NOTE

This report was prepared by the Expert Group on tobacco advertising promotion and sponsorship (TAPS) to provide an overview of the establishment and work of the Expert Group. COP7 adopted decision FCTC/COP7(5) to establish this Expert Group and to provide a report for COP8. This document has highlighted the present-day issues regarding cross-border TAPS and provided its recommendations.

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Report of the Expert Group on Tobacco Advertising, Promotion and Sponsorship:
Depiction of Tobacco in Entertainment Media

INTRODUCTION

1. In decision FCTC/COP7(5), the Conference of the Parties (COP) at its Seventh session in New Delhi, India, 7–12 November 2016 requested the Convention Secretariat to:

   (a) establish an expert group with regional representation, in collaboration with the World Health Organization (WHO), to provide recommendations on operationalizing the implementation of Article 13 and its Guidelines on cross-border advertising and Tobacco Advertising, Promotion and Sponsorship (TAPS) in entertainment media, collect successful national and regional experiences in this regard, and develop a report to be submitted to the next COP on suggestions and the way forward, with the Convention Secretariat to coordinate the establishment of the group and its terms of reference with the Bureau guidance; and

   (b) to report to the Eighth session of the COP on progress towards combatting cross-border advertising and TAPS in entertainment media.

2. A Party had submitted a request to the Bureau of the COP to review TAPS in entertainment media and cross-border advertising because of the concerns associated with increased use of mobile technology, particularly among young people. The Bureau of the COP then included it as an agenda item at the Seventh session of the COP (COP7), with a view to improve implementation of WHO FCTC Article 13. A report was submitted to COP7, which discussed depictions of tobacco in entertainment media, identified implementation gaps, highlighted the growing issue of cross-border TAPS, presented current global responses, and identified potential areas for further engagement.¹


4. In accordance to the terms of reference of the Expert Group on TAPS adopted by the Bureau of the COP7, this report includes:

   (a) evidence base reviewed by the Expert Group;

   (b) examples of actions by Parties to address depiction of tobacco in entertainment media; and

   (c) recommendations on operationalizing the implementation of Article 13 of the WHO FCTC and its Guidelines on cross-border advertising and TAPS in entertainment media.
OVERVIEW OF EVIDENCE

5. The relationship between tobacco marketing and smoking behaviour has been extensively researched. The accumulated evidence base shows a strong causal relationship between tobacco promotion and increased tobacco use. Young people and adolescents are particularly vulnerable to the influential effects of media depictions of tobacco use. Reducing youth and adolescent exposure to positive and glamourized depictions of tobacco use embedded in entertainment media is essential to successful tobacco use prevention. These tobacco depictions may well occur independent of any tobacco industry involvement, but this does not diminish the potential impact such portrayals have on smoking uptake.

6. Media depictions of tobacco use beyond traditional paid mass media advertisements have been documented and assessed for their potential to increase youth smoking uptake and normalize tobacco use. Entertainment media content such as: movies, music videos, online videos, television programmes, streaming services, social media posts, video games and mobile phone applications have all been shown to depict and promote tobacco use and tobacco products in ways that may encourage youth smoking uptake. The majority of this entertainment media content is being consumed/viewed through mobile devices and the internet.

7. Outside of direct tobacco advertising, promotion and sponsorship, movie depictions of tobacco use have been the most comprehensively investigated, with the 2008 National Cancer Institute (NCI) Tobacco Control Monograph No. 195 concluding that: “the total weight of evidence from cross-sectional, longitudinal, and experimental studies, combined with the high theoretical plausibility from the perspective of social influences, indicates a causal relationship between exposure to movie smoking depictions and youth smoking initiation”.

8. Key findings from Chapters 7 and 10 of the NCI monograph summarize the evidence that tobacco advertising and smoking in movies hinders tobacco control prevention efforts and increases youth uptake:

(a) tobacco advertising targets the psychological needs of adolescents, such as popularity, peer acceptance, and positive self-image. Advertising creates the perception that smoking will satisfy these needs;

(b) adolescents who believe that smoking can satisfy their psychological needs or whose desired image of themselves is similar to their image of smokers are more likely to smoke cigarettes;

(c) experimental studies show that even brief exposure to tobacco advertising influences adolescents’ attitudes and perceptions about smoking and smokers, and adolescents’ intentions to smoke;

(d) longitudinal studies provide strong and consistent evidence that exposure to cigarette advertising influences non-smoking adolescents to initiate smoking and to move toward regular smoking;

(e) depiction of cigarette smoking is pervasive in movies and there is a causal relationship between exposure to depictions in movies and youth smoking initiation;

(f) cross-sectional studies show that among adolescents, exposure to smoking in movies is associated with initiation of smoking and among adolescent never smokers, exposure is associated with more positive attitudes toward smoking;

(g) two longitudinal studies demonstrate that adolescents with higher exposure to smoking in movies at baseline are 2.0 to 2.7 times more likely to try cigarette smoking in the future;

(h) pro-tobacco movie content appears to promote pro-smoking beliefs and intentions.
9. Further to the NCI monograph, in 2011, a review of 19 longitudinal studies of adolescents aged 18 or younger who were non-smokers at baseline suggests that exposure to tobacco advertising and promotion in a variety of ways is associated with an increased likelihood of adolescents initiating smoking. In 2012, the US Surgeon General’s report, Preventing Tobacco Use Among Youth and Young Adults further endorsed this finding and concluded that: “The evidence is sufficient to conclude that there is a causal relationship between depictions of smoking in the movies and the initiation of smoking among young people."

