

28 June, 2023

Shri. Rajesh Bhushan
Secretary
Department of Health & Family Welfare, Government of India
Room No. 156, A Wing, Nirman Bhawan,
New Delhi - 110011
Email: secyhfw@nic.in

Dear Shri Bhushan,

I am writing on behalf of the Singapore-based Asia Video Industry Association (AVIA). AVIA is the trade association for the video industry and ecosystem in Asia Pacific. It serves to make the video industry stronger and healthier through promoting the common interests of its members. Our membership consists of a combination of local, regional and multi-national companies, many of which are substantial cross-border investors; creating and purchasing video content to meet rapidly-evolving consumer demands and investing in India's communications and creative industries.

AVIA member-companies are active in India also and include the likes of Netflix, Amazon, Warner Bros. Discovery, Zee TV, Bharucha & Partners, Viacom18 (Jio), Network18 and Star India/Hotstar, apart from other global players like AsiaSat, SES, TVMonde, The Walt Disney Co. and Google amongst the 60+ member-company base.

As responsible industry players who endeavour to comply with applicable health and other related regulation, and who have supported India's ongoing education and efforts to reduce consumption of tobacco products, we write to express our urgent concerns about the recently announced amendment to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 by the Ministry of Health & Family Welfare (MoHFW).

Whilst we appreciate and support the Ministry's goal of reducing the consumption of tobacco, we have serious concerns inter-alia about the severe negative impact of these "2023 Tobacco Warning Rules" on the Online Curated Content (OCC) industry, popularly known as OTT platforms, which are different from the likes of YouTube that carry unedited user-generated content.

The amendments would have a negative impact on the ability to make Indian content go global, significantly deteriorate the experience of users and audiences of OCC services and add incalculable administrative and operational costs in ways that would work counter to the intention of educating and advising users on the dangers of tobacco consumption.

We note with concern that MoHFW has not cited any empirical data, rigorous analysis or scientific studies in support of stipulations contained in 2023 Tobacco Rules. Introduction and/or implementation of any rule without empirical data, statistics etc. to support or justify such rules, raises concerns *inter-alia* about their necessity and effectiveness.

Our first concern that we wish to raise is the absence of industry consultation prior to this announcement. Simply announcing rules without dealing with relevant issues (including potential implementation issues),

with a short deadline for implementation, undermines the confidence of economic actors and investors in transparency in policy making. As an industry body we are always happy to collate our members' views and engage with relevant government processes --- as we have been doing for the last 15 years having continuously engaging with MIB, TRAI, DoT, DoS, Commerce Ministry, etc. --- to help shape outcomes that can be implemented in a manner that addresses legitimate public policy objectives as well as practical operational issues.

Consultation with industry stakeholders is an international best practice, which at a minimum keeps policy makers informed of potential issues with proposed regulatory changes. Having rules simply announced with no prior consultation or understanding of the impact can result in a wide-ranging and unintended impact on a large body of content providers.

As the Indian Government organisations (notably the Ministry of Information and Broadcasting, MIB, and Meity) will be aware, the OCC part of the content industry is already regulated under the IT Rules, 2021, which provides a Code of Ethics outlining specific provisions for how OCC content should be classified. These provisions provide for classification of content based on specific criteria on Context, Theme, Tone and Impact, as well as the Target Audience. This Code inter-alia places requirements on OCC providers to display the content classification, content descriptor, as well as age rating. Consumers are in control of what and when they watch.

