



Channel Sponsorship

A consultation on the sponsorship of television
channels and radio stations

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Section 1

Summary

- 1.1 Ofcom is the regulator for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services. Ofcom's statutory duties are largely derived from the Communications Act 2003 ("the Act").
- 1.2 Ofcom is required by the Act to set standards for content included in radio and television services, including sponsorship on radio and television. The standards for sponsorship are derived from specific standards objectives in the Act and, additionally for television, from European legislation - the Television Without Frontiers ("TWF") Directive. A summary of the legal provisions relevant to this consultation is set out in Annex 5 of this document.
- 1.3 The standards for broadcast sponsorship are set out in Section 9 of Ofcom's Broadcasting Code ("the Code"), which was published in May 2005. It should be noted that this section of the Code does not apply to BBC services funded by the licence fee or grant in aid.
- 1.4 Programme sponsorship has existed in the UK for over 15 years. Previous codes covering broadcast sponsorship arrangements contained rules prohibiting the sponsorship of television channels and radio stations ("channels"). One of the questions Ofcom asked when it consulted on the content of the Code was whether it was appropriate to maintain the prohibition on channel sponsorship. Most respondents believed this restriction should be removed. Additionally, research conducted in 2005 showed that viewers were likely to accept channel sponsorship as a funding source for television.
- 1.5 Following publication of the Code, Ofcom stated that, subject to further internal consideration, it intended to permit channel sponsorship.
- 1.6 Before allowing such activity Ofcom needs to determine what, if any, rules are needed to ensure channel sponsorship arrangements are compatible with the existing rules relating to programme sponsorship.
- 1.7 This consultation document sets out the issues surrounding channel sponsorship and offers options for addressing each issue, including those preferred by Ofcom.
- 1.8 Ofcom's preferred option in all cases is to make only minor amendments to the Code and use guidance to explain how the existing principles and rules that currently apply to programme sponsorship will apply to channel sponsorship arrangements.
- 1.9 Ofcom's preferred options are:
 - 1.9.1 in relation to ensuring that channel sponsorship arrangements do not result in the indirect sponsorship of content which cannot be sponsored (e.g. news), Ofcom proposes to prohibit sponsorship of channels that carry such content;
 - 1.9.2 in relation to ensuring that channel sponsorship arrangements are transparent, Ofcom proposes to amend the Code rules to include channel sponsorship arrangements and prohibit the incorporation of sponsor names into the channel name;

- 1.9.3 in relation to ensuring credits for channel sponsors do not result in undue prominence for the sponsor, Ofcom proposes to make no changes to the Code but issue guidance on how undue prominence can be avoided;
- 1.9.4 in relation to ensuring the principles relating to programme sponsorship apply equally to channel sponsorship, Ofcom proposes amending the wording of the principles to include all broadcast sponsorship arrangements;
- 1.9.5 in relation to ensuring that credits for channel sponsors are kept separate from other output, Ofcom proposes to make no changes to the Code.

1.10 Ofcom would like responses to this consultation in particular from:

- interested members of the public;
- those who represent the interests of people who watch television or listen to radio and sound programmes including those representing minorities;
- broadcasters regulated by Ofcom;
- companies, professional organisations, associations, bodies, groups or individuals who represent the interests of those who will have to take account of the new sponsorship standards;
- advertisers, agencies, sponsors or others involved in broadcast sponsorship;
- companies, professional organisations, associations, bodies, or individuals who work in the broadcasting sector or related sectors; and
- other regulators.