10. A cross-cultural survey in six European countries, conducted between November 2009 and June 2010, found an association between exposure to smoking in movies and smoking among youth, which is independent of cultural context. The overall adjusted model, after controlling for different variables such as age, gender, family affluence, school performance, television screen time, number of movies seen, sensation seeking, rebellious and smoking within the social environment, found that adolescents with higher exposure to smoking in movies were significantly more likely to have ever smoked. Compared to adolescents in Q1 (lowest exposure category), those in Q2 were 1.3 times more likely to have ever smoked, 1.6 times for those in Q3 and 1.7 times for those in Q4.

11. A longitudinal study of adolescent never smokers from six European countries conducted in the years 2009–2010 and followed up in 2011, found that after controlling for age, gender, family affluence, school performance, television screen time, personality characteristics, and smoking status of peers, parents and siblings, exposure to each additional 1000 tobacco occurrences increased the adjusted relative risk for smoking initiation by 13%. This indicates a statistically significant association between exposure to tobacco in movies and smoking initiation. Another study also showed a similar dose-response increase in the risk of smoking initiation with higher exposure to smoking in films. Studies across 15 different countries, including low- and middle-income countries (e.g., India, Argentina, Mexico,), have found similar associations between exposure to tobacco use and youth smoking initiation.

12. Social media has also been used to generate favourable attitudes towards tobacco. A 2014 study found that among youth who never used tobacco, exposure to tobacco promotions via Facebook/My Space was associated with a higher likelihood of thinking that people who smoked looked cool and had more friends; were more willing to smoke if a friend offered; and were less likely to believe that all tobacco products and second-hand smoke were dangerous. There was also a statistically significant association between exposure to tobacco ads and intent to try cigarettes soon. Among never tobacco users, males were more likely than females to have pro-tobacco attitudes; 14–15 year olds were more likely to have some pro-tobacco attitudes; and minorities were more likely than whites to have pro-tobacco attitudes.

13. A 2016 Australian study found that past-month exposure to internet-based tobacco advertising and branding among young people increased over the years of the survey (advertising: 21% in 2010 to 29% in 2013; branding: 20% in 2010 to 26% in 2013). The participants who were younger, female, from lower socioeconomic status, and never-smokers were more likely to report exposure. Facebook was the most commonly cited platform for encountering tobacco branding in 2013 (22% of all branding). Compared with young people interviewed in 2013, participants in 2010 were significantly less likely to report exposure to tobacco ads and intent to try cigarettes soon. Among never-smokers aged 12–17 years, exposure to online advertising and branding or branding alone were significant predictors of smoking susceptibility.

14. In a study that measured tobacco and alcohol content in the most popular UK video games, and assessed the relationship between exposure to tobacco or alcohol content and smoking or drinking behaviours in British adolescents, it was found that adolescents who had played at least one game were significantly more likely to have ever tried smoking (adjusted odds ratio of 2.70, 95% CI = 1.75-4.17).
OVERVIEW OF CROSS-BORDER TAPS METHODS

15. It is well documented that the tobacco industry once spent millions to have film producers feature specific tobacco brands and funded advertising campaigns for the latest films and their top stars. While this type of direct promotion and sponsorship in entertainment media is subject to tighter regulation in many countries that are party to the WHO FCTC, young people remain exposed to pro-tobacco imagery in a myriad of ways through the media they consume. Increasingly, as media consumption patterns change, due to the increased availability and affordability of internet and internet enabled devices, especially smart phones, this content is likely to be viewed online or through a streaming service.

16. Additionally, the popularity of content-sharing platforms, including social media, enables users to be content creators and sharers. People can view and share digital media freely, easily and quickly. This situation has blurred the lines between consumer and brand owner and poses a challenge to controlling cross-border TAPS.

1. Commercial communications which include tobacco depictions

17. It is important to emphasize that it is the commercial nature of tobacco depictions in entertainment media that is of utmost concern - this is not an effort to censor individuals and pro-tobacco beliefs, attitudes, or behaviours. Commercial content is not only that with direct/indirect ties to the tobacco industry, but any form of commercial entertainment media that includes tobacco depictions. The WHO FCTC Guidelines on banning tobacco advertising, promotion and sponsorship clearly state that the depiction of tobacco in entertainment media, such as films, theatre and games, is a form of tobacco advertising and promotion.

18. The vehicles for entertainment media to cross borders include but are not limited to: Internet-based devices (smart phones, apps, tablets, smart televisions), cable television, transnational flight entertainment and public lounges. These vehicles facilitate online streaming of films, television series, music videos, sporting, music, dance and other entertainment events; enable access to electronic versions of international and domestic newspapers and magazines; and in addition to containing tobacco depictions may also deliver embedded advertising content.

