilling the requirements of article 3g of the AVMS Directive.

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

VLV considers that the ban on product placement should remain in place, in order to avoid advertiser-contamination of TV programmes.. That ban is currently enforced by means of the Ofcom Code, which draws its authority from section 319 of the 2003 Communications Act. Moreover, article 3 of the 2003 Communications Act states that Ofcom’s principal duty in carrying out their functions is “to further the interests of citizens in relation to communications matters”. As Ofcom observed in its 2006 consultation on product placement,

“In most cases the primary reason [why viewer organisations like VLV argued for a retention of the ban on product placement] was a belief that the blurring of separation between advertising and programming would be to the detriment of viewers, in contravention of Ofcom’s primary duty to further the interests of citizens.” [as cited above]

VLV therefore considers that any proposal by the Government to remove the current prohibition on product placement in television programmes, will have to be imposed by primary legislation. This is because (a) the change is not required by the AVMS Directive; and (b) it will require Parliament to remove or to amend article 3 of the 2003 Communications Act.

### **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?**

Although the DCMS Consultation Document alleges that financial benefits of between £25m and £140m per annum will arise from the introduction of product placement into television programmes, there seems to be no empirical evidence to substantiate these assertions. The alleged benefits seem simply to have been pulled out of the air. Does the DCMS have further empirical data to back up the size and scale of these alleged benefits?

Moreover, the alleged benefits appear to take no account of the potential reduction in advertising and sponsorship revenues for broadcasters, which might well occur if product placement is allowed. Today, commercial communications is a sophisticated business, which seeks to use television advertising, programme sponsorship, product placement and other forms of audiovisual commercial communication, such as tele-shopping, in order to increase the sales of goods and services. Many advertising agencies are concerned that some advertisers may well reduce their television advertising expenditure in order to switch it to product placement. In 2006, Ofcom reported a disagreement between advertisers and advertising agencies on the putative benefits of product placement. In its report on public responses to its consultation on the possible introduction of product placement, Ofcom reported that

“[T]he Institute of Practitioners in Advertising (IPA) were concerned about any potential impact on the value of sponsorship to advertisers and noted that their members suggested revenue projections for product placement should be conservative – approx. £40million. ISBA

[the Incorporated Society of British Advertisers] commented that ...whilst spot advertising was likely to remain one of the most powerful tools available to advertisers, it would be important to find other ways to engage with viewers as they began to avoid advertisements.” (Paragraph 3.18)

Thus it would seem that estimates about the financial benefits to broadcasters and producers, which might arise from the introduction of product placement into television programmes, are by no means as reliable as the DCMS Consultation Paper implies. It seems likely that any estimate of putative financial benefits

- Should be conservative;
- Could impact adversely on broadcasters’ revenues, not only from a loss of advertising revenue, but also from less programme sponsorship.

But in addition any financial benefit which might accrue to broadcasters, would come at a high price in other ways. Viewers would be denied their freedom to avoid advertisements, by removing the traditional separation between programmes and audiovisual commercial communications, thus requiring them, either to engage with product placement which had been paid for by advertisers, or to switch to a non advertiser-funded programme.

Moreover, it would be necessary for the UK to upgrade its syllabus in media literacy substantially in order to take account of this change in the UK regulatory framework.

VLV considers that it is important to see the international dimensions of this struggle by broadcasters and advertisers to introduce commercial messages into British television programmes. It is already obvious that the introduction of product placement would lead to the Americanisation of British television. As the EU Commissioner Viviane Reding told Secretary of State Andy Burnham on 11 December 2008,

“As regards product placement in television and in non-linear audiovisual media services, I would like to stress that the liberalisation was introduced into the Audiovisual Media Services Directive in particular to allow broadcasters and producers to find additional or alternative sources of financing and hence to improve the level playing field with US competitors.” [Letter on DCMS web-site]