Section 2

Background

- 2.1 In October 2004, Ofcom consulted on a new Broadcasting Code (“the Code”). In the draft Code that formed part of the consultation, one of the proposed rules prohibited the sponsorship of television channels and radio stations (“channels”).
- 2.2 Sponsorship of channels had previously been prohibited by the legacy regulators. For television, this prohibition was based on the interpretation of the TWF Directive definition of sponsorship¹, which refers to sponsorship in terms of programmes but does not mention channels. Likewise, the Act refers to sponsorship (on radio and television) only with reference to “programmes”.
- 2.3 On both media, channel sponsorship had been considered unacceptable because of concerns over the sponsor’s possible influence on the editorial content of the service and the possibility that some services may carry unsponsorable/restricted content, e.g. news (news cannot be sponsored on radio or television) and children’s programmes (these cannot be sponsored by alcohol brands)
- 2.4 One of Ofcom’s duties under the Act is to ensure that unnecessary regulation is not maintained².
- 2.5 We have re-examined the TWF Directive and the provisions in the Act relating to sponsorship. Whilst there are no provisions which explicitly allow for channel sponsorship, the legislation does not appear explicitly to prohibit it. The European Commission’s Interpretative Communication³ indicates that if in doubt about how to interpret the TWF Directive then it will tend towards a more liberal approach i.e. permitting an activity.
- 2.6 One of the questions asked during the Code consultation was whether it was appropriate to retain the prohibition on channel sponsorship. The majority of respondents who expressed a view on this issue considered the prohibition unnecessary.
- 2.7 Additionally, Ofcom has carried out research⁴ as part of its project looking at the deregulation of future funding sources for television. The research indicates that viewers are likely to accept channel sponsorship as a funding mechanism for commercial television. A summary of the research was published with Ofcom’s consultation on product placement⁵.
- 2.8 Ofcom published its new Broadcasting Code in May 2005. Because of the views expressed on channel sponsorship during the consultation, the Code did not contain a rule prohibiting this activity. In the statement published to accompany the Code,

¹ Sponsorship is defined in the Directive as “... any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products.”

² Communications Act 2003 Section 6 (1).

³ European Commission Interpretative Communication on Certain Aspects of the Provisions on Televised Advertising in the ‘Television without Frontiers’ Directive, 23 April 2004 (Annex 7).

⁴ The Future Funding of Television, 18 July 2005, Human Capital Media Strategy & Research.

⁵ Product Placement Consultation published 19 December 2005 - (http://www.ofcom.org.uk/consult/condocs/product_placement)

Ofcom stated that it intended to, subject to further internal discussions, permit channel sponsorship. However, before doing so, it may be necessary to develop some further rules around this specific area.

- 2.9 The purpose of this consultation is to determine what rules, if any, are necessary to facilitate channel sponsorship whilst ensuring such arrangements are compatible with both the Act and the TWF Directive.

Section 3

Issues

- 3.1 This section sets out the issues we believe need to be considered in relation to channel sponsorship. It should be read in conjunction with the analysis presented in Section 4. We would welcome your comments on these issues (see Annex 1 on how to respond).
- 3.2 Section 9 of the Code (Annex 6) contains principles and rules which apply to programme sponsorship. We want to consider to what extent these or similar rules and principles may usefully be applied to channel sponsorship to ensure that Ofcom's regulatory duties are met.

Principles

- 3.3 We need to consider how the principles that relate to programme sponsorship will apply to channel sponsorship.
- 3.4 The principles relating to programme sponsorship are:
- transparency – to ensure sponsorship arrangements are transparent;
 - separation – to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and
 - editorial independence – to ensure that the broadcaster maintains editorial control over sponsored programmes and that programmes are not distorted for commercial purposes.
- 3.5 These principles form the cornerstones of the regulation of broadcast sponsorship and are drawn from the Act and the TWF Directive.

Content that cannot be sponsored

- 3.6 We need to consider what, if any, rules should apply to the sponsorship of channels that carry unsponsorable and restricted content.
- 3.7 The Code states that:
- News bulletins and news desk presentations on radio, and news and current affairs programmes on television, cannot be sponsored. (Rule 9.1)
 - No programme on radio or television may be sponsored by a sponsor that is not allowed to advertise on that medium, with the exception of betting and gaming companies. (Rule 9.2)
 - Betting and gaming companies must not sponsor programmes aimed at people under eighteen. (Rule 9.3)
 - Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium. (Rule 9.4)
- 3.8 This means that no news (and, for television, current affairs) programmes can be sponsored. Also, certain genres of programmes cannot be sponsored by certain products (e.g. an alcohol brand cannot sponsor a children's programme).

- 3.9 These rules help to ensure that editorial integrity is maintained and protect audiences from unsuitable sponsorship. They are based on the requirements of the Act and, for television, the TWF Directive.
- 3.10 To ensure compliance with the rules any channel sponsorship arrangement should not include, or appear to include, content that is unsponsorable.

