

## **Consultation on the draft BBC Editorial Guidelines 2024**

Submission by Prof. Jonathan Hardy, and Prof. Iain MacRury for the Branded Content Governance Project.

Our submission focuses on the matters most relevant to the Branded Content Governance Project, a three-year research project funded by UK Research and Innovation, concerning marketing communications and brand sponsored content. However, our project is also concerned with the common elements and connections across a range of issues, from AI to disinformation to contributor credentials, which concern the appropriate management, identification and attribution of sources of content to serve and support users. This submission addresses issues of notification and identification of content including the attribution of contributors; AI-assisted and AI-generated content; commercial communications, sponsorship and promotion. Our submission responds to all three of the consultation questions with a particular focus on the third question: Do they sufficiently reflect the changes in the media landscape since the last review in 2019?

### **1. ABOUT THE BRANDED CONTENT GOVERNANCE PROJECT**

As media and marketing merge and new forms of marketing communications proliferate, are regulations, guidance and best practice keeping pace? That is the focus of our three-year international research project, the Branded Content Governance (BCG) Project. The BCG Project examines the regulation and broader governance of content that is funded or produced by advertisers. The project is funded by two UK Research Councils (ESRC and AHRC; ES/W007991/1, part of UK Research and Innovation, a non-departmental public body sponsored by the Department for Science, Innovation and Technology (DSIT).

The BCG Project is led by three Universities (University of the Arts London (UAL), University of Stirling and Complutense University, Madrid) supported by 90+ international academic advisors, industry partners (including the Branded Content Marketing Association and Content Marketing Association) and industry, legal, policy and civil society participants. Jonathan Hardy is Professor of Communications and Media at the University of the Arts London and Principal Investigator for the BCG Project. Iain MacRury is Professor of Communications, Media and Culture at the University of Stirling and Co-Investigator for the BCG Project.

### **2. GENERAL COMMENTS**

It is very welcome that the BBC is seeking to review and overhaul these Editorial Guidelines and associated processes. The BBC's ability to design and implement processes to identify and uphold editorial standards is vital across its own services but can also play an important role in leadership and standard setting across the industry. This is relevant across all the issues addressed in the Guidelines. For marketing and promotional communications this is especially important in a period in which advertiser funding and involvement in content creation is creating new forms, relationships and challenges. The BBC Editorial Guidelines represent the accumulated, collective wisdom of efforts to establish public service broadcasting and communication services over the 102 years of the BBC. They integrate the relevant legal and regulatory measures, the professional

standards and processes and the ethical and normative values that have as their core the provision of public service in public communications. There is very much to commend, although the test throughout is how performance matches standards and how well the standards are understood and embedded through training and support across all staff and in the oversight of all those with whom the BBC contracts and interacts in the provision of services. This response focuses on the areas where further consideration or specific changes are recommended.

### **3. COMMENTS ON GUIDELINES**

#### **3.1. Section 2: Contributors**

Contributors' Affiliations and Supplied News Material (2.4.17 section, P 11). The guidelines state:

It should not be assumed that contributors to BBC output are unbiased or impartial. For those from organisations such as charities, think-tanks or universities, it may be necessary, when relevant, to give appropriate information about affiliations, funding or particular viewpoints. The same applies to individual researchers, journalists, scientists or other experts and, on occasion, to contributors who may be relating their own experiences. The key test is to consider whether the audience would be misled if such information was not made available. It may also be necessary to consider whether such affiliations might risk undermining trust in the contributor's professional credentials or in the perceived authenticity of their experiences.

This section needs to be strengthened. The opening statement is misleading as it should never be assumed that a contributor who advocates a policy agenda is 'unbiased or impartial'.

There needs to be a clearer distinction made in the category of contributors on public affairs and issues, between those who are principally 'policy actors' and those contributors who are principally 'independent policy analysts'. This is not to argue that such distinctions are straightforward since the qualities of each can be combined and blurred. Ostensibly more 'independent' academic or journalistic contributors can be partisan in their analysis and advocacy; policy actors are not merely partisan advocates but may well communicate independently verified research and evidence. However, the broad distinction between policy actors and policy analysts matters because policy actors are not principally 'unbiased or impartial', only policy analysts/commentors may be so described. Independence here means non-dependence on political or economic interests. There needs to be a much stronger principle that audiences should be given fair and impartial information about the 'affiliation' of a policy actor who is invited to comment as a contributor. This is especially important to ensure transparency in respect of spokespersons or lobbyists who are employed by or affiliated with organisations, networks or causes. Such affiliation is often clear, but this is not consistent, and the BBC should strive to set the highest standards needed across the communications ecosystems, both in the UK and wherever BBC services can be accessed.

