

Summary: Intervention & Options

Department /Agency: DCMS	Title: Impact Assessment of legislative options for implementing the EU AVMS Directive: Product Placement on Television	
Stage: Consultation	Version: Partial	Date: November 2009
Related Publications: Impact assessment of legislative options for implementing the EU AVMS Directive – product placement.		

Available to view or download at:

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

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

The EU Audiovisual Media Services Directive (AVMS) has changed EU law on product placement in EU-made TV programming. As a result Member States may allow it in certain types of programme, subject to safeguards. They must however prohibit it in other types of programme. The Government must legislate to ensure compliance with this prohibition and the EU safeguards. Ofcom's Broadcasting Code has prohibited TV product placement until now, in line with EU law as it was before the AVMS Directive. Implementing the Directive therefore offers an opportunity to revise our rules so as to allow television companies and programme makers to take advantage of product placement while providing robust safeguards for viewers and consumers.

What are the policy objectives and the intended effects?

There are three policy objectives

- to comply with the terms of the AVMS Directive
- to allow television companies and programme makers to take advantage of product placement;
- to provide robust safeguards for viewers and consumers.

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 3.

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

2012

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:

BEN BRADSHAW

Date: November 2009

Summary: Analysis & Evidence

Policy Option: 3

Description: Prohibit product placement in all UK-made programming

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs to broadcasters and programme makers in complying with the regulatory safeguards on television product placement. Not assessed, but likely to be small in relation to the total financial benefits to them.
	One-off (Transition)	Yrs	
	£		
	Average Annual Cost (excluding one-off)		
	£		Total Cost (PV) £
Other key non-monetised costs by 'main affected groups' Possible risks to programme quality and to the separation of editorial and advertising content, and possible risks to health and welfare arising out of product placement of certain types of product. These would affect viewers and consumers in general.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Removing the current prohibition of product placement will allow tv broadcasters and programme makers to develop a new revenue stream. Previous consultation has shown no clear consensus on the size of this revenue stream - figures between £25m and £100m a year are most widely quoted.
	One-off	Yrs	
	£		
	Average Annual Benefit (excluding one-off)		
	£ £25m - £100m		Total Benefit (PV) £ £25m - £100m
Other key non-monetised benefits by 'main affected groups' The availability of additional revenue through product placement would make it easier for television broadcasters and producers to maintain the quality and diversity of programming which viewers expect.			

Key Assumptions/Sensitivities/Risks

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?	UK
On what date will the policy be implemented?	March 2010
Which organisation(s) will enforce the policy?	Ofcom
What is the total annual cost of enforcement for these organisations?	This will depend on the extent to which product is permitted.
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	Possibly
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

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £	Net Impact £

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 EU law in this respect (in the TVWF Directive – see next section). The TVWF was interpreted in the UK and most other EU Member States 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 legitimate sources of revenue in the UK 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.

The Audiovisual Media Services Directive (AVMS)

The AVMS Directive (2007/65/EC) has replaced the TVWF Directive. EU Member States are required to bring its provisions into force by 19 December 2009. In contrast to the TVWF Directive, AVMS makes specific provision allowing television product placement. Under Article 3g, Member States are required to introduce a formal prohibition of product placement on television, but may then if they choose derogate from that, so as to permit product placement in any or all of the programme genres of ‘cinematographic works’, ‘films and series made for (television) services’, ‘sports programmes’ and ‘light entertainment programmes’.

Member States may not however permit product placement in children's programmes, even if these are in one of the four specifically ‘permitted’ genres. If a Member State allows television product placement, it must ensure that

- the content and scheduling of the programmes which contain it must not be affected in such a way as to affect the responsibility and editorial independence of the broadcaster;
- programmes which contain product placement shall not directly encourage purchase or rental of goods or services which have been ‘placed’, in particular by making special promotional references to them;
- programmes which contain product placement do not give undue prominence to the product; and
- viewers are clearly informed of the existence of product placement. Programmes which contain product placement must be ‘appropriately identified’ at the start and at the end, and after any advertising breaks.