Transparency

- 3.11 To ensure sponsorship arrangements on television are transparent, the Code includes the following requirements:
- Sponsorship must be clearly identified at the beginning and/or end of the programme (Rule 9.7)
 - The relationship between the sponsor and the programme must be transparent (Rule 9.8)
- 3.12 and, on radio:
- Credits must be broadcast as appropriate during longer sponsored output for the degree of transparency required (Rule 9.9)
- 3.13 If channels are sponsored, the relationship between the sponsor and the channel should be clear to the audience.
- 3.14 Under current rules, broadcasters have a degree of creative freedom in how they choose to identify sponsorship arrangements. Programme sponsorship is identified in a number of ways, ranging from a very explicit sponsorship message e.g. “programme X is sponsored by sponsor Y” to the incorporation of the sponsor name in a programme title e.g. “Gillette World of Sport”.
- 3.15 The interpretation of past sponsorship codes placed restrictions on how sponsorship was identified e.g. by prohibiting phrases, such as “brought to you by”, that could be perceived to suggest that the sponsor had undermined the broadcaster’s editorial responsibilities. As audiences have become more familiar with, and accepting of, programme sponsorship the codes have become less prescriptive in relation to sponsorship messages. The current Code requires only that sponsorship is identified and does not specify how this should be achieved.
- 3.16 Channel sponsorship is a new concept for audiences and we need to consider how such arrangements can be identified whilst ensuring that the audience understands the nature of the sponsorship and can distinguish channel sponsorship from other sponsored output (e.g. programme sponsorship) as well as other arrangements (e.g. a channel owned by, and named after, a brand better known in another field e.g. Saga Radio).

Separation

- 3.17 We need to consider what, if any, rules are needed to ensure channel sponsor credits are appropriately separated from editorial content and advertising.
- 3.18 The specific rules in the Code that relate to separation apply only to television, as they are derived from the requirements of the TWF Directive. These rules are:
- 3.19 Sponsorship credits must be clearly separated from programmes by temporal or spatial means (Rule 9.13).

- 3.20 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party (Rule 9.14).
- 3.21 The rules are based on the TWF Directive requirements relating to the separation of advertising from programming, the amount of advertising and the requirement that sponsored programmes may not be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster.
- 3.22 While there are no specific rules on how sponsor credits on radio should be separated from other output, the principle of separation applies and is enforced through the requirement that sponsorship must be identified clearly and sponsor credits must be short branding statements (Rule 9.10). These rules ensure sponsor credits on radio are distinct from programming and advertising.

Undue Prominence

- 3.23 We need to consider whether additional rules and/or guidance are needed to prevent channel sponsorship credits giving undue prominence to the channel sponsor.
- 3.24 The Code contains no specific rules for television concerning the size and/or duration of sponsorship credits. For radio, credits should be short branding statements.
- 3.25 However, the Code does require that there should be no undue prominence of products and services within programmes (Rule 10.4). Because sponsor credits form part of programming, they are subject to this rule.
- 3.26 In the guidance that accompanies the Code, we have stated that the size and/or duration of a sponsor credit should not give undue prominence to the sponsor. Undue prominence may occur, for example, if the size and/or duration of a credit is disproportionate to that of the sponsored output e.g. a ten minute credit for a short sponsored strand.
- 3.27 For programme sponsorship, credits can be placed only around the sponsored programme. Because of the nature of channel sponsorship, there are no natural limits on when and where credits can be placed.

Section 4

Application of the Broadcasting Code to channel sponsorship arrangements.

- 4.1 This section identifies the existing rules in the Code relevant to programme sponsorship arrangements and considers how they might be applied to channel sponsorship. It outlines the policy options available to Ofcom, in particular in the context of Ofcom's statutory duties. It lays out the benefits and disadvantages of each option and includes Ofcom's preferred option.
- 4.2 Ofcom will generally carry out an Impact Assessment (IA) if our proposals are likely to have a significant effect on businesses or the general public or where there is a major change in Ofcom's activities. Given that the change to allow channel sponsorship has already been discussed in the context of the changes to the Broadcasting Code, Ofcom does not consider that the proposals contained in this document represent a major change in Ofcom's activities or are likely to have a significant effect on businesses or the general public. Therefore a formal quantifiable IA is not required. However we have set out the benefits and advantages of each option in an IA format to assist stakeholders in their understanding of the issues and arguments involved.
- 4.3 You should send any comments on this consultation to us by the closing date. We will consider all comments before deciding whether to implement our proposals.

A. How to ensure the principles relating to programme sponsorship apply equally to channel sponsorship.

- 4.4 The principles ensure programme sponsorship arrangements are transparent, do not affect the editorial integrity of the broadcaster/programme maker and keep credits separate from both programming and advertising.
- 4.5 They are based on the requirements of both the Act and the TWF Directive.
- 4.6 The Code currently refers to the principles in terms of programme sponsorship only. We need to consider whether it is necessary to amend the wording to make clear that the principles relate to all broadcast sponsorship arrangements.

Option A1 – Leave the current wording unchanged.

