

**FCTC**WHO FRAMEWORK CONVENTION
ON TOBACCO CONTROL**Conference of the Parties to the
WHO Framework Convention
on Tobacco Control**Seventh session
Delhi, India, 7–12 November 2016
Provisional agenda item 5.9**FCTC/COP7/38
30 August 2016****Tobacco advertising, promotion and sponsorship:
depiction of tobacco in entertainment media****Report by the Convention Secretariat****INTRODUCTION**

1. At its third session (Durban, South Africa, 17–22 November 2008) the Conference of the Parties (COP) adopted guidelines for the implementation of Article 13 (Tobacco advertising, promotion and sponsorship) of the WHO Framework Convention on Tobacco Control (WHO FCTC), the purpose of which is to assist Parties in meeting their obligations under Article 13¹. The guidelines draw on the best available evidence and the experience of Parties that have successfully implemented effective measures against tobacco advertising, promotion and sponsorship (TAPS)², including those addressing the depiction of tobacco in entertainment media.

2. The COP Bureau reviewed the request of a Party to revisit TAPS in the context of improved implementation of WHO FCTC Article 13 in drama (television and cinema products) and decided to include it as an agenda item at the seventh session of COP (COP7). This report discusses depictions of tobacco in entertainment media in relation to the guidelines for the implementation of Article 13, identifies implementation gaps related to TAPS, highlights the growing issue of cross-border TAPS, and presents current global responses, as well as potential areas for further engagement.

DEPICTIONS OF TOBACCO IN ENTERTAINMENT MEDIA

3. Depictions of tobacco and tobacco use in entertainment media is included in the guidelines for implementation of Article 13, which also contain specific recommended actions. The guidelines clearly state the measures that Parties should take with regard to the depiction of tobacco in entertainment media products, which include:

- (a) requiring certification that no benefits were received for any tobacco depiction;
- (b) prohibiting the use of identifiable tobacco brands or imagery;
- (c) requiring anti-tobacco advertisements; and

¹ See decision FCTC/COP3(12).

² Guidelines for implementation Article 13, paragraph 1, available at:
http://www.who.int/fctc/treaty_instruments/adopted/Guidelines_Article_13_English.pdf?ua=1.

(d) implementing a ratings or classification system that takes tobacco depiction into account³.

4. However, the global landscape of entertainment media has substantially changed since the adoption of the guidelines for Article 13. In particular, the commercialization of entertainment media relies not only on national, but also on international markets, generating cross-border advertising, thereby adding complexity to the framing of national regulations. Examples of vehicles for cross-border entertainment media include, but are not limited to: Internet-based devices (smart phones, apps, tablets, smart televisions), cable television, transnational flight entertainment and public lounges. A large and growing number of media outlets generate TAPS around the world. In addition to the film industry, these outlets include online streaming of television series, soap operas and other media, especially viral and social media.

5. According to WHO⁴, by 2018, as digital cinema screens multiply and satellite and high-speed data connections proliferate, analysts estimate that in-cinema viewing will generate 45% of global filmed entertainment revenue, electronic in-home video 30% and physical in-home video 25%. About 45% of the world's households now have Internet access, including nearly one third of households in developing countries. Worldwide, one in three individuals now has a mobile-broadband (smart phone) subscription, which is five times the number in 2008. The rapid spread of multiple media platforms for viewing filmed entertainment, reality shows and outdoor exhibitions means that exposure to TAPS is vastly underestimated.

6. Furthermore, while the implementation of comprehensive TAPS bans is increasing among Parties, national regulators are still struggling to address the use of entertainment media as a means of cross-border advertising and promotion which benefits the tobacco industry, to circumvent national TAPS bans. For example, of the top 75 box office films worldwide each year between 2010 and 2014, 97% were produced or co-produced in the United States, a non-Party to the Convention⁵.