Previous consultations

DCMS conducted a three month consultation on the implementation of the AVMS Directive between July and October 2008. A total of 59 responses were received. Of these, 43 responded to the questions on product placement, the highest level of interest generated by any part of the consultation. Most of the responses came from television broadcasters, on-demand service providers and advertising organisations, who were mostly in favour of allowing product placement. A significant minority of responses came from organisations representing children's, consumer, health and viewer's interests, who were mostly opposed to product placement.

Programme makers, commercial broadcasters and advertisers argued that product placement would give broadcasters a new source of revenue. Responses provided a range of assessments of the value of this revenue. Ofcom's assessment in December 2005 of the revenue of product placement in the UK market was that most observers thought it might be worth around £25-£35m after five years. Respondents believed that the expected revenue would help maintain investment to ensure quality and diversity of programmes on British television. They also argued that rules ensuring that products are not unduly prominent in programmes would make sure that product placement did not detract from viewers' enjoyment. .

The responses in respect of product placement demonstrated that there is a lack of clear information, and agreement, about the extent of the commercial impact which allowing product placement on television might have. Estimates put forward by industry ranged widely from £25m-£30m to as high as £140m. Other respondents doubted whether product placement would have any significant economic impact. (The Department has not made any estimate of the value of product placement.) It is also not clear if any increase in revenue from product placement would be displacing revenues from other streams such as spot advertising and sponsorship.

Consumer and viewer groups argued that allowing product placement in television programmes would bring about a blurring of the distinction between advertising and editorial content in television programmes which would undermine the trust viewers have in the integrity of UK-made programming. It was also argued that allowing product placement would risk undermining the creative integrity of writers. Others were concerned that product placement could weaken the effectiveness of our restrictions on the promotion to children of foods high in fat, salt or sugar. Some proposed that the only way to ensure that children would not be exposed to alcohol and HFSS food promotion was a complete ban on product placement on television. Others added that product placement of HFSS foods should be prohibited in sport and in popular entertainment shows as well as children's programmes.

Ofcom consultation 2005-6

Ofcom consulted on product placement in 2005/6. 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. A recent paper by the European Parliament also concludes that product placement is likely to remain a modest source of income.¹

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 given².

Sponsorship was first allowed in the UK in 1988 and 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. If product placement does generate significant revenues

¹ Advertising Rules and Their Effects under the New Audiovisual Media Services Directive, 04/2009, Directorate General For Internal Policies, European Parliament, 2009.

² *Impact Assessment – Draft Audiovisual Media Services Directive*, COM(2005)646 final, European Commission, December 2005

it may encourage service provider to commission as it constitutes an additional source of revenue, this might imply an increase in production levels.³

Video-on-demand

This impact assessment does not concern product placement on video-on-demand services. Under the Directive, and in UK regulations, product placement will continue to be permitted in video-on-demand, subject to safeguards.

Product placement will also continue to be permitted in films, and in television programmes acquired from outside the UK, subject to the limitations and safeguards imposed by the Directive. Prop placement will continue to be permitted in all television and video-on-demand programmes, subject to the requirements of the Directive and to guidance from Ofcom, and the new video-on-demand co-regulatory body that is being established.

Prop Placement

Prop placement is a small industry in the UK – around 12 companies, represented by the recently-formed trade body, the Association of Entertainment Marketing Agencies - providing television and film props, either at no cost or at reduced rates, which introduce realism into productions and reduce costs for producers⁴. 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 concluded⁵ 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.

³ Advertising Rules and Their Effects under the New Audiovisual Media Services Directive, 04/2009, Directorate General For Internal Policies, European Parliament, 2009.

⁴ Product Placement consultation document, Ofcom, December 2005

⁵ Product Placement consultation document, Ofcom, December 2005

Possible health impacts

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.

Small Firms Impact Assessment

Smaller broadcasters 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 modest 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.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
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	Yes	No
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.

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.

Allowing UK broadcasters 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.