2. Smoking depictions across media types

2.1. Films

19. American films have extensive reach worldwide - 97% of the top 75 box office hits worldwide each year between 2010 and 2014 were USA produced or co-produced. These films accounted for 63% of ticket sales in the European Union in 2014; 71% in the Russian Federation and the Commonwealth of Independent States; 89% in Canada; 89% in Latin American countries; 88% of market share in Australia and New Zealand; the majority in much of Asia; and about 40% in China, India, Japan and the Republic of Korea. The films delivered an estimated 225 billion tobacco impressions in cinemas alone between 2010 and 2014, with exceptions in China, India and Japan.

20. An analysis of more than 1800 feature films, accounting for 95% of ticket sales in the USA between 2002 and 2014 showed that tobacco imagery was present in 59% of the top-grossing youth-rated and adult-rated films – 78% of R-rated films, 60% of PG-13 films and 25% of G- or PG-rated films had smoking scenes. In all the top-grossing films distributed in the USA between 2002 and 2014, there were approximately 35,500 tobacco incidents, 57% in R-rated films, 39% in PG-13 films and 4% in G- or PG-rated films. The number of tobacco incidents peaked in 2005 at 3960, declined to 1825 in 2010 and then increased again. In 2014, the number of tobacco incidents in PG-13 films was the highest in more than a decade, with some containing more than five minutes of screen smoking.
21. Another key issue concerns the “downrating” of films as they move across borders. Films that get rated for adults in the US market often receive youth ratings when evaluated by non-US country rating systems.⁵⁸,⁵⁹ For example, more than half of films that receive an R-rating for adults in the USA, receive a youth rating when evaluated by rating systems in Argentina, Brazil, and Mexico.³⁰ R-rated Hollywood films that contain the most smoking are then likely to get rated for youth by rating systems outside of the USA, increasing the likelihood that youth are exposed to tobacco imagery.

22. Smoking scenes are said to be even more prevalent in films produced outside of Hollywood. An analysis was conducted of films produced in six European countries (Germany, Iceland, Italy, Poland, the Netherlands and the United Kingdom of Great Britain and Northern Ireland) and in two Latin American countries (Argentina and Mexico). It was found that nearly nine out of 10 films produced in Iceland and Argentina had smoking scenes, including films rated for young people. The others were more likely or equally as likely as the films produced in the USA to contain tobacco imagery.³¹ A study conducted in Brazil in which 50 films including the 10 highest-grossing films from 2007 to 2011 were analysed, found tobacco depictions in 53% of the movies rated as suitable for 14 years, 18% for those 12 years old and 4% for those 10 years or younger. Approximately 75% of tobacco content is contained in films with access for all ages and up to 14 years of age.³²

2.2. Television programmes

23. Reality television shows are popular with children and young adults. For example, a study into Series 3 of the United Kingdom reality show Love Island, broadcast in 2017, had high levels of smoking depicted - tobacco imagery appeared in 204 intervals and an identifiable cigarette brand, Lucky Strike Double Click, appeared in 16 intervals. According to the paper, the 21 episodes delivered an estimated 559 million gross tobacco impressions, primarily to women, including 47 million to children under 16 and 44 million gross impressions of Lucky Strike branding, including 4 million to children under 16.³³ A study that quantified tobacco imagery in two Brazilian TV reality shows broadcast in 2014 that were rated as suitable for those age was 12, found that of the 165 episodes analyzed, 73 (44%) had incidents/messages related to tobacco. These episodes encompassed 230 scenes with tobacco related incidents.³⁴

24. Streaming television programmes With viewership of traditional television among youth and young adults decreasing, and online streaming and paid subscription increasing, this is an area of concern. Globally, young people (aged 18 to 34) are much more likely to be internet and smartphone users compared with those ages 35 and older, this age gap is found in high and lower income countries.³⁵

25. For example, Netflix, a global streaming service provider and content creator, with 117.58 million subscribers worldwide as of 2017, produces popular content that is riddled with smoking depictions. A study in the USA used a nationally sourced sample of youth and young adults to identify 14 most popular broadcast and cable television shows in the age group, and then analyzed these shows for tobacco imagery. The study found that 79% of the shows most popular with the 15–24 years age group depicted smoking prominently. The seven Netflix shows in the sample registered a total of 319 “tobacco incidents” compared to broadcast or cable television shows with 139 such portrayals.³⁶

2.3. Social media and audio-visual sharing platforms

26. Social media (such as Facebook and Instagram) and audio-visual sharing (such as YouTube) platforms have provided tobacco companies an additional platform for promoting their products and for countering the denormalizing strategies of tobacco control. Tobacco companies can use social media to maintain favourable associations with smoking and particular brands.³⁷ In 2008, British American Tobacco (BAT) employees were found to be promoting BAT cigarette brands on Facebook.³⁸
27. In a 2014 study to measure youth exposure to tobacco promotions via new electronic media outlets, it was found that 11.0% (n = 1,882) of youth reported recently receiving ads/promotions from tobacco companies via Facebook/MySpace (9.1% among youth who never used tobacco, and 14.7% among youth who ever used tobacco); and 4.0% (n = 727) received such promotions via text message (2.8% among never-tobacco users, and 6.5% among ever-users).

