

## Section Nine

# Sponsorship

## I General Summary of Responses

### Responses to the Consultation

We have received substantive responses from the BBC, ITV, Channel 4 and Five, S4C, UKTV, ITN, Capital Radio, Chrysalis, the Commercial Radio Companies Association, EMAP, Discovery Networks Europe, Trustar, Kanal 5, Enteraction TV, ZIP TV, the Radio Advertising Clearance Centre (RACC), National Lottery, European Sponsorship Association, the Association of International Broadcasters (AIB), Satellite and Cable Broadcasters Group (SCBG), the Institute of Practitioners in Advertising (IPA), Incorporated Society of British Advertisers (ISBA), the Association for Television On-Demand Ltd (ATVOD), the Church of Ireland Broadcasting Committee, the Churches' Media Council, the Evangelical Alliance, the Christian Broadcasting Council, National Secular Society, Community Media Association, United Christian Broadcasting, MediaWise, mediawatch-uk, Ligali, Maranatha, Public Voice, Campaign for Press and Broadcasting Freedom, the RNIB, the Institute of Fundraising, the Advertising Association (AA), Sustain, Olswang, Freedom Media, CSV Media, the Periodical Publishers' Association (PPA) and a number of individuals. There were 12 confidential responses.

### Positive Responses

ITV, Channel 4, Five and S4C all welcome Ofcom's efforts to simplify existing regulations in this area. However, concern is expressed that the BBC is exempt from this part of the Code.

Trustar welcomes the simplification of the sponsorship rules.

Radio advertising pre-clearance organisation the RACC believes that no material or detrimental changes have been made and the wording of the proposed amended rules is clear and easily understood for practical interpretation purposes.

Freedom Media welcomes the relaxation of regulation as it will give freedom to independent producers to gain alternative sources of production funding.

SCBG welcomes Section Nine: Sponsorship and Section Ten: Commercial References and Other Matters as offering commercial opportunities but suggests the proposed changes in the Code offer limited growth in sponsorship income.

United Christian Broadcasting believes Christian broadcasters need to be able to raise funds by a variety of means and this section enables this to happen.

### Calls for a Reduction in Regulation and Restrictions

The Branded Content Marketing Association urges Ofcom to go as far as possible to discontinue the restrictions on sponsorship and commercial references. It claims that getting rid of unnecessary regulation is crucial for the continued health of the TV and radio industries.

The European Sponsorship Association notes that other media is not subject to regulation but this does not seem to lead to any great problems. It endorses a relaxation to sponsorship rules whilst maintaining high quality TV and radio.

An individual argues that there is good reason for Ofcom to take a positive deregulatory stance in the field of advertising, as advertisers and sponsors have shown themselves to be responsible over the long term.

Discovery Networks Europe believes that further liberalisation should take place and that broadcast television should not be at a disadvantage relative to the Internet and 3G systems especially given the net decline in spot advertising.

The European Sponsorship Association believes there is scope for Ofcom to further liberalise the rules for broadcast sponsorship in the UK.

### **Ofcom response**

We recognise that sponsorship is an important, and growing, source of revenue for broadcasters. To help facilitate growth in this area we have tried, wherever possible, to reduce the amount of detailed regulation, but have retained the rules we believe necessary to ensure the requirements of the TWF Directive and the Act are met. Following the consultation, we have further amended some of the rules in this area. These changes are detailed in this document.

## **Sponsorship**

### **II Preamble**

This section of the Code does not apply to the BBC.

#### **Responses to the Consultation**

The BBC suggests this phrase be replaced with “This section of the Code does not apply to BBC services funded by the licence fee or grant in aid or to programmes supplied by the BBC to S4C as part of the statutory provision”.

S4C does not believe that the BBC should continue to be exempted from this section and that any programmes produced by the BBC to be broadcast on S4C must comply with this section.

Chrysalis Radio suggests that Ofcom urge the government to amend its agreement with the BBC so that the provisions of the Code relating to sponsorship and commercial references are made equally applicable to the BBC as to other broadcasters.

Channel 4 and Five also believe that the BBC should be subject to these rules.

### **Ofcom response**

We have amended the preamble to clarify that this section does not apply to BBC services funded by the licence fee or grant in aid. The BBC, S4C and Ofcom have been able to clarify the position regarding those programmes supplied by the BBC to S4C as part of the statutory provision. Such programmes must comply with the Broadcasting Code in its entirety as no separate provision has been made in legislation to exclude them.

It is not for Ofcom to decide whether this section of the Broadcasting Code should or should not apply to the BBC. If it were to apply to the BBC, then the Government would need to issue a notification to this effect. However, it should be noted that the BBC does not carry sponsorship on its services.

### **III 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.

Editorial independence - to ensure that the broadcaster maintains editorial control over sponsored programmes.