But, *pace* Commissioner Reding, there is no evidence that UK broadcasters actually need product placement in order to compete in the global marketplace. As Ben Bradshaw, the current Secretary of State noted in September 2009, the UK production sector “makes the UK the world’s largest programme exporter after the US and by far the leading exporter of programme formats with over half of the global market.” (Ben Bradshaw’s speech to the Royal Television Society, 16 September 2009)

Indeed, there is no evidence whatsoever that UK viewers actually want advertisers to engage with them by means of product placement. It could well be that the inclusion of product placement would actually dissuade viewers from watching UK television programmes, thus reducing the viewing figures and the revenue from foreign programme sales. Denmark, for instance, has already banned the use of product placement in its television programmes. VLV recognises that many UK viewers do watch some foreign programmes which may already contain product placement that UK broadcasters have purchased from elsewhere – usually the USA. But most viewers also recognise them for precisely what they are: that is, programmes which have been produced in the USA, which reflect, and normally celebrate, the culture of that foreign country on the other side of the Atlantic. Moreover, UK viewers are also protected from the worst excesses of product placement in American television programmes by the prohibition of “undue prominence” in the Ofcom code.

In addition, it is clear from Ofcom’s research that although most UK viewers actually prefer to watch UK-originated programmes, their loyalty to national films and series is conditional. What most UK

viewers want is the full range of public service content, and they would prefer it to be widely available from more than one provider – i.e. ITV, Channel Four and Five, as well as the BBC. Thus they look to UK-originated programmes, not simply because they are an end in themselves, but so that they can receive the full range of public service broadcasting (*Ofcom's Second Public Service Broadcasting Review. Putting Viewers First*, January 2009, paragraphs 3.5 – 3.6, and 3.11 – 3.18)

VLV therefore submits that the introduction of product placement would not necessarily increase the production of UK-originated public service broadcasting programmes and indeed might militate against it. If the UK Government does wish to introduce product placement, VLV submits that it should first require the UK's commercially-financed public service broadcasters to demonstrate which of their public service programme genres would not be detrimentally affected by the introduction of product placement.

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

Yes, by commissioning proper independent research, which studies the relationships between all forms of audiovisual commercial communication. We consider that it is significant that in their evidence to Ofcom, the main UK public service broadcasters – ITV, SMG, UTV and Channel TV - submitted that it was more appropriate to treat product placement like sponsorship. (*Ofcom Product Placement*, 18 October 2006, paragraph 3.44.)

VLV therefore submits that the wide range of estimates could be narrowed by deducting from any alleged financial benefits from the introduction of product placement, an amount which takes account of the likely reduction in programme sponsorship.

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

VLV has no evidence on this. If it exists, then the DCMS should publish it before making a decision on product placement.

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

VLV has no evidence on this.

#### **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?**

As VLV has argued in our response to question 1, this consultation has nothing to do with the AVMS Directive. The Directive merely provides a number of derogations from the overall ban on product placement required by article 3g (1) of the Directive. Moreover, as we argued in our response to question 3, most UK viewers only value UK-produced programmes which deliver public service programming.

VLV therefore considers that the Government should place the onus on the nation's commercially-funded public service broadcasters to show in which programme genres the introduction of product placement would not be detrimental to public service programmes. On the face of it product placement would appear to be detrimental to the production of most genres of programmes, especially news and current affairs programmes, religious programmes, consumer programmes, historical drama programmes, contemporary comedy and satirical programmes, game shows, and some sports programmes.

**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?**

Yes.

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

If introduced, product placement should only be allowed in fictional films and series which purport to portray contemporary drama. It should be banned in historical films and series – i.e. those which portray any events before 1997. Nor should product placement be allowed in programmes which employ child performers (i.e. those aged 16 or under), such as actors, dancers or musicians.

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

Yes. The term ‘sports programmes’ needs to be more specific.

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

What is a sport? The official aim of the DCMS is “[t]o improve the quality of life for all through cultural and sporting activities ...”

VLV submits that product placement could undermine commercial sponsorship of sporting events. It should therefore be prohibited for:

- Any amateur sports event, including the Olympic Games
- Any professional sports events which is not organised and regulated by a national sporting body,
- Any sports event in which a child is participating, and thus any coverage of the event which would be likely to attract child viewers.
- Any local or regional sporting event, in which product placement might undermine any putative commercial sponsorship of the event itself.