Content classification, advisories, descriptors, and parental controls allow consumers to make an informed decision prior to watching, of what they view, by putting in place mechanisms for responsible viewing. Most notable within this classification requirement are specific guidelines for content as a whole portraying misuse of psychotropic substances, liquor, **smoking and tobacco**, which qualify and require a higher classification to be included by the OCC providers. Indeed, the age rating, content advisories or descriptors are all tools for users to make informed choice when it comes to viewing content with smoking and tobacco depiction/consumption. Thus, the Code of Ethics under the IT Rules, 2021 already provides for a robust regulatory landscape for OCC providers, which is both reasonable and proportionate. **Introducing a new set of regulatory changes on an existing occupied field creates confusion by mandating a parallel conflicting regulatory mechanism.**

We note the requirement in the 2023 Tobacco Warning Rules to:

- (a) display anti-tobacco health spots, of minimum thirty seconds duration each at the beginning and middle of the programme;
- (b) display an 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 programme;
- (c) display an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the programme.

The uniqueness of OCC is the ability of consumers to consume what content they want, when they want, and how they want. A large proportion of consumers watch OCC content on mobile devices, at a time and place of their choosing. Consumers appreciate a seamless content viewing experience. Introducing onerous requirements to insert audiovisual disclaimers in the middle of programmes as well as static messages in each scene which contains tobacco or tobacco use, would severely undermine the consumer experience, especially for those viewing on mobile devices. These requirements do not take into account technological advances or the "on demand" nature of the OCC platform. Messaging and program interruptions that deteriorate the viewing experience relative to the original format may also drive consumers to increased viewing of illicit pirated content – which is unfortunately readily available online.

Such content may be found unfiltered, unrated and often on sites that provide exposure to much wider risks to viewers and operate outside of regulation and accountability. Viewers will thus be incentivized to view content on other, unregulated, or pirate, internet services, which will adversely impact India's burgeoning Media & Entertainment sector as a whole.

The Indian M&E industry, according to a recent FICCI-EY report, is worth INR 2.1 trillion (\$26 billion) as of 2022 and is expected to show double-digit growth in coming years. Any disruptions or unintended regulatory interventions can derail the Indian Government's announced incentives to make India a global content and entertainment hub.

Static messages on top of subtitles; audiovisual disclaimers in the middle of programs where there is no natural intermission; relatively lengthy disclaimers for content that itself might be only 20 minutes in length, all severely undermine the consumer experience. A uniform rule, considering the different types of content of varying duration made available by OCC, is not feasible. There are various types of publishers in India and numerous types of OCC model of business in India namely SVOD, TVOD, AVOD, etc. As a result, the content duration that each type of service offering may carry is likely to vary significantly. To apply the same rule of duration of warnings, health spots, disclaimers, etc. and the requirement to apply all of them in the same manner, is not feasible. Additionally, ad-dependant video on demand providers may face serious adversity in placing a warning next to an ad that is screened before a piece of content. Not only may this drive away viewers due to the long pre-content messaging, but it may also have an impact on the ad brand who may not wish their products to be placed next to such warnings.

Further, this requirement could pose challenges to bringing Indian content across the world. Increasingly OCC content is offered in numerous languages, either subtitled or dubbed, to bring it to a wider audience. This enables Indian audiences to consume global content as well as allowing OCC Indian creators and providers to showcase Indian content to the world, in line with MIB's goal to double content spend in India to USD10 Bn. in five years.

Placing these requirements, which go beyond international standards, onto content creators potentially risks them deeming it too difficult and/or destructive of their creative vision. Such onerous and unreasonable obligations are equally likely to prevent international creators from exhibiting content in India. It is likely that with such requirements, international content that is rapidly becoming popular and available in India will no longer be exhibited in India. No international creators would be willing to include any of the warnings in their content. This would effectively lead to a reduction of production and exhibition in India, which was, until now, on the rise due to the Government of India's significant efforts. **A light-touch approach to OCC is crucial in this regard, making it easier for Indian content to travel across the world, as well as provide Indian consumers with access to global content.**

There are many more concerns we wish to highlight, including the proposed short timeline for implementation. In light of all of these concerns AVIA would request relevant Government departments to urgently meet with industry representatives, including those from AVIA, to discuss and address these.

Yours sincerely,



Clare Bloomfield
Acting Chief Policy Officer