*Meaning of 'unsuitable sponsorship':*

*Unsuitable sponsorship is sponsorship that infringes any provision of this section of the Code.*

## **Responses to the Consultation**

### **General Remarks**

Public Voice strongly supports the principle. It recognises that this section of the Code does not simply prohibit organisations from making inputs, but prohibits these being directly linked to some measure of benefit to that organisation. However, Public Voice is concerned that the definitional net is wide and inclusive and could impact on voluntary organisations. It would prefer a much less all inclusive definition of sponsorship that makes clear reference to commercial gain as the principal exclusion

AIB accepts the principle but seeks to ensure that “the application of these principles and associated rules do not attempt to apply sanctions to or prohibit activity of international broadcasters that the UK’s legislation was not designed to control”.

UKTV believes that creative ways of funding should be left to broadcasters provided they fulfil the principles of transparency, editorial independence and separation of programme content and all advertising.

ITV, Channel 4 and Five believe that the words ‘unsuitable sponsorship’ do not add anything to the principle and should be removed.

Olswang does not accept that the principle accurately reflects the content of the rules. In particular, the examples of transparency, separation and editorial independence are not aimed at ensuring that unsuitable sponsorship is prevented. It prefers a formulation which states that the principles are “to ensure that any sponsorship is transparent, and protects separation and editorial independence and also to ensure that sponsorship is prevented where the content or the sponsor is inappropriate.” It prefers the word ‘inappropriate’ to ‘unsuitable’. It also believes that unsuitable/inappropriate should be given a meaning restricted to those elements set out in Rules 9.1 to 9.5 of the draft Code (i.e. unsponsorable content and restricted sponsors) and not other rules.

## Transparency

Community Media Association welcomes the attempt to ensure integrity and transparency in sponsorship, advertising and editorial control.

The Commercial Radio Companies Association believes that transparency and trust are key to sponsorship agreements and that there should not be any additional restrictions on sponsorship coming from gambling companies. It believes that the BBC should be subject to the same transparency rules as commercial radio.

## Separation

Campaign Group CPBF applauds the clear statement of principles concerning transparency, separation and editorial independence. It believes the lines between broadcasters and sponsors are being increasingly blurred and that the definition of sponsored programme is adequate. However, it is concerned that there are strong competitive market pressures on broadcasters to accommodate sponsors and secure vital income and believe it would be unwise to rely on self regulation by broadcasters alone.

UKTV does not believe it should be a point of principle to separate advertising and sponsorship.

Zip TV feels that the ‘transparency’ principle has been mixed up with the ‘separation’ principle. Showing a sponsor logo onscreen during relevant sponsored programming is seen as breaching the principle of separation, but in fact an onscreen logo during a programme does not appear to breach the separation principle. The sponsor wishes viewers to know that it has paid, in full or in part, for the programme the viewer is watching, gaining credit for the viewer’s enjoyment.

## Editorial Independence

MediaWise welcomes restrictions as a means of guaranteeing editorial independence of programme makers.

## Ofcom response

Independent editorial control over programmes is required by both the Act (Section 319) and the TWF Directive (Article 17). In addition, the TWF Directive requires sponsored programmes to be clearly identified as such and prohibits them, for example, from encouraging the purchase of the sponsor’s products or services.

Ofcom therefore remains of the view that the principle needs to emphasise a requirement for transparency, separation and editorial independence. We have amended the third bullet point of the principle to clarify the importance of editorial independence.

Ofcom’s position on the separation of sponsor credits from programmes is set out in Section Nine of the Broadcasting Code.

Whilst we appreciate that a number of respondents questioned the use of the word ‘unsuitable’, this word comes directly from section 319 of the Act. However, we have deleted the meaning of ‘unsuitable sponsorship’ as this seemed circular and did not appear to offer licensees much material assistance in ensuring compliance. The decision as to what is ‘unsuitable’ sponsorship remains ultimately an issue of Ofcom’s discretion.

With regard to Public Voice’s comments, we appreciate that voluntary organisations will often have a different perspective to that of commercial entities, e.g. raising awareness of a cause rather than trying to make a commercial gain. However, we do not believe that there is a legal basis for exempting them from the scope of this section of the Broadcasting Code. The TWF Directive defines ‘sponsorship’ 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.

## **IV Rules**

There are specific rules for the content of sponsored programmes and the content of sponsor credits. Some of these are different for radio and television. In addition to these rules, sponsorship must comply with advertising rules, relating to both content and scheduling, relevant to, respectively, radio and television.

*Meaning of ‘sponsored programme’:*

*A sponsored 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 transmission of the programme.*

*A sponsor is any organisation or person, 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.*

### **Responses to the Consultation**

ISBA is concerned that the definition of a sponsored programme mistakes sponsorship for advertiser funded programming.