**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?**

Yes.

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

VLV considers that product placement should be banned from:

- ‘Reality shows’ which claim to portray real events
- Satirical or comedy programmes, as they are especially susceptible to creative interference or limitation by advertisers
- Game shows, in which participants compete for prizes, as these would almost certainly infringe the prohibition on ‘undue prominence’ (see our response to question 20.)

**14. Should there be a specific prohibition of product placement in**

- **religious programmes**

Yes.

- **news programmes;**

Yes.

- **current affairs programmes;**

Yes.

- **consumer programmes;**

Yes. or

- **any other specific type of television programme?**

*All other types of programme – see our responses (above).*

## **Children**

### **15. Should any or all product placement be restricted or prohibited in programmes with a disproportionately high child audience?**

*Yes. Article 3g of the AVMS Directive already bans product placement in children's programmes. This prohibition, which is obviously designed to protect children, makes no sense if it does not include all programmes watched by children. Imagine, for instance, a UK-commissioned TV series based on the character of Harry Potter, or the teenage Adrian Mole. Many children would undoubtedly want to watch it – even if their parents did not want them to – and they would thus be wide open to commercial exploitation.*

*Moreover, as yet the UK has not yet even begun to establish a programme of media literacy for all children, which would alert them to the dangers of product placement in family programmes or series featuring children.*

### **16. If so, how should that assessment be made in advance of a programme being broadcast?**

*One way would be to ban product placement in any programme which features children, or child performers.*

*Moreover, if the Government insists on allowing the introduction of product placement into TV programmes, the task of pre-broadcast assessment must be linked to the requirement in the AVMS Directive for the presence of product placement to be signalled in advance to the viewer - only in this case it must also be signalled to the parent of the child viewer. As we shall argue in our response to questions 34 to 37, notification must extend beyond the programme itself to all trails, advertisements, and programme listings relating to the programme.*

### **17. How could a 'disproportionately high child audience' be defined?**

*VLV has no comment on this question, except to say that the AVMS Directive clearly seeks to protect all children from the negative effects of product placement, not just a 'disproportionately high' audience of children.*

### **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**

*Yes.*

### **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?**

*Greater, because any restriction will also have to take account of narrative context in which HFSS foods or alcohol are consumed. Consider, for example a situation in which a child character – or even an adult whom the child admires – consumes HFSS foods or alcohol. How could the regulator establish a code of practice for the dramatic regulation of such events? In order to prevent negative influences arising from product placement, they would have to establish complex rules – which in some cases could be well-meaning but ridiculous rules - for playwrights and screenwriters.*

Consider, for example, the dramatic contortions required during the 1930s by the Production Code Office of the Motion Picture Association of America (the Hays Office). These covered the portrayal of politicians, lawyers and doctors, and of 'fallen women'. These rules required that whenever there was a portrayal of undesirable behaviour by politician, lawyer or doctor, then the film also had to include a scene- or scenes - of 'compensating moral value' which was designed to re-establish the moral reputation of members of that profession. A similar arrangement was introduced for the portrayal of 'fallen women' - including real historical people, such as Lady Hamilton and Marie Walewska, the mistress of Napoleon. In these cases, screenwriters were required to add scenes in which fallen women

were shown to regret bitterly any earlier extra-marital sexual activity. It would be possible for the regulator to introduce similar rules for any programmes which contained scenes involving the consumption of HFSS foods or alcohol, although any such arrangement might be difficult to implement.

The need for a complex system of rules about the use of product placement highlights the pressures that would be continually applied on scriptwriters and producers. It would also have a serious impact on the creativity which we are so keen to promote as a world-leading attribute of British television. By levelling the product placement playing field the better to compete with countries such as the US we would in fact deny British television programme makers the creative advantage they at present enjoy.

### **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?**

Very simply: by continuing to prohibit product placement.