7. The depiction of tobacco use in entertainment media was brought to the attention of the tobacco control community in 2003, the year of the adoption of the WHO FCTC by the World Health Assembly, which publicized counter-measures as part of that year's World No Tobacco Day. Although several Parties have already taken action to ban tobacco use in the entertainment media as part of their comprehensive advertising bans, the situation is still alarming. Parties have therefore once again raised concerns in relation to the expanded use of entertainment media to promote tobacco use and have called for targeted action to address the issue. This is particularly true among Parties from the Eastern Mediterranean Region (EMR), which have gathered to identify various aspects of the problem and to ascertain the role and responsibilities of various partners⁶.

IMPLEMENTATION OF COMPREHENSIVE TAPS BANS WITH EMPHASIS ON ENTERTAINMENT MEDIA

8. According to the latest Party reports⁷, the average implementation rate for Article 13 in 2016 was 46%. In the 2016 reporting cycle, a number of Parties have adopted or amended TAPS bans, most

³ Guidelines for implementation Article 13, paragraph 31.

⁴ World Health Organization, *Smoke-Free Movies: from evidence to action*, 3rd Edition (2015), chapter 1.1, available at: http://apps.who.int/iris/bitstream/10665/190165/1/9789241509596_eng.pdf.

⁵ World Health Organization, *Smoke-Free Movies: from evidence to action*, 3rd Edition (2015), available at: http://apps.who.int/iris/bitstream/10665/190165/1/9789241509596_eng.pdf. After the adoption of the guidelines for Article 13, WHO has released three reports on smoke-free movies prepared in close association with WHO's collaborating centres.

⁶ WHO EMRO consultation on TAPS and Drama.

⁷ See FCTC/COP7/4. The findings may still be subject to change as the responses are verified with the relevant Parties. A more detailed analysis of the information received from the Parties will be presented in the 2016 Global Progress Report, available before COP7 at: http://www.who.int/fctc/reporting/summary_analysis/en/.

recently Brazil, Cambodia, China, Gabon, Nigeria, Oman, the Republic of Moldova and Uganda. Compared to other time-bound obligations under the Convention, like Articles 8 and 11, the implementation rate of Article 13 remains the lowest.

9. In the 2016 reporting cycle, 71% of Parties considered their advertising bans to be comprehensive. However, implementation of cross-border bans on advertising, promotion and sponsorship, and establishing proper enforcement strategies and fines for non-compliance remains a challenge for many Parties. In 2016, only 45% of reporting Parties indicated having included cross-border advertising entering their territory in their comprehensive bans, and 43% reported that their bans covered cross-border advertising originating from their country. Around one third of reporting Parties imposed penalties for cross-border advertising and cooperated to eliminate it. As for bans on the depiction and/or use of tobacco in entertainment media, 49% of Parties reported they had such a ban in 2016.

10. In the majority of Parties where needs assessment for the implementation of the WHO FCTC missions have been conducted, the depiction of tobacco use in entertainment media as well as Internet and cross-border forms of tobacco product advertising were not completely regulated. In Belarus, the team of experts found that trans-border tobacco promotion has not been banned and recommended that specific measures to ban cross-border tobacco advertising should be included in new and comprehensive legislation. In Lebanon, although a law banned all forms of tobacco advertising, promotion and sponsorship and mandated fines for violations, reports indicated that some forms of advertising were still being used on billboards and for the promotion of tobacco use in some film scenes. There was a general consensus that these issues were very difficult to regulate.