28. YouTube is the most researched social media site in the tobacco control field. Music videos are highly viewed, shared, and popular content on YouTube, they are also a major global source of exposure to tobacco imagery. A United Kingdom study quantified tobacco and alcohol content, including branding, in YouTube music videos. YouTube videos of the 110 most popular songs in the United Kingdom music charts during a 12-week period from 3 November 2013 to 19 January 2014 were analyzed. A montage of the video clips can be viewed here: https://youtu.be/edRA6yvFYWQ The study found that tobacco appeared in 22% of all videos; electronic cigarettes in 2%; tobacco branding in 4%; and electronic cigarette branding in 1%. The most frequently observed tobacco and electronic cigarette brands were Marlboro and E-Lites.

29. Another United Kingdom study that sought to estimate adult and adolescent exposure to tobacco and alcohol content in YouTube music videos found that the 32 popular videos included in the survey, delivered an estimated 203 million gross impressions of tobacco to the British population. Adolescents were exposed to an average of 10.5 tobacco impressions per capita, with exposure rates being higher in girls than boys; and adults to an average of 2.9 tobacco impressions per capita. The highest number of gross tobacco impressions per capita occurred in the 13–18 age group (11.48 among those aged 13–15 and 10.50 among those aged 16–18).

2.4. Computer games and smartphone applications

30. In response to concerns about violence in videogames, the Entertainment Software Association established the Entertainment Software Ratings Board (ESRB) to rate games by considering a range of risk behaviours (for example, alcohol use, drug use, sex, violence), including tobacco. Games rated for teens that have been introduced since 2005 increasingly include tobacco content, and teen-rated games contain tobacco content, even if the ESRB system does not capture that content. Adolescent and young adult gamers reported that 42% of the games they regularly played contained tobacco content, although only 8% of those games received a content descriptor for tobacco from the ESRB. Despite these data, a recent study of stakeholders in the videogame industry indicates little concern about tobacco content in games, mostly due to the greater concerns from parents and advocacy groups about violence and sex.

31. The United Kingdom video gaming market was the third largest in the world in 2015 and around 54% of United Kingdom adolescents play video games online. Approximately 80% of children aged 10–15 play packaged or online video games with an age rating higher than their age, and over half of British parents were unaware of the content to which their children are exposed. Age classification of United Kingdom video games are overseen by the Video Standards Council, which applies age ratings based on content descriptors assigned by the Pan European Game Information (PEGI) system, which is voluntary and self-regulatory.

32. A study published in 2016 quantified and characterized alcohol and tobacco content in the most popular United Kingdom video games, and assessed the relationship between exposure to tobacco or alcohol content and smoking or drinking behaviors in British adolescents. A total of 32 of United Kingdom’s bestselling video games in 2012 and 2013 were analyzed. It was found that tobacco actual use occurred in 32 intervals (15%), implied use in 27 intervals (12%) and paraphernalia in 53 intervals (24%). Furthermore, adolescents who had played at least one game were significantly more likely to have ever tried smoking (adjusted odds ratio of 2.70, 95% CI = 1.75-4.17). Furthermore, there were no such PEGI content descriptors for tobacco content.
Smartphone Applications A study of pro-smoking smartphone applications (apps) found that some of the identified apps showed images of cigarette brands and others showed images that resemble existing brands. Pro-smoking apps included a cartoon game and an opportunity to simulate the smoking experience with high quality, free apps.\(^5\)

2.5. Online – direct advertising

The Internet enables tobacco companies to interact with and engage consumers. For example, the Camel brand engaged smokers to help design their new packaging through an interactive website.\(^5\)

A study that collected data on all online banner/video advertisements appearing in the USA and Canada between 1 April 2012 and 1 April 2013 - including associated meta-data, first market, spend, characteristics, themes, topic area, target demographics. The study found that e-cigarette and tobacco industries spent almost $2 million on the placement of their online product advertisements, mostly on two brands: NJOY e-cigarettes and Swedish Snus. There was almost no direct advertising of cigarettes.\(^5\) However, this study does not at all account for tobacco depictions within online entertainment media.