The PPA is concerned that the definition of a sponsored programme is too wide and may catch all programme content producers with business interests other than broadcasting. It is concerned about the impact this may have on ‘masthead’ programmes and believes the code should differentiate between content producers and programme sponsors.

### **Ofcom response**

We have amended the Broadcasting Code to make clear that the meaning of a sponsored programme includes those that are advertiser funded. We have also amended the meaning of a ‘sponsor’ to more closely reflect the TWF Directive’s definition of ‘sponsorship’.

### **Sponsorable content**

#### **Draft Rule 9.1 (now Rule 9.1)**

All programmes, including substantive programme strands and themed blocks of programmes, may be sponsored, with the following exceptions:

## Radio

- (i) News bulletins and news desk presentation may not be sponsored.

## Television

- (ii) News and current affairs programmes may not be sponsored.
- (iii) Consumer advice programmes (programmes or series offering or including reviews or advice on products or services, including what to buy or where to go) may not be sponsored by sponsors whose business involves the marketing or provision of products or services of the type featured.

## Responses to the Consultation

Emap believes that the decision to enter agreements of this kind should be left to the management.

The Commercial Radio Companies Association does not understand the prohibition on news sponsorship.

Chrysalis Radio does not believe there is any need to prohibit sponsorship of the news.

S4C believes that the TWF Directive does not prohibit the sponsorship of subtitling and this output should be sponsorable.

MediaWise suggests children's programming be included on the exclusion list.

The BBC notes that the RA Advertising and Sponsorship Code requires special care to ensure that children's programming is not linked to inappropriate sponsor products or services. They believe this is another example of where a rule from a legacy code could be usefully retained in the Ofcom Code to ensure the suitability of sponsors for programming aimed at or likely to attract significant numbers of child viewers and listeners.

IPA sees no reason why thematic channels like MTV should not be sponsored or why channel ownership (e.g. Disney) should be more acceptable than channel sponsorship. IPA suggests the definition of a 'sponsored programme' is too narrow and would allow programmes that are already in existence before being sponsored by a brand to fall outside the definition. It suggests that the paragraph beginning 'Costs include...' be expanded with terminology consistent with the International Chamber of Commerce's Code on Sponsorship.

ITV would like this rule to be written as: "News and current affairs programmes may not be sponsored. The inclusion of a news bulletin may be permitted within an appropriate sponsored programme, providing the bulletin is presented separately and no appearance is given of the news itself being sponsored."

Capital Radio would like clarification that sports, weather and travel can continue to be sponsored.

ITN would not support any move to allow sponsorship of news bulletins or general news content on rolling news channels, but it believes that further consideration should be given to how sponsorship of elements of news programming should be regulated. It is unclear from the draft Code whether Ofcom would permit the sponsorship of strands within news output, such as weather, markets or business news.

Two respondents believe the draft rule prohibiting the sponsorship of consumer advice programmes should be removed, as they feel editorial integrity is already sufficiently covered by Rules 9.6 and 9.7 of the proposed Code.

AIB says that a number of other European countries define current affairs programming as having a political element but the UK definition appears to be broader. In this context, AIB refers to an ITC ruling (relating to a series part funded by the EC) and asks Ofcom to take a more pragmatic approach to the sponsorship of programmes that are not news and do not fall within the European definition of current affairs. AIB is concerned that Ofcom's interpretation of current affairs could mean that a programme that discussed Big Brother whilst the reality show is on the air should not be sponsored as the discussion programme would be, arguably, dealing with an issue of the day for many millions of the population.

The BBC suggests that it would be useful to incorporate a definition of a 'current affairs programme' into the main body of the Code. It also suggests that it could be useful to define when a business programme would actually be a current affairs programme. This was referred to in the ITC Code (8.3) which it is now proposed to delete. It suggests that Ofcom should think about including a stipulation in the Code that business programmes are 'current affairs programming' if they deal with political issues (national and international) and/or issues of current public controversy, in order to fulfil the requirement for due impartiality in current affairs programming.

### Ofcom response

Taking these various issues in order:

The prohibition on the sponsorship of radio news is not new and Ofcom is not proposing to increase the regulatory burden in this area. We do however believe that the prohibition should remain in the Broadcasting Code as it is central to the principle of editorial independence in this most important area of programming. Allowing the sponsorship of radio news may lead viewers to question the independence and integrity of the news programme. Research has shown that viewers and listeners consider the impartiality and accuracy of the news to be an essential element for both radio and television.

The Broadcasting Code does not prohibit the sponsorship of subtitling and we have removed the reference to programmes in this rule to avoid the impression that only programmes can be sponsored.

The sponsorship of current affairs programmes on television is prohibited under the TWF Directive and this legislation does not apply to radio.