11. Within the WHO Eastern Mediterranean Region (EMR), it has been repeatedly documented that the entertainment media, including film and television series, are extensively used to advertise and promote various types of tobacco. Studies in EMR Parties have reported a high frequency of tobacco use in entertainment media scenes. A background paper from Egypt demonstrated excessive tobacco imagery both in movies and television series during the month of Ramadan⁸. Another Party from the same WHO region, Tunisia also reported that it continues to experience indirect advertising especially in filmed entertainment, showing people of all ages using a variety of tobacco products (cigarettes, cigars and water pipes)

CURRENT GLOBAL RESPONSES AND POTENTIAL AREAS FOR FURTHER ENGAGEMENT

12. Effective measures to address the depiction of tobacco in entertainment media have already been implemented. For example, since 2012, India has required that films depicting smoking are accompanied by government-produced anti-smoking announcements and a static health warning at the bottom of the screen, visible for the duration of the depiction of a tobacco product or its use. In addition, they require the producers to provide an acceptable editorial justification for the display of tobacco products or their use upon application for a film rating certificate. An audiovisual disclaimer, explicitly mentioning the ill effects of tobacco use, must also appear at the beginning and in the middle of the film or television programme.⁹

⁸ Report on the consultative meeting on tobacco advertising, promotion and sponsorship (TAPS) in drama (24–26 August 2014, Cairo, Egypt), available at: http://applications.emro.who.int/docs/IC_Meet_Rep_2014_EN_16244.pdf.

⁹ See footnote 5.

13. Parties' 2016 reports¹⁰ also provide useful information on this topic. For example, the Republic of Korea highlighted that due to sustained strict regulation and co-operation between major broadcasters, tobacco scenes have virtually disappeared from television, and that viewers criticize companies which show smoking scenes. Other Parties such as Austria, Jamaica and the Philippines have also initiated relevant regulatory activities to reduce or eliminate tobacco advertising in films, either in cinemas or in DVDs, the Internet, cable, satellite and other media. In Panama and Brazil¹¹, surveys specifically concerning advertising on national and cable TV, movies, and the Internet are being conducted. Panama also funded a joint workshop with the WHO Regional Office of the Americas to facilitate the analysis of tobacco in films in the region. Another example with a broad outreach covering a number of Parties to the Convention is the European Union's Tobacco Advertising Directive¹² of 2003, which prohibits all tobacco advertising with cross-border effects. EU Member States subsequently implemented national legislation on this basis.

14. Furthermore, a recent WHO Report¹³ highlights the fact that while national approaches, and even local approaches, can have wide-ranging positive global effects, multinational cooperation is critical in restricting the global reach of film-based tobacco imagery. The report's conclusions and recommendations for the entertainment media include: 1) certifying the absence of tobacco industry payments through a disclaimer 2) banning the depiction of tobacco brand names 3) requiring robust anti-smoking advertisements 4) requiring adult ratings for films with tobacco imagery and 5) making media productions with smoking ineligible for public subsidies. These recommendations are aligned with the guidelines for implementation of Article 13 of the WHO FCTC.

15. Since 2009¹⁴, more research has been undertaken concerning the depiction of smoking in movies, including evidence of a causal relationship between such depictions of smoking and the initiation of smoking among young people¹⁵.

PREVIOUS COP-MANDATED WORK ON CROSS-BORDER ADVERTISING

16. Article 13.8 of the WHO FCTC recognizes the particular challenges Parties face in addressing cross-border TAPS by making reference to a possible Protocol on this matter. Being the only reference to a protocol on a specific subject in the WHO FCTC text, this underlines the complexity of regulating cross-border TAPS. Accordingly, COP1 established an expert group on cross-border advertising, promotion and sponsorship mandated to prepare a template for a protocol on the subject on the basis of Article 13.8 WHO FCTC¹⁶. The COP subsequently established a working group on Article 13 (Tobacco advertising, promotion and sponsorship) of the Convention, in addition to preparing guidelines, to present recommendations on key elements of a protocol on cross-border TAPS, which would be complementary to the guidelines, and on any other measures that would contribute to the

¹⁰ See FCTC/COP7/4. The findings may still be subject to change as the responses are verified with the relevant Parties. A more detailed analysis of the information received from the Parties will be presented in the 2016 Global Progress Report, available before COP7 at: http://www.who.int/fctc/reporting/summary_analysis/en/.

