

## **Comments by New Indian Consumer Initiative Regarding COTPA Rules 2024 and Their Impact on Consumers, Creative Freedom, and Civil Society**

Dear Sir/Madam,

We write to you regarding concerns on the new Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2024 (COTPA Rules 2024 - <https://mohfw.gov.in/?q=newshighlights-191>) which were published on September 13, 2024 by the Ministry of Health and Family Welfare and currently out for public consultation.

At the outset, we wholeheartedly support eliminating the menace of tobacco use in the country and welcome the intent of the government to tackle the issue with seriousness. However, the new rules raise some serious concern vis-à-vis unintended consequences. The New Indian Consumer Initiative organized a public consultation in this regard.

Based on the outcome of public consultation, we, the undermentioned group of consumer advocates, creative professionals, and concerned civil society actors, are writing to express some concerns regarding the proposed Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Amendment Rules, 2024 (COTPA Rules 2024).

While we strongly support the government's objectives to reduce tobacco consumption and raise public awareness of its health risks, these concerns regarding the unintended and far-reaching consequences of the proposed regulations, particularly for India's consumers, cultural industries, and the broader civil society are important to be considered.

### **A Society-First Perspective: Protecting Consumer Rights, Creative Freedom, and Public Interest**

#### **1 Impact on Consumer Experience and Fragmentation of OTT Access**

OTT platforms have revolutionized how Indians access global content, making India a key hub for world-class entertainment. COTPA Rules 2024 will undermine this achievement by creating an OTT streaming experience that is significantly different from other regions of the world. Forcing Indian users to repeatedly view non-skippable anti-tobacco warnings, even in content unrelated to tobacco, not only diminishes the user experience but also restricts their freedom to engage with content on their terms. This inconsistency is likely to treat Indian viewers differently and position them as second-class consumers compared to their global counterparts. It also affects their choice and autonomy for the content that they have paid for.

Furthermore, these new regulations could deter international filmmakers from making their content available in India, limiting the diversity of cultural expression that Indian consumers currently enjoy. For example, as seen in 2013 with *Blue Jasmine*, filmmakers who refuse to comply with similar rules could withdraw their films from the Indian market. Such

restrictions on content availability will erode India's status as a global content hub and limit the cultural choices available to Indian audiences.

## **2 Erosion of Creative Freedom and Artistic Integrity**

The creative community in India has worked tirelessly to establish itself as a globally recognized force, bringing diverse, bold, and thought-provoking content to audiences worldwide. The mandatory imposition of intrusive anti-tobacco warnings on films and shows, regardless of whether they contain tobacco depictions, strikes at the heart of creative freedom. These rules will affect how stories are told, disrupting the narrative flow and altering the artistic intent of the creators.

India's vibrant content creation industry is already regulated by the Central Board of Film Certification (CBFC), which ensures that content is appropriate for audiences. Adding additional layers of regulation, such as mandatory anti-tobacco warnings, risks overburdening an industry that thrives on artistic expression. Forcing creatives to dilute their work with warnings that are irrelevant to the story they wish to tell sets a worrying precedent for censorship and could stifle future creative endeavours.

Filmmakers attest to the enormous amount of time, effort, and resources that go into creating a film or series. It's not just about the financial investment, which can run into hundreds of crores for a single project, but also the years spent developing scripts, perfecting visuals, and refining the final product.

For them and many others, their work is an expression of art, a vision that they hope will resonate with audiences. However, the COTPA Rules 2024 will require OTT platforms to insert random cuts into films and series to display health warnings. These cuts will likely be jarring, disrupting the narrative flow that creators work so hard to maintain.

As storytellers, they understand how crucial the timing is to a scene—interruptions, especially at pivotal moments, can completely break the viewer's engagement. The hard work and creative intent that goes into each scene risk being overshadowed by these intrusive warnings.

If audiences begin to lose interest in content because of these disruptions, it could also lead to a drop in viewership, which would affect the willingness of OTT platforms to invest in new projects. For creators, this is a worrying prospect, as it means fewer opportunities to tell impactful stories.

## **3 Risk of Isolating India in the Global Creative Landscape**

OTT platforms have opened up opportunities not just for Indian creators but also for international collaborations. The ability to reach global audiences has been a game changer, allowing creators to bring Indian stories to the world. However, with the introduction of these new rules, India risks becoming an outlier in the global media and entertainment (M&E) industry.

Most countries, including leading markets like the European Union, the UK, and Singapore, focus on giving users the autonomy to make their own viewing choices through content descriptors and age ratings. These systems inform viewers about potentially sensitive content without interrupting the viewing experience.

#### **4 Depiction Is Not Promotion**

One of the key concerns with the COTPA Rules 2024 is the assumption that depicting tobacco use in a film or series automatically promotes it. Creative community and consumers strongly disagree with this view. Depiction is often a reflection of the realities of the characters or the time period being portrayed. For instance, it's hard to imagine certain historical figures, like J. Robert Oppenheimer, without their signature props. These scenes are integral to the authenticity of the story, not an endorsement of tobacco use.

The current regulations already ensure that content with tobacco use is flagged and accompanied by warnings. This provides sufficient information for viewers to make informed choices. Introducing additional, intrusive warnings could set a precedent for overregulation.

If we confuse depiction with promotion, what's next? Will the regulation require warnings for any imitable behaviour, such as reckless driving or unhealthy eating? This kind of regulatory overreach could severely limit creative freedom in the long term.