The scheduling restrictions and prohibitions that apply to advertising around children's programmes apply also to sponsorship arrangements. It would be disproportionate and illogical to place greater restrictions on sponsors than those that apply to advertisers. We believe the scheduling restrictions in addition to the rules in this Broadcasting Code section offer appropriate protection for child audiences.

A programme that is sponsored may contain a news bulletin, provided the news content is separated from the sponsored content and the sponsorship is presented in such a way as to avoid the impression that the news content has been sponsored.

The sponsorship of specialist strands (e.g. weather and sport) that appear as part of a news programme will continue to be sponsorable under the Broadcasting Code. The sponsorship should be presented in such a way as to avoid the impression that the main news content is sponsored.

The restriction placed on the sponsorship of consumer advice programmes on television was to prevent advertisers with a particular interest in a field influencing (or potentially influencing) editorial content. We agree that the two later rules in this section (under the heading 'The content of sponsored programmes') are sufficient to protect the editorial independence of consumer advice programmes. We have therefore removed the absolute prohibition relating to television programmes.

For clarity, we have added a definition of a 'current affairs programme' to the Broadcasting Code. It is unlikely that we would consider a discussion programme based on a reality television series to be current affairs.

### **Draft Rule 9.2 (now deleted – pending further consultation)**

A television channel or radio station may not be sponsored.

### **Responses to the Consultation**

Two individuals and the campaign group CPBF believe it is appropriate to retain the prohibition on the sponsorship of a whole TV channel or radio station.

Maranatha thinks that any move to end prohibition of the sponsorship of channel or station should only be made if it does not interfere with programming or impartiality.

Channel 4 and Five accept that a TV channel cannot be sponsored.

The Churches' Media Council stresses that broadcaster's editorial independence is paramount.

Twenty respondents, including UKTV, ITV and Discovery Networks Europe and Chrysalis Radio believe that the rule should be deleted or relaxed. As long as the principle of transparency is maintained, and the relationship between the sponsor and broadcaster is clear they see no harm in the sponsorship of a TV channel or radio station.

Capital Radio believes there is no good reason why a station which does not have news should not be allowed to be completely sponsored and request that the rule be deleted.

The Commercial Radio Companies Association does not understand why this is the decision of regulators and not commercial broadcasters.

CSV Media's key concern is the financial sustainability of community media broadcasters. It would welcome some flexibility within the requirement that a TV channel or radio station may not be sponsored, e.g. short-term station sponsorship. CSV Media believes that restrictions on advertising could affect the ability of fledgling stations to succeed, particularly those surrounding sponsorship. It suggests that station sponsorship should be allowed but that it should be for no more than seven days.

The BBC believes that it could be possible for niche channels to take sponsorship from a sponsor whose business has no direct connection with the general editorial remit of the channels – for example - a bank or building society might be able to sponsor a specialist



music channel which did not broadcast news and current affairs, business analysis or general factual output.

The Community Media Association believes there are sufficient measures in place to protect the integrity of community radio and that a prohibition on station sponsorship is unnecessary. Ligali also suggests that this is unnecessary and stifles opportunity for smaller community oriented media organisations.

The AA believes Ofcom should push the boundaries of the TWF Directive to encourage sponsorship. Freedom Media points out that the TWF Directive does not prohibit the sponsorship of a whole TV channel.

### **Ofcom response**

Sponsorship of a whole television channel or radio station is currently not permitted. It has been considered unacceptable because of the way in which the regulator interpreted the TWF Directive and the ITC Code of Programme Sponsorship. Overall, the concern was over a sponsor's possible influence on the editorial content of a whole service and the possibility that many services may carry unsponsorable content e.g. news. However, under current rules commercial companies can become licensees and name the broadcast service after the brand. From the audience perspective, channel sponsorship may not be any different.

Ofcom has re-examined the TWF Directive and notes that it does not appear to explicitly prohibit or approve of channel sponsorship. The Commission's Interpretative Communication indicates that if in doubt about the TWF then it will tend towards a more liberal approach.

The general thrust of the responses suggests that channel sponsorship would be welcomed. Subject to further internal consideration, Ofcom therefore intends to permit channel sponsorship. However, it may be necessary to develop some further rules around this specific area to ensure compatibility with the TWF Directive.

Ofcom aims to start a consultation as soon as possible on what rules, if any, are necessary. Until Ofcom has concluded this consultation and taken all necessary consequent decisions, its present interpretation of the Directive and sponsorship rules remain unchanged i.e. sponsorship of whole channels is prohibited.

### **Prohibited and restricted sponsors**

#### **Draft Rule 9.3 (now Rule 9.2)**

No programme on radio or television may be sponsored by a sponsor that is not allowed to advertise on that media, with the following exception:

Bookmakers and gaming companies may sponsor subject to certain conditions. [The specific conditions that apply to sponsorship by betting and gaming companies are being consulted upon]

### **Responses to the Consultation**

IPA agrees with this rule.