¹¹ Research conducted by the Ministry of Health, Panama and Fundação Oswaldo Cruz Center for Studies on Tobacco and Health, Brazil.

¹² Directive 2003/33/EC of 26 May 2003 of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ L 152, 20.6.2003, p. 16).

¹³ See footnote 5.

¹⁴ <http://www.who.int/tobacco/publications/marketing/en/>.

¹⁵ Preventing tobacco use among youth and young adults: a report of the Surgeon General, 2012. Atlanta (GA): US Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health; 2012.

¹⁶ Decision FCTC/COP1(16). http://apps.who.int/gb/fctc/PDF/cop1/FCTC_COP1_DIV8-en.pdf.

elimination of cross-border TAPS¹⁷. COP3 took note of the recommendations and other measures recommended by the working group and requested the Convention Secretariat to assess the implications of the working group report and propose options for further work¹⁸.

17. Following the report of the Secretariat¹⁹, COP4 decided, subject to the prioritization of work by the COP, to establish an expert group on cross-border TAPS. The expert group was mandated to keep the COP updated on relevant technology developments regarding cross-border TAPS and best practices for responding to the same, and to monitor and review the guidelines for implementation of Article 13 and the arrangements established to facilitate international cooperation between Parties in the area of cross-border TAPS²⁰. In the workplan and budget for the financial period 2012–2013 adopted by COP4, the expert group on cross-border TAPS was included as an “unbudgeted recommended activity subject to availability of extrabudgetary resources²¹”. However, the topic was not included in the 2014–2015 workplan and budget, and was not introduced as an agenda item at COP5 or thereafter.

18. The marketing of tobacco in films, particularly those originating in countries with the most active film industries, remains very common and continues to promote smoking. This includes films rated as suitable for children and adolescents²². When regulating the entertainment media, Parties should be mindful of its cross-border nature and implement evidence-based measures. Considering that entertainment media is also produced from non-Parties²³ and made available in Parties with a weak regulatory framework, international cooperation is needed.

19. In conclusion, implementation of comprehensive TAPS bans especially in relation to all forms of entertainment media is a concern for selected Parties to the treaty even after the adoption of guidelines to implement Article 13. While old forms of advertising, promotion and sponsorship have been successfully banned by a number of Parties, many have yet to introduce or strengthen regulation. Furthermore, the lack of proper enforcement mechanisms still undermines the implementation of Article 13 in many jurisdictions. Finally, with the advent of new entertainment media, the strengthening of national legislation and regulation of cross-border aspects of TAPS requires greater attention from the Parties, and to prompt additional work as was foreseen at the advent of the WHO FCTC.

ACTION BY THE CONFERENCE OF THE PARTIES

20. The COP is invited to note this report and provide guidance on any future work needed in this area.

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¹⁷ Decision FCTC/COP2(8). http://apps.who.int/gb/fctc/PDF/cop2/FCTC_COP2_DIV9-en.pdf.

¹⁸ Decisions FCTC/COP3(13) and FCTC/COP3(14).

¹⁹ Document FCTC/COP/4/10.

²⁰ Decision FCTC/COP4(12).

²¹ Decision FCTC/COP/4(20), Annex 1.

²² See footnote 5.

²³ Within the context of film, this is a particular concern given that Hollywood movies can reach every corner of the world. Between 2002 and 2013, films produced in the United States comprised 75–85% of the top 100 box office films in Argentina, Brazil and Mexico, and the dominance continued through 2014. In 2014, domestically produced films accounted for a majority of box office receipts in only seven countries: the Islamic Republic of Iran (99%), the USA (95%), India (83%), Turkey (59%), Japan (58%), China (54%) and the Republic of Korea (50%). Focus 2015: World Film Market Trends. Strasbourg: European Audiovisual Observatory; 2015. Available at: <http://www.obs.coe.int/>, accessed 10 August 2015.