- 4.7 Guidance can be issued explaining that the principles apply to all sponsorship arrangements.

Benefits

- Administrative - no changes to the Code will be necessary.

Disadvantages

- Lack of clarity and of regulatory certainty – it will not be clear to readers of the Code that the principles apply to channel sponsorship arrangements.

Option A2 – Amend wording to include all broadcast sponsorship arrangements.

Benefits

- Clarity/regulatory certainty – immediately clear to stakeholders that channel sponsorship arrangements must adhere to the principles.

Disadvantages

- Administrative burden – changes to the Code will be necessary and these changes will need to be disseminated to those who use the Code.

Recommendation

- 4.8 Because we believe the benefits of providing regulatory certainty outweigh the disadvantage of amending the wording of the Code, Ofcom's preferred option is A2.

Question

1. Do you agree with Ofcom's proposal to amend the wording to reflect that the principles apply to all sponsorship arrangements?
If not, how should Ofcom make it clear that the principles apply to channel sponsorship arrangements?

B. How to ensure channel sponsorship arrangements do not result in the unacceptable sponsorship of unsponsorable content.

- 4.9 Not all programmes can be sponsored (e.g. news) and some companies are restricted from sponsoring certain types of programmes (e.g. alcohol brands sponsoring children's programmes).
- 4.10 We need to consider if and what rules are needed to ensure channel sponsorship arrangements do not result in the unsuitable sponsorship of prohibited and restricted output.

Option B1 - Allow sponsorship of all channels, regardless of output.

Benefits

- Deregulatory – this is the least restrictive option and will open channel sponsorship to all channels.

Disadvantages

- Transparency and compliance with Rules 9.1-9.4 of the Code – because of the restrictions placed on the sponsorship of certain types of content, this option is only viable if the sponsorship is seen not to relate to the programmes on the channel i.e. its content. There is an argument that sponsorship of a channel will be seen to relate to the channel's identity (i.e. the channel name) and not to its content. If this is the case, it may be possible for those channels that carry content that cannot be sponsored to have their name sponsored. However, there is no certainty that audiences will understand this subtle, and somewhat obscure, distinction and we believe that channel sponsorship will be perceived to encompass programmes, including those that cannot be sponsored. This is particularly likely to be the case if the majority of a channel's content is unsponsorable (e.g. a rolling news channel) or where unsponsorable content is integrated in continuous programming (e.g. on radio).
- Indirect sponsorship of unsponsorable content – the way in which revenue raised from a channel sponsorship arrangement is allocated may result in the indirect

sponsorship of unsponsorable programmes. If the revenue goes towards funding the content of the channel (including material which is unsponsorable), the arrangement is likely to breach the Code.

- Legal certainty – any arrangement that leads to the sponsorship of unsponsorable content (or the perception of it) is legally untenable.
- Administrative burden – to demonstrate channel sponsorship revenue has not funded unsponsorable content, broadcasters may need to provide an audit trail.

Option B2 - Allow channel sponsorship subject to the proportion of sponsorable content on the channel.

4.11 This option will mean prohibiting/restricting sponsorship on channels where the majority of output consists of unsponsorable/restricted programming e.g. no sponsorship on news channels, no alcohol sponsorship on children's channels. Sponsorship on channels where the majority of output consists of sponsorable content would be permitted provided it was clear that the arrangement did not apply to the unsponsorable content on the channel. One way of achieving this could be to prohibit credits from appearing around unsponsorable output.

Benefits

- Deregulatory - will facilitate channel sponsorship for the majority of channels.

Disadvantages

- Impact on content – channels could be discouraged from carrying news (and, for television, current affairs).
- Transparency and compliance with Rules 9.1-9.4 of the Code - it may not be clear to the audience that the sponsorship arrangement does not apply to all content. (see B1 above)
- Increased regulatory burden – Ofcom would need to consider, and issue rules/guidance on, what proportion of a channels content must be suitable for sponsorship before a channel sponsorship arrangement can be entered into.
- Indirect sponsorship – see B1 above
- Legal certainty – see B1 above
- Administrative burden – see B1 above

Option B3 - Place an absolute prohibition on the sponsorship of channels that carry any unsponsorable content (e.g. news) and restrict the type of sponsor on channels that carry certain categories of programmes (e.g. childrens).