2.6. Lifestyle

The fashion industry has also had a long and intertwined history with the tobacco industry.\(^5\) Although smoking-positive cultures have been eroded, particularly in countries with declining smoking prevalence and comprehensive tobacco control policies,\(^5\) there are still attempts to resurrect smoking’s tarnished image such as in the recent MET Gala.\(^5\)

In the biggest and most celebrated fashion event of the year in New York City - the MET Gala - celebrities have blatantly violated New York City’s smoking ban in public places. American fashion designer, Marc Jacobs, posted an image of himself smoking during the event in the girls’ room, with celebrities Courtney Love, her daughter Frances Bean Cobain and Char de Francesco. The latter can be seen holding a Marlboro cigarette packet, associating the brand with exclusivity, celebrity, fashion and rebellion.\(^6\) Courtney Love was also a paid spokesperson for NJOY e-cigarettes in 2013.\(^6\)

The tobacco industry continues to apply marketing tactics in its direct marketing that promote values, an image or an identity one aspires to have. Tobacco companies use youth-oriented images and themes to suggest young people to smoke. For example, Philip Morris’ Be Marlboro campaign in 2014 used images of attractive people taking risks and being fearless; of asserting freedom; exploring their limits; defying authority. This global campaign also included sponsorship of parties and concerts, online promotional videos, exciting point of sale display and interactive booths.\(^6\)

2.7. Brand stretching and brand sharing

The tobacco industry has also applied alibi advertising. The Davidoff Cool Water fragrance and the Davidoff Good Life cologne were distributed globally to provide brand name support. According to an internal Davidoff strategic brand review document, “successful Davidoff trademark diversification such as Cool Water and Good Life fragrances, as well as Davidoff Coffee, was developed to create alibi advertising opportunities for the brand. These have made above the line market communication possible even in dark markets.”\(^6\)

In a reverse form of brand stretching, Vogue cigarettes has also exploited the strong imagery of the Vogue fashion magazine brand even though they are not associated. Female consumers are very familiar with Vogue magazine and associate the cigarette with being fashionable, modern, young, and on trend. Even the ads for Vogue cigarettes include high fashion images.\(^6\)
2.8. Imported magazines and international newspapers

41. In many instances, Parties do not have a ban on tobacco depictions in publications produced outside the territory and brought into the territory.

2.9. Corporate social responsibility (CSR)

42. CSR is an important tool for companies to improve their image. Some Parties may ban publicity of contributions by tobacco companies to social and humanitarian causes but they do not ban these practices if they were not publicized. Tobacco companies have sponsored the arts, education, hunger and nutrition and disaster relief among others.

43. Tobacco industry corporate websites and social reports provide accessible documentation of these activities. As has been documented by the International Non-Governmental Coalition Against Tobacco (INGCAT), tobacco company expenditure on poverty relief and health care projects is dwarfed by the marketing of tobacco to these same populations, and by expenditure on publicizing these activities in annual reports and corporate advertising.\(^{65}\)

44. The industry also uses social media to tout its CSR agenda.\(^ {66}\) On 8 March, International Women’s Day is a global day to celebrate the social, economic, cultural and political achievement of women, and also marks the call to action for accelerating gender parity. In 2017, the theme was ‘Be Bold for Change’. To be seen as being generous, accountable and operating to high standards, the tobacco industry issued CSR messages and used social media to spread them. Philip Morris International (PMI) posted a 2-minute video (14,000 views 24 hours after posting) on its Facebook page that opens with the statement “changing one women’s life can benefit a whole community”. The video also featured Womanity Foundation and how they valued the partnership between corporations and the social development sector. PMI, a partner of the Womanity Foundation, has been supporting social development capacity building and mentoring programmes in India and Brazil. British American Tobacco (BAT) also used Twitter to feature images of female BAT employees, one of whom held a gift with a message about BAT’s commitment to diversity.\(^ {67}\)

45. On the PMI web site, PMI indicated that they supported disaster relief efforts in Ecuador after an earthquake and had responded to the call for support from the United Nations; and were recognized by the Deputy Prime Minister of Ethiopia for their donation to help drought victims.\(^ {68}\)

46. In tobacco-producing countries, CSR actions have been intensively used to broaden the support of legislators. In Brazil, the second largest producer and largest tobacco exporter in the world, all tobacco companies and industries – including Souza Cruz (the branch of BAT in Brazil) and Philip Morris – invest in CSR.\(^ {69}\) The CSR programmes developed by Souza Cruz for rural tobacco producers, are mostly focused on young people, and include: the Sustainable Rural Producer, Entrepreneurship Program of the young Rural; Rural Young Network; Brazilian Rural Youth Exchange.\(^ {70}\)

47. PMI has also sought to be a stakeholder in the sustainable development agenda. Most recently, PMI announced that they are committed to a smoke-free world and established the Foundation for a Smoke-free World. They also stated that they have tackled socio-economic challenges in tobacco growing communities; are seeking to replace cigarettes with less harmful alternatives; and are committed to good agricultural practices.\(^ {71}\) The Foundation has a strong online presence including a collection of promotional videos and active social media accounts.

EXAMPLES OF LEGISLATIVE OR POLICY ACTIONS UNDERTAKEN BY PARTIES TO ADDRESS TAPS IN ENTERTAINMENT MEDIA AND CROSS-BORDER TAPS

48. Regulating and controlling direct advertising is more readily enforceable, enacted and enforcing polices that also apply to content within entrainment media that promotes tobacco use is a bigger
challenge. With regards to depiction of tobacco in entertainment media, Article 13 Guidelines currently state that Parties should take the following measures:

(a) require certification that no benefits were received for any tobacco depiction;
(b) prohibit the use of identifiable tobacco brands or imagery;
(c) require anti-tobacco advertisements;
(d) implement a ratings or classification system that takes tobacco depiction into account (for example, requiring adult ratings which restrict access of minors);
(e) require disclosure to relevant government authorities of expenditures by the tobacco industry on advertising, promotion and sponsorship in which it engages, for Parties that do not have a comprehensive ban.