Moreover, although advertisers may have a commercial imperative to persuade audiences to recognise the products and services that have been placed within programmes, the AVMS Directive has sought to protect viewers from that commercial imperative by prohibiting any ‘undue prominence’ in programmes wholly or partly funded by product placement. Thus the Directive has extended the UK’s previous prohibition on ‘undue prominence’ in two directions. First, it has extended the prohibition from the UK to every other Member State; and second, it has extended Ofcom’s prohibition on ‘undue prominence’ to all programmes, whether or not they contain prop placement. Thus the prohibition on undue prominence has been extended to all programmes shown on television from whatever source, which contain either prop placement or product placement.

Article 1 (h) of the AVMS Directive defines “audiovisual commercial communication” as  
*“images with or without sound which are designed to promote, directly or indirectly, the goods, services, or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, tele-shopping and product placement.”*  
[Emphases added]

This means that audiovisual commercial communication includes all images, with or without sound, which are designed to promote indirectly and for self-promotional purposes, the goods service or image of an entity pursuing an economic activity. Moreover forms of audiovisual commercial communication include any activity for self-promotional purposes, and extend beyond advertising, sponsorship or product placement, regardless of whether payment is involved. *They therefore include any prop placement which is designed to promote, directly or indirectly, the goods, services, or image of a natural or legal entity pursuing an economic activity.*

In addition, article 3 (e) (1a) of the AVMS Directive, prohibits surreptitious audiovisual commercial communication. (a term which can – but need not always -include prop placement). Moreover, Recital 60 of the Directive explains that “Surreptitious audiovisual commercial communication is prohibited because of its negative effect on consumers.”

Furthermore, article 3g (2c) of the AVMS Directive only permits derogation from the overall ban on product placement provided, *inter alia*, that the product in question does not have undue prominence. Finally, the prop placement, which is allowed by the second indent of article 3g (2) as an exception to the overall prohibition on product placement in article 3g (1), only refers to the free of charge provision of certain goods or services “with a view to their inclusion in a programme”. Thus the derogation does not permit their inclusion ‘in order to permit a form of surreptitious audiovisual commercial communication’, for if it did, it would contradict article 3(e) (1a) of the Directive. VLV therefore submits that the AVMS Directive prohibits undue prominence whether it arises from prop placement or product placement. This is because:

- (a) Undue prominence of prop placement is *de facto* surreptitious advertising, since the prop is placed in a manner which is designed to promote directly or indirectly, the goods, service or image of a natural or legal entity pursuing an economic activity; and
- (b) Undue prominence of product placement is prohibited absolutely.

With regard to type (a) - the prohibition of undue prominence in prop placement – VLV submits that the precise UK definition of ‘undue prominence’ should be linked *both to* the prohibition of ‘surreptitious audiovisual commercial communication’ in article 3 (e) (1a) of the Directive *and to* the definition of the term ‘audiovisual commercial communication’ in article 1 (h). For prop placement becomes a surreptitious audiovisual commercial communication if it promotes, either directly or indirectly, the goods, services, or image of a natural or legal entity pursuing an economic activity. The regulator will obviously have to form its judgements on a case by case basis.

It is also important to note that article 3e (1) of the AVMS Directive requires Member States to ensure that audiovisual commercial communications provided by media service providers under their jurisdiction [in this case all UK-licensed TV services] comply with all the requirements of article 3e, which includes the prohibition on surreptitious audiovisual commercial communication in article 3e (1)(a). Thus the ban on surreptitious advertising also extends to programmes which have been sub-licensed from elsewhere by the television broadcaster, as well as to programmes produced or commissioned by the UK television broadcaster itself. Thus the prohibition extends to all programmes which the UK-licensed television broadcasters have sub-licensed whether they come from inside or from outside the EU. .

