

Comments on “Draft Notification Regarding Changes in Rules 11 of the COTPA Amendment Rules, 2023 - OTT Rules”

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Sl no.	Relevant section in the Draft Notification in which comments are being provided	Comment/Suggestions	Rationale
1.	<p>a. Display anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the film</p> <p>b. Display of anti-tobacco health warning as a prominent static message at the bottom of the screen during the depiction of tobacco products or their use in the program, on all content, whether of Indian or foreign origin, released on or after 1st September 2023.</p>	<p>We propose not mandating anti-tobacco static messages on scenes displaying tobacco scenes in contents released in Online curated content platforms (OCCP) for better visual experience of users and avoid confusion.</p> <p>However, we suggest incentivising OCCPs, in form of rewards and recognition, to come up with innovative and creative mechanisms to build awareness about harmful effects of tobacco consumption,</p> <p>While mandatory messaging during particular scenes may not necessarily be efficient or effective, OCCPs should be encouraged to come out with better communication strategies which could lead to enhanced comprehension and positive action by consumers.</p>	<p>a) Impact on viewing experience: The mandatory static warnings during tobacco-related scenes may significantly disrupt the viewing experience on OCCP, especially for mobile users. Given that a substantial portion of OCCP content in India is consumed on mobile devices, which have smaller screens, these warnings can obscure key visual elements or subtitles, which are crucial to the storytelling. This is particularly problematic because OCCP pride themselves on delivering high-quality visual narratives. The obstruction caused by the warnings could potentially diminish this core offering, potentially leading to a less immersive and satisfying viewing experience.</p> <p>b) Confusion for users with different language: The static anti-tobacco message on OCCP platforms must be in the same language as the online content. The users might not be aware of the language of the content and use subtitles to understand the content. The message</p>

			will be both confusing and of limited use to the user in such scenarios.
2.	<p>a. Display anti-tobacco health spots of minimum thirty seconds duration each at the beginning and middle of the film.</p> <p>b. Display an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, at the beginning of the film.</p>	<p>While we support the government's intention to raise anti-tobacco awareness among all age groups, we believe the proposed approach may not effectively achieve that goal. Instead, we advocate for a more data-driven strategy to assess the impact of these health warnings in the context of OCCP. It is crucial to conduct further research on how anti-tobacco messaging affects younger viewers and their psychological responses to frequent health warnings.</p> <p>Imposing uniform anti-tobacco warnings across all ages and content types could prove counterproductive. Younger audiences, who are already informed and protected through existing age-ratings and parental controls, may not require the same intensity of messaging as adult users, and such broad measures risk diluting the effectiveness of these warnings. This necessitates a more nuanced approach, with regulatory measures that account for the varying</p>	<p>a) Impacts on children and adolescent Viewers: OCCP are widely used by children, especially with leading animation studios partnering with them. While protecting young viewers from tobacco content is important, repeated exposure to fear-based health messages could have unintended psychological effects. Research shows that intrusive messaging can lead to resistance or desensitisation, particularly among adolescents, who might react with curiosity or defiance.^{1,2} Children could also feel confused or overwhelmed by such warnings, sparking unintended curiosity about tobacco. With parental controls already in place, the new rules should carefully consider the impact of these warnings on content designed for children to avoid harming their psychological well-being.</p>

¹ Sophie Lacoste-Badie, Karine Gallopel-Morvan, Mathieu Lajante, Olivier Droulers, (2019) "How do smokers respond to pictorial and threatening tobacco warnings? The role of threat level, repeated exposure, type of packs and warning size", Journal of Consumer Marketing, <https://doi.org/10.1108/JCM-01-2017-2051> Permanent link to this document: <https://doi.org/10.1108/JCM-01-2017-2051>

² <https://www.emerald.com/insight/content/doi/10.1108/JCM-01-2017-2051/full/html>

		<p>levels of consumer engagement and awareness of content descriptors, rather than a blanket policy that may frustrate users and reduce overall compliance.</p> <p>We recommend strategic use of audio-visual disclaimers and health spots, depending on content frequently viewed by the user. For instance, whenever the viewer is watching tobacco consumption on OCCP for the first time, disclaimers and spots must accompany. Thereafter, the frequency of such disclaimers may vary depending on the content which the viewer watches, and the frequency of scenes depicting tobacco consumption.</p> <p>Regulatory authorities can also work with OCCP to identify target groups (e.g., youth vs adults) and adjust the frequency and type of warnings accordingly. Age-based filters could help ensure that warnings are displayed appropriately without overwhelming all viewers, particularly those who may not need constant reminders.</p> <p>Moreover, instead of blanket mandates, a code of ethics co-designed by OCCPs, experts, and consumer groups should be</p>	<p>b) Effectiveness of health warnings and reactance: A growing body of research questions the effectiveness of health warnings in altering behaviour. For instance, studies have shown that pictorial health warnings, while impactful, can elicit psychological reactance in smokers.³ In the case of OCCP platform users, particularly those who may not be smokers themselves, the constant barrage of anti-tobacco messages could create irritation, desensitisation, and a decrease in the overall perceived enjoyment of content.</p> <p>c) Chilling effect on creative expression: Another consequence of the proposed rules is the potential chilling effect on creative freedom and storytelling in the OCCP space. Filmmakers and content creators might feel restricted or deterred from including scenes with</p>
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³ <https://tobaccocontrol.bj.com/content/25/3/341>