1. General legislative frameworks

49. Parties may have a comprehensive ban on TAPS, but the law may only ban commercial or paid advertising of tobacco products. Unpaid depiction of tobacco in entertainment media and materials entering the territory containing tobacco advertisement or imagery may be permitted or have limited restrictions. An explicit ban on TAPS originating or entering the territory and on Internet sales and TAPS would be needed to protect the population. For example, Article 16 of Burkina Faso’s Law No. 040-2010/AN states that “Advertising, including trans-boundary advertising, and direct or indirect promotion in any form whatsoever for tobacco and tobacco products are forbidden, except in the spaces authorized by regulatory provision” and Article 24 states that “Sale over the internet, or by any other means that does not allow for verification of the age of the buyer, is forbidden”.

50. Article 25 of Djibouti’s Law No. 175/AN/07 states that “In order to reduce the consumption of tobacco products, which is the cause of a cohort of health problems, disability and death, a global ban on any advertising for tobacco and on any promotion and sponsorship of tobacco is hereby instituted”. Article 28 states that “A global ban on advertising, promotion and sponsorship on the radio, television, in the print press, and as applicable, in other media such as internet, is hereby instituted …”.

51. Article 14 of Panama’s Law No. 13 of 2008 states that “Any kind of marketing, advertising and sponsorship of tobacco and its products is totally prohibited, whether through indirect or subliminal means, aimed at minors or those of majority age. Equally prohibited are all forms of cross-border advertising, promotion and sponsorship of tobacco and its products that may penetrate the national territory”.

52. Directive 2003/33/EC of the European Parliament and the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products prohibits TAPS with cross-border effects. The ban covers media (i.e. print, radio, information society services) other than television. Member States are responsible for implementing measures and bringing them into force by 31 July 2005. Articles 9(1d), 10(2) and 11(4a) of the Audiovisual Media Services Directive (2010/13/EU) prohibit all forms of audiovisual commercial communications for cigarettes and other tobacco products, including sponsorship and product placement. Originating Member States are to verify that audiovisual media services comply with national law as coordinated by this Directive to ensure free movement of such services without secondary control in the receiving Member State. The Audiovisual Media Services Directive is currently being revised though no changes are proposed to the wording on tobacco advertising.
2. TAPS ban in print and broadcast media

53. Since 2000, Brazil has banned tobacco advertising and promotion on television, newspapers and magazines, as well as the sponsorship of cultural or sporting activities. Sponsorship and advertising in a national stadium, race track, stage or similar for international sporting events that do not have a fixed headquarters in one country and which are organized by foreign institutions (for example Formula 1 races) have also been banned as of 30 September 2005. Broadcasting of cultural or sporting events in Brazil, with tobacco images generated abroad or sponsored by tobacco companies are now prohibited. The National Health Surveillance Agency (ANVISA) conducts surveillance and monitors local television, radio and printed media. The public may also submit complaints to the authority.

3. Anti-tobacco advertisements

54. Showing anti-tobacco advertisements whenever there is a scene with tobacco imagery, has been considered as a way of providing the government with air-time to disseminate public health messages. India, Malta and Bahrain are some countries that have implemented this.

55. India, since 2012, has required films depicting smoking to be accompanied by government-produced anti-tobacco 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 audio-visual 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. 72,73

56. For movies and television series produced outside Bahrain and screened on Bahrain television and in cinemas, the Ministry of Information Affairs has started to display warning message at the time tobacco use is depicted in a scene.

57. Malta, has in Article 7 of their Tobacco Act of 1986, required the owner, licensee, machinist or responsible person to ensure that immediately before the beginning of every film show and on resumption of the show after the interval, a health warning be screened as well as a notification that smoking is prohibited in the cinema.

4. Ratings or classification system

58. Several Parties have ratings system for films. For example, in Kenya, the Kenya Film Classification Board (KFCB) is the public regulator of films, and using the Film Classification Guidelines, classifies use of tobacco or tobacco products under the theme “drugs, alcohol and other harmful substances”. The restrictions include: portraying children in the production, trafficking and distribution without any real context; justifying, promoting, encouraging or glamourizing abuse or misuse of drug related products; and, attempts to associate drugs, alcohol and other illegal substances with sexual prowess and/or a glamorous, successful lifestyle.

59. In the United Kingdom, if smoking significantly features in film, video or DVD that particularly appeals to children, the British Board of Film Classification (BBFC) should normally indicate this in BBFCinsight (both a short and long description of issues found in the work and accessible via their website or phone application). It is important to add that the BBFC will only provide such information if there is excessive smoking in the works, so is therefore limited in its effectiveness to prevent youth exposure to smoking depictions. Further, Ofcom, the communications regulator in the United Kingdom, state that smoking depictions should be editorially justified and not condoned, encouraged or glamorised in United Kingdom television programmes aimed at children.
In Egypt there is a code of ethics for entertainment/drama creators that emphasizes the importance of artistic freedom, but balances this with an obligation to protect young people from content that increases curiosity about and use of tobacco and other drugs. The Code of Ethics has been signed by many parties, including those responsible for media production and broadcasting. It calls for action from drama producers, writers, stars, and television and radio channel owners. It reminds all parties of their responsibilities to protect children and youth from initiation of tobacco use. It calls for action in relation to child rights, human rights and tobacco control laws.