Within the EU, article 2a (1) of the AVMS Directive only ensures freedom of reception of audiovisual media services which have been licensed by other Member States. It does not require the UK to accept any ruling which has already been handed down by the regulator in another Member State, about the undue prominence of goods, services, or corporate image within an individual programme. Thus when a UK-licensed broadcaster wishes to broadcast a programme which has already been screened elsewhere in the EU, for example in Austria or Luxembourg, but which the UK regulator considers to exhibit ‘undue prominence’, there is no requirement in the AVMS Directive for the UK regulator to accept the previous classification of any other Member State. Indeed, article 3 (1) of the Directive allows Member States to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by the Directive. *A fortiori*, the UK can also set its own standards of ‘undue prominence’ for programmes which have been purchased by UK-licensed TV broadcasters from producers established outside the EU, e. g. in the USA.

Thus it will be necessary for the UK regulator to establish its own standards of undue prominence, both for programmes produced outside the UK which are shown on UK-licensed TV services, and for programmes produced or commissioned by UK-licensed broadcasters which contain either prop placement or product placement – or indeed have been sponsored.

*VLV submits, therefore, that regardless of any commercial imperative, no programme which is broadcast by a UK-licensed broadcaster should be entitled to contain prop or product placement which exhibits ‘undue prominence.’.*

*Prima facie* it would seem possible for the regulator to establish standards which will enable the broadcaster to judge in advance whether any specific reference to the goods, services or the image of the provider has been given undue prominence. Although consumer and viewer groups advised Ofcom in 2006 that they disputed the ability of broadcasters to self-regulate, Ofcom concluded that this aspect of future product placement regulation would involve a fair amount of debate and work. [*Ofcom, Product Placement*, 18 October 2006, paragraphs. 3.33 and 3.34] *VLV is currently prepared to co-operate and to participate in any ongoing discussions about this issue.*

**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?**

In its response to the previous question, VLV emphasised that in order to prevent surreptitious audiovisual commercial communication, the regulator should prohibit the undue prominence of any commercial service or corporate image in a television programme, as well that of any product. If this submission is accepted, then the question of what constitutes illegitimate ‘direct encouragement’ can be discussed in relation to both products and services.

From a viewer’s perspective, there is a fine line between ‘undue prominence’ and ‘direct encouragement’. The former often works by implication, by allusion, or by example, whereas the latter encourages viewers by more direct methods. It is useful, however, to distinguish between those programmes which purport to portray a fictional world of the imagination, and those programmes that purport to portray the real world. The latter may be further subdivided between those programmes which are shot in the TV studio and those which are shot on location.

Viewers clearly realise that fictional programmes are accounts of fictional events. Nevertheless, they frequently identify with the emotional experiences of fictional characters, or even with the characters themselves. They can imitate their behaviour, attempt to purchase the products which the characters buy, or seek to use the same services. The division between the unduly prominent portrayal of an object and the direct encouragement to buy it can be wafer-thin.

A plain girl in a fictional television series buys a new silk dress. The story focuses on the quality of the dress, the store from where she buys it, and the make of the dress. The girl goes out, meets a handsome man whom she fancies, and he in turn compliments her on her appearance, and in particular on her elegant dress. He invites her out for a drink and a meal. They get on well together. There might also be a later scene when the girl tells her friend about her evening out, and how impressed the man was by her new dress, or helpful the shop assistant in the store had been. This scenario would almost certainly constitute undue prominence for the dress. But it might also constitute direct encouragement to buy that the particular dress, or to use that particular store *Thus VLV submits that, in fictional programmes, the regulator should seek to render unnecessary a separate criterion of ‘direct encouragement for the purchase or hire of goods or services’ by establishing a suitably rigorous threshold for determining undue prominence.*

The prominence of goods, services, or image in factual programmes is a far more serious issue, since even though a programme may purport to portray the real world, in fact nearly every programme is planned and constructed in order to give a highly mediated image of the real world. Particular locations are selected, and some are even redecorated, perhaps in corporate colours, or to incorporate corporate logos. Individual products are featured, services are chosen, modes of travel are promoted, and pre-chosen cooking products are featured. The opportunities for illegitimate ‘direct encouragement’ to purchase or hire goods or services are even more numerous and even greater. *VLV considers that it would be impossible for the regulator to anticipate every form of direct encouragement in factual programmes, and therefore product placement should continue to be banned.*