#### **5 Risks of Piracy and Consumer Exploitation**

The frequent and repetitive display of anti-tobacco warnings, especially in OTT content, can lead to a growing sense of frustration among viewers. Faced with numerous interruptions that detract from their entertainment experience, many consumers may turn to pirated versions of content to avoid the disruptions. This poses a serious threat to both consumer safety and the creative industry itself.

Pirated content is often distributed through unregulated websites, exposing users to cybersecurity risks such as malware, data theft, and device hijacking. This is not merely an economic issue but one of public safety. As piracy increases, so too do the risks to consumers' personal and financial information. Ironically, in trying to protect public health, COTPA Rules 2024 may drive consumers toward unsafe and illegal alternatives that put them at greater risk.

#### **6 Compromising the Safety and Well-being of Children and other sensitive sections**

The graphic nature of the required warnings—featuring images of oral cancer and damaged organs—could be distressing for certain segments of the population. Children who consume content on OTT platforms, including kid-specific and animation-focused services, would be exposed to these disturbing images without the ability to skip them. This could introduce them prematurely to concepts such as death, disease, and cancer, which they may not be emotionally prepared to process.

The rules, as written, apply to all content, regardless of whether it contains tobacco-related scenes, making this a widespread issue. The potential distress caused by these images isn't limited to children. Elderly viewers or individuals who have lost loved ones to cancer may find these constant reminders emotionally triggering. Content consumption, especially entertainment, is meant to provide a mental break and promote relaxation. Forcing viewers to repeatedly confront these graphic images could have a negative impact on their mental health, transforming a recreational activity into a source of anxiety or discomfort.

OTT platforms have been pioneers in the use of parental controls and content filtering to ensure that age-inappropriate material is not accessible to young viewers. By enforcing blanket anti-tobacco warnings across all content, the new rules risk undermining these safeguards.

## **7 Agency of Parents and Caretakers**

Parents and caretakers are often instrumental in deciding what content is appropriate for their children. The mandatory inclusion of graphic warnings, even in content designed for children, removes that agency from parents and caretakers. It is essential that regulations aimed at public health do not inadvertently expose younger audiences to sensitive and distressing subjects.

## **8 Desensitisation and Reduced Effectiveness of Public Health Messaging**

While the aim of the COTPA Rules is to raise awareness about the dangers of tobacco use, the repetitive and mandatory nature of these warnings' risks desensitizing viewers. Overexposure to the same message, particularly in unrelated content, can cause viewers to become indifferent or even dismissive of the warnings. This is already evident with tobacco packaging, where many regular tobacco users ignore the graphic warnings. By inundating OTT viewers with frequent anti-tobacco messages, the intended impact of these warnings may diminish over time, rendering them ineffective. Moreover, the disruptive nature of these warnings may encourage viewers to skip or ignore the beginning portions of films and shows, where such messages are most prevalent. This defeats the purpose of the regulations and weakens the overall goal of reducing tobacco consumption through awareness.

## **9 Misalignment of Focus: Addressing Direct Tobacco Sales and E-commerce Risks**

While OTT platforms are being heavily regulated for tobacco depiction, it is important to acknowledge that the greater public health risk lies in the direct sale of tobacco products, especially via e-commerce. Quick commerce platforms, which deliver tobacco products to consumers' doorsteps within minutes, lack the same level of scrutiny. These platforms often ask users to self-certify their age with no robust verification mechanisms in place, making it easy for minors to gain access to tobacco products.

Ironically, while OTT content creators must comply with onerous regulations, the applications that facilitate the purchase and delivery of tobacco products remain largely free from these obligations. A realignment of focus is necessary to address the direct channels

through which tobacco is being made available to consumers, including vulnerable sections of society like minors.

## **10 Conclusion: A Call for Proportionate and Contextual Regulation**

We fully support the government's commitment to reducing tobacco usage and improving public health. However, the current form of COTPA Rules 2024 imposes disproportionate obligations on OTT platforms, at the expense of consumer rights, creative freedom, and public safety. We urge the Ministry to consider a more balanced approach—one that focuses on direct tobacco sales and targets platforms that facilitate the consumption of tobacco products, rather than unduly burdening content creators and consumers.

It would be more beneficial to focus on controlling access to tobacco products rather than disrupting the entertainment experience. For instance, today it is alarmingly easy for minors to purchase cigarettes through quick commerce platforms, where age verification is minimal at best. Despite existing laws, tobacco products continue to be sold near schools and other restricted areas.

Efforts to regulate tobacco access at the point of sale—such as enforcing stringent age verification on quick commerce platforms and cracking down on vendors selling tobacco near educational institutions—would likely have a greater impact than disrupting OTT content. It is concerning that while the platforms that facilitate tobacco purchases remain largely unregulated, OTT platforms are being saddled with heavy restrictions that do not address the core issue of accessibility.

We believe a nuanced, collaborative, and context-specific regulatory approach will better serve the goals of public health without compromising the integrity of India's creative industries or the rights of its citizens. Towards this endeavour, we also believe that adequate awareness on potential harm of tobacco use must exist. However, the placement of 'warning', choice of platform and frequency needs to be carefully considered. This is critical as the purpose of warning is to sensitize users and elicit positive response from them. It is important to highlight this fact to avoid any counter-productive or counter intuitive impact. At the same time, sensitization efforts need to be calibrated in such a manner that their intended purpose does not lead to unintended consequences on other sectors.

We hope these concerns will be taken into consideration during the review process, and we stand ready to engage further in discussions to find an equitable solution that protects both public health and societal interests.

Thank you for your attention to this matter.

Sincerely,



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Best regards

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21<sup>st</sup> October, 2024