Smoking in movies regulation - India case study

The Government of India enacted The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003 to discourage the use and consumption of cigarettes and other tobacco products and protect children and youth from harmful effects of tobacco use with the objective to achieve improvement of public health as enjoined by Article 47 of the Constitution of India. Section 5 of the Act prohibits/restricts all forms of advertisement (direct, indirect/surrogate) promotion and sponsorship of tobacco products. However, after the enactment of the COTPA, that comprehensively banned all forms of advertisement, promotion and sponsorship of tobacco products, studies conducted during the period 2003 and 2005 revealed that there was an upsurge of films depicting tobacco use.

In order to address this challenge the Government of India refined its Rules to regulate depiction of tobacco products or their use in films and television programmes. These Rules were initially notified in 2005, however it was implemented in 2012 after several rounds consultations and detailed deliberations with Ministry of Information and Broadcasting, which is the implementing agency for the Rules.

This policy which India has pioneered requires film theatres and television channels to screen pre-approved anti-tobacco public service announcements (around 1 minute films) and a disclaimer at the beginning and during the middle of programmes in which tobacco consumption is depicted; and health warning as a static message at the bottom of the screen while tobacco is in use onscreen. Moreover, any brand names of tobacco products, if shown, are ordered to be blurred out. The content is not certified as fit for public exhibition by the Central Board of Film Certification, till such directions are strictly complied with.

This Policy has made huge free air time available for sustained mass media campaigns and may be regarded as a novel health financing mechanism.

5. Disclosure of expenditures on TAPS by the tobacco industry

Canada requires highly detailed semi-annual reports describing tobacco industry promotional activities. Article 16 outlines reporting requirements for promotional activities, Article 17 information on advertisements, Article 18 on sponsorship, Article 19 on permanent facilities, Article 20 on packaging, Article 21 on services, Article 22 on display at retail, Article 23 on accessories and Article 24 on other products. For example, the tobacco manufacturer has to report on where the advertisement was published, the dates it was published, the cost and to provide a copy of the advertisement. 74

Article 3 of Chile’s Law 19419 regulating activities related to tobacco states that tobacco companies must annually inform the Ministry of Health an itemized breakdown of donations made, as well as expenses incurred as a result of agreements with public institutions, athletic or community organizations, academic or cultural institutions, and non-governmental organizations.
6. **Certification that no benefits were received for any tobacco depiction in entertainment media**

63. Article 13 Guidelines recommend that Parties should “implement a mechanism requiring that when an entertainment media product depicts tobacco products, use or imagery of any type, the responsible executives at each company involved in the production, distribution or presentation of that entertainment media product certify that no money, gifts, free publicity, interest-free loans, tobacco products, public relations assistance or anything else of any value has been given in exchange for the depiction”.

64. Although not a legislative or policy requirement, in the United States of America, Time Warner (Warner Bros) began in 2008 to post the following statement in their film credits: “No person or entity associated with this film received payment or anything of value, or entered into any agreement, in connection with the depiction of tobacco products”. Paramount (Viacom) in 2012 had this statement in one of their PG-rated films, “Paramount Pictures did not receive any payment or other consideration, or enter into any agreement, for the depiction of tobacco products in this film”.

65. Ideally, certification should be a sworn affidavit on public file that holds executives accountable - as is done when animals are used in filmmaking and the makers certify they were not harmed during the process.

7. **Civil law options**

66. Article 61 of the Federal Act on Audiovisual Media Services states that the regulatory authority can decide on infringements on the basis of complaints by: a statutory interest group which has a justified interest in compliance with Articles 31 to 38 and 42a to 46 (regarding audiovisual commercial communication on television channels in order to protect consumer interests); by individuals affected; by the Association for Consumer Information; and by one of the bodies and organizations of another Member State of the European Union.

67. Paragraph 26 of the Hungary Act XLVIII 2008 states that “nongovernmental organizations active in the area of protection of non-smokers shall be entitled to request the opening of proceedings with respect to any infringement of the provision governing the advertisement of tobacco products and sponsorship relating to tobacco products”.

8. **Actions by other stakeholders**

68. Although a voluntary system has not proven to be particularly effective at reducing tobacco imagery in entertainment media, three major broadcasters in the Republic of Korea have eliminated smoking scenes in television drama since early to mid-2000s due to criticism by viewers and which may also be attributable to sustained strict regulation and cooperation. In 2015, Disney had also announced that it will no longer make films with smoking scenes. Although there is some concern that they may not apply this policy to subsidiaries, including in their upcoming purchase of Fox studios.