Moreover, since the derogation in the first indent of article 3g (2) of the AVMS Directive makes no specific mention of factual programmes, *VLV submits that it would be wrong for the UK Government to infer from the loose wording of that indent, that product placement should be allowed in factual programmes. Furthermore, as VLV has noted above, article 3 (1) of the Directive allows the UK Government to require UK television to comply with more detailed or stricter rules in the fields coordinated by the Directive.*

**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?**

*Yes. A simple statement, in line with article 3e (1) (a) of the AVMS Directive, which says that that all UK-licensed TV broadcasters are forbidden to broadcast any surreptitious audiovisual commercial*

communications, and that any programmes which are sponsored or contain product placement, shall be readily recognisable as such.

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

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

Yes.

**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?**

All three should be subject to outright prohibition.

**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?**

No.

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

No.

### **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?**

There are two categories of effects. The first would be on the commercial relations between broadcasters and potential commissioners of audiovisual commercial communication. The second would be the effects on viewers. They require different research methods. The latter cannot be separated from the UK's progress in implementing a media literacy programme which has been designed for both adults and children.

The results of academic research on the effects of exposure to audiovisual media are complicated, and any research would need proper control samples. Although the issue requires further discussion, one possible way would be to compare the effects of these programmes on the buying habits of viewers – both adults and children – who had been provided with detailed media education about the UK system of regulating product placement, and those who had not.

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

If product placement is introduced, it would be desirable to conduct research into the effects of product placement on viewer behaviour. VLV considers that this should both be funded and carried out in an independent manner, preferably by an academic research institution. Ofcom's budget could be one source of funds

### **Other types of product**

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

Yes.

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

All products that, by common consent, are damaging to society. A list of such products to be developed as part of the regulation of product placement.

**Terms of trade**

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

VLV has no comment.

**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?**

VLV has no comment.

**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?**

If the ban on undue prominence were strictly enforced in relation to all programmes, with regard to both to prop placement and product placement, then it might enhance the ability of broadcasters to charge advertisers for what was previously prop placement.

**Signalling product placement to viewers**

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

Recital 60 of the AVMS Directive requires that the viewer must be *adequately informed* of the existence of product placement, and article 3g (2) (d) requires that they shall be *clearly informed* of the presence of product placement. Moreover,

Recital 64 requires that the elderly and people with a disability have a right to participate and to be integrated in the social and cultural life of the community, a requirement that is inextricably linked to the provision of accessible audiovisual media services. The means to accessibility should, include, but need not be limited to, sign language, subtitling, audio-description.

Thus VLV considers that any notification must at least be both adequate and clear, and accessible to elderly and disabled people.

**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?**

Viewers normally choose which programme to watch or to record in one of three ways:

- By surfing the available channels at a given moment in time;
- By watching a trail of the programme by the broadcaster;
- By reading a preview of the programme in the press; or
- By identifying the programme in a listings magazine.

VLV therefore considers that viewers should be notified of the presence of product placement in a programme prior to the opening credits of a programme, in all programme trails and advertisements for the programme, in all TV listings, in all non-broadcast forms of advertising. Moreover, any TV broadcaster which schedules a programme containing product placement, should be required to ensure that all reviewers of TV programmes who are provided with advance copies of the programme are informed about the presence of product placement in a programme, and that they should require

all newspapers, journals and magazines to whom they sublicense the right to publish their programme schedules, to include an appropriate logo against each and every programme which contains product placement.

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

Yes.

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

Yes. Every notification must be both clear and adequate for viewers. This indicates that there should be a minimum size of the typeface on the screen in order to inform the elderly and audio description to inform the visually impaired. Where necessary, there should also be either be additional sign language or subtitling.

### **Thematic placement**

**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?**

Yes. For example, thematic placement by a trade association could constitute both surreptitious advertisement and an audiovisual commercial communication as defined by article 1h of the AVMS Directive.

**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?**

Yes.

### **Negative and simulated placements**

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

Yes.

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

Yes.

24 December 2009