Benefits

- Legal certainty/transparency – the rules relating to unsponsorable and restricted content are derived from the statutory requirements that editorial independence is maintained on television and the desirability that it is maintained on radio. Also that the unsuitable sponsorship of programmes included in television and radio services is prevented. For television, the sponsorship of news and current affairs is specifically prohibited by the TWF Directive. This option ensures that channel sponsorship does not lead to, or will be perceived to apply to, unsponsorable content.
- Regulatory certainty - while channels that carry unsponsorable content could not be sponsored as a whole, licensees will continue to be free to offer sponsorship of all other (unrestricted) content.

Disadvantages

- Proportionality - this may have a disproportionate effect on radio stations, the majority of which carry some news content.
- Impact on content – see B2 above

Recommendation

- 4.12 Ofcom's preferred option is B3 for the reasons stated. However, if stakeholders believe channels that carry unsponsorable content can be sponsored without the sponsorship being perceived as applying to such content, we would welcome workable proposals from them on how this might be achieved.

Question

*2. Do you agree with Ofcom's proposal to prohibit channel sponsorship on channels that carry unsponsorable content?
If not, please give reasons and suggest how channels that carry unsponsorable content can be sponsored without the sponsorship including, or appearing to include, this content.*

C. How to ensure channel sponsorship arrangements are transparent

- 4.13 The Code requires sponsorship arrangements to be clearly identified and the relationship between the sponsor and programme to be transparent.
- 4.14 For programme sponsorship, credits should appear at the beginning and/or end of the programme.
- 4.15 For programmes, ways of identifying sponsorship can vary. Creative descriptions such as 'powered by' to describe a programme sponsorship arrangement or the use of sponsor names in programme titles appear to pose no concerns for audiences who are now very familiar with programme sponsorship and are aware that broadcasters are responsible for the content they transmit. Channel sponsorship will be a new concept for audiences.
- 4.16 We need to consider whether additional specific rules are needed to ensure channel sponsorship arrangements are clearly identified.

Option C1 - Make no change to the Code's existing rules on transparency and explain in guidance that the rules apply to all sponsorship arrangements. Let broadcasters decide when and how channel sponsorship is identified; including allowing the incorporation of sponsor names into channel names e.g. the Acme Channel.

Benefits

- Least intrusive option - allows broadcasters freedom to identify channel sponsorship in the way that they consider most appropriate for their audience.
- Administrative - no changes to the Code will be necessary.

Disadvantages

- Potential audience confusion - inexplicit sponsorship messages may not make clear the nature of the sponsorship arrangement. In addition, if sponsors' names are allowed to appear as part of the channel name, the audience may be confused as to

who is responsible for the content. While audiences are familiar with channels owned by brands that are better recognised in another field (e.g. Hallmark, Saga), in these cases the brand owner is also the licensee who has editorial responsibility for the material it transmits.

- Administrative burden - there may be issues for platform providers who may need to change Electronic Programme Guide listings each time a channel changes its sponsor/name. Additionally, variations to the broadcaster's licence may be required each time a channel changes sponsor/names for which Ofcom may need to charge an administrative fee.

Option C2 - Make no change to the Code's existing rules on transparency but use guidance to prohibit the incorporation of sponsor names into channel names.

4.17 Guidance can be used to explain that the rules apply to all sponsorship arrangements. A separate rule would not be needed to exclude channel names incorporating sponsors' names as this could be applied using existing rules, with guidance explaining why we consider such arrangements are incompatible with the rules.

Benefits

- Administrative - no Code changes required.

Disadvantages

- Lack of clarity – existing wording suggests that the rules apply to programme sponsorship arrangements only. It may be unclear to Code users whether the rules apply to channel sponsorship.
- Legally challengeable – it may be difficult for Ofcom to find a breach under the Code of a rule that refers only to programmes.

Option C3 – Amend the Code rules on transparency to include channel sponsorship. Use guidance to explain why the inclusion of a sponsor name in the channel name is incompatible with the rules (see option C2 above).

Benefits

- Clarity – immediately clear to Code users that the rules apply to both channel and programme sponsorship arrangements
- Enforceable – see above.
- Flexible – if, as audiences become more familiar with channel sponsorship, it appears that the incorporation of a sponsor's name in a channel title is unlikely to result in issues regarding transparency and editorial integrity, this option would allow Ofcom to relax its interpretation of the rules at a later date.

Disadvantages

- Administrative burden – changes to the Code required

Option C4 – Include a specific rule prohibiting channel names incorporating sponsor names e.g. “Sponsor names must not form part of the name of the sponsored service”

Benefits

- Clarity – a clear statement that sponsor names in channel titles are incompatible with the Code.