Kanal 5 believes that restrictions on betting and gambling should be lifted and would like to participate in the upcoming consultation on this matter.

Discovery Networks Europe can see no reason for the continued restrictions on gambling advertising given that these companies are already allowed to sponsor certain sports directly.

CPBF believes the suitability of a sponsor should not be left to the broadcasters' discretion. Food or drink manufacturers or retailers should not sponsor programmes aimed at children.

Sustain believes the Broadcast Code does not properly protect children from the advertising of unhealthy foods. Sustain comments that sponsorship is "a form of marketing which reinforces product and/or brand awareness". It believes that its recommendations in response to a previous ITC Code of Advertising Standards consultation should be incorporated into the new Broadcasting Code.

### **Ofcom response**

We believe there is no justification to add any other exemptions under this rule. Subject to the prohibition regarding programmes aimed at under-eighteens, we have decided not to retain current restrictions concerning the type of programmes that can be sponsored by betting and gaming companies. The exception provided to betting and gaming companies in this rule will therefore apply without the prerequisite for certain conditions to be met.

Ofcom is proposing to consult on any potential rules relating to advertising of food and drink to children. Any changes relating to content and scheduling restrictions that may result from the consultation will apply to sponsorship arrangements.

### **Draft Rule 9.4 (now incorporated into Rule 9.4)**

Scheduling restrictions that apply to advertising on the relevant media apply also to sponsorship.

### **Responses to the Consultation**

ITV accepts this rule, as does IPA.

SCBG suggests this should read: "Scheduling restrictions that apply to advertising on the relevant media should apply to sponsorship, unless there is a clear benefit to the viewer," as this would allow, for example, condom advertising on health programmes before the watershed.

Discovery Networks Europe believes that this rule is unnecessarily inflexible and should be redrafted as, "Scheduling restrictions that apply to advertising on the relevant media should apply to sponsorship, unless there is a clear benefit to the viewer.'

### **Ofcom response**

The Rules on the Amount and Scheduling of Advertising in relation to scheduling restrictions allow for some flexibility. This flexibility will apply also to sponsorship arrangements. Sponsorship on radio and television must also comply with the advertising content rules that apply. This rule has been amended to clarify the point.

Any request from broadcasters for exceptional deviations from this rule should be referred to Ofcom. A reference to this effect will be made in the guidance.

### **Draft Rule 9.5 (now Rule 9.3)**

Bookmakers or gaming companies may not sponsor programmes aimed at persons under the age of eighteen.

### **Responses to the Consultation**

IPA agrees with this rule. ITV agrees that the conditions relating to the under eighteens and scheduling should be retained but other restrictions should not be included.

### **Ofcom response**

Ofcom notes the responses.

### **The content of sponsored programmes**

### **Draft Rule 9.6 (now Rule 9.5)**

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

### **Responses to the Consultation**

CSV Media wants a debate about the pertinence of rules 9.6 and 9.7 for the community media sector. It suggests 'advertorials' (i.e. Government sponsored programmes where an organisation such as a local NHS trust also contributes to the content of the show) should be allowed. CSV says that "by only allowing programme sponsorship from Government funded service providers, Ofcom can ensure that it does not embroil itself in a payola scandal".

IPA, SCBG, S4C and ITV agree with this rule.

### **Ofcom response**

These rules apply only to programmes that meet the definition of sponsored programmes. A public information programme funded by a public body may, in certain circumstances, not be subject to the sponsorship section of the Broadcasting Code..

We have made a minor amendment to the rule in the interests of clarity: rather than 'affect', the rule now says 'impair'.

### **Draft Rule 9.7 (now Rule 9.6)**

There may be no promotional reference to the sponsor, its name, trademark, image, activities, services, products or any other direct or indirect interest, in the programme. Any non-promotional reference must be editorially justified. This extends to generic references.

### **Responses to the Consultation**

The CPBF opposes relaxation of the rule preventing references to the sponsor in programmes, believing that instead of TV following radio, the rules for radio should be strengthened in line with current TV rules. Ofcom should retain in the new rules the current rule relating to programme presenters. The wording used to describe the sponsor's

relationship to the programme must be fully compliant with the principles and rules of the Code. Finally, sponsors' names should not appear in programme titles.

A number of respondents, including ITV, S4C, IPA and the AA, welcome Ofcom's proposals and agree that the current rules should be relaxed to allow non-promotional references to the sponsor.

Channel 4 and Five welcome this new rule in the sense that it allows the complex rules on 'event sponsorship' and 'masthead programmes' to lapse. They also prefer the emphasis on 'editorial justification' to the present provision where any reference is a breach of the Code. They believe that this provision should be applied to both sponsored and advertiser funded programmes for consistency. Where a programme is advertiser funded, there will be greater onus on the broadcaster to demonstrate that there was no overt attempt at promotion and that the reference is editorially justified.