		<p>introduced, allowing OCCPs some discretion on how they implement health warnings, and monitoring of its implementation and effectiveness by civil society. This could include tailored messaging based on content genre or viewer demographics, which would respect the platform's autonomy while achieving public health goals.</p>	<p>tobacco use, even when such depictions are necessary to maintain artistic authenticity or are integral to the narrative. This could have a negative impact on the diversity of stories being told on platforms.</p> <p>Additionally, most OCCP already adhere to globally accepted practices for content regulation and moderation. They are also regulated under the Information Technology (IT) Act and its associated rules to conduct due diligence and ensure the appropriateness of content. Adding these new layers of restrictions could stifle creativity and lead creators to self-censor their work to avoid regulatory challenges.</p>
2.	<p>Display non-skippable anti-tobacco health spot of minimum thirty seconds duration and non-skippable audio-visual disclaimer on the ill effects of tobacco use, of minimum twenty seconds upon opening the platforms of Publishers of the online curated content.</p>	<p>The proposed rules should carefully consider the impact of these warnings on content designed for children to avoid adverse impact on their psychological well-being. This should be avoided when the app is opened in kids' mode, as content is unlikely to depict tobacco usage or consumption.</p> <p>Moreover, we propose the content should be skippable after 3-5 seconds. It will</p>	<p>a) Confusing for new users: The non-skippable messaging on opening of the platform can cause confusion for new to internet or OCCP users as they might not be aware of platform's commitment to public health or the specific regulations in place. This unexpected interruption can create a frustrating experience, making it harder for them to navigate the</p>

		<p>imply that the user is actively engaged and has understood the message, allowing them to continue with their viewing experience. In contrast, with non-skippable messages lasting 20-30 seconds, users may lose interest and move away from the screen during the interruption. This disengagement means there's no guarantee that users have absorbed the message or understood its importance. The longer non-skippable format could lead to frustration and reduced attention, ultimately diminishing the effectiveness of the health messaging intended to promote awareness. Moreover, forcing viewers to sit through non-skippable warnings, without their permission, only takes away agency. This is contradictory to the entire edifice of digital economy and regulation, which considers consumers' consent essential to deliver any message or content to them.</p> <p>Therefore, the skippable approach would preserve the user experience while still delivering the health message effectively.</p>	<p>platform and enjoy the content they intended to watch. Ultimately, this confusion may lead to dissatisfaction.</p> <p>b) Restricting choice: This non-skippable approach effectively removes choice from consumers. While digital economy regulations in general emphasise on consent and providing users with what they want, enforcing non-skippable content contradicts this approach. By taking away the power to skip messages, it reflects an overtly paternalistic attitude from the state, which is counterintuitive to the principles of user autonomy. Society should move away from such paternalism, allowing users to make informed choices rather than imposing regulations that dictate their viewing experience.</p> <p>c) Disproportionate burden on OCCP: OCCP platforms should not bear the disproportionate burden of spreading anti-tobacco messaging, especially when tobacco-related information and products are readily available from other sources. No stringent</p>
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			<p>statutory bodies might push for messages on climate change, child labor, women's empowerment, and more. This could lead to a slippery slope where OCCP content becomes filled with regulatory messages, detracting from the user experience. While anti-tobacco warnings are tied to tobacco depictions, content often portrays other sensitive issues like rash driving or violence, potentially leaving the scope for further government-mandated disclaimers, which could overwhelm streaming platforms and disrupt entertainment.</p> <p>e) Potential risks of shifting to illegal platforms: Disruption in user experience might prompt some, especially youth to opt for illegal platforms that does not follow regulatory norms. These Illegal streaming platforms are often rife with cybersecurity risks, including malware, phishing schemes, and identity theft, risking users' online security.</p>
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Overall, we recommend conducting comprehensive Regulatory Impact Assessment (RIA) of the proposed rules to understand potential costs and benefits of the proposal on different stakeholder groups. RIA can also help design more balanced approach which can achieve the regulatory

objectives, in a manner that costs are significantly outweighed by the benefits. CUTS has considerable experience of conducting RIAs and would be happy to assist the Ministry of Health and Family Welfare in this regard.⁴

⁴ <https://cuts-ccier.org/regulatory-impact-assessment/>