69. Facebook has an advertising policy and list of prohibited content, which includes tobacco products. It states, “Ads must not promote the sale or use of tobacco products and related paraphernalia”.

70. Google also has an advertising policy on dangerous products or services and prohibits tobacco or any products containing tobacco; products that form a component of a tobacco product, as well as products and services that directly facilitate or promote tobacco consumption; and products designed to simulate tobacco smoking. However, there are loopholes whereby these policies only cover paid
advertisements and not embedded or free content, and tobacco sites may get around the policy by using creative keywords such as smoking information.\textsuperscript{80}

**KNOWLEDGE GAPS IN THE AREA OF CROSS-BORDER TAPS AND TAPS IN ENTERTAINMENT MEDIA**

71. It must be emphasized that while monitoring tobacco depictions in entertainment media is both useful and necessary to understanding patterns of youth exposure, the collected body of evidence clearly shows that media tobacco depictions increase youth smoking uptake. Gaps in knowledge are not such that preventive policy action must be delayed, but only that implementation and effectiveness of policy action could be enhanced with further research. Policy action that required the tobacco industry to more fully disclose its marketing and promotional activities could assist in filling some current gaps in knowledge. These include:

(a) difficulties in identifying the origins, both country and creator/owner, of TAPS content, particularly online;

(b) challenges in systematically documenting and capturing both tobacco industry promotional activities and tobacco depictions in entertainment media.

72. There is also a need to increase the breadth and scope of TAPS in entertainment media research to capture country/region specific data. This is particularly true for the African region where there is a dearth of research to draw from. Additionally, broadening research to include not only youth under 18, but young adults aged 18–25, is necessary as this age group has the highest smoking rates. Given that women in low and middle income countries are a primary target of tobacco industry marketing, better understanding of how women are being targeted through entertainment media is crucial.

**RECOMMENDATIONS**

73. The Expert Committee recognizes previous work on cross-border TAPS and notes the report on this topic prepared by the Convention Secretariat during COP7:

\textit{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.\textsuperscript{81}}

74. The focus of previous COP discussions, reports, and Guidelines on cross-border TAPS has been primarily on movies. It is critical that these discussions and resulting decisions now extend to other forms of entertainment media, particularly digital media. Further, this expert report primarily focuses on traditional tobacco products as the evidence base is well established. The expert group however acknowledges and endorses this COP decision on the marketing of electronic nicotine and non-nicotine delivery systems:

\textit{INVITES Parties to consider applying regulatory measures such as those referred to in document FCTC/COP/7/11 to prohibit or restrict the manufacture, importation, distribution, presentation, sale and use of ENDS/ENNDS, as appropriate to their national laws and public health objectives.}
Expert Committee Recommendations

1) It is essential that all Parties fully and comprehensively implement measures as outlined and detailed in the Article 13 Guidelines and work to monitor and evaluate the effectiveness of TAPS polices and regulations. Parties should examine and revise existing TAPS legislation to ensure it includes films, internet, streaming media and subscription media. Parties are encouraged to work collaboratively and systemically to monitor cross-border TAPS and TAPS in the entertainment media. This includes cooperation amongst Parties to strengthen the cross-border ban on TAPS and enforcement of the ban. This includes providing assistance in removing TAPS from source countries that crosses borders. Parties should also continue sharing experiences and promising practices in order to maximize implementation of Article 13. However, Article 13 Implementation guidelines are in urgent need of supplementing in light of the major changes to media consumption patterns, including those associated with cross-border communications, since they were originally adopted at COP3 in 2008;

2) The existing Implementation guidelines for Article 13 that were adopted in 2008 remain relevant;

3) In light of major changes to media consumption, developing additional implementation guidance for Parties, for example an addendum to the existing Article 13 Guidelines, that is reflective of these transformations is recommended. A special focus on social media and other online channels is warranted. The development of additional guidance should reflect lessons learned in other topic areas of online content regulation;

4) Parties are urged to develop legislation or administrative measures to reduce tobacco depictions in entertainment media such as requiring tobacco industry disclosure of all expenditures associated with TAPS, requiring health and content warnings on material that depicts tobacco, banning tobacco branding from all entertainment media, any tobacco products shown must include required health warnings and other regulatory requirements relating to packaging (such as plain packaging), and requiring age-rating on entertainment media including music videos and video games. Further, Parties are urged to prohibit tax concessions and subsidies for films that include tobacco promotions;

5) In addition to legislative action, Parties are encouraged to work with the media industry to reduce tobacco imagery in entertainment media, particularly in media content that is consumed by youth and adolescents. Developing a Code of Ethics with the media industry, for example, could assist in reducing positive depictions of tobacco use. Engaging stakeholders outside of health will assist in increasing understanding of the impact of tobacco depictions on youth smoking uptake;

6) Civil society has a crucial role in ensuring such legislation is upheld, including through its role in monitoring and reporting on tobacco depictions in entertainment media. Parties should provide channels for civil society to raise TAPS policy violations;

7) Parties are encouraged to report on the adoption of these recommendations in their WHO FCTC implementation reporting.
ANNEX

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