Discovery Networks Europe believes that the rule is too vague. It suggests amending the wording to 'there may be no 'undue prominence' for a sponsor within a programme they are sponsoring.'

The BBC believes that Rule 9.7 should be more tightly drawn with the following restrictions: sponsors should not be able to sponsor programmes where there is a reasonable expectation that reference to the sponsor, its companies, services or products, will be materially or regularly featured in the programme/series; or which would be expected to contain material about their companies, products, or services were it not for its sponsorship; any reference to a sponsor within a programme it is sponsoring should be incidental, non promotional and clearly editorially justifiable; the choice of sponsors for a programme and any reference to the sponsor, its services, products or goods within the programme should not give the perception that the sponsor has influenced the editorial content of the programme.

ITV and the Digital TV Production Company question why it is necessary to restrict generic references outside of those which are promotional.

UKTV requests clarification on the definition of the word 'promotional'; it suggests that, ideally, this would follow the EU definition – 'to encourage purchase or rental of product'.

The AA would like a definition of what is meant by 'promotional' references, which should include branded products and services where justified. SCBG believes that vagueness in the term 'promotional' will cause problems; it suggests a revised definition of 'undue prominence' (given in Rule 10.4) and the substitution for 'undue prominence' for 'promotion' here.

Emap says this would drastically reduce their sponsorship income and it must be looked at again.

The Commercial Radio Companies Association says that this should be TV specific. Capital Radio agrees that this should apply only to television. Chrysalis believes this is a separation issue that should apply only to TV.

AIB suggests that the rules surrounding sponsorship "should be relaxed for programmes: made specifically for domestic audiences in other territories where broadcasting legislation allows sponsorship messages to be included in a programme; available to an expatriate community by means of a controlled subscription TV service; or not made in the English language".

The PPA is concerned that where a masthead programme is sponsored, the proposed Rules 9.6 and 9.7 are more restrictive than the ITC Code of Sponsorship which allowed ‘sparing’ and ‘minimal’ references to the programme title within the programme.

### **Ofcom response**

Having carefully considered the comments, Ofcom believes that the rule strikes the right balance between ensuring that editorial independence is not compromised and leaving responsibility for editorial integrity to the broadcaster. This is a clear relaxation of the current rule which prohibits any reference to the sponsor, in keeping with Ofcom’s proportionate and light touch approach to regulation. For the avoidance of doubt we have made it clear that promotional generic references will not be permitted.

However, in response to requests for clarification, we have now amended the rule to make clear that non-promotional references will be acceptable only where they are editorially justified and incidental. We have also provided a meaning of ‘promotional reference’. This meaning is inclusive rather than exclusive as there may be other types of reference that Ofcom would consider on the individual facts to be promotional, e.g. where a reference is intended to raise brand awareness.

On radio, editorially justified references to the sponsor that form part of the sponsorship will continue to be allowed.

Advertiser-funded programmes are viewed as sponsored programmes; this has now been clarified in the definition of ‘sponsored programme’.

Ofcom has no intention to apply more restrictive regulation to masthead programmes than was applied under previous Codes. The revised rule will continue to allow internal references to the programme title while preventing the programme from promoting its parent publication.

### **Sponsorship credits**

#### **Draft Rule 9.8 (now Rule 9.7)**

Sponsorship must be clearly identified at the beginning and/or end of the programme.

### **Responses to the Consultation**

Emap, The Commercial Radio Companies Association, Capital Radio and Chrysalis Radio believe that this rule should apply only to television.

ITV would like to amend the rule to: “Sponsorship must be clearly identified at the beginning and/or end of the programme and/or end of a strand of an appropriate programme.”

### **Ofcom response**

While we recognise the concern from within the radio industry, the principal issue is transparency. This rule has been reworded to make it clear we are referring to sponsored programmes and that ‘clearly identified’ is to be achieved by referring to the name or logo of the sponsor. As such, appropriate guidance will clarify that a radio presenter’s voiced credit, within opening and/or closing comments of the sponsored programming, will satisfy the requirement of the rule.

Guidance will be issued to clarify that this rule refers to each item of sponsored output.

### **Draft Rule 9.9 (now Rule 9.8)**

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

#### **Responses to the Consultation**

IPA suggests “amalgamating this clause with the second sentence in Rule 9.17 to produce a clear related message.”

AA believes that this implements the principles of sponsor identification and separation from programmes. ITV accepts this rule.

S4C welcomes the new rule and would welcome further guidance from time to time on acceptable expressions used in reference to the sponsorship arrangement.

CPBF believe the wording used to describe the sponsor’s relationship to the programme must be fully compliant with the principles and rules of the Code.

#### **Ofcom response**

This rule applies both to television and radio, whereas the later rule is specific to television.