The proposed guidance states: 'For those from organisations such as charities, think-tanks or universities, it may be necessary, when relevant, to give appropriate information about affiliations, funding or particular viewpoints'. This is insufficient. It should be normal practice to ensure that audiences are made aware of the organisation or network to which contributors are affiliated, or associated, the main purposes and particular viewpoints of the organisation/network

and the sources of funding. This may be summary. For instance, 'X is a spokesperson for the Tax Payers alliance, which lobbies for a low-tax society and does not disclose its funders...'

The use of journalists or other members of media organisations as contributors is also changing as the capacity for independent, public interest journalism is challenged and diminished in various ways across all media systems. The guidelines should state that the affiliation of persons employed by, or otherwise representing, media or communication organisations or networks should always be made clear. Users should also be given appropriate, summary information about the ownership and control of the media organisation so that they can better understand and assess the position of the contributor.

Understanding the position of the contributor is also relevant to marketers and should not be considered self-evident from the assumed identity of the brand or brands alone. Brands can also become spokespeople in public debates/ controversies, for example, where the trend towards purpose driven marketing encourages sometimes unlikely and controversial political causes to become part of 'marketing' content e.g. Lush, Nike, Ben and Jerry, Shell, etc. Ensuring the affiliation of contributors is made clear also supports the requirement to avoid any appearance of an editorial partnership outside of those formally approved, in line with 16.4.14, which states that 'Editorial partnerships should not jeopardise the good reputation of the BBC or the value of the BBC brand'.

We agree that 'The key test is to consider whether the audience would be misled if such information was not made available'.

We agree that 'Any use of video and audio news releases, or other material supplied by outside organisations, should be clearly labelled, stating who supplied it and explaining any relevant circumstances in which it was produced'

## **Section 2 and 3: Artificial Intelligence**

The BBC has a vital role in educating users on artificial intelligence (AI) and in demonstrating best practice in the disclosure of AI. This will be challenging and complex as diverse audiences within the UK, and across all the global audiences served by the BBC, come to recognise and understand the changing roles played by AI across content and services. Specific guidance is likely to require more frequent review and revision than many other areas. We believe that at this point, and for the foreseeable period ahead, the guidelines should strengthen the requirements for the disclosure on AI-assisted and AI-generated content.

Where AI assistance directly affects the presentation of content that should be declared. This is an evolving area, with much ongoing policy debate, legislative proposals and action, but we recommend the BBC promotes best practice in labelling and identification.

The proposed statement in the BBC guidance is valuable but insufficient and should be strengthened. This reads (3.4.29): 'Any use of AI by the BBC must be transparent and clear to the audience. The audience should be informed in a manner appropriate to the context and it may be helpful to explain not just that AI has been used but how and why it has been used'.

The use of AI in the preparation and processing of information is likely to render the phrase ‘any use of AI’ unclear and rapidly obsolete as it would cover source materials (such as AI-assisted reports or other data) as well as BBC content production. Therefore, there is merit in keeping the statement, as it has value in being encompassing, but adding a further statement on the identification of AI-assisted content and AI-generated content.

Section 2.4.19 includes the statement: ‘For independent production companies any proposed use of AI, where there may be a material impact on audience-facing content, should be discussed as part of the commissioning process’.

We recommend that the guidance should state in 3.4.29: ‘any use of AI, where there may be a material impact on audience-facing content, should be identified as either AI-assisted or AI-generated, depending on the context.’

The World Intellectual Property Organization (WIPO) Secretariat provides definitions in the *Revised Issues Paper on Intellectual Property Policy and Artificial Intelligence* (WIPO 2020):  
“AI-generated” and “generated autonomously by AI” are terms that are used interchangeably and refer to the generation of an output by AI without human intervention. In this scenario, AI can change its behavior during operation to respond to unanticipated information or events. This is to be distinguished from “AI-assisted” outputs that are generated with material human intervention and/or direction.

The WIPO definitions are subject to ongoing debate within and beyond WIPO (Simone 2020) and so the Guidelines need to be kept under review. There is a case for flexibility. However, the context is one in which there is an emerging view that users do not need to be told if AI has contributed to content production, with safeguards only directed to the content itself. On the contrary, we argue that an understanding of the provenance of sources of content is integral to the mission of public service communication, to combatting dis/misinformation, promoting information transparency, and to media education and literacy.