Disadvantages

- Unnecessary regulation – the objective can be achieved through guidance.
- Administrative burden – changes to the Code required.
- Inflexible - see C3 above

Recommendation

4.18 Ofcom’s preferred option is C3 for the reasons stated.

Questions

3. *Do you agree with Ofcom’s proposal to amend the Code rules on transparency to include channel sponsorship? If not, how should Ofcom make it clear that the transparency rules apply to channel sponsorship arrangements?*

4. *Should broadcasters be allowed to name their service after a sponsor e.g. The Acme Channel? Please give reasons for your answer.*

D. How to ensure credits for channel sponsors are kept separate from other output

4.19 The Code rules relating to the separation of sponsorship credits on television require credits to be clearly separated from programme content and be distinct from advertising. These are:

4.20 Sponsorship credits must be clearly separated from programmes by temporal or spatial means. (Rule 9.13)

4.21 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party (Rule 9.14)

4.22 We need to consider whether specific rules and/or guidance are needed to ensure channel sponsor credits are sufficiently separated from programming and advertising.

Option D1 – Make no change to the existing rules on separation.

4.23 These rules can apply equally to channel sponsorship, in terms of both principle and wording.

Benefits

- Simplicity - broadcasters already understand the need to separate sponsor credits from other content.
- Administrative – no Code changes required.

Disadvantages

- None identified

Option D2 – Include a rule specifying that channel sponsorship credits should be separated from other content e.g. “credits for channel sponsors must be kept separate from both programmes and advertising”.

Benefits

- Clarity

Disadvantages

- Unnecessary regulation
- Administrative burden – changes to the Code required

Recommendation

- 4.24 Ofcom preferred option is D1. Because the rules relating to separation can apply equally to channel sponsorship, we consider additional rules and guidance in this area unnecessary.

Question

5. Do you agree with Ofcom’s proposal to make no amendment to the Code regarding the separation of sponsorship from advertising and programming? If not, please give reasons.

E. How to ensure credits for channel sponsors do not result in undue prominence for the sponsor

- 4.25 There are currently no specific limits on how large or how long a sponsor’s credit can be. However, the Act and the TWF Directive require that programmes should not be distorted for commercial purposes. To this end, the Broadcasting Code contains a rule that prohibits undue prominence of commercial products and services within programmes. This rule applies to sponsor credits.
- 4.26 We need to consider whether specific rules are necessary to prevent a channel sponsor’s credit creating an unacceptable level of prominence for the sponsor.

Option E1 - Make no changes to the Code. The size and length of credits is a matter for the broadcaster.

Benefits

- Least intrusive option - undue prominence rules would still apply to credits and will limit exposure for the sponsor.

Disadvantages

- Regulatory uncertainty - broadcasters will be unsure as to exactly how prominent credits can be.

Option E2 - Make no changes to the Code but issue guidance on how undue prominence for the sponsor can be avoided.

Benefits

- Clarity - greater certainty for broadcasters.
- No administrative burden - no Code amendments needed.

Disadvantages

- Difficult to enforce - broadcasters cannot be found in breach of guidance (but undue prominence rule must be complied with).

Option E3 - Include a specific rule in the Code limiting the size and/or duration of channel sponsor credits

Benefits

- Clarity – clear rule for broadcasters to comply with.

Disadvantages

- Unnecessary regulation – the objective can be achieved by existing rules (possibly amended) and guidance.

Recommendation

- 4.27 Ofcom's preferred option is E2. Neither the Act nor the TWF Directive contains specific requirements in relation to sponsor credits. However, both require that the editorial independence of the broadcaster is maintained and that programmes are not distorted for commercial purposes. We believe that excessively large or long sponsor credits could distort programming and the prominence of credits should therefore be considered.
- 4.28 Because of the existing undue prominence rule, we do not consider it necessary to introduce additional rules to the Code but instead will consider issuing guidance explaining how undue prominence can be avoided.

Question

6. Do you agree with Ofcom's proposal to make no amendment to the Code but to publish guidance on the acceptable level of prominence for channel sponsor credits?
If not, please give reasons.

F. Other Issues

- 4.29 We believe that the options recommended by Ofcom in each case are in line with Ofcom's statutory duties under the Act. We believe they provide transparency for stakeholders, are proportionate and maintain consistency in the application of regulation under the Code and the TWF Directive.

Question

7. Have we correctly identified the significant issues surrounding the regulation of channel sponsorship?
If not, what other matters should Ofcom take into account that are not raised in this consultation?