If necessary, we will issue guidance on appropriate sponsor identification messages.

### **Draft Rule 9.10 (now incorporated into Rule 9.4)**

Sponsor credits on radio and television must comply with advertising rules that apply to that medium.

#### **Responses to the Consultation**

The AA is concerned about the impact future changes to the broadcast advertising code will have on sponsorship, particularly now the responsibility for advertising content has transferred to the Advertising Standards Authority (ASA). It believes that Ofcom should take the same approach as the ITC and apply the detailed rules of the advertising code ‘where appropriate’. Ofcom will therefore need separately to assess the implications of extending advertising code changes to the sponsorship rules, and it should consult on the proposed changes.

IPA agrees with this rule. ITV accepts this rule though it believes that sponsorship should be the remit of Ofcom and advertising should be the remit of the ASA.

#### **Ofcom response**

We believe this rule adequately states the requirement for sponsor credits to comply with advertising regulations. We recognise that any amendments to the broadcast advertising code could impact on the regulation of sponsor credits.

### **Radio**

#### **Draft Rule 9.11 (now Rule 9.9)**

Credits must be broadcast as appropriate during longer sponsored output, as appropriate for the degree of transparency required.

## Responses to the Consultation

This rule raised no substantive responses.

### Rule 9.12 (now Rule 9.10)

Credits must be short branding statements. They may, however, contain legitimate advertising messages, which must remain secondary.

## Responses to the Consultation

Emap says that credits having to ‘remain secondary’ are an added restriction to radio and it is baffled as to why this has been introduced. The Commercial Radio Companies Association does not see the need for the proposed change. Chrysalis Radio does not believe there is any need to impose restrictions on the form of sponsorship credits on the radio as long as transparency is maintained.

The AA suggests deletion of the words ‘which must remain secondary,’ as this did not exist in the RAU Advertising and Sponsorship Code.

Capital Radio suggests that this rule be deleted completely.

### Ofcom response

The ‘remain secondary’ reference was intended to highlight that, whilst advertising is permitted, the credit should remain primarily a branding statement. However, having considered this rule further and taken into account the representations, we believe that requirement that the credit is a short branding statement is in itself sufficient to differentiate between sponsorship to advertising. . (For exception to this rule please see draft Rule 9.13)

### Rule 9.13 (now deleted)

A sponsor credit for a betting and gaming company may include only a concise description of its provision of service. No advertising content is permitted.

## Responses to the Consultation

The AA believes this rule should be removed when the Gambling Bill becomes law.

IPA agrees with this rule.

### Ofcom response

We welcome the AA’s comments. However, ongoing enquiries from radio licensees have highlighted that this rule is more restrictive than current television requirements. We have therefore deleted the rule, and instead exclude betting and gaming companies from advertising within sponsorship credits. This will enable such companies to issue branding statements across all broadcast sponsorship.

### Draft Rule 9.14 (now Rule 9.11)

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

## Responses to the Consultation

Emap believes Rules 9.14 and 9.15 are contradictory.

IPA agrees with this rule.

### Ofcom response

We do not believe the two rules contradict each other, since one deals with clearance of sponsorship credits and the other with trails.

Sponsor credits for all output require appropriate clearance.

### Draft Rule 9.15 (now Rule 9.12)

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

### Responses to the Consultation

This rule raised no issues. However, we have added wording to make it clear that the same rules regarding sponsorship apply.

### Television

#### Draft Rule 9.16 (now part deleted and part Rule 9.13)

#### There may be no sponsor credits within programmes.

- (i) Where a programme contains sponsored strands or sponsored specialist reports, credits must be presented outside, and clearly separated from, the programme.
- (ii) Front credits must not be integrated within any part of the programme other than its title sequence, provided that the sequence does not include, nor is preceded by, any part of the programme itself.
- (iii) Bumper or end credits may overlap the programme for not more than five seconds.

### Responses to the Consultation

UKTV believes that the content, design and format of sponsor credits should be left to the broadcaster. UKTV believes sponsor credits can be given at the start of a programme by a presenter, provided this is done in a way that does not undermine the principles of separation, editorial integrity and transparency.

The AA notes that this should allow credits around sponsored strands or specialist reports within programmes, for example, as now exists in weather programmes. This should be made clear in guidance.

The BBC would welcome clarification about Rule 9.16 (i); specifically, whether this means there should be sponsor bumpers around a specific sponsored section within the programme.

IPA believes broadcasters should be able to sell sponsorship within programming, with the sponsorship identified before and after the relevant segment rather than just at the beginning or end of ad breaks.



Campaign Group CPBF believes it is vital that Rule 9.16 is strictly enforced.

ITV believes this rule should be amended in accordance with its suggestion for Rule 9.8.