The key boundary, relevant for producers/practitioners and consumers alike, is to identify when content has been AI assisted or generated. Some have argued that the AI contribution will be rapidly assimilated and become as normal as digital retouching. Yet, the counterargument can also be made. Even digital image-editing may be unacceptable in contexts as diverse as passport images, a retouched Royal photograph, photo agency integrity, or the pervasive image filtering that has contributed to deteriorating mental wellbeing among children and young adults.

The need for clear labelling is outlined in a US Senate Bill introduced in 2023 (S. 2691) to mandate disclosures for AI-generated content. The Bill would require ‘Each generative artificial intelligence system that...produces image, video, audio, or multimedia AI-generated content shall include on such AI-generated content a clear and conspicuous disclosure’.

The European Union AI Act is not explicit on all requirements for public communications and marketing communications, but a new section added to article 52 in February 2024 indicates the importance of both formal statutory and self-regulatory codes addressing labelling and disclosure. Article 52 (4a) states:

The AI Office shall encourage and facilitate the drawing up of codes of practice at Union level to facilitate the effective implementation of the obligations regarding the detection

and labelling of artificially generated or manipulated content. The Commission is empowered to adopt implementing acts to approve these codes of practice in accordance with the procedure laid down in Article 52e paragraphs 6-8. If it deems the code is not adequate, the Commission is empowered to adopt an implementing act specifying the common rules for the implementation of those obligations in accordance with the examination procedure laid down in Article 73 paragraph 2.

We agree with the guidance on the Use of Technology set out in section 2.4.19.

Section 13.3.12 requires that the Consumer Technology & Products legal team must be consulted about any request for re-use or reversioning of BBC material (including editorial content, metadata and other assets) by third parties as components of artificial intelligence. The Guidelines should specify that this should also apply to BBC commercial services and explicitly cover any planned use of BBC material in relation to marketing communications, included sponsored content.

### **Section 15 Product Placement**

The consultation asks respondents to assess whether the draft guidelines ‘sufficiently reflect the changes in the media landscape since the last review in 2019?’

Product placement is an area where rapid industry developments are taking place. First, the product placement market is growing, as marketers seek audience attention and engagement, and media seek revenue streams that supplement or replace revenue from interruptive advertising. Netflix introduced an ad-supported tier in 2022, which now has more than 70 million global users (out of 280+million subscribers). Yet, Netflix joins the other streamers in incorporating product placement into its original productions. Season three of *Stranger Things*, for example, contained approx. \$15 million worth of product placement (Newman 2019). Global spending on product placement grew by 12.3% in 2023 (to nearly \$30 billion dollars), the majority of which was spent on television (70%), followed by film (12%) (Adnews 2024).

The ability to place virtual product placement in shows in post-production has been developing for some time (Dagnino 2022) but this can now be targeted and ‘personalised’.

AI-assisted virtual product placement (VPP) can use the data collected on users to select and insert targeted brand placements into the content they consume and allied services. The leading VPP and in-content advertising platform, Mirriad (2024), describes this as ‘the advertising solution for the streaming age’. ‘Mirriad dynamically inserts brands into a vast range of premium Television, SVOD/AVOD, Music, and Influencer content’ (Mirriad 2024). These ‘hyper-contextual ads that do not interrupt the viewing experience...[claiming] seamless integration of brand messages directly within the content, promising more authentic engagement and enhancing viewer perceptions of advertisements’ (Mirriad (2024).

NBC Universal plans to use their data and make virtual ads programmatic. ‘The products and brands will rotate based on who’s watching the film taking into account factors like age, gender, search history, and more’ (Lukyantseva 2024).

The BBC should set a clear standard and not allow product placement in any programming that was originally commissioned by a BBC UK public service.

## **Section 15: Prop Placement**

One of the main reasons for the limited expansion of product placement since the liberalisation of rules in 2011 is that the UK has a thriving and successful ‘prop placement’ industry. Through intermediary suppliers, brands get exposure in shows while they and broadcasters/producers can evade the required disclosure to users, as well as reduce transactional costs.

In this context, it is vital that prop placement is carefully managed both for BBC productions and commissioned programmes. Section 15.4.11 includes the statement that ‘Props of significant value may be treated as product placement if they are not returned to the provider’. This allows valuable products to be shown on BBC services and then returned subject only to the safeguards required by the Ofcom code (no promotion, no undue prominence). The BBC should set a higher standard and require a documented process involving a BBC editorial decision on any prop placement for commissioned programmes.

