And now it's time for a commercial break: big changes for television advertising

TELEVISION ADVERTISING IS WORTH AROUND £3.5BN annually in Britain. Individual prime-time slots can cost over £50,000, and it is anyone's guess what fee a 30-second commercial during the Olympics might command. But, despite the scale of the advertising industry, advertising revenues in commercial television have taken a battering in recent years, as advertising spending migrates to the internet, slumping 5% to a five-year low in 2006. It is time to rethink the funding of the commercial channels.

RELAXING THE RULES

Before 1991, it was simple: create a television commercial and place it on one of the commercial channels. Then, in 1991, the UK regulator (ITC then; Ofcom now) relaxed the rules to allow whole programme sponsorship and soon *Friends* was brought to us courtesy of Wella. This January saw another advertising first, with Fiat taking over sponsorship of Five for the whole evening to celebrate the launch of the Fiat 500. This was the first channel sponsorship since Ofcom announced a further relaxation of the rules in 2006. Now, a new European Directive (coupled with a review from Ofcom of domestic policy) will allow product placement in TV programmes, as well as greater flexibility in the timing and distribution of advertising breaks.

Adopted by the EU at the end of November 2007, the Audiovisual Media Services Directive (2007/65/EC) (the AVMS Directive) in effect replaces the regulatory framework set out in the Television without Frontiers Directive 1989 (89/552/EC, as amended by 97/36/EC) (the TWF Directive). In the late 1980s, there was a relatively limited choice for viewers – state-owned and other terrestrial free-to-air broadcasters dominated in the market. The TWF Directive's main objective was straightforward: create a single market in television broadcasting. However, the pace of technological advancement and the range of audiovisual services available since meant that the old Directive needed to be adapted to take account of the changing media landscape of the 21st century. Enter the AVMS Directive. Most commentary on the new Directive has centred on the fact that, for the first time, it extends regulatory control to the internet and on-demand networks. However, it also allows product placement on television and amends the minimum standards on the timing and distribution of advertising on television channels across Europe. Advertisers and producers alike will be keen to understand how the rules are changing.

CURRENT RULES ON ADVERTISING ON TV

The current EU rules are in the TWF Directive, although Ofcom has the power to strengthen them for UK services. The TWF Directive limits advertising on television channels to an average of nine minutes per hour (plus up to three minutes of teleshopping spots), subject to a maximum of 12 minutes in any one hour. In addition, at least 20 minutes must elapse between advertisements within a TV programme (thereby allowing three breaks within a one hour programme) and 45 minutes for a film shown on TV. Further, somewhat complicated rules require that these breaks be taken during a 'natural break' in the programming (eg, at the end of a comedy sketch rather than halfway through it). Ofcom limits advertising breaks still further for public broadcast channels (ITV1, GMTV, Channel 4, Five and S4C) to an average of seven minutes per hour. This average is subject to a cap of eight minutes per hour during peak-time viewing and 12 minutes per hour for all other times. These channels are also only allowed one advertising break in each half hour.

Product placement is not currently allowed in TV programmes, although it is not banned from foreign TV imports or films shown on television (provided the UK broadcaster is not benefiting directly). However, prop placement (the use of products or services supplied at zero cost or reduced cost) is fine as long as it is justified editorially.

NEW RULES ON THE HORIZON

The AVMS Directive is to be implemented in the UK towards the end of 2009 and Ofcom aims to issue new guidelines at around the same time. In terms of the timing and distribution of advertisements, the AVMS Directive will permit the UK to eliminate the ›

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20-minutes-between-breaks rule for TV programmes and allow breaks in films every 30 minutes. It will also permit the simplification of the rules by allowing a maximum of 12 minutes of advertising in every hour, regardless of overall averages. A new rule will prevent advertising in children's programmes that last less than 30 minutes.

Ofcom is currently in a consultation phase to try to understand how far it should implement these changes and the extent to which it should amend its Rules on the Amount and Distribution of Advertising. Ofcom recognises that viewers have greater opportunity to avoid adverts these days: more channels are available and increasing numbers of households use time-shifting to watch their programmes when they want (and to skip the adverts that they contain). The Virgin Media packages and Sky+ box, for example, allow consumers to record a programme or series at the touch of a button and replay it at their leisure, skipping through any adverts they do not want to watch. Some consumers even choose to delay their viewing by a mere ten minutes to allow them to fast forward through the advertisements. It is against this background that Ofcom is considering whether the viewing public will tolerate more advertisements. It suggests that some limits on the frequency of advertising breaks should be retained but it is consulting on a number of possible options. Ofcom is also seeking views on the amount of advertising that should be allowed on television and whether it should keep stricter rules for public service broadcasters.

The big news though is that, for the first time, EU states will be able to choose whether to allow limited product placement in television programmes. Ofcom conducted a consultation ahead of the AVMS Directive suggesting that the benefits of allowing product placement were likely to be higher than the costs resulting from it, and recognising that the British market could be worth between £25m and £30m within five years. The outcome, however, was that there was no consensus on whether it should be introduced and the economic benefits appeared to remain modest. If it is introduced, it will not be a free-for-all. The AVMS Directive provides that product placement will be subject to a number of provisos:

- the placement cannot influence the content of the programme such that the responsibility and editorial independence of the service provider is affected;
- certain products, such as tobacco or prescription medicines, are prohibited outright;
- the placement cannot promote buying and/or renting goods and services, ie by making reference to special offers;
- the placement cannot be used in news, current affairs or children's programmes;
- the viewers must be informed at the beginning, end and after every commercial break of the existence of product placement – surreptitious placement is prohibited; and
- the product in question cannot be given undue prominence.

A further consultation on the prohibition and any exception is expected shortly. It should be noted that product placement is not the same as prop placement, to which the prohibition does not apply.

As programmes are increasingly distributed across a range of new platforms, and traditional 'spot advertising' reduces as a result of technology and changing commercial models, product placement may provide a more effective form of marketing for advertisers, and a valuable source of revenues for producers (to supplement falling broadcast licence fees). Product placement is big business in the US and is widely used in US programming, although it is seen by many as being too intrusive. What producers and advertisers will want to see, therefore, is a clear set of codes and guidelines from Ofcom, which achieves an acceptable balance between editorial justification and 'product recognition'.

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