### Ofcom response

There is no prohibition of the sponsorship of strands within programmes and these arrangements will continue to be permitted. As a result of the consultation, and in line with the Commission's Interpretative Communication on the TWF Directive, we have amended this section of the Broadcasting Code to remove the restriction on sponsor credits within programmes but make it clear that such sponsorship messages must be separated by spatial and/or temporal means. While the amended rule requires credits to be separated from the sponsored material, it does not specify at which points credits may be placed. Broadcasters can decide the most appropriate juncture for sponsor credits. However, they must ensure the sponsorship complies with the relevant sections of the Code (e.g. transparency, separation, undue prominence). We will consider giving examples of acceptable forms of separation in guidance.

### Draft Rule 9.17 (now Rule 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.

### Responses to the Consultation

A number of respondents, including Trustar and S4C, support the new rule.

However, others question whether it is necessary. For example, UKTV does not agree that it should be a point of principle to separate advertising and sponsorship. It believes that creative ways of funding should be left to the broadcaster, provided they fulfil certain fundamental criteria, and would like this to read: "In particular, credits must not directly encourage the purchase or rental of the products or services of the sponsor or a third party".

Channel 4 and Five would like this rule to be changed to avoid protracted, subjective and esoteric discussions and debates about what will constitute 'advertising messages or calls to action'. ITV believes that the words 'advertising messages or' should be deleted.

The AA believes that consideration should now be given to allowing brief corporate slogans or copy lines within sponsorship credit and TWF Directive rules. It welcomes the removal of "attributes, benefits or prices" but believes "advertising messages" is not sufficiently clear. IPA does not believe there should be a ban on a simple statement of product attributes or benefits. ISBA wants consideration to be given to appropriate commercial messages in sponsor credits on television.

The BBC notes that although Rule 9.17 accords with the requirements of the TWF Directive it does not apply to radio in regulatory terms. It therefore suggest that for consistency Rule 9.17 is also applied to radio.

### Ofcom response

The TWF Directive requires advertising and programme elements of a service to be kept separate (Article 10) and restricts the amount of advertising on television (Article 18). Sponsor credits are not counted as part of advertising minutage and this rule, and

specifically the term ‘advertising messages’, is designed to prevent credits being used to extend the amount of airtime that contains advertising. Commentary on how this rule will be interpreted will be included in guidance.

The TWF Directive does not apply to radio. Limited legitimate advertising has been allowed in radio sponsor credits and we see no reason to tighten the regulations for radio.

### **Draft Rule 9.18 (now Rule 9.15)**

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

### **Responses to the Consultation**

ITV believes that the new rule should be amended with the words ‘must remain secondary’ deleted.

### **Ofcom response**

The purpose of a trailer is to inform viewers about forthcoming programmes. To ensure that trailers are not distorted for commercial purposes, we propose to retain a rule that requires any sponsor message to remain secondary. We believe, however, that the length of the credit should be left to the judgment of the broadcaster and that the requirement in the legacy code limiting the credit to five seconds is no longer necessary.

## **V Other Issues**

### **News presenters appearing in sponsored programmes**

#### **Responses to the Consultation**

The Churches Media Council, the BBC and the CPBF wish to retain a restriction on news presenters appearing in sponsored programmes. The BBC believes the proposal not to carry over the prohibition contained in the ITC Code on Programme Sponsorship (9.2) raises serious issues concerning impartiality and the perception of impartiality. They therefore strongly suggest that Ofcom retains this rule from the legacy code to continue to protect the integrity of news and current affairs presenters and to maintain a clear line between programmes that may be sponsored and their sponsors.

#### **Ofcom response**

The rule referred to prevents news presenters from appearing in sponsored programmes that are scheduled adjacent to the news programme they present. The Broadcasting Code will ensure that news programmes are clearly separated from sponsored programmes and there should be no impression that any sponsorship applies to news. Broadcasters must also ensure the impartiality of their news service. It is therefore a matter for individual broadcasters to decide whether the appearance of a news presenter in a sponsored programme will undermine the integrity of their news.

## **Credit length on ITV, Channel 4 and Five**

### **Responses to the Consultation**

A number of respondents, including ITV, Channel 4 and Five and the Branded Content Marketing Association, agree that the five second limit in the current rules is unnecessary. IPA agrees that the decision on length should be left to broadcasters.

However, some respondents, including a number of individuals, Maranatha, CPBF and Ligali, believe the five-second limit should be retained.

Overall, there was support for removing the limit on the length of sponsor credits appearing on ITV, Channel 4 and Five.

### **Ofcom response**

Ofcom sees no reason for maintaining the limit of the length of sponsorship credits on commercial PSB broadcasters. This is inconsistent and unnecessary regulation. There is no evidence that the length of sponsorship credits on other broadcasting services is problematic.

Ofcom has therefore not restricted the length of sponsorship credits on ITV, Channel 4 and Five.