## **Section 15: Promotional Material or Stories Supplied by Outside Bodies**

15.4.21

Academic studies of the supply of sources, and dependency of media on outside sources, draw on concepts such as information subsidies (Gandy 1982) and churnalism (Johnston and Forde 2017). The BBC should ensure that there is both clear labelling for acquired content and commentary on the use of the source material so that users can assess the provenance of the material and also the rationale for the use and incorporation of such content by the BBC. This matters not only for news but across all content.

## **Section 15: Brand sponsored podcasts and other content involving brands**

The issues of managing marketer payment and editorial/aesthetic control can be expected to become more complex and challenging as they arise in ‘emergent’ forms/formats beyond the more established editorial/advertising relationships in publishing and broadcasting. This is already occurring with the growth of marketers’ interest in podcasting and SVOD, as well as live-streaming, short-form video and other media forms.

BBC employees should not appear or be heard in branded content. For sponsored programmes, the BBC should have strict rules that prevent any presenter, including contracted BBC talent, appearing to endorse a sponsor’s products or services. Instead, the acknowledgement of sponsors should be brief, factual and without ‘undue prominence’ in line with Ofcom Broadcasting code requirements. These include

9.22: Sponsorship credits must be distinct from advertising. In particular:

- a) Sponsorship credits broadcast around sponsored programmes must not contain advertising messages or calls to action. Credits must not encourage the purchase or rental of the products or services of the sponsor or a third party. The focus of the credit must be the sponsorship arrangement itself. Such credits may include explicit reference to the sponsor’s products, services or trade marks for the sole purpose of helping to identify the sponsor and/or the sponsorship arrangement.
- b) Sponsorship credits broadcast during programmes must not be unduly prominent. Such credits must consist of a brief, neutral visual or verbal statement identifying the

sponsorship arrangement. This can be accompanied by only a graphic of the name, logo, or any other distinctive symbol of the sponsor. The content of the graphic must be static and must contain no advertising messages, calls to action or any other information about the sponsor, its products, services or trade marks.

There is a case to ensure sponsor credits in podcasts or other audio are made distinct by a) an audio signal that would serve a similar auditory function to the P sign required for product placement and b) by ensuring the sponsor reference was in a voice other than that of the programme presenter or any of the participants in the programme. This would contribute to the overall goals to ensure there is stronger separation between programmes (and hosts) and marketing communications, including sponsorship references, and to ensure consistent governance practices across BBC-affiliated podcasts, including third-party distribution.

## **Section 16: Advertiser Funded Programmes**

We recommend that the BBC should adopt a policy of not allowing any acquired advertiser funded programmes (AFP) and only permitting programme sponsorship under suitable, specified terms where BBC editorial oversight can be maintained throughout. The BBC should safeguard the trust, quality and integrity of its brand by not permitting any programming that is or appears to be influenced by a third-party who has an economic relationship or consideration. This means that any programme sponsorship must be able to demonstrate the editorial integrity and independence of the programme such that viewers/users would not reasonably conclude otherwise.

Ofcom's Broadcasting Code, rule 9.1(a) states 'Broadcasters must ensure that no advertiser exercises editorial influence over the content of programmes'. AFP cannot satisfy that requirement, except where it is conducted under strict rules applicable to sponsorship of programmes/content.

Brands want association with trusted, independent content and seek formats that enhance these values by being further removed from 'advertisements'. Such efforts to 'transfer' values from trusted editorial content to the brand/marketer are well-established in the research literature. There is an even greater set of concerns for public service media brands. The BBC stands as a preeminent PSM brand and how it engages with commercial content and interests sets standards that will influence what is deemed suitable across a much larger media ecology of regulated PSMs, audiovisual, audio, publishing and other content creation and communication services.

## **Summary**

In summary, the key suggestions are as follows:

- We recognise the leading role of the BBC, and the importance of the standards set in these Guidelines for the UK media ecology and for global media ecologies.
- We welcome, and propose ways to strengthen and clarify, transparency through improved labelling for product placement, sponsorship credits and virtual placements, and underline the emergence of targeted programmatic forms of product placement.
- We call for strengthened disclosure for the affiliation of contributors and propose that the guidelines acknowledge differentiations between policy actors and independent policy analysts.

- We note the particular risks to independence arising from the audio forms, notably podcasts involving brand sponsorship (payment and control), and propose more consistent efforts to disclose and separate commercial and editorial content.
- We recommend the Guidelines acknowledge and prepare for the use of emerging and future technologies by requiring disclosure of AI-generated and AI-assisted content and by explicitly regulating AI-driven virtual product placement.
- The BBC should maintain trust and accountability through regular audits of commercial activities and so we recommend active deliberation/ oversight around the boundaries between the public service and commercial components of the organisation.

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