Section 5

Responses

5.1 In particular, Ofcom would like responses to this consultation from:

- interested members of the public;
- those who represent the interests of people who watch television or listen to radio and sound programmes including those representing minorities;
- broadcasters regulated by Ofcom;
- companies, professional organisations, associations, bodies, groups or individuals who represent the interests of those who will have to take account of the new sponsorship standards;
- advertisers, agencies, sponsors or others involved in broadcast sponsorship
- companies, professional organisations, associations, bodies, or individuals who work in the broadcasting sector or related sectors;
- other regulators.

Annex 1

Responding to this consultation

How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 20 April 2006**.

Ofcom strongly prefers to receive responses using the online webform at <http://www.ofcom.org.uk/consult/condocs/sponsorship/form> as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), among other things to indicate whether or not there are confidentiality issues. This response cover sheet is incorporated into the online webform.

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Julia Snape
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA

Fax:020 7981 3806

Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online webform but not otherwise.

It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

If you have any queries or want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Suzanne Wright on 020 7981 3864.

Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate Annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer.

Next steps

Following the end of the consultation period, Ofcom intends to publish a statement in the autumn.

Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, who is Ofcom's consultation champion:

Vicki Nash
Ofcom Scotland
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW
Tel: 0141 229 7401
Fax: 0141 229 7433
Email: vicki.nash@ofcom.org.uk

Annex 2

Ofcom's consultation principles

Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.1 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

During the consultation

A2.2 We will be clear about who we are consulting, why, on what questions and for how long.

A2.3 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.4 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.5 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.6 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

A2.7 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online webform if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of the online webform at <http://www.ofcom.org.uk/consult/condocs/sponsorship/form>.
- A3.5 Please put any confidential parts of your response in a separate Annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: Channel Sponsorship

To (Ofcom contact): Julia Snape

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate Annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

Annex 4

Consultation questions

1. Do you agree with Ofcom's proposal to amend the wording to reflect that the principles apply to all sponsorship arrangements?

If not, how should Ofcom make it clear that the principles apply to channel sponsorship arrangements?

2. Do you agree with Ofcom's proposal to prohibit channel sponsorship on channels that carry unsponsorable content?

If not, please give reasons and suggest how channels that carry unsponsorable content can be sponsored without the sponsorship including, or appearing to include, this content.

3. Do you agree with Ofcom's proposal to amend the Code rules on transparency to include channel sponsorship?

If not, how should Ofcom make it clear that the transparency rules apply to channel sponsorship arrangements?

4. Should broadcasters be allowed to name their service after a sponsor e.g. The Acme Channel? Please give reasons for your answer.

5. Do you agree with Ofcom's proposal to make no amendment to the Code regarding the separation of sponsorship from advertising and programming?

If not, please give reasons.

6. Do you agree with Ofcom's proposal to make no amendment to the Code but to publish guidance on the acceptable level of prominence for channel sponsor credits?

If not, please give reasons.

7. Have we correctly identified the significant issues surrounding the regulation of channel sponsorship?

If not, what other matters should Ofcom take into account that are not raised in this consultation?

Annex 5

Relevant Legislation

Communications Act 2003

Section 6 Duties to review regulatory burdens

(1) OFCOM must keep the carrying out of their functions under review with a view to securing that regulation by OFCOM does not involve-

- (a) the imposition of burdens which are unnecessary; or
- (b) the maintenance of burdens which have become unnecessary.

Section 319 Ofcom's Standards Code

Under Section 319, Ofcom has a statutory duty to ensure that:

- the international obligations of the United Kingdom with respect to advertising included in television and radio services are complied with (Section 319 (2)(i));
- the unsuitable sponsorship of programmes included in television and radio services is prevented (Section 319 (2)(j)).

In setting Standards Ofcom must have regard to the desirability of maintaining the independence of editorial control over programme content (section 319 (4)(f))

Standards set by OFCOM to secure the objectives mentioned in section 319(2)(i) and (j) -

- must include general provision governing standards and practice in advertising and in the sponsoring of programmes; and
- may include provision prohibiting advertisements and forms and methods of advertising or sponsorship (whether generally or in particular circumstances). (Section 321)

Television Without Frontiers (TWF) Directive

Section 319 (2)(i) of the Act requires Ofcom to ensure television broadcast sponsorship complies with the provisions of the Television Without Frontiers (TWF) Directive.

Article 17 of the Directive relating to sponsored programmes requires the following:

- the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;
- they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;
- they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.
- News and current affairs programmes may not be sponsored.

Channel Sponsorship

Article 10 of the Directive requires television advertising to be readily recognisable as such and kept separate from other parts of the programme service.

Articles 11 and 18 specify when advertising can be shown and for how long.

Annex 6

Section 9 of Ofcom's Broadcasting Code

(Relevant legislation includes, in particular, section 319(2)(i) and (j) and 319(4)(e) and (f) of the Communications Act 2003, Articles 1(e), 10(1) and 17 of the Television Without Frontiers Directive, and Article 10 of the European Convention on Human Rights.)

This section of the Code does not apply to BBC services funded by the licence fee or grant in aid.

Principle

To ensure that the unsuitable sponsorship of programmes on radio and television is prevented, with particular reference to :

- transparency – to ensure sponsorship arrangements are transparent;
- separation –to ensure that sponsorship messages are separate from programmes and to maintain a distinction between advertising and sponsorship; and
- editorial independence – to ensure that the broadcaster maintains editorial control over sponsored programmes and that programmes are not distorted for commercial purposes.

Rules

Meaning of "sponsored programme" and "sponsor":

A sponsored programme, which includes an advertiser-funded programme, is a programme that has had some or all of its costs met by a sponsor with a view to promoting its own or another's name, trademark, image, activities, services, products or any other direct or indirect interest.

Costs include any part of the costs connected to the production or broadcast of the programme.

A sponsor is any public or private undertaking (other than the broadcaster or programme producer), who is sponsoring the programme or programming in question with a view to promoting their or another's name, trademark, image, activities, services, products or any other direct or indirect interest. This meaning extends to those who are otherwise supplying or funding the programme.

Content that may not be sponsored

9.1 The following may not be sponsored:

- news bulletins and news desk presentations on radio; and
- news and current affairs programmes on television.

Meaning of "current affairs programme(s)":

A current affairs programme is one that contains explanation and analysis of current events and issues, including material dealing with political or industrial controversy or with current public policy.

Prohibited and restricted sponsors

9.2 No programme on radio or television may be sponsored by a sponsor that is not allowed to advertise on that medium, with the exception of betting and gaming companies.

9.3 Betting and gaming companies must not sponsor programmes aimed at people under eighteen.

9.4 Sponsorship on radio and television must comply with both the advertising content and scheduling rules that apply to that medium.

The content of sponsored programmes

9.5 A sponsor must not influence the content and/or scheduling of a programme in such a way as to impair the responsibility and editorial independence of the broadcaster.

9.6 There must be no promotional reference to the sponsor, its name, trademark, image, activities, services or products and no promotional generic references. The sponsor must also not have any other direct or indirect interest in the editorial content of the sponsored programme. Non-promotional references are permitted only where they are editorially justified and incidental.

Meaning of “promotional reference”:

This includes, but is not limited to, references that encourage, or are intended to encourage, the purchase or rental of a product or service.

Sponsorship credits

Television and radio

9.7 Sponsored programmes must be clearly identified as such by reference to the name and/or logo of the sponsor at the beginning and/or end of the programme.

9.8 The relationship between the sponsor and the sponsored programme must be transparent.

Radio

9.9 During longer sponsored output, credits must be broadcast as appropriate to create the degree of transparency required.

9.10 Credits must be short branding statements. However, credits may contain legitimate advertising messages, except credits for betting and gaming companies.

9.11 Credits must be cleared for broadcast in the same way as advertisements.

9.12 Programme trails are treated as programmes and the same sponsorship rules apply.

Television

9.13 Sponsorship credits must be clearly separated from programmes by temporal or spatial means.

9.14 Sponsorship must be clearly separated from advertising. Sponsor credits must not contain advertising messages or calls to action. In particular, credits must not encourage the purchase or rental of the products or services of the sponsor or a third party.

9.15 Where a programme trail contains a reference to the sponsor of the programme, the sponsor reference must remain brief and secondary.

Annex 7

Extract from the European Commission's Interpretative Communication on Certain Aspects of the Provisions on Televised Advertising in the "Television without Frontiers" Directive

This Communication, which follows on from the Commission's Communication on the future of European regulatory audiovisual policy adopted on 15 December 2003, aims to clarify how the relevant provisions of the Directive apply to certain forms and techniques of commercial communication which have emerged in parallel with technological and market developments. In doing so, the Commission is seeking to increase legal certainty for economic operators, Member States and consumers. In view of the fact that some provisions are open to interpretation and given the absence of relevant case law, the approach rests on the "*in dubio